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Presidential Documents

Title 3—

The President

Proclamation 10405 of May 31, 2022

Adjusting Imports of Aluminum Into the United States

By the President of the United States of America

A Proclamation

1. On January 19, 2018, the Secretary of Commerce (Secretary) transmitted to the President a report on the Secretary's investigation into the effect of imports of aluminum articles on the national security of the United States under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862). The Secretary found and advised the President of his opinion that aluminum articles are being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States.

2. In Proclamation 9704 of March 8, 2018 (Adjusting Imports of Aluminum Into the United States), the President concurred in the Secretary's finding that aluminum articles are being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States, and decided to adjust the imports of aluminum articles by imposing a 10 percent ad valorem tariff on such articles imported from all countries except Canada and Mexico. The proclamation further stated that any country with which we have a security relationship is welcome to discuss with the United States alternative ways to address the threatened impairment of the national security caused by imports from that country, and noted that, should the United States and any such country arrive at a satisfactory alternative means to address the threat to the national security such that the President determines that imports from that country no longer threaten to impair the national security, the President may remove or modify the restriction on aluminum articles imports from that country and, if necessary, adjust the tariff as it applies to other countries, as the national security interests of the United States require.

3. The United States has successfully concluded discussions with the United Kingdom (UK) on satisfactory alternative means to address the threatened impairment to our national security posed by aluminum articles imports from the UK. The United States and the UK have agreed to expand coordination involving trade remedies and customs matters, monitor bilateral steel and aluminum trade, cooperate on addressing non-market excess capacity and carbon intensity in these sectors, annually review their arrangement and their ongoing cooperation, and confer on market-distorting influence or ownership in the steel and aluminum industries. The United States will monitor the implementation and effectiveness of the measures agreed upon with the UK in addressing our national security needs, and I may revisit this determination, as appropriate.

4. The United States will implement a number of actions, including a tariff-rate quota that restricts the quantity of aluminum articles imported into the United States from the UK without the application of the tariff proclaimed in Proclamation 9704. Under the arrangement, aluminum articles, except semi-finished wrought aluminum articles, that are accompanied by a certificate of analysis are eligible for in-quota treatment. In order to be eligible for in-quota treatment, semi-finished wrought aluminum articles must be accompanied by a certificate of analysis and must not contain primary aluminum from the People's Republic of China, the Russian Federation,

or the Republic of Belarus. In my judgment, these measures will provide an effective, long-term alternative means to address any contribution by UK aluminum articles imports to the threatened impairment to our national security by restraining aluminum articles imports to the United States from the UK, limiting transshipment, and discouraging excess capacity and excess aluminum production. In light of this agreement, I have determined that specified volumes of eligible aluminum articles imports from the UK will no longer threaten to impair the national security and have decided to exclude such imports from the UK up to a designated quota from the tariff proclaimed in Proclamation 9704. The United States will monitor the implementation and effectiveness of the tariff-rate quota and other measures agreed upon with the UK in addressing our national security needs, and I may revisit this determination, as appropriate.

5. The alternative means, including the tariff-rate quota, are consistent with the recommendations specified in the original investigation into the effect of imports of aluminum articles on the national security of the United States under section 232 of the Trade Expansion Act of 1962, as amended. The agreed-upon aggregate tariff-rate quota volume, totaling 900 metric tons of unwrought aluminum, 11,400 metric tons of semi-finished wrought aluminum other than foil, and 9,300 metric tons of foil, is consistent with the objective of reaching and sustaining a sufficient capacity utilization rate in the domestic aluminum industry.

6. In light of my determination to adjust the tariff proclaimed in Proclamation 9704 as applied to eligible aluminum articles imports from the UK, I have considered whether it is necessary and appropriate in light of our national security interests to make any corresponding adjustments to such tariff as it applies to other countries. I have determined that it is necessary and appropriate, at this time, to maintain the current tariff level as it applies to other countries.

7. Section 232 of the Trade Expansion Act of 1962, as amended, authorizes the President to adjust the imports of an article and its derivatives that are being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.

8. Section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483), authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTSUS) the substance of statutes affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States of America, including section 232 of the Trade Expansion Act of 1962, as amended, section 301 of title 3, United States Code, and section 604 of the Trade Act of 1974, as amended, do hereby proclaim as follows:

(1) To establish a tariff-rate quota on imports of eligible aluminum articles from the UK as set forth in paragraph 4 of this proclamation, U.S. Note 19 of subchapter III of chapter 99 of the HTSUS is amended as provided for in the Annex to this proclamation. Imports of aluminum articles from the UK in excess of the tariff-rate quota quantities shall remain subject to the duties imposed by clause 2 of Proclamation 9704, as amended. The Secretary, in consultation with the United States Trade Representative and the Secretary of Homeland Security, shall recommend to the President, as warranted, updates to the in-quota volumes contained in the Annex to this proclamation. Aluminum articles from the UK imported under an exclusion granted pursuant to clause 3 of Proclamation 9704, as amended, shall count against the in-quota volume of the tariff-rate quota established in clause 1 of this proclamation.

(2) Clause 2 of Proclamation 9704, as amended, is further amended in the second sentence by deleting ''and'' before ''(h)'' and inserting before the period at the end: '', and (i) on or after 12:01 a.m. eastern daylight

time on June 1, 2022, from all countries except Argentina, Australia, Canada, Mexico, and from the member countries of the European Union through 11:59 p.m. eastern standard time on December 31, 2023, and from the United Kingdom, for aluminum articles covered by headings 9903.85.25 through 9903.85.44, inclusive.''

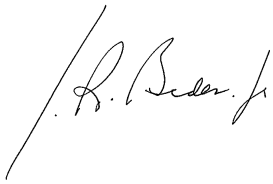
(3) Aluminum articles eligible for treatment under clause 1 of this proclamation must be accompanied by a certificate of analysis in order to receive such treatment. Eligible semi-finished wrought aluminum articles must not contain primary aluminum from the People's Republic of China, the Russian Federation, or the Republic of Belarus. The Secretary, in consultation with the Secretary of Homeland Security and the United States Trade Representative, is authorized to take such actions as are necessary to ensure compliance with this requirement. Failure to comply could result in applicable remedies or penalties under United States law.

(4) The modifications to the HTSUS made by clause 1 of this proclamation shall be effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on June 1, 2022, and shall continue in effect, unless such actions are expressly reduced, modified, or terminated.

(5) Any imports of aluminum articles from the UK that were admitted into a U.S. foreign trade zone under ''privileged foreign status'' as defined in 19 CFR 146.41, prior to 12:01 a.m. eastern daylight time on June 1, 2022, shall be subject upon entry for consumption made on or after 12:01 a.m. eastern daylight time on June 1, 2022, to the provisions of the tariff-rate quota in effect at the time of the entry for consumption.

(6) Any provision of previous proclamations and Executive Orders that is inconsistent with the actions taken in this proclamation is superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord two thousand twenty-two, and of the Independence of the United States of America the two hundred and forty-sixth.



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ANNEX

Modifications to Chapter 99 of the Harmonized Tariff Schedule of the United States

Effective with respect to products of the United Kingdom that are entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on June 1, 2022, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is hereby modified as follows:

1. Subdivision (a) of U.S. note 19 to such subchapter is modified by adding the following new subdivision at the end thereof:

"(vi) Subheadings 9903.85.50 through 9903.85.66, inclusive, set forth the ordinary customs duty treatment for the aluminum products (as enumerated in subdivision (b) of this note) of the United Kingdom under tariff-rate quotas administered by the Department of Commerce. Subheadings 9903.85.50 through 9903.85.66 shall be subject to any aggregate annual quantity established for each such subheading, including any other limitations that may be announced, in addition to the aggregate annual quantity set forth in the superior text to any such subheading, all as set forth on the Internet site of the Department of Commerce at the following link: https://bis.doc.gov/232-aluminum. No entries of any semi-finished (wrought) aluminum products under subheadings 9903.85.53 through 9903.85.66, inclusive, shall contain primary aluminum that is the product of the People's Republic of China, Russia or Belarus. No entry of such aluminum products under subheadings 9903.85.50 through 9903.85.66, inclusive, during any of the periods January through June or July through December in any year shall be allowed that is in excess of the quantity that may be allocated by the Department of Commerce, as set forth on the Internet site of such Department as noted herein. No claim for entry under any provision of chapter 98 or of subchapter II of chapter 99 shall be allowed to reduce or prevent the application of an additional duty provided for under this note. A Certificate of Analysis for a smelted (unalloyed) primary aluminum used in a product imported under the above subheadings, or such other information as may required by U.S. Customs and Border Protection, must be supplied by the importer in order to make entry under this subdivision."

2. The article description of heading 9903.85.01 is modified by striking "and" and by inserting after "9903.85.44" the phrase "and subheadings 9903.85.50 through 9903.85.66".

3. The article description of heading 9903.85.03 is modified by inserting before "or any exclusions" the phrase "of the United Kingdom".

9903.85.50	Aluminum products of the United Kingdom, when such products are covered by an exclusion granted by the Secretary of Commerce under note 19(c) to this subchapter, provided that such goods shall be counted toward any quantitative limitation applicable to any such product until such limitation has filled.....	The duty provided in the applicable subheading	
	Aluminum products of the United Kingdom, not described in heading 9903.85.50 to this subchapter and entered under the terms provided in U.S. note 19 to this subchapter:		
	Unwrought aluminum products specified in U.S. note 19(b)(i) to this subchapter, when entered in aggregate annual quantities not to exceed 0.9 thousand metric tons (TMT):		
9903.85.51	Unwrought aluminum, not alloyed (provided for in subheading 7601.10.30 or 7601.10.60)	The duty provided in the applicable subheading	
9903.85.52	Other unwrought products, alloyed (provided for in subheading 7601.20.30, 7601.20.60 or 7601.20.90)	The duty provided in the applicable subheading	
	Other aluminum products (other than foil), specified in U.S. note 19(b)(ii) through 19(b)(v) to this subchapter, when entered in aggregate annual quantities not to exceed 11.4 TM:		
9903.85.53	Bars, rods and profiles of aluminum, not alloyed (provided for in subheading 7604.10.10, 7604.10.30 or 7604.10.50)	The duty provided in the applicable subheading	
9903.85.54	Hollow profiles of aluminum alloys (provided for in subheading 7604.21.00)	The duty provided in the applicable subheading	
9903.85.55	Bars, rods, and solid profiles, alloyed (provided for in subheading 7604.29.10, 7604.29.30 or 7604.29.50)	The duty provided in the applicable subheading	
9903.85.56	Wire of aluminum, of which the maximum cross-sectional dimension exceeds 7 mm (provided for in subheading 7605.11.00 or 7605.21.00)	The duty provided in the applicable subheading	

9903.85.57	Other wire of aluminum (provided for in subheading 7605.19.00 or 7605.29.00)	The duty provided in the applicable subheading
9903.85.58	Products meeting the requirements of note 1(d) to chapter 76 and with a thickness of more than 6.3 mm (described in statistical reporting number 7606.11.3030, 7606.12.3015, 7606.12.3025, 7606.12.3035, 7606.91.3055, 7606.91.6055, 7606.92.3025 or 7606.92.6055)	The duty provided in the applicable subheading
9903.85.59	Products meeting the requirements of note 1(d) to chapter 76 and with a thickness of 6.3 mm or less (described in statistical reporting number 7606.11.3060, 7606.12.3091, 7606.12.3096, 7606.91.3095, 7606.91.6095, 7606.92.3035 or 7606.92.6095) ..	The duty provided in the applicable subheading
9903.85.60	Aluminum alloy can stock (described in statistical reporting number 7606.12.3045 or 7606.12.3055)	The duty provided in the applicable subheading
9903.85.61	Pipes and tubes of aluminum, seamless (described in statistical reporting number 7608.10.0030 or 7608.20.0030)	The duty provided in the applicable subheading
9903.85.62	Pipes and tubes of aluminum, other than seamless (described in statistical reporting number 7608.10.0090 or 7608.20.0090).....	The duty provided in the applicable subheading
9903.85.63	Tube or pipe fittings of aluminum (for example, couplings, elbows, sleeves) (described in statistical reporting number 7609.00.0000)	The duty provided in the applicable subheading
9903.85.64	Castings or forgings of aluminum (described in statistical reporting number 7616.99.5160 or 7616.99.5170)	The duty provided in the applicable subheading
	Aluminum foil, when entered in aggregate annual quantities not to exceed 9.3 TMT:	
9903.85.65	Aluminum foil, not backed (described in statistical reporting number 7607.11.3000, 7607.11.6010, 7607.11.6090, 7607.11.9030,	

	7607.11.9060, 7607.11.9090, 7607.19.1000, 7607.19.3000 or 7607.19.6000)	The duty provided in the applicable subheading
9903.85.66	Aluminum foil, backed (described in statistical reporting number 7607.20.1000 or 7607.20.5000)	The duty provided in the applicable subheading"

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Presidential Documents

Proclamation 10406 of May 31, 2022

Adjusting Imports of Steel Into the United States

By the President of the United States of America

A Proclamation

1. On January 11, 2018, the Secretary of Commerce (Secretary) transmitted to the President a report on the Secretary's investigation into the effect of imports of steel mill articles (steel articles) on the national security of the United States under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862). The Secretary found and advised the President of his opinion that steel articles are being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States.

2. In Proclamation 9705 of March 8, 2018 (Adjusting Imports of Steel Into the United States), the President concurred in the Secretary's finding that steel articles, as defined in clause 1 of Proclamation 9705, as amended by clause 8 of Proclamation 9711 of March 22, 2018 (Adjusting Imports of Steel Into the United States), are being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States, and decided to adjust the imports of those steel articles by imposing a 25 percent ad valorem tariff on such articles imported from all countries except Canada and Mexico. The proclamation further stated that any country with which we have a security relationship is welcome to discuss with the United States alternative ways to address the threatened impairment to the national security caused by imports from that country, and noted that, should the United States and any such country arrive at a satisfactory alternative means to address the threat to the national security such that the President determines that imports from that country no longer threaten to impair the national security, the President may remove or modify the restriction on steel articles imports from that country and, if necessary, adjust the tariff as it applies to other countries, as the national security interests of the United States require.

3. The United States has successfully concluded discussions with the United Kingdom (UK) on satisfactory alternative means to address the threatened impairment to the national security posed by imports of steel articles and derivative steel articles from the UK. The United States and the UK have agreed to expand coordination involving trade remedies and customs matters, monitor bilateral steel and aluminum trade, cooperate on addressing non-market excess capacity and carbon intensity in these sectors, annually review their arrangement and their ongoing cooperation, and ensure that steel articles exports from the UK to the United States under the applicable tariff-rate quota for steel articles are not supported by market-distorting practices.

4. The United States will implement a number of actions, including a tariff-rate quota that restricts the quantity of steel articles and derivative steel articles imported into the United States from the UK without the application of the tariff proclaimed in Proclamation 9705. Under the arrangement, steel articles that are melted and poured in the UK and imported from either the UK or further processed in the European Union, conferring European Union country of origin, and subsequently imported into the United States from the European Union are eligible for in-quota treatment. In my judgment, these measures will provide an effective, long-term alternative

means to address any contribution by UK steel articles and derivative steel articles imports to the threatened impairment to the national security by restraining steel articles and derivative steel articles imports to the United States from the UK, limiting transshipment, discouraging excess steel capacity and production, and strengthening the United States-UK partnership. In light of this agreement, I have determined that imports of specified volumes of eligible steel articles and derivative steel articles from the UK will no longer threaten to impair the national security and have decided to exclude such imports from the UK up to a designated quota from the tariff proclaimed in Proclamation 9705. The United States will monitor the implementation and effectiveness of the tariff-rate quota and other measures agreed upon with the UK in addressing our national security needs, and I may revisit this determination, as appropriate.

5. I conclude that the UK presents a special case because of the unique nature of the special relationship that exists between the United States and the UK. The United States has a deep security relationship with the UK, including a shared commitment to mutual support in addressing national security concerns, particularly through security, defense, and intelligence partnerships; a strong economic and strategic partnership; and a shared commitment to addressing global excess capacity in steel production.

6. The alternative means, including the tariff-rate quota, advance the recommendations contained in the Secretary's January 2018 report. The agreed-upon aggregate tariff-rate quota volume specified in the agreement between the United States and the UK, totaling 500,000 metric tons, is consistent with the objective of reaching and maintaining a sufficient capacity utilization rate in the domestic steel industry and reflects the continued importance of the special relationship that exists between the United States and the UK.

7. In light of my determination to adjust the tariff proclaimed in Proclamation 9705 as applied to eligible steel articles and derivative steel articles that are melted and poured in the UK and imported from either the UK or the European Union, I have considered whether it is necessary and appropriate in light of our national security interests to make any corresponding adjustments to such tariff as it applies to other countries. I have determined that it is necessary and appropriate, at this time, to maintain the current tariff level as it applies to other countries.

8. Section 232 of the Trade Expansion Act of 1962, as amended, authorizes the President to adjust the imports of an article and its derivatives that are being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.

9. Section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483), authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTSUS) the substance of statutes affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, JOSEPH R. BIDEN Jr., President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States of America, including section 232 of the Trade Expansion Act of 1962, as amended, section 301 of title 3, United States Code, and section 604 of the Trade Act of 1974, as amended, do hereby proclaim as follows:

(1) To establish a tariff-rate quota on imports of steel articles that are melted and poured in the UK and imported from either the UK or the European Union as set forth in paragraph 4 of this proclamation, U.S. Note 16 of subchapter III of chapter 99 of the HTSUS is amended as provided for in the Annex to this proclamation. Imports of steel articles that are melted and poured in the UK and from either the UK or the European Union in excess of the tariff-rate quota quantities shall remain subject to the duties imposed by clause 2 of Proclamation 9705, as amended. The Secretary, in consultation with the Secretary of Homeland Security and

the United States Trade Representative, shall recommend to the President, as warranted, updates to the in-quota volumes contained in the Annex to this proclamation. Steel articles that are melted and poured in the UK and from either the UK or the European Union imported under an exclusion granted pursuant to clause 3 of Proclamation 9705, as amended, shall count against the in-quota volume of the tariff-rate quota established in clause 1 of this proclamation.

(2) Clause 2 of Proclamation 9705, as amended, is revised to read as follows:

''(2)(a) In order to establish certain modifications to the duty rate on imports of steel articles, subchapter III of chapter 99 of the HTSUS is modified as provided in the Annex to this proclamation and any subsequent proclamations regarding such steel articles.

(b) Except as otherwise provided in this proclamation, or in notices published pursuant to clause 3 of this proclamation, all steel articles imports covered by heading 9903.80.01, in subchapter III of chapter 99 of the HTSUS, shall be subject to an additional 25 percent ad valorem rate of duty with respect to goods entered for consumption, or withdrawn from warehouse for consumption, as follows: (i) on or after 12:01 a.m. eastern daylight time on March 23, 2018, from all countries except Argentina, Australia, Brazil, Canada, Mexico, South Korea, and the member countries of the European Union; (ii) on or after 12:01 a.m. eastern daylight time on June 1, 2018, from all countries except Argentina, Australia, Brazil, and South Korea; (iii) on or after 12:01 a.m. eastern daylight time on August 13, 2018, from all countries except Argentina, Australia, Brazil, South Korea, and Turkey; (iv) on or after 12:01 a.m. eastern daylight time on May 20, 2019, from all countries except Argentina, Australia, Brazil, South Korea, and Turkey; (v) on or after 12:01 a.m. eastern daylight time on May 21, 2019, from all countries except Argentina, Australia, Brazil, Canada, Mexico, and South Korea; (vi) on or after 12:01 a.m. eastern standard time on January 1, 2022, from all countries except Argentina, Australia, Brazil, Canada, Mexico, and South Korea, and except the member countries of the European Union through 11:59 p.m. eastern standard time on December 31, 2023, for steel articles covered by headings 9903.80.65 through 9903.81.19, inclusive; (vii) on or after 12:01 a.m. eastern daylight time on April 1, 2022, from all countries except Argentina, Australia, Brazil, Canada, Mexico, and South Korea, and except the member countries of the European Union through 11:59 p.m. eastern standard time on December 31, 2023, for steel articles covered by headings 9903.80.65 through 9903.81.19, inclusive, and from Japan, for steel articles covered by headings 9903.81.25 through 9903.81.80, inclusive; and (viii) on or after 12:01 a.m. eastern daylight time on June 1, 2022, from all countries except Argentina, Australia, Brazil, Canada, Mexico, South Korea, and Ukraine, and except the member countries of the European Union through 11:59 p.m. eastern standard time on December 31, 2023, for steel articles covered by headings 9903.80.65 through 9903.81.19, inclusive, and from Japan and the UK, for steel articles covered by subheadings 9903.81.25 through 9903.81.78 and heading 9903.81.80, and from the member countries of the European Union, for steel articles covered by heading 9903.81.81. Further, except as otherwise provided in notices published pursuant to clause 3 of this proclamation, all steel articles imports from Turkey covered by heading 9903.80.02, in subchapter III of chapter 99 of the HTSUS, shall be subject to a 50 percent ad valorem rate of duty with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on August 13, 2018, and prior to 12:01 a.m. eastern daylight time on May 21, 2019. All steel articles imports covered by heading 9903.80.61, in subchapter III of chapter 99 of the HTSUS, shall be subject to the additional 25 percent ad valorem rate of duty established herein with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern time on the date specified in a determination by the Secretary granting relief. These rates of duty, which are in addition

to any other duties, fees, exactions, and charges applicable to such imported steel articles, shall apply to imports of steel articles from each country as specified in the preceding three sentences.''

(3) The first two sentences of clause 1 of Proclamation 9980 of January 24, 2020 (Adjusting Imports of Derivative Aluminum Articles and Derivative Steel Articles Into the United States), are revised to read as follows:

''In order to establish increases in the duty rate on imports of certain derivative articles, subchapter III of chapter 99 of the HTSUS is modified as provided in Annex I and Annex II to this proclamation. Except as otherwise provided in this proclamation, all imports of derivative aluminum articles specified in Annex I to this proclamation shall be subject to an additional 10 percent ad valorem rate of duty, and all imports of derivative steel articles specified in Annex II to this proclamation shall be subject to an additional 25 percent ad valorem rate of duty, with respect to goods entered for consumption, or withdrawn from warehouse for consumption, as follows: (i) on or after 12:01 a.m. eastern standard time on February 8, 2020, these rates of duty, which are in addition to any other duties, fees, exactions, and charges applicable to such imported derivative aluminum articles or steel articles, shall apply to imports of derivative aluminum articles described in Annex I to this proclamation from all countries except Argentina, the Commonwealth of Australia (Australia), Canada, and the United Mexican States (Mexico) and to imports of derivative steel articles described in Annex II to this proclamation from all countries except Argentina, Australia, Brazil, Canada, Mexico, and South Korea; (ii) on or after 12:01 a.m. eastern standard time on January 1, 2022, these rates of duty, which are in addition to any other duties, fees, exactions, and charges applicable to such imported derivative aluminum articles or steel articles, shall apply to imports of derivative aluminum articles described in Annex I to this proclamation from all countries except Argentina, Australia, Canada, the member countries of the European Union, and Mexico and to imports of derivative steel articles described in Annex II to this proclamation from all countries except Argentina, Australia, Brazil, Canada, the member countries of the European Union, Mexico, and South Korea; (iii) on or after 12:01 a.m. eastern daylight time on April 1, 2022, these rates of duty, which are in addition to any other duties, fees, exactions, and charges applicable to such imported derivative aluminum articles or steel articles, shall apply to imports of derivative aluminum articles described in Annex I to this proclamation from all countries except Argentina, Australia, Canada, the member countries of the European Union, and Mexico and to imports of derivative steel articles described in Annex II to this proclamation from all countries except Argentina, Australia, Brazil, Canada, the member countries of the European Union, Japan, Mexico, and South Korea; (iv) on or after 12:01 a.m. eastern daylight time on June 1, 2022, these rates of duty, which are in addition to any other duties, fees, exactions, and charges applicable to such imported derivative aluminum articles or steel articles, shall apply to imports of derivative aluminum articles described in Annex I to this proclamation from all countries except Argentina, Australia, Canada, the member countries of the European Union, and Mexico, and to imports of derivative steel articles described in Annex II to this proclamation from all countries except Argentina, Australia, Brazil, Canada, the member countries of the European Union, Japan, Mexico, and South Korea, and except from Ukraine through 11:59 p.m. eastern daylight time on June 1, 2023; and (v) on or after 12:01 a.m. eastern daylight time on June 1, 2022, these rates of duty, which are in addition to any other duties, fees, exactions, and charges applicable to such imported derivative aluminum articles or steel articles, shall apply to imports of derivative aluminum articles described in Annex I to this proclamation from all countries except Argentina, Australia, Canada, the member countries of the European Union, Mexico, and the UK, and to imports of derivative steel articles described in Annex II to this proclamation from

all countries except Argentina, Australia, Brazil, Canada, the member countries of the European Union, Japan, Mexico, South Korea, and the UK, and except from Ukraine through 11:59 p.m. eastern daylight time on June 1, 2023.''

(4) Steel articles eligible for treatment under clause 1 of this proclamation must be melted and poured in the UK in order to receive such treatment. Steel articles melted and poured in the UK that are further processed in a member country of the European Union, conferring country of origin in a member country of the European Union, and subsequently imported into the United States is also eligible for treatment under clause 1 of this proclamation as set forth in the Annex to this proclamation. The Secretary, in consultation with the Secretary of Homeland Security and the United States Trade Representative, is authorized to take such actions as are necessary to ensure compliance with this requirement. Failure to comply could result in applicable remedies such as the collection of the tariff set forth in clause 2 of Proclamation 9705, or penalties under United States law.

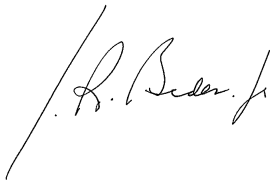
(5) In the case of any known UK steel producer that is owned or controlled by a company registered in the People's Republic of China or a Chinese entity, and which exports steel to the United States under the applicable tariff-rate quota, the UK agreed to provide an attestation to the United States annually, based on an annual strategic audit conducted by an independent third party, to the effect that there is no evidence of market-distorting practices by that producer in the UK that would materially contribute to non-market excess capacity of steel. If the attestation is not provided annually as set out in the Annex to this proclamation, the Secretary may temporarily deny access for any UK steel producer to the in-quota rate for the applicable tariff-rate quota. The Secretary, in consultation with the Secretary of Homeland Security and the United States Trade Representative, is authorized to take such actions as are necessary to ensure compliance with the actions regarding attestations set forth in the Annex to this proclamation. If an attestation is not provided as set forth in the Annex to this proclamation, it could result in collection of the tariff set forth in clause 2 of Proclamation 9705.

(6) The modifications to the HTSUS made by clause 1 of this proclamation shall be effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on June 1, 2022, and shall continue in effect, unless such actions are expressly reduced, modified, or terminated.

(7) Any imports of steel articles from the UK and steel articles that are melted and poured in the UK that are further processed in a member country of the European Union, conferring country of origin in a member country of the European Union, that were admitted into a U.S. foreign trade zone under ''privileged foreign status'' as defined in 19 CFR 146.41, prior to 12:01 a.m. eastern daylight time on June 1, 2022, shall be subject upon entry for consumption made on or after 12:01 a.m. eastern daylight time on June 1, 2022, to the provisions of the tariff-rate quota in effect at the time of the entry for consumption.

(8) Any provision of previous proclamations and Executive Orders that is inconsistent with the actions taken in this proclamation is superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord two thousand twenty-two, and of the Independence of the United States of America the two hundred and forty-sixth.



Billing code 3395–F2–P

ANNEX

Modifications to Chapter 99 of the Harmonized Tariff Schedule of the United States

Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after [June 1, 2022,] subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States ("HTS") is hereby modified as follows:

1. Subdivision (g) of U.S. note 16 to such subchapter Is modified to read as follows:

   "Subheadings 9903.81.25 through 9903.81.78 and headings 9903.81.80 and 9903.81.81, inclusive, set forth the ordinary customs duty treatment for the iron or steel products (as enumerated in subdivision (b) of this note) of Japan or of the United Kingdom. The aggregate annual import volume under subheadings 9903.81.25 through 9903.81.78 and heading 9903.81.80 for such products of Japan shall be limited to 1,250,000 metric tons; and the aggregate import volume under subheadings 9903.81.25 through 9903.81.78 and heading 9908.81.80 for such products of the United Kingdom shall be limited to 500,000 metric tons; and heading 9903.81.81 for such products of the European Union that are melted and poured in the UK shall be limited to 37,800metric tons. Subheadings 9903.81.25 through 9903.81.80 shall also be subject to any aggregate annual quantity established for each such subheading, including any allocations or other limitations that may be announced, all as set forth on the Internet site of the Department of Commerce at the following link: https://bis.doc.gov/232-steel. No shipments of such iron or steel products shall be allowed to enter in an aggregate quantity under any such subheading, during any of the periods January through March, April through June, July through September, or October through December in any 12-month period, that is in excess of the quantity that is made available to Japan or the United Kingdom during any such period by the Department of Commerce, as set forth on the Internet site of such Department as noted herein. The Department of Commerce is authorized to carry forward any unused quantity of such product from one or more such countries from the first quarter of any calendar year to the third quarter of such year, from the second quarter of any calendar year to the fourth quarter of such year. Entries of any product of Japan or the United Kingdom that may be described in an exclusion granted by the Department of Commerce shall be eligible to utilize such exclusion upon proper claim therefor, and such entries shall be counted against the annual aggregate quantitative limitation set forth in this subdivision. "

2. Such subdivision (g) is further modified by inserting at the end of such subdivision the following sentence:

   "Iron or steel products described in subdivision (b) of this note that are melted and poured in a United Kingdom steel facility and are products of the member countries of the European Union enumerated in subdivision (f) of this note will be admitted into the United States under the

quantitative limitation provided in this subdivision and shall be reported under heading 9903.81.81 of this subchapter.

3. Such subdivision (g) is further modified by inserting at the end of such subdivision the following sentences:

"Entry requirement for certain steel from the United Kingdom

The United Kingdom will provide to the United States, in the case of any known UK steel producer that is owned or controlled by a company registered in China or a Chinese entity, and which exports steel to the United States under the applicable TRQ for UK steel, an attestation. The attestation will be to the effect that there is no evidence of market distorting practices by that producer in the UK that would materially contribute to non-market excess capacity of steel. The results of such audit will be made available to the United States upon completion.

Steel from any UK steel producer that is owned or controlled by a company registered in China or a Chinese entity will be eligible for entry at the in-quota rate for 6 months from June 1, 2022 within which the UK will provide the first annual attestation. If the attestation is not provided by December 1, 2022 and then annually on December 1 thereafter, the United States reserves the right to temporarily deny access for the UK steel producer to the in-quota rate for the applicable TRQ. Where at any time access has been denied, and where the UK submits an attestation, the United States will restore the access of the affected producer to the in-quota rate within 8 weeks."

4. The article descriptions of heading 9903.80.01 and 9903.80.03 are each modified by deleting "or of Japan," and by inserting in lieu thereof "of Japan, or of the United Kingdom".

5. The superior text to subheadings 9903.81.25 through 9903.81.78 is modified by deleting "subdivision (f)" and by inserting in lieu thereof "subdivision (g)" at each instance, and by inserting after "of Japan" the phrase "or of the United Kingdom". Such superior text is further modified by deleting from the first line of the article description the word "Iron" and by inserting in lieu thereof "Except as provided in heading 9903.81.81, iron".

6. The article description of heading 9903.81.80 is modified by inserting after "of Japan" the phrase "the United Kingdom, or of the European Union, where the steel was melted and poured in the United Kingdom".

7. The following new heading is inserted in numerical sequence in such subchapter III, with the material inserted in the columns entitled "Heading/Subheading", "Article Description", and "Rates of Duty 1-General", respectively:

"9903.81.81	: Iron or steel products described in subdivision (b) of note	:	:
	: 16 to this subchapter that are melted and poured in a United	:	:
	: Kingdom facility and are products of	:	:

: the member countries of the European Union, under the	:	:
: terms of subdivision (g) of note 16 to this subchapter……	: Free”	:

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Filed 6–2–22; 8:45 am]
Billing code 7020–02–C

Presidential Documents

Proclamation 10407 of May 31, 2022

Black Music Appreciation Month, 2022

By the President of the United States of America

A Proclamation

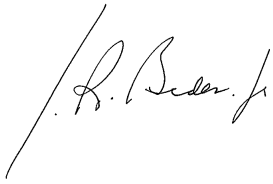
Music has the power to lift our spirits, comfort our souls, and inspire our hearts. It gives a voice to the human spirit, creating a common language that unites people and breaks down barriers. Perhaps no music has had as profound and powerful an impact in shaping America's musical score as Black music. Intricately woven into the tapestry of our Nation, Black music enriches our lives and pushes the boundaries of creativity. Throughout the decades and across the country, Black music has fueled a myriad of genres—from rhythm and blues to jazz, gospel, country, rap and more. This month, we celebrate the extraordinary legacy of Black music on American culture and recognize the indelible impact it continues to have on the world.

For generations, Black music has conveyed the hopes and struggles of a resilient people—spirituals mourning the original sin of slavery and later heralding freedom from bondage, hard truths told through jazz and the sounds of Motown during the Civil Rights movement, and hip-hop and rhythm and blues that remind us of the work that still lies ahead. The music created by Black artists continues to influence musicians of all persuasions, entertain people of all backgrounds, and shape the story of our Nation.

During Black Music Appreciation Month, we honor Black musicians, singers, and contributors to the music industry—past and present—whose innovative talents unite us in joy as much as in sorrow and healing. We pay homage to the musical legends whose artistic expressions help build community, generate empathy, and foster a sense of shared identity. And we celebrate Black artists who have used their songs to stand up to injustice, fight for equality, and reflect a mirror on society—reminding us all of our enduring obligation to deliver the promise of America for all Americans.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2022 as Black Music Appreciation Month. I call upon public officials, educators, and all the people of the United States to observe this month by honoring Black Musicians and raising awareness and appreciation of Black music.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord two thousand twenty-two, and of the Independence of the United States of America the two hundred and forty-sixth.



[FR Doc. 2022–12123
Filed 6–2–22; 8:45 am]
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Presidential Documents

Proclamation 10408 of May 31, 2022

Great Outdoors Month, 2022

By the President of the United States of America

A Proclamation

During Great Outdoors Month, we celebrate our Nation's vast array of parks, wildlife refuges, forests, monuments, marine sanctuaries, waters, national conservation lands, and other natural treasures. Every day, Americans across the country draw inspiration and pride from the beauty of our magnificent outdoor spaces. From lush forests in Washington State and coral reefs in the Virgin Islands to snow-capped mountains in Alaska and rolling hills in Vermont—the grandeur of the American landscape fills our souls and fuels our spirit of adventure. These iconic and stunning natural wonders have always been central to our heritage as a people and essential to our identity as a Nation.

Boundless outdoor spaces across the country unite Americans of every age and background for hiking, fishing, canoeing, hunting, exploring, reflecting, and finding solace. As part of my Administration's efforts to advance equity, diversity, and inclusion, we are committed to ensuring that everyone can access and enjoy America's great outdoors. Outreach efforts—including the National Park Service's Rivers, Trails, and Conservation Assistance program—expand trails, conserve rivers, and restore green space so that more people can benefit. We are also enhancing safe outdoor resources for communities so that more people can participate in healthy, active outdoor recreation and enjoy the physical and spiritual nourishment it provides.

Today, our lands and waters face unprecedented threats from climate change that require historic action to safeguard and preserve them. That is why my Administration is setting ambitious environmental standards and making bold climate commitments for the United States: reducing greenhouse gas emissions by up to 52 percent by 2030, reaching 100 percent carbon pollution-free electricity by 2035, and achieving net-zero emissions economy-wide by 2050.

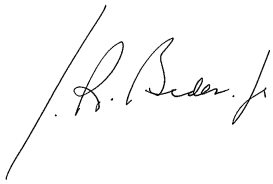
Together with our State, Tribal, and local partners, we also launched the America the Beautiful Initiative, our Nation's first-ever voluntary conservation goal, to conserve and restore 30 percent of America's lands and waters by 2030. We also spearheaded a $1 Billion America the Beautiful Challenge, combining Federal investments with private and philanthropic contributions to accelerate land, water, and wildlife conservation and restoration efforts across the country. And we are making critical investments through the Great American Outdoors Act for land acquisition and community-based conservation and recreation projects in national parks, national forests, public lands, and Tribal schools.

Land and ocean conservation is a crucial part of addressing the world's climate challenges. Proper stewardship protects the outdoors while contributing to sustainability, climate mitigation, and climate resilience. It is estimated that as much as one-third of the global emissions reductions needed to stabilize the world's climate can come from natural climate solutions. That's why I issued an Executive Order on Earth Day to strengthen our Nation's forests, communities, and local economies, and to take stock of nature and its benefits.

During Great Outdoors Month, I encourage Americans to take time to experience the natural wonders across our Nation. As we enjoy the great outdoor landscapes and seascapes, let us each recommit to doing our part in their stewardship, preservation, and sustainable use so they continue to be a source of inspiration for outdoor enthusiasts for generations to come.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2022 as Great Outdoors Month. I urge all Americans to explore the great outdoors, to experience our Nation's natural heritage, and to continue our Nation's tradition conserving our lands and waters for future generations.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord two thousand twenty-two, and of the Independence of the United States of America the two hundred and forty-sixth.



[FR Doc. 2022–12124
Filed 6–2–22; 8:45 am]
Billing code 3395–F2–P

Presidential Documents

Proclamation 10409 of May 31, 2022

Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Pride Month, 2022

By the President of the United States of America

A Proclamation

During Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex (LGBTQI+) Pride Month, we reflect on the progress we have made as a Nation in the fight for justice, inclusion, and equality while reaffirming our commitment to do more to support LGBTQI+ rights at home and abroad. I often say that America can be defined by one word: possibilities. This month, we celebrate generations of LGBTQI+ people who have fought to make the possibilities of our Nation real for every American.

Today, the rights of LGBTQI+ Americans are under relentless attack. Members of the LGBTQI+ community—especially people of color and trans people—continue to face discrimination and cruel, persistent efforts to undermine their human rights. An onslaught of dangerous anti-LGBTQI+ legislation has been introduced and passed in States across the country, targeting transgender children and their parents and interfering with their access to health care. These unconscionable attacks have left countless LGBTQI+ families in fear and pain. All of this compounded has been especially difficult on LGBTQI+ youth, 45 percent of whom seriously considered attempting suicide in the last year—a devastating reality that our Nation must work urgently to address.

This month, we remind the LGBTQI+ community that they are loved and cherished. My Administration sees you for who you are—deserving of dignity, respect, and support. As I said in my State of the Union Address—especially to our younger transgender Americans—I will always have your back as your President so that you can be yourself and reach your God-given potential. Today and every day, my Administration stands with every LGBTQI+ American in the ongoing struggle against intolerance, discrimination, and injustice. We condemn the dangerous State laws and bills that target LGBTQI+ youth. And we remain steadfast in our commitment to helping LGBTQI+ people in America and around the world live free from violence.

Since my first day in office, I have taken historic action to ensure that everyone—no matter who they are or whom they love—has an equal place in our democracy. I signed a landmark Executive Order charging the Federal Government with preventing and combating discrimination on the basis of sexual orientation and gender identity. This includes non-discrimination protections for LGBTQI+ Americans in housing, health care, education, employment, credit and lending services, and the criminal justice system. My Administration has expanded access to inclusive passports for transgender Americans and instituted reforms to the traveler screening process at United States airports. We are supporting the open service for patriotic transgender military members and providing better services for LGBTQI+ veterans. I am honored by the service of the first openly gay Cabinet Secretary and the first transgender person confirmed by the Senate and to have been able to establish the first White House Gender Policy Council.

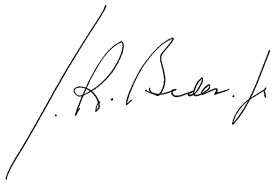
But there is more work to be done. That is why I continue to call on the Congress to pass the Equality Act, which will enshrine long overdue civil rights protections and build a better future for all LGBTQI+ Americans.

We must also fight for LGBTQI+ seniors so that they can age with dignity. And we must confront the disproportionate levels of poverty, homelessness, and unemployment in the LGBTQI+ community.

This month, we honor the resilience of LGBTQI+ people, who are fighting to live authentically and freely. We reaffirm our belief that LGBTQI+ rights are human rights. And we recommit to delivering protections, safety, and equality to LGBTQI+ families so that everyone can realize the full promise of America.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2022 as Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Pride Month. I call upon the people of the United States to recognize the achievements of the LGBTQI+ community, to celebrate the great diversity of the American people, and to wave their flags of pride high.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord two thousand twenty-two, and of the Independence of the United States of America the two hundred and forty-sixth.



[FR Doc. 2022–12125
Filed 6–2–22; 8:45 am]
Billing code 3395–F2–P

Presidential Documents

Proclamation 10410 of May 31, 2022

National Caribbean-American Heritage Month, 2022

By the President of the United States of America

A Proclamation

America's strength has always been rooted in our diversity. Since our Nation's founding, generation after generation of immigrants have helped build this country, and the prosperity and opportunity that draw so many immigrants to America would not be possible without the contributions and legacies of Caribbean Americans. Today, millions of Caribbean Americans strengthen our country through their vibrant cultures, traditions, languages, and values. In recognition of National Caribbean-American Heritage Month, we honor the immeasurable ways Caribbean Americans have added to our American dream.

This month, our Nation also celebrates the extraordinary leadership and achievements of Vice President Kamala Harris, the first Black American of Jamaican heritage to hold this high office. I am also honored to celebrate alongside brilliant and dedicated public servants of Caribbean heritage—including Secretary of Education Miguel Cardona, Secretary of Homeland Security Alejandro Mayorkas, and Domestic Policy Advisor Susan Rice.

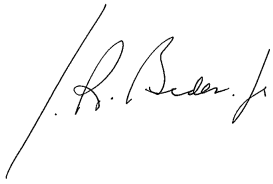
Every day, we see the invaluable contributions Caribbean American communities have made to our country. Our Nation has seen the persistence and character of generations of Caribbean Americans who have fought for equity and equality despite continued discrimination and hardship. In addition, public servants like our Nation's first Supreme Court Justice of Puerto Rican descent, Sonia Sotomayor, and the late General Colin Powell, the son of Jamaican immigrants and the first Black Secretary of State, have made essential contributions to American society and blazed new trails in service to the American people. Caribbean American entrepreneurs, scientists, medical professionals, teachers, artists, police officers, athletes, and contributors in every field have also left a lasting impact on our society.

In spite of innumerable achievements and undeniable contributions, too many Caribbean Americans continue to face systemic barriers to success. Caribbean Americans have been impacted by systemic racism and disparities in opportunity. My Administration has taken a whole-of-government approach to advancing racial justice and equity in order to begin healing those wounds and strengthening opportunity for all. We will continue to use every tool at our disposal to ensure that every American—no matter who they are or where they come from—has equal access to the American dream.

During this National Caribbean-American Heritage Month, we honor the generations of Caribbean Americans who have built our Nation, shaped our progress, and strengthened our national character.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2022 as National Caribbean-American Heritage Month. I encourage all Americans to join in celebrating the history, culture, and achievements of Caribbean Americans with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord two thousand twenty-two, and of the Independence of the United States of America the two hundred and forty-sixth.



[FR Doc. 2022–12126
Filed 6–2–22; 8:45 am]
Billing code 3395–F2–P

Presidential Documents

Proclamation 10411 of May 31, 2022

National Homeownership Month, 2022

By the President of the United States of America

A Proclamation

For many Americans, a home is more than just a residence. It is a place that instills a sense of pride, security, and comfort that, no matter what challenges in life arise, they have somewhere to go and call their own. Whether owning or renting, a home is where we can live with dignity and watch our families grow. During National Homeownership Month, we recognize the importance of housing and reaffirm our commitment to ensuring that everyone has a place to call home.

Every American should be able to afford to rent or own a home of their own. Yet across the country, the price of housing—both for renters and homebuyers—is increasing, making it harder for people to find an affordable home. Our Nation is facing a housing shortage that is driving up prices—and with housing prices near record highs, too many families are unable to make other important investments, such as furthering their education or saving for retirement.

Throughout the pandemic, my Administration has helped people who have struggled, through no fault of their own, stay in their homes by providing financial relief to help pay the mortgage or the rent. To tackle the root causes of housing affordability, my Administration released a Housing Supply Action Plan, aimed at closing the nationwide shortfall of housing for purchase and rent in 5 years through a variety of measures: incentivizing States and localities to create the conditions for more housing, improving financing tools for a wider range of housing arrangements, enhancing existing forms of financing for housing construction, and addressing other barriers to housing supply and affordability, such as supply chain issues due to the pandemic. My budget also includes investments to address the critical shortage of affordable housing and provide first-generation down payment assistance to aspiring homeowners.

Homeownership is a major source of generational wealth for many Americans—it is a central part of the American dream. But for too many Americans—especially Black and Brown Americans—homeownership and the opportunity to build and pass down wealth through it are unattainable. Longstanding inequities in the housing system, from disinvestment to redlining and mis-valuation of homes in communities of color, have locked out entire generations from the American dream and the opportunity to build generational wealth. Housing also opens up opportunities that are tied to where one lives, and it is our shared responsibility to ensure that everyone has equitable access to those opportunities—from education and stable employment to quality health care and healthy food.

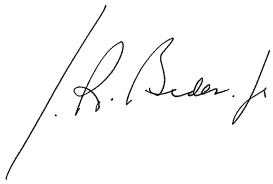
My Administration is committed to ending unlawful housing discrimination and advancing equity for underserved communities. Toward that aim, we have launched an aggressive effort to combat racial discrimination in housing. I also remain committed to expanding access to homeownership opportunities for first-time home buyers and minority homebuyers while ensuring that Black and Brown families receive a fair appraisal for their homes. Through the Property Appraisal and Valuation Equity Action Plan, we have developed

the most wide-ranging set of Federal reforms in history to ensure that the color of a person's skin does not determine the value of their home.

As we mark National Homeownership Month, we recognize the importance of housing for all Americans. Whether owning, renting, or aspiring to do either, we renew our commitment to lowering costs and expanding access to safe, affordable homes that all Americans need and deserve. Together, we can ensure that every American has a safe place to call home.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2022 as National Homeownership Month. I call upon the people of this Nation to safeguard the American Dream by ensuring that everyone has access to an affordable home in a community of their choice.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord two thousand twenty-two, and of the Independence of the United States of America the two hundred and forty-sixth.



[FR Doc. 2022–12127
Filed 6–2–22; 8:45 am]
Billing code 3395–F2–P

Presidential Documents

Proclamation 10412 of May 31, 2022

National Immigrant Heritage Month, 2022

By the President of the United States of America

A Proclamation

The United States is a Nation of immigrants—shaped by the courageous people from around the world who leave their homes, lives, and loved ones to seek refuge and opportunity on our shores. Their sacrifices and entrepreneurial spirit have contributed to the rich tapestry that has defined the character of our country for generations. Since our founding, the very idea of America as a Nation of limitless possibilities has been nurtured and advanced by immigrants. During National Immigrant Heritage Month, we honor the contributions of immigrants to our great Nation and celebrate their profound impact.

Immigrants fuel our economy and work in every profession, including health care, public service, law, education, engineering, construction, caregiving, manufacturing, service, agriculture, and countless other industries. They create new businesses, small and large, and generate millions of jobs in America. They are essential workers, providing critical services during COVID–19 and serving on the frontlines of research for vaccines and treatments. Immigrants have also helped the United States lead the world in science, technology, and innovation while contributing to the arts, culture, and government. They bring new traditions, customs, and perspectives that keep American innovation dynamic.

My Administration is committed to ensuring that our immigration system is accessible and humane. I have called on the Congress to pass long-overdue legislation to comprehensively reform our immigration system. Through multiple Executive Orders, I have also directed agencies across the Federal Government to remove barriers that improperly impede access to immigration benefits and to assure fair and timely adjudication of those benefits.

An important part of our commitment is recognizing that, too often, immigrants face discrimination, xenophobia, and violence. Hate and fear are being given too much oxygen by those who pretend to love America but do not understand America. To confront the dangerous ideology of hate requires caring about all people—including our Nation's immigrants. After all, the fundamental promise of America is that all of us are created equal and deserve to be treated equally throughout our lives. As a Nation, we have never fully lived up to that promise, but we have never walked away from it either. That is why my Administration will continue to use every tool at our disposal to ensure that all immigrants feel safe, valued, and respected.

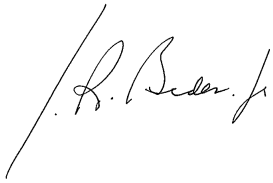
The United States has long been a refuge for those seeking safe haven. In the wake of World War II, we opened our doors to hundreds of thousands fleeing the devastation in Europe and the horrors of the Holocaust. After the Vietnam War and other conflicts in Southeast Asia, we formed the United States Refugee Admissions Program, which has welcomed more than 3 million people fleeing persecution and war since 1980. More recently, we welcomed tens of thousands of Afghans and their families who served honorably alongside American forces, and we are now welcoming thousands of Ukrainians fleeing Russia's invasion. My Administration continues to

extend Temporary Protected Status for vulnerable migrant populations throughout the world who cannot safely return to their countries of origin. Furthermore, my Administration is committed to promoting naturalization and breaking down barriers to United States citizenship for all eligible candidates—a promise that honors our Nation's values and makes us more secure and prosperous.

When someone becomes a United States citizen, it gives them the opportunity to fully participate in and contribute their unique talents to our American story. Each generation of immigrants has made our Nation stronger and reaffirmed that diversity is—and always has been—our greatest strength. This National Immigrant Heritage Month, we honor our immigrants and recommit to remaining a country worthy of their dreams and aspirations, a Nation true to our enduring values, and a democracy that forever stands as a beacon of hope to the world.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2022 as National Immigrant Heritage Month. I call upon the people of the United States to learn more about the history of our Nation's diverse and varied immigrant communities and to observe this month with appropriate programming and activities that remind us of the values of diversity, equity, and inclusion.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord two thousand twenty-two, and of the Independence of the United States of America the two hundred and forty-sixth.



[FR Doc. 2022–12128
Filed 6–2–22; 8:45 am]
Billing code 3395–F2–P

Presidential Documents

Proclamation 10413 of May 31, 2022

National Ocean Month, 2022

By the President of the United States of America

A Proclamation

From the air we breathe to the food we eat, our magnificent ocean touches every aspect of our lives. It helps regulate the climate, supports millions of jobs, and serves as a place for exploration, commerce, and recreation. As it sustains and connects us, the ocean is woven into the cultures of local and Indigenous coastal and island communities. During National Ocean Month, we celebrate the beauty and bounty of our ocean and reaffirm our commitment to protecting and conserving our marine environments for a sustainable future.

Fifty years ago, our Nation enacted laws that created a robust foundation for environmental protection: the Clean Water Act, the Coastal Zone Management Act, the Marine Mammal Protection Act, and the National Marine Sanctuaries Act. Through these laws, we have protected our coastlines, safeguarded marine wildlife, sustained fisheries, and improved water quality. Today, the United States is a global leader in protecting and using precious marine resources in a responsible and sustainable way—but there is still more work to be done.

Earlier this year, my Administration released a sobering report on sea level rise caused by climate change. Addressing this issue requires collaboration and commitment. Working with State, Tribal, Territorial, and local partners, we will co-develop ocean-based climate solutions, including the United States Ocean-Climate Action Plan, which will help us mitigate and adapt to the effects of the climate crisis. To guide our understanding of the ocean, coasts, and climate change, we must also invest in science and solutions that recognize and elevate Indigenous and local knowledge.

The Bipartisan Infrastructure Law is a critical step forward in providing resources to enhance ocean and coastal observation, mapping, and forecasting—tools that will greatly improve the resilience of our coastal infrastructure and shorelines. The Natural Capital Accounts and National Nature Assessment I announced on Earth Day will also help us understand the ocean's value to our economy, health, climate, and national security. My Administration is developing a National Ocean Plan to develop the ocean economy and create good-paying American jobs while protecting vital marine ecosystems. Toward that aim, we are already deploying offshore wind energy and joining international initiatives to manage the planet's ocean equitably and sustainably.

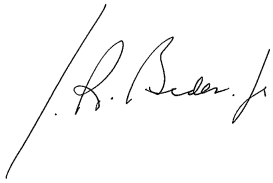
We are also working to restore coastal habitats and ecosystems with nature-based solutions that protect coastal communities from flooding and storms. These investments go hand-in-hand with my Administration's America the Beautiful Initiative, which set a national goal to voluntarily conserve and restore at least 30 percent of United States lands and waters by 2030.

In taking these steps, we recognize that access to our ocean and its benefits have not always been equally distributed. Communities of color, Indigenous communities, and low-income communities have often been shut out from ocean-related opportunities while shouldering disproportionate climate burdens. My Administration is committed to delivering climate justice, expanding access to ocean opportunities, and diversifying ocean workforces.

During National Ocean Month, as we celebrate the beauty and power of our ocean, let us remember our shared responsibility to protect and preserve it. Together, let us recommit to caring for our ocean and enhancing its economic and ecological sustainability for generations to come.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2022 as National Ocean Month. I call upon Americans to take action to protect, conserve, and restore our ocean and coasts.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord two thousand twenty-two, and of the Independence of the United States of America the two hundred and forty-sixth.



[FR Doc. 2022–12129
Filed 6–2–22; 8:45 am]
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Rules and Regulations

Federal Register
Vol. 87, No. 107
Friday, June 3, 2022

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1240

RIN 2590–AB16

Capital Planning and Stress Capital Buffer Determination

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA or the Agency) is adopting a final rule (final rule) that supplements the FHFA Enterprise Regulatory Capital Framework (ERCF) rule by requiring the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac, and with Fannie Mae, each an Enterprise) to submit annual capital plans to FHFA and provide prior notice for certain capital actions. The final rule incorporates the stress capital buffer determination from the ERCF into the capital planning process. The requirements in the final rule are consistent with the regulatory framework for capital planning for large bank holding companies.

DATES: This rule is effective August 2, 2022.

FOR FURTHER INFORMATION CONTACT: Andrew Varrieur, Acting Senior Associate Director, Office of Capital Policy, (202) 649–3141, *Andrew.Varrieur@fhfa.gov;* Ron Sugarman, Principal Policy Analyst, Office of Capital Policy, (202) 649–3208, *Ron.Sugarman@fhfa.gov;* or Mark Laponsky, Deputy General Counsel, Office of General Counsel, (202) 649–3054, *Mark.Laponsky@fhfa.gov* (these are not toll-free numbers); Federal Housing Finance Agency, 400 Seventh St. SW, Washington, DC 20219. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

SUPPLEMENTARY INFORMATION:

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I. Introduction

On December 27, 2021, FHFA published in the **Federal Register** a notice of proposed rulemaking (the proposal or proposed rule) seeking comments on FHFA's proposal to require each Enterprise to submit annual capital plans to FHFA and provide prior notice for certain capital actions. The proposal incorporated the determination of the stress capital buffer from the ERCF [1] into the capital planning process. The requirements in the proposal were consistent with the regulatory framework for capital planning for large bank holding companies. FHFA is now adopting this final rule as proposed.

The final rule's requirement to develop capital plans will allow the Enterprises to identify the amount of capital they need to raise to meet the ERCF's requirements, and to consider the timing of when to raise capital, and what types of capital to raise. The final rule, like the ERCF, is intended to provide a stable regulatory framework for the Enterprises for an extended period, including after they achieve adequate capitalization under the ERCF.

II. Overview of the Final Rule

After carefully considering the comments on the proposed rule, and as described in this preamble, FHFA is adopting the capital planning requirements and stress capital buffer determination as proposed. FHFA continues to believe that the Enterprises should have robust systems and processes in place that incorporate forward-looking projections of revenue and losses to monitor and maintain their internal capital adequacy. Furthermore, each Enterprise should operate with an amount of capital that is commensurate with each Enterprise's risk profile. FHFA also believes that the stress capital buffer determination should be part of the capital planning process.

Specifically, the final rule will require an Enterprise to develop and maintain a capital plan, which the Enterprise must generally submit to FHFA by May 20 of each year, after it has been reviewed by the Enterprise's board of directors or a designated committee thereof. The plan must contain certain mandatory elements, including an assessment of the expected sources and uses of capital over a planning horizon that reflects the Enterprise's size and complexity, assuming both expected and stressful conditions. This includes the Enterprise's internal baseline scenario and internal stress scenario, as well as additional scenarios that may be provided by FHFA. The planning horizon is at least five years for the Enterprise's scenarios and at least nine consecutive quarters for the FHFA scenarios. The capital plans also must include any planned capital actions and consider the regulatory capital buffers.

The final rule includes the factors that FHFA will consider in reviewing a plan, including its comprehensiveness and reasonableness given the assumptions and analysis underlying the plan and the robustness of the Enterprise's capital adequacy process. A plan must be resubmitted if there is a material change in the Enterprise's risk profile, financial condition, or corporate structure. FHFA also may require an Enterprise to resubmit its capital plan if the plan is incomplete or FHFA determines resubmission is necessary to monitor risks to capital adequacy. In general, an Enterprise must receive prior approval from FHFA to make a capital distribution, if the distribution would occur after an event that requires a resubmission. There is also a post-notice requirement for certain capital distributions.

In addition to requiring a capital plan, the rule incorporates the stress capital buffer from the ERCF into the capital planning process and makes the necessary conforming amendments to the ERCF. After FHFA notifies the Enterprise of its stress capital buffer each year, the Enterprise must adjust its planned capital distributions to be consistent with the capital distribution limitations effective under the new stress capital buffer. The final rule

[1] 86 FR 73187 (Dec. 27, 2021).

changes the stress capital buffer's calculation method slightly by considering an Enterprise's planned common stock dividends for the fourth through seventh quarters of the planning horizon rather than the ERCF direction to use each of the nine quarters of the planning horizon.

III. General Comments on the Proposed Rule

FHFA received public comment letters on the proposed rule from a total of 12 different commenters. These commenters represented a variety of interested parties including one Enterprise (Freddie Mac), two trade associations, one corporation, and eight private individuals.[2] Three of the private individuals submitted multiple comment letters each, resulting in FHFA receiving a total of 21 comment letters on the proposed rule.

Freddie Mac was very supportive of the capital planning and stress capital buffer processes that would be required by the proposal but offered specific suggestions for modifying the stress capital buffer determination, the board duty provisions, and the compliance date for submission of the capital plans in the rule.

Of the 20 other letters, 19 were on conservatorship issues, while one expressed concern about FHFA's Duty to Serve program that was unrelated to capital planning or the stress capital buffer. Some of the conservatorship related letters dealt with the U.S. Department of the Treasury's (Treasury) investment in the Enterprises through the Preferred Stock Purchase Agreements and common stock warrants, prospect of future exits from the conservatorships, and how that may affect capital planning. Other letters dealt with aspects of the conservatorships that were unrelated to capital planning or the stress capital buffer. Most of the conservatorship letters were from private individuals and some of these individuals mentioned they were Enterprise shareholders. One conservatorship letter was from a trade association and one was from a corporation. The trade association commenter, while offering general support for the proposal's objective of making certain the Enterprises are operating with capital positions that reflect their risk profile, also expressed concern about Treasury's investment and desired clarity about exits from the conservatorships. The corporation commenter was similarly concerned about Treasury's investment as an impediment to raising capital.

FHFA has determined not to make changes to the rule in response to the comments on the Duty to Serve program or conservatorship issues. As FHFA stated in the preamble to its proposal, the rule is a framework for ongoing capital planning consistent with the regulatory requirements for large banks. The final rule, like the ERCF, is intended to provide a stable regulatory framework for the Enterprises for an extended period, including after they achieve adequate capitalization under the ERCF.

FHFA did not receive any comments regarding the mandatory elements of a capital plan, FHFA's review of a capital plan, an Enterprise's potential resubmission of a capital plan, FHFA's approval requirements for certain capital actions, or post notice requirements. FHFA is adopting those portions of the rule as proposed.

Freddie Mac's comments on the stress capital buffer, board's duties, and compliance date are discussed below:

A. Stress Capital Buffer

The proposal included a minor change to the stress capital buffer calculation compared to the finalized ERCF to align with a recent amendment to the regulatory banking framework. In addition, the proposal incorporated the stress capital buffer from the ERCF into the capital planning process.

Under both the ERCF and proposal, the buffer would be determined by FHFA, with the calculation based on the results of a supervisory stress test, subject to a floor of 0.75 percent of the Enterprise's adjusted total assets as of the last day of the previous calendar quarter. However, until such time as FHFA develops its supervisory stress test, or in any year that FHFA does not determine the stress capital buffer, the buffer would be equal to 0.75 percent of an Enterprise's adjusted total assets.

Consistent with recent amendments to the Federal Reserve Board's banking rule, the proposal's calculation method prefunds an Enterprise's planned common stock dividends for the fourth through seventh quarters of the planning horizon rather than using the existing ERCF instruction to use each of the nine quarters of the planning horizon.

The proposal incorporated the stress capital buffer into the capital planning process by requiring an Enterprise, within two business days of receiving its stress capital buffer from FHFA, to adjust its planned capital distributions for the fourth through seventh quarters of the planning horizon to be consistent with effective capital distribution limitations assuming the stress capital buffer provided by FHFA, in place of any stress capital buffer currently in effect.

Freddie Mac proposed to eliminate the 0.75 percent floor, supervisory stress test, and inclusion of planned dividends in the stress capital buffer calculation. Freddie Mac preferred to use capital depletion in Freddie Mac's Dodd-Frank Act Stress Test (DFAST) instead of a new supervisory stress test to be developed by FHFA. Freddie Mac proposed to apply the severely adverse scenario without a deferred tax asset write off or prefunding common stock dividends, holding the balance sheet constant over the stress horizon, and observing the quarter with the largest cumulative losses, all without applying the 0.75 percent floor.

Freddie Mac said the floor of 0.75 percent of adjusted total assets is inappropriate for the Enterprises. Freddie Mac stated that for banks, the static floor was intended to address concerns that larger institutions could use a dynamic stress capital buffer based on stress testing to lower their capital requirements relative to smaller peers. However, they noted the Enterprises do not have a subset of smaller competitors. They said the Federal Reserve Board noted in its rule that about half of the bank population would be above the floor making the buffer risk sensitive. Freddie Mac believes their buffer would be below the floor, blunting risk sensitivity and increasing risk-taking if they managed toward the floor.

Freddie Mac also proposed to remove the add-on for planned common stock dividends for the fourth through seventh quarters, given that they are not forecasted to pay dividends in the near term due to their current capital position.

Consistent with the banking approach, FHFA believes that the development of a supervisory stress test is important for the stress capital buffer determination, and preferrable to reliance on the Enterprise's DFAST model. The 0.75 percent buffer floor and consideration of common stock dividends already were a part of the ERCF as published by FHFA on December 17, 2020. FHFA's only change from the ERCF regarding common stock dividends was a reduction from using the full nine quarter stress horizon to using four quarters to be consistent with the banking framework. While the Enterprises are not currently able to pay dividends, it is important to keep the

[2] See comments on Capital Planning and Stress Capital Buffer Determination Proposed Rule, available at *https://www.fhfa.gov/Supervision Regulation/Rules/Pages/Comment-List.aspx? RuleID=714.* The comment period for the proposed rule closed on February 25, 2022.

dividend provision forward looking since the Enterprises are working toward building capital to meet the standards in the ERCF. Therefore, FHFA is keeping the stress capital buffer determination unchanged in the final rule.

B. Board Duties

Freddie Mac asked that FHFA clarify the role of its board of directors in the final rule. The proposed rule stated that the Enterprise's board of directors, or a designated committee thereof, must at least annually and prior to submission of the capital plan: (1) Review the robustness of the Enterprise's process for assessing capital adequacy: (2) Ensure that any deficiencies in the Enterprise's process for assessing capital adequacy are appropriately remedied; and (3) approve the Enterprise's capital plan. The Enterprise wanted the term ''ensure'' changed to ''oversee'' or ''review'' since the board plays an oversight role. FHFA believes that while an Enterprise's management is responsible for remedying any deficiencies in the process for assessing capital adequacy, the board, as part of its oversight role, is ultimately responsible for ensuring that it gets done. FHFA's language on the board's duties is also consistent with the banking framework. Therefore, FHFA is keeping the language on the board's duties unchanged in the final rule.

C. Compliance Date

Freddie Mac asked FHFA to clarify that the annual May 20 capital plan submission dates will start in 2023, in the event that the final rule becomes effective before May 20, 2022, so that they will have sufficient time to prepare their first plan submission. FHFA agrees that the first plan submission under the final rule will be May 20, 2023. Given the final rule's publication date and effective date, no changes are necessary to the rule.

IV. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) requires that regulations involving the collection of information receive clearance from the Office of Management and Budget (OMB). The final rule contains no such collection of information requiring OMB approval under the PRA. Therefore, no information has been submitted to OMB for review.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. FHFA need not undertake such an analysis if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the final rule under the Regulatory Flexibility Act and FHFA certifies that the final rule will not have a significant economic impact on a substantial number of small entities because the final rule is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

VI. Congressional Review Act

In accordance with the Congressional Review Act (5 U.S.C. 801 *et seq.*), FHFA has determined that this final rule is a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects for 12 CFR Part 1240

Capital, Credit, Enterprise, Investments, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons stated in the preamble, under the authority of 12 U.S.C. 4511, 4513, 4513b, 4514, 4515–17, 4526, 4611–12, 4631–36, FHFA amends part 1240 of title 12 of the Code of Federal Regulations as follows:

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

SUBCHAPTER C—ENTERPRISES

PART 1240—CAPITAL ADEQUACY OF ENTERPRISES

■ 1. The authority citation for part 1240 continues to read as follows:

Authority: 12 U.S.C. 4511, 4513, 4513b, 4514, 4515, 4517, 4526, 4611–12, 4631–36.

■ 2. In § 1240.11, revise paragraph (a)(7) to read as follows:

§ 1240.11 Capital conservation buffer and leverage buffer.

(a) * * *

(7) *Stress capital buffer.* (i) The stress capital buffer for an Enterprise is the stress capital buffer determined under § 1240.500 except as provided in paragraph (a)(7)(ii) of this section.

(ii) If an Enterprise has not yet received a stress capital buffer requirement, its stress capital buffer for purposes of this part is 0.75 percent of the Enterprise's adjusted total assets, as of the last day of the previous calendar quarter.

* * * * *

■ 3. Add subpart H, consisting of §§ 1240.500 through 1240.502, to read as follows:

Subpart H—Capital Planning and Stress Capital Buffer Determination

§ 1240.500 Capital planning and stress capital buffer determination.

(a) *Purpose.* This section establishes capital planning and prior notice and approval requirements for capital distributions by the Enterprises. This section also establishes FHFA's process for determining the stress capital buffer applicable to the Enterprises.

(b) *Scope and reservation of authority*—(1) *Applicability.* This section applies to the Enterprises.

(2) *Reservation of authority.* Nothing in this section shall limit the authority of FHFA to issue or enforce a capital directive or take any other supervisory or enforcement action, including an action to address unsafe or unsound practices or conditions or violations of law.

(c) *Definitions.* For purposes of this section, the following definitions apply:

Adjusted total assets has the same meaning as under subpart A of this part.

Advanced approaches means the risk-weighted assets calculation methodologies as set forth in subpart E of this part.

Capital action means any issuance of a debt or equity capital instrument, any capital distribution, and any similar action that FHFA determines could impact an Enterprise's consolidated capital.

Capital distribution means a redemption or repurchase of any debt or equity capital instrument, a payment of common or preferred stock dividends, a payment that may be temporarily or permanently suspended by the issuer on any instrument that is eligible for inclusion in the numerator of any minimum regulatory capital ratio, and any similar transaction that FHFA determines to be in substance a distribution of capital.

Capital plan means a written presentation of an Enterprise's capital planning strategies and capital adequacy process that includes the mandatory elements set forth in paragraph (d)(2) of this section.

Capital plan cycle means the period beginning on January 1 of a calendar year and ending on December 31 of that year.

Capital policy means an Enterprise's written principles and guidelines used for capital planning, capital issuance,

capital usage and distributions, including internal capital goals; the quantitative or qualitative guidelines for capital distributions; the strategies for addressing potential capital shortfalls; and the internal governance procedures around capital policy principles and guidelines.

Common equity tier 1 capital has the same meaning as under subpart C of this part.

Effective capital distribution limitations means any limitations on capital distributions established by FHFA by order or regulation, provided that, for any limitations based on risk-weighted assets, such limitations must be calculated using the standardized approach, as set forth in subpart D of this part.

Final planned capital distributions means the planned capital distributions included in a capital plan that include the adjustments made pursuant to paragraph (g) of this section, if any.

Internal baseline scenario means a scenario that reflects the Enterprise's expectation of the economic and financial outlook, including expectations related to the Enterprise's capital adequacy and financial condition.

Internal stress scenario means a scenario designed by an Enterprise that stresses the specific vulnerabilities of the Enterprise's risk profile and operations, including those related to the Enterprise's capital adequacy and financial condition.

Planning horizon means the period of at least nine consecutive quarters for the FHFA scenarios and at least five years for the Internal scenarios, beginning with the quarter preceding the quarter in which the Enterprise submits its capital plan, over which the relevant projections extend, unless otherwise directed by FHFA.

Regulatory capital ratio means a capital ratio for which FHFA has established minimum requirements for the Enterprise by regulation or order, including, as applicable, the Enterprise's regulatory capital ratios calculated under subpart B of this part; except that the Enterprise shall not use the advanced approaches to calculate its regulatory capital ratios.

Severely adverse scenario has the same meaning as under 12 CFR part 1238.

Stability capital buffer has the same meaning as under subpart G of this part.

Stress capital buffer means the amount calculated under paragraph (e) of this section.

Supervisory stress test means a stress test conducted by FHFA using a severely adverse scenario and the assumptions contained in 12 CFR part 1238.

(d) *Capital planning requirements and procedures*—(1) *Annual capital planning.* (i) An Enterprise must develop and maintain a capital plan.

(ii) An Enterprise must submit its complete capital plan to FHFA by May 20 of each calendar year, or such later date as directed by FHFA.

(iii) The Enterprise's board of directors or a designated committee thereof must at least annually and prior to submission of the capital plan under paragraph (d)(1)(ii) of this section:

(A) Review the robustness of the Enterprise's process for assessing capital adequacy;

(B) Ensure that any deficiencies in the Enterprise's process for assessing capital adequacy are appropriately remedied; and

(C) Approve the Enterprise's capital plan.

(2) *Mandatory elements of capital plan.* A capital plan must contain at least the following elements:

(i) An assessment of the expected uses and sources of capital over the planning horizon that reflects the Enterprise's size, complexity, risk profile, and scope of operations, assuming both expected and stressful conditions, including:

(A) Estimates of projected revenues, expenses, losses, reserves, and pro forma capital levels, including regulatory capital ratios, and any additional capital measures deemed relevant by the Enterprise, over the planning horizon under a range of scenarios, including the Internal baseline scenario and at least one Internal stress scenario, as well as any additional scenarios that FHFA may provide the Enterprise after giving notice to the Enterprise;

(B) A discussion of the results of any stress test required by law or regulation, and an explanation of how the capital plan takes these results into account; and

(C) A description of all planned capital actions over the planning horizon. Planned capital actions must be consistent with any effective capital distribution limitations, except as may be adjusted pursuant to paragraph (g) of this section. In determining whether an Enterprise's planned capital distributions are consistent with effective capital distribution limitations, an Enterprise must assume that:

(*1*) Any countercyclical capital buffer amount currently applicable to the Enterprise remains at the same level, except that the Enterprise must reflect any increases or decreases in the countercyclical capital buffer amount that have been announced by FHFA at the times indicated by FHFA's announcement for when such increases or decreases will take effect; and

(*2*) Any stability capital buffer currently applicable to the Enterprise when the capital plan is submitted remains at the same level, except that the Enterprise must reflect any increase in its stability capital buffer pursuant to § 1240.400(c)(1), beginning in the fifth quarter of the planning horizon.

(ii) A detailed description of the Enterprise's process for assessing capital adequacy, including:

(A) A discussion of how the Enterprise will, under expected and stressful conditions, maintain capital commensurate with its risks, and maintain capital above the regulatory capital ratios;

(B) A discussion of how the Enterprise will, under expected and stressful conditions, maintain sufficient capital to continue its operations by maintaining ready access to funding, meeting its obligations to creditors and other counterparties, and continuing to serve as a credit intermediary;

(iii) The Enterprise's capital policy; and

(iv) A discussion of any expected changes to the Enterprise's business plan that are likely to have a material impact on the Enterprise's capital adequacy or liquidity.

(3) *Data collection.* Upon the request of FHFA, the Enterprise shall provide FHFA with information regarding:

(i) The Enterprise's financial condition, including its capital;

(ii) The Enterprise's structure;

(iii) Amount and risk characteristics of the Enterprise's on- and off-balance sheet exposures, including exposures within the Enterprise's trading account, other trading-related exposures (such as counterparty-credit risk exposures) or other items sensitive to changes in market factors, including, as appropriate, information about the sensitivity of positions to changes in market rates and prices;

(iv) The Enterprise's relevant policies and procedures, including risk management policies and procedures;

(v) The Enterprise's liquidity profile and management;

(vi) The loss, revenue, and expense estimation models used by the Enterprise for stress scenario analysis, including supporting documentation regarding each model's development and validation; and

(vii) Any other relevant qualitative or quantitative information requested by FHFA to facilitate review of the Enterprise's capital plan under this section.

(4) *Resubmission of a capital plan.* (i) An Enterprise must update and resubmit its capital plan to FHFA within 30 calendar days of the occurrence of one of the following events:

(A) The Enterprise determines there has been or will be a material change in the Enterprise's risk profile, financial condition, or corporate structure since the Enterprise last submitted the capital plan to FHFA; or

(B) FHFA instructs the Enterprise in writing to revise and resubmit its capital plan, as necessary to monitor risks to capital adequacy, for reasons including, but not limited to:

(*1*) *The* capital plan is incomplete or the capital plan, or the Enterprise's internal capital adequacy process, contains material weaknesses;

(*2*) There has been, or will likely be, a material change in the Enterprise's risk profile (including a material change in its business strategy or any risk exposure), financial condition, or corporate structure;

(*3*) The Internal stress scenario(s) are not appropriate for the Enterprise's business model and portfolios, or changes in financial markets or the macro-economic outlook that could have a material impact on an Enterprise's risk profile and financial condition require the use of updated scenarios; or

(ii) FHFA may extend the 30-day period in paragraph (d)(4)(i) of this section for up to an additional 60 calendar days, or such longer period as FHFA determines appropriate.

(iii) Any updated capital plan must satisfy all the requirements of this section; however, an Enterprise may continue to rely on information submitted as part of a previously submitted capital plan to the extent that the information remains accurate and appropriate.

(5) *Confidential treatment of information submitted.* The confidentiality of information submitted to FHFA under this section and related materials shall be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552(b)) and FHFA's rule in 12 CFR part 1214—Availability of Non-Public Information.

(e) *Calculation of the stress capital buffer*—(1) *General.* FHFA will determine the stress capital buffer that applies under § 1240.11 pursuant to this paragraph (e). FHFA will calculate the Enterprise's stress capital buffer requirement annually.

(2) *Stress capital buffer calculation.* An Enterprise's stress capital buffer is equal to the Enterprise's adjusted total assets, as of the last day of the previous calendar quarter, multiplied by the greater of:

(i) The following calculation:

(A) The ratio of an Enterprise's common equity tier 1 capital to adjusted total assets, as of the final quarter of the previous capital plan cycle, unless otherwise determined by FHFA; minus

(B) The lowest projected ratio of the Enterprise's common equity tier 1 capital to adjusted total assets, in any quarter of the planning horizon under a supervisory stress test; plus

(C) The ratio of:

(*1*) The sum of the Enterprise's planned common stock dividends (expressed as a dollar amount) for each of the fourth through seventh quarters of the planning horizon; to

(*2*) The adjusted total assets of the Enterprise in the quarter in which the Enterprise had its lowest projected ratio of common equity tier 1 capital to adjusted total assets, in any quarter of the planning horizon under a supervisory stress test; and (ii) 0.75 percent.

(3) *Recalculation of stress capital buffer.* If an Enterprise resubmits its capital plan pursuant to paragraph (d)(4) of this section, FHFA may recalculate the Enterprise's stress capital buffer. FHFA will provide notice of whether the Enterprise's stress capital buffer will be recalculated within 75 calendar days after the date on which the capital plan is resubmitted, unless FHFA provides notice to the Enterprise that it is extending the time period.

(f) *Review of capital plans by FHFA.* FHFA will consider the following factors in reviewing an Enterprise's capital plan:

(1) The comprehensiveness of the capital plan, including the extent to which the analysis underlying the capital plan captures and addresses potential risks stemming from activities across the Enterprise and the Enterprise's capital policy;

(2) The reasonableness of the Enterprise's capital plan, the assumptions and analysis underlying the capital plan, and the robustness of its capital adequacy process;

(3) Relevant supervisory information about the Enterprise and its subsidiaries;

(4) The Enterprise's regulatory and financial reports, as well as supporting data that would allow for an analysis of the Enterprise's loss, revenue, and reserve projections;

(5) The results of any stress tests conducted by the Enterprise or FHFA; and

(6) Other information requested or required by FHFA, as well as any other information relevant, or related, to the Enterprise's capital adequacy.

(g) *FHFA notice of stress capital buffer; final planned capital distributions*—(1) *Notice.* FHFA will provide an Enterprise with notice of its stress capital buffer and an explanation of the results of the supervisory stress test. Unless otherwise determined by FHFA, notice will be provided by August 15 of the calendar year in which the capital plan was submitted pursuant to paragraph (d)(1)(ii) of this section or within 90 calendar days of receiving notice that FHFA will recalculate the Enterprise's stress capital buffer pursuant to paragraph (e)(3) of this section.

(2) *Response to notice*—(i) *Request for reconsideration of stress capital buffer.* An Enterprise may request reconsideration of a stress capital buffer provided under paragraph (g)(1) of this section. To request reconsideration of a stress capital buffer, an Enterprise must submit to FHFA a request pursuant to paragraph (h) of this section.

(ii) *Adjustments to planned capital distributions.* Within two business days of receipt of notice of a stress capital buffer under paragraph (g)(1) or (h)(5) of this section, as applicable, an Enterprise must:

(A) Determine whether the planned capital distributions for the fourth through seventh quarters of the planning horizon under the Internal baseline scenario would be consistent with effective capital distribution limitations assuming the stress capital buffer provided by FHFA under paragraph (g)(1) or (h)(5) of this section, as applicable, in place of any stress capital buffer in effect; and

(*1*) If the planned capital distributions for the fourth through seventh quarters of the planning horizon under the Internal baseline scenario would not be consistent with effective capital distribution limitations assuming the stress capital buffer provided by FHFA under paragraph (g)(1) or (h)(5) of this section, as applicable, in place of any stress capital buffer in effect, the Enterprise must adjust its planned capital distributions such that its planned capital distributions would be consistent with effective capital distribution limitations assuming the stress capital buffer provided by FHFA under paragraph (g)(1) or (h)(5) of this section, as applicable, in place of any stress capital buffer in effect; or

(*2*) If the planned capital distributions for the fourth through seventh quarters of the planning horizon under the Internal baseline scenario would be consistent with effective capital distribution limitations assuming the

stress capital buffer provided by FHFA under paragraph (g)(1) or (h)(5) of this section, as applicable, in place of any stress capital buffer in effect, the Enterprise may adjust its planned capital distributions. An Enterprise may not adjust its planned capital distributions to be inconsistent with the effective capital distribution limitations assuming the stress capital buffer provided by FHFA under paragraph (g)(1) or (h)(5) of this section, as applicable; and

(B) Notify FHFA of any adjustments made to planned capital distributions for the fourth through seventh quarters of the planning horizon under the Internal baseline scenario.

(3) *Final planned capital distributions.* FHFA will consider the planned capital distributions, including any adjustments made pursuant to paragraph (g)(2)(ii) of this section, to be the Enterprise's final planned capital distributions on the later of:

(i) The expiration of the time for requesting reconsideration under paragraph (i) of this section; and

(ii) The expiration of the time for adjusting planned capital distributions pursuant to paragraph (g)(2)(ii) of this section.

(4) *Effective date of final stress capital buffer.* (i) FHFA will provide an Enterprise with its final stress capital buffer and confirmation of the Enterprise's final planned capital distributions by August 31 of the calendar year that a capital plan was submitted pursuant to paragraph (d)(1)(ii) of this section, unless otherwise determined by FHFA. A stress capital buffer will not be considered final so as to be agency action subject to judicial review under 5 U.S.C. 704 during the pendency of a request for reconsideration made pursuant to paragraph (h) of this section or before the time for requesting reconsideration has expired.

(ii) Unless otherwise determined by FHFA, an Enterprise's final planned capital distributions and final stress capital buffer shall:

(A) Be effective on October 1 of the calendar year in which a capital plan was submitted pursuant to paragraph (d)(1)(ii) of this section; and

(B) Remain in effect until superseded.

(5) *Publication.* With respect to an Enterprise subject to this section, FHFA may disclose publicly any or all of the following:

(i) The stress capital buffer provided to an Enterprise under paragraph (g)(1) or (h)(5) of this section;

(ii) Adjustments made pursuant to paragraph (g)(2)(ii) of this section;

(iii) A summary of the results of the supervisory stress test; and

(iv) Other information.

(h) *Administrative remedies; request for reconsideration.* The following requirements and procedures apply to any request under this paragraph (h):

(1) *General.* To request reconsideration of a stress capital buffer, provided under paragraph (g) of this section, an Enterprise must submit a written request for reconsideration.

(2) *Timing of request.* A request for reconsideration of a stress capital buffer, provided under paragraph (g) of this section, must be received within 15 calendar days of receipt of a notice of an Enterprise's stress capital buffer.

(3) *Contents of request.* (i) A request for reconsideration must include a detailed explanation of why reconsideration should be granted (that is, why a stress capital buffer should be reconsidered). With respect to any information that was not previously provided to FHFA in the Enterprise's capital plan, the request should include an explanation of why the information should be considered.

(ii) A request for reconsideration may include a request for an informal hearing on the Enterprise's request for reconsideration.

(4) *Hearing.* (i) FHFA may, in its sole discretion, order an informal hearing if FHFA finds that a hearing is appropriate or necessary to resolve disputes regarding material issues of fact.

(ii) An informal hearing shall be held within 30 calendar days of a request, if granted, provided that FHFA may extend this period upon notice to the requesting party.

(5) *Response to request.* Within 30 calendar days of receipt of the Enterprise's request for reconsideration of its stress capital buffer submitted under paragraph (h)(2) of this section or within 30 days of the conclusion of an informal hearing conducted under paragraph (h)(4) of this section, FHFA will notify the Enterprise of its decision to affirm or modify the Enterprise's stress capital buffer, provided that FHFA may extend this period upon notice to the Enterprise.

(6) *Distributions during the pendency of a request for reconsideration.*

During the pendency of FHFA's decision under paragraph (h)(5) of this section, the Enterprise may make capital distributions that are consistent with effective distribution limitations, unless prior approval is required under paragraph (i)(1) of this section.

(i) *Approval requirements for certain capital actions*—(1) *Circumstances requiring approval—resubmission of a capital plan.* Unless it receives prior approval pursuant to paragraph (i)(3) of this section, an Enterprise may not make a capital distribution (excluding any capital distribution arising from the issuance of a capital instrument eligible for inclusion in the numerator of a regulatory capital ratio) if the capital distribution would occur after the occurrence of an event requiring resubmission under paragraph (d)(4)(i)(A) or (B) of this section.

(2) *Contents of request.* A request for a capital distribution under this section must contain the following information:

(i) The Enterprise's capital plan or a discussion of changes to the Enterprise's capital plan since it was last submitted to FHFA;

(ii) The purpose of the transaction;

(iii) A description of the capital distribution, including for redemptions or repurchases of securities, the gross consideration to be paid and the terms and sources of funding for the transaction, and for dividends, the amount of the dividend(s); and

(iv) Any additional information requested by FHFA (which may include, among other things, an assessment of the Enterprise's capital adequacy under a severely adverse scenario, a revised capital plan, and supporting data).

(3) *Approval of certain capital distributions.* (i) FHFA will act on a request for prior approval of a capital distribution within 30 calendar days after the receipt of all the information required under paragraph (i)(2) of this section.

(ii) In acting on a request for prior approval of a capital distribution, FHFA will apply the considerations and principles in paragraph (f) of this section, as appropriate. In addition, FHFA may disapprove the transaction if the Enterprise does not provide all of the information required to be submitted under paragraph (i)(2) of this section.

(4) *Disapproval and hearing.* (i) FHFA will notify the Enterprise in writing of the reasons for a decision to disapprove any proposed capital distribution. Within 15 calendar days after receipt of a disapproval by FHFA, the Enterprise may submit a written request for a hearing.

(ii) FHFA may, in its sole discretion, order an informal hearing if FHFA finds that a hearing is appropriate or necessary to resolve disputes regarding material issues of fact. An informal hearing shall be held within 30 calendar days of a request, if granted, provided that FHFA may extend this period upon notice to the requesting party.

(iii) Written notice of the final decision of FHFA shall be given to the Enterprise within 60 calendar days of

the conclusion of any informal hearing ordered by FHFA, provided that FHFA may extend this period upon notice to the requesting party.

(iv) While FHFA's decision is pending and until such time as FHFA approves the capital distribution at issue, the Enterprise may not make such capital distribution.

(j) *Post notice requirement.* An Enterprise must notify FHFA within 15 days of making a capital distribution if:

(1) The capital distribution was approved pursuant to paragraph (i)(3) of this section; or

(2) The dollar amount of the capital distribution will exceed the dollar amount of the Enterprise's final planned capital distributions, as measured on an aggregate basis beginning in the fourth quarter of the planning horizon through the quarter at issue.

§ § 1240.501–1240.502 [Reserved]

Sandra L. Thompson,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2022–11928 Filed 6–2–22; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0094; Project Identifier AD–2021–01251–E; Amendment 39–22052; AD 2022–11–02]

RIN 2120–AA64

Airworthiness Directives; CFM International, S.A. Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all CFM International, S.A. (CFM) LEAP–1B21, LEAP–1B23, LEAP–1B25, LEAP–1B27, LEAP–1B28, LEAP–1B28B1, LEAP–1B28B2, LEAP–1B28B2C, LEAP–1B28B3, LEAP–1B28BBJ1, and LEAP–1B28BBJ2 model turbofan engines. This AD was prompted by the detection of melt-related freckles in the billet, which may reduce the life of certain compressor rotor stages 6–10 spools, high pressure turbine (HPT) rotor mid seals, HPT rotor stage 2 disks, low pressure turbine (LPT) stage 2 disks, and LPT stage 3 disks. This AD requires revising the airworthiness limitations section (ALS) of the applicable CFM LEAP–1B Engine Shop Manual (ESM), and the operator's existing approved maintenance or inspection program, as applicable, to incorporate reduced life limits for these parts. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 8, 2022.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 8, 2022.

ADDRESSES: For service information identified in this final rule, contact CFM International, S.A., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125; phone: (877) 432–3272; email: *fleetsupport@ge.com*. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0094.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0094; 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: Mehdi Lamnyi, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7743; email: *Mehdi.Lamnyi@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 CFM LEAP–1B21, LEAP–1B23, LEAP–1B25, LEAP–1B27, LEAP–1B28, LEAP–1B28B1, LEAP–1B28B2, LEAP–1B28B2C, LEAP–1B28B3, LEAP–1B28BBJ1, and LEAP–1B28BBJ2 model turbofan engines. The NPRM published in the **Federal Register** on February 15, 2022 (87 FR 8434). The NPRM was prompted by the engine manufacturer notifying the FAA of the detection of melt-related freckles in the billet, which may reduce the life of certain compressor rotor stages 6–10 spools, HPT rotor mid seals, HPT rotor stage 2 disks, LPT stage 2 disks, and LPT stage 3 disks (life-limited parts (LLPs)). The manufacturer's investigation determined that, as a result of such freckles forming in the billet, these LLPs may have undetected subsurface anomalies that developed during the manufacturing process, resulting in reduced material properties and a lower fatigue life capability. Reduced material properties may cause premature LLP fracture, which could result in uncontained debris release. As a result of its investigation, the manufacturer determined the need to reduce the life limits of these LLPs. To reflect these reduced life limits, the manufacturer revised the CFM ALS, Chapter 05 of LEAP–1B ESM. Additionally, the manufacturer published service information that specifies procedures for the removal and replacement of these LLPs before reaching their new life limits. In the NPRM, the FAA proposed to require revising the ALS of the CFM LEAP–1B ESM, as applicable to each affected engine model, and the operator's existing approved maintenance or inspection program, as applicable, to incorporate reduced life limits for certain LLPs. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from four commenters. The commenters were Air Line Pilots Association, International (ALPA), American Airlines (AA), CFM, and United Airlines (UAL). The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Update Service Information Revisions

CFM requested that the FAA update the service information issue numbers and dates to reflect the current revisions.

The FAA agrees and updated the service information issue numbers and dates throughout this AD. The FAA also added a Credit For Previous Actions paragraph to this AD, allowing operators to take credit for required actions if accomplished prior to the effective date of this AD using prior versions of the service information. This change imposes no additional burden on operators who are required to comply with this AD.

Request To Include Future Revisions to Service Information

AA and UAL requested that the FAA revise the required actions of the AD to allow the use of future approved revisions of the specified service information. AA added that when the FAA publishes an AD that incorporates an EASA AD by reference, the EASA AD includes language stating the use of later revisions is acceptable for compliance. AA suggested that since the FAA already approves future approved revisions of documents that are incorporated by reference in a foreign AD, it is reasonable and logical that this FAA AD allows future approved revisions.

The FAA disagrees with revising the required actions of this AD to allow for the use of future approved revisions of the service information. Future revisions of the service information have not yet been published by the manufacturer or reviewed by the FAA. In the case of a foreign AD incorporated by reference in an FAA AD, the service information referenced by EASA is a second-tier document. A request for an alternative method of compliance can be submitted to the FAA if future revisions of the service information referenced in paragraph (g) of this AD are published. Additionally, if future revisions of the service information are published by the manufacturer and approved by the FAA, the FAA may consider further rulemaking.

Request To Clarify the Intent of the AD

AA requested the FAA clarify if the AD requires the incorporation of the LLP life limits in CFM Service Bulletin (SB) LEAP–1B–72–00–0342–01A–930A–D, Issue 002–00, dated July 26, 2021 (CFM SB LEAP–1B–72–00–0342–01A–930A–D), identified in Other Related Service Information, or if the AD requires revisions to the ESM.

The FAA notes that this AD does not require any actions using CFM SB LEAP–1B–72–00–0342–01A–930A–D. This AD requires only revising the ALS of the applicable CFM LEAP–1B ESM, and the operator's existing approved maintenance or inspection program, as applicable, to incorporate reduced life limits for these parts using CFM High Pressure Compressor Rotor Life Limits LEAP–1B–05–11–02–01A–0B1B–C, Issue 010–00, dated March 17, 2022, CFM High Pressure Turbine Rotor Life Limits LEAP–1B–05–11–03–01A–0B1B–C, Issue 007–00, dated March 17, 2022, and CFM Low Pressure Turbine Rotor Life Limits LEAP–1B–05–11–04–01A–0B1B–C, Issue 008–00, dated February 16, 2022. The revised life limits include references to CFM SB LEAP–1B–72–00–0342–01A–930A–D for lists of specific part serial numbers.

Support for the AD

ALPA expressed support for the AD as written.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. 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 the following service information:

- CFM High Pressure Compressor Rotor Life Limits LEAP–1B–05–11–02–01A–0B1B–C, Issue 010–00, dated March 17, 2022 (CFM LEAP–1B–05–11–02–01A–0B1B–C). CFM LEAP–1B–05–11–02–01A–0B1B–C provides the new life limits for the high pressure compressor rotor.
- CFM High Pressure Turbine Rotor Life Limits LEAP–1B–05–11–03–01A–0B1B–C, Issue 007–00, dated March 17, 2022 (CFM LEAP–1B–05–11–03–01A–0B1B–C). CFM LEAP–1B–05–11–03–01A–0B1B–C provides the new limits for the high pressure turbine rotor.
- CFM Low Pressure Turbine Rotor Life Limits LEAP–1B–05–11–04–01A–0B1B–C, Issue 008–00, dated February 16, 2022 (CFM LEAP–1B–05–11–04–01A–0B1B–C). CFM LEAP–1B–05–11–04–01A–0B1B–C provides the new life limits for the low pressure turbine rotor.

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**.

Other Related Service Information

The FAA reviewed CFM SB LEAP–1B–72–00–0342–01A–930A–D. CFM SB LEAP–1B–72–00–0342–01A–930A–D specifies procedures for removing and replacing the LLPs, and provides new life limits for certain serial numbers of the LLPs.

Costs of Compliance

The FAA estimates that this AD affects 378 engines installed on 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
Revise ALS of the ESM and the operator's existing approved maintenance or inspection program.	1 work-hour × $85 per hour = $85 ..	$0	$85	$32,130

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:

2022–11–02 CFM International, S.A.: Amendment 39–22052; Docket No. FAA–2022–0094; Project Identifier AD–2021–01251–E.

(a) Effective Date

This airworthiness directive (AD) is effective July 8, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to CFM International, S.A. (CFM) LEAP–1B21, LEAP–1B23, LEAP–1B25, LEAP–1B27, LEAP–1B28, LEAP–1B28B1, LEAP–1B28B2, LEAP–1B28B2C, LEAP–1B28B3, LEAP–1B28BBJ1, and LEAP–1B28BBJ2 model turbofan engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section, and JASC Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by the detection of melt-related freckles in the billet, which may reduce the life of certain compressor rotor stages 6–10 spools, high pressure turbine (HPT) rotor mid seals, HPT rotor stage 2 disks, low pressure turbine (LPT) stage 2 disks, and LPT stage 3 disks. The FAA is issuing this AD to prevent the failure of the high pressure compressor, HPT rotor, and LPT rotor. The unsafe condition, if not addressed, could result in release of uncontained debris, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

Within 60 days after the effective date of this AD, revise the airworthiness limitations section (ALS) of the applicable CFM LEAP–1B Engine Shop Manual (ESM) and the operator's existing approved maintenance or inspection program, as applicable, by incorporating the following service information:

(1) CFM High Pressure Compressor Rotor Life Limits LEAP–1B–05–11–02–01A–0B1B–C, Issue 010–00, dated March 17, 2022;

(2) CFM High Pressure Turbine Rotor Life Limits LEAP–1B–05–11–03–01A–0B1B–C, Issue 007–00, dated March 17, 2022; and

(3) CFM Low Pressure Turbine Rotor Life Limits LEAP–1B–05–11–04–01A–0B1B–C, Issue 008–00, dated February 16, 2022.

(h) Credit for Previous Actions

(1) You may take credit for the action required by paragraph (g)(1) of this AD if the following service information was incorporated into the ALS of the applicable ESM and the operator's existing approved maintenance or inspection program, as applicable, prior to the effective date of this AD: CFM High Pressure Compressor Rotor Life Limits LEAP–1B–05–11–02–01A–0B1B–C, Issue 009–00, dated July 26, 2021.

(2) You may take credit for the action required by paragraph (g)(2) of this AD if the following service information was incorporated into the ALS of the applicable ESM and the operator's existing approved maintenance or inspection program, as applicable, prior to the effective date of this AD: CFM High Pressure Turbine Rotor Life Limits LEAP–1B–05–11–03–01A–0B1B–C, Issue 006–00, dated July 26, 2021.

(3) You may take credit for the action required by paragraph (g)(3) of this AD if the following service information was incorporated into the ALS of the applicable ESM and the operator's existing approved maintenance or inspection program, as applicable, prior to the effective date of this AD: CFM Low Pressure Turbine Rotor Life Limits LEAP–1B–05–11–04–01A–0B1B–C, Issue 006–00, dated June 1, 2021, or Issue 007, dated February 15, 2022.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j) of this AD and email to: *ANE-AD-AMOC@faa.gov.*

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

(j) Related Information

For more information about this AD, contact Mehdi Lamnyi, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7743; email: *Mehdi.Lamnyi@faa.gov.*

(k) 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) CFM High Pressure Compressor Rotor Life Limits LEAP–1B–05–11–02–01A–0B1B–C, Issue 010–00, dated March 17, 2022.

(ii) CFM High Pressure Turbine Rotor Life Limits LEAP–1B–05–11–03–01A–0B1B–C, Issue 007–00, dated March 17, 2022.

(iii) CFM Low Pressure Turbine Rotor Life Limits LEAP–1B–05–11–04–01A–0B1B–C, Issue 008–00, dated February 16, 2022.

(3) For service information identified in this AD, contact CFM International, S.A., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125; phone: (877) 432–3272; email: *fleetsupport@ge.com.*

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on May 13, 2022.

Gaetano A. Sciortino,

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

[FR Doc. 2022–11926 Filed 6–2–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0597; Project Identifier MCAI–2022–00638–T; Amendment 39–22074; AD 2022–11–51]

RIN 2120–AA64

Airworthiness Directives; Embraer S.A. (Type Certificate Previously Held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Embraer S.A. (Type Certificate previously held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.) Model ERJ 170–200 STD, ERJ 170–200 LR, ERJ 170–200 SU, and ERJ 170–200 LL airplanes. This AD was prompted by a report of an in-flight detachment of a right-hand wing tip and the subsequent determination that cracks could develop on the wing tip connection area that can affect its structural integrity to the point of an in-flight detachment. This AD requires a detailed inspection for cracks of the affected wing tip connections, corrective action if necessary, and revision of the existing maintenance or inspection program, as specified in an Agência Nacional de Aviação Civil (ANAC) AD, which is incorporated by reference. The FAA previously sent an emergency AD to all known U.S. owners and operators of these airplanes. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective on June 21, 2022. Emergency AD 2022–11–51, issued on May 13, 2022, which contained the requirements of this amendment, was effective with actual notice.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 21, 2022.

The FAA must receive comments on this AD by July 18, 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 material incorporated by reference (IBR) in this AD, contact ANAC, Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email *pac@anac.gov.br;* internet *www.anac.gov.br/en/.* You may find this IBR material on the ANAC website at *https://sistemas.anac.gov.br/certificacao/DA/DAE.asp.* You may view this service information at the FAA, Transport Standards 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–2022–0597.

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–2022–0597; 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 street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Krista Greer, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3221; email *Krista.Greer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0597; Project Identifier MCAI–2022–00638–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 Krista Greer, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3221; email *Krista.Greer@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.

Background

The FAA issued Emergency AD 2022–11–51, dated May 13, 2022 (the emergency AD), to address an unsafe condition on Embraer S.A. Model ERJ 170–200 STD, ERJ 170–200 LR, ERJ 170–200 SU, and ERJ 170–200 LL airplanes. The FAA sent the emergency AD to all known U.S. owners and operators of these airplanes. The emergency AD requires a detailed inspection for cracks of the affected wing tip connections, corrective action if cracks are found, and revision of the existing maintenance or inspection program to include a revised threshold and interval for a certain airworthiness limitations task.

The emergency AD was prompted by Emergency AD 2022–05–02, effective May 13, 2022 (ANAC Emergency AD 2022–05–02) (also referred to after this as the Mandatory Continuing Airworthiness Information, or the MCAI), issued by ANAC, which is the aviation authority for Brazil, to correct the unsafe condition for certain Embraer S.A. Model ERJ 170–200 STD, ERJ 170–200 LR, ERJ 170–200 SU, and ERJ 170–200 LL airplanes. ANAC Emergency AD 2022–05–02 was prompted by a report of an in-flight detachment of a right-hand wing tip. Subsequently it was determined that cracks could develop on the wing tip connection area that can affect its structural integrity to the point of an in-flight detachment. This condition, if not addressed, even if sufficient controllability of the airplane is maintained for the safe continuation of the flight, could result in the

detached part damaging other airplane parts and affecting controllability, as well as damaging property and injuring persons on the ground.

See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

ANAC Emergency AD 2022–05–02 specifies procedures for a detailed inspection for cracks of the affected wing tip connections, corrective action including rework of the wing spar 1 or repair/modification of the wingtip spar 1, and revision of the existing maintenance or inspection program to include a revised threshold and interval for a certain airworthiness limitations task. 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 this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI described above. The FAA is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

AD Requirements

This AD requires accomplishing the actions specified in ANAC Emergency AD 2022–05–02 described previously, except for any differences identified as exceptions in the regulatory text of this AD and except as discussed under ''Difference Between this AD and the MCAI.''

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, ANAC Emergency AD 2022–05–02 is incorporated by reference in this AD. This AD requires compliance with ANAC Emergency AD 2022–05–02 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in ANAC Emergency AD 2022–05–02 does not mean that operators need comply only with that section. For example, where the AD refers to required actions and compliance, compliance with these AD requirements is not limited to the section titled ''Required Action'' or ''Compliance'' in ANAC Emergency AD 2022–05–02. Service information required by ANAC Emergency AD 2022–05–02 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0597 after this AD is published.

Difference Between This AD and the MCAI

This AD requires all operators to revise the existing maintenance or inspection program, as applicable, to include a reduced threshold and interval for a certain airworthiness limitations task. The MCAI does not require this action for airplanes with less than 7,500 flight hours after installation of an affected part number.

Interim Action

The FAA considers this AD interim action. The inspection reports that are required by this AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of the cracking, and eventually to develop final action to address the unsafe condition. Once final action has been identified, the FAA might consider further rulemaking.

FAA's Justification 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 required the immediate adoption of Emergency AD 2022–11–51 issued on May 13, 2022, to all known U.S. owners and operators of these airplanes. The FAA found that the risk to the flying public justified waiving notice and comment prior to adoption of this rule because cracks on the wing tip connection area can affect its structural integrity to the point of an in-flight detachment. Even if sufficient controllability of the airplane is maintained for the safe continuation of the flight, this condition could result in the detached part damaging other airplane parts and affecting controllability, as well as damaging property and injuring persons on the ground. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons. Given the significance of the risk presented by this unsafe condition, it must be immediately addressed. 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.

Regulatory Flexibility Act (RFA)

The requirements of the 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 115 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
Inspections	6 work-hours × $85 per hour = $510	$0	$510	$58,650

The FAA has determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although the FAA 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 total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Reporting	1 work-hour × $85 per hour = $85	$0	$85
Wing spar 1 rework (per side)	49 work-hours × $85 per hour = $4,165	2,212	6,377
Wingtip spar 1 repair/modification (per side)	111 work-hours × $85 per hour = $9,435	16,949	26,384

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

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.

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:

2022–11–51 Embraer S.A. (Type Certificate Previously Held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.): Amendment 39–22074; Docket No. FAA–2022–0597; Project Identifier MCAI–2022–00638–T.

(a) Effective Date

The FAA issued Emergency Airworthiness Directive (AD) 2022–11–51 on May 13, 2022, directly to affected owners and operators. As a result of such actual notice, the emergency AD was effective for those owners and operators on the date it was provided. This AD contains the same requirements as that emergency AD and, for those who did not receive actual notice, is effective on June 21, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Embraer S.A. (Type Certificate previously held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.) Model ERJ 170–200 STD, ERJ 170–200 LR, ERJ 170–200 SU, and ERJ 170–200 LL airplanes, certificated in any category, as identified in Agência Nacional de Aviação Civil (ANAC) Emergency AD 2022–05–02, effective May 13, 2022 (ANAC Emergency AD 2022–05–02).

(d) Subject

Air Transport Association (ATA) of America Code 57, Wing structure.

(e) Unsafe Condition

This AD was prompted by a report of an in-flight detachment of a right-hand wing tip. Subsequently it was determined that cracks could develop on the wing tip connection area that can affect its structural integrity to the point of an in-flight detachment. The FAA is issuing this AD to address this condition, which, even if sufficient controllability of the airplane is maintained for the safe continuation of the flight, could result in the detached part damaging other airplane parts and affecting controllability, as well as damaging property and injuring persons on the ground.

(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, ANAC Emergency AD 2022–05–02.

(h) Exceptions to ANAC Emergency AD 2022–05–02

(1) Where ANAC Emergency AD 2022–05–02 refers to its effective date, this AD requires using the effective date of this AD.

(2) For the first column heading of table 1—''Compliance Times'' of ANAC Emergency AD 2022–05–02, replace ''Flight Hours (FH) accumulated from installation of affected PN'' with ''Flight Hours (FH) accumulated from installation of affected PN as of the effective date of this (FAA) AD.''

(3) Where table 1—''Compliance Times'' of ANAC Emergency AD 2022–05–02 specifies flight hours of ''19.800 or greater,'' for this AD use flight hours of ''19.800 or greater.''

(4) Where paragraphs (a)(i) and (a)(ii) of ANAC Emergency AD 2022–05–02 specify correcting ''discrepancies,'' this AD defines a discrepancy as a crack.

(5) The inspections and corrective actions specified in paragraphs (a)(i) and (a)(ii) of ANAC Emergency AD 2022–05–02 must be done using the service information specified in paragraphs (a)(i) and (a)(ii) of ANAC Emergency AD 2022–05–02.

(6) Where paragraph (a)(iii) of ANAC Emergency AD 2022–05–02 specifies to ''Modify task 57–30–002–0002 of the Airworthiness Limitations Section, on MRB 1621, APPENDIX A—PART 2—AIRWORTHINESS LIMITATION INSPECTIONS (ALI)—STRUCTURES, to revise its compliance interval'' at the times in table 1—''Compliance Times'' of ANAC Emergency AD 2022–05–02, this AD requires revising the existing maintenance or inspection program, as applicable, within 30 days after the effective date of this AD to incorporate the information specified in table 2—''Airworthiness Limitations Section Updates'' of ANAC Emergency AD 2022–05–02; except do not include the information in the ''Current Threshold/Interval'' column. The initial compliance time for the airworthiness limitations task is within 1,000 flight hours after accomplishment of the tasks specified in paragraphs (a)(i) and (a)(ii) of ANAC Emergency AD 2022–05–02; except, for airplanes that have accumulated 7,499 flight hours or less from installation of an affected part number, as defined in ANAC Emergency AD 2022–05–02, the initial compliance time is before the accumulation of 10,000 flight hours from installation of the affected part number.

(7) Paragraph (b) of ANAC Emergency AD 2022–05–02 specifies to report crack findings to Embraer and ANAC within a certain compliance time. For this AD, report crack findings at the applicable time specified in paragraph (h)(7)(i) or (ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 36 hours after accomplishment of the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 36 hours after the effective date of this AD.

(8) The ''Alternative method of compliance (AMOC)'' section of ANAC Emergency AD 2022–05–02 does not apply to this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* 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, Large Aircraft Section, International Validation Branch, FAA; or ANAC; or ANAC's authorized Designee. If approved by the ANAC Designee, the approval must include the Designee's authorized signature.

(j) Related Information

For more information about this AD, contact Krista Greer, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3221; email *Krista.Greer@faa.gov.*

(k) 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) Agência Nacional de Aviação Civil (ANAC) Emergency AD 2022–05–02, effective May 13, 2022.

(ii) [Reserved]

(3) For ANAC Emergency AD 2022–05–02, contact ANAC, Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email: *pac@anac.gov.br;* internet *www.anac.gov.br/en/.* You may find this IBR material on the ANAC website at *https://sistemas.anac.gov.br/certificacao/DA/DAE.asp.*

(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 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 May 26, 2022.

Gaetano A. Sciortino,

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

[FR Doc. 2022–11962 Filed 6–2–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0143; Project Identifier MCAI–2021–01401–T; Amendment 39–22061; AD 2022–11–11]

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 (type certificate previously held by Bombardier, Inc.) Model DHC–8–401 and –402 airplanes. This AD was prompted by reports of a certain bolt at the pivot pin link being found missing or having stress corrosion cracking. This AD requires a modification to the nose landing gear (NLG) shock strut assembly. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 8, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 8, 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–2022–0143.

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–2022–0143; 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: Antariksh Shetty, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued AD CF–2009–29R4, dated October 1, 2021 (TCCA AD CF–2009–29R4) (also referred to after this as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain De Havilland Aircraft of Canada Limited Model DHC–8–401 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–2022–0143.

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 (type certificate previously held by Bombardier, Inc.) Model DHC–8–401 and –402 airplanes. The NPRM published in the **Federal Register** on February 23, 2022 (87 FR 10112). The NPRM was prompted by reports of a certain bolt at the pivot pin link being found missing or having stress corrosion cracking. The NPRM proposed to require a modification to the NLG shock strut assembly. The FAA is issuing this AD to address failure of the pivot pin retention bolt, which could result in a loss of directional control or loss of an NLG tire during takeoff or landing, which could lead to runway excursions. See the MCAI for additional background information.

Discussion of Final Airworthiness Directive

Comments

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

The FAA received additional comments from Horizon Air. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request to Issue a Single AD

Horizon Air requested that the FAA issue a single AD instead of both AD 2021–25–12, Amendment 39–21856 (86 FR 72174, December 21, 2021) (AD 2021–25–12), and this AD. Horizon Air noted that in the ''Relationship Between Proposed AD and AD 2021–25–12'' paragraph of the NPRM, it stated it was determined that a stand-alone AD would be more appropriate. Horizon Air pointed out this AD and AD 2021–25–12 were both prompted by the same unsafe condition and the applicability is the same. Horizon Air suggested that this final rule replace AD 2021–25–12 in order to have the subject matter mandates in a singular rule. Horizon Air concluded that having the new AD state the retained requirements and new requirements would promote compliance, be historically consistent, and be congruent with the related Transport Canada airworthiness directive (TCCA AD CF–2009–29R4).

The FAA disagrees with the commenter's request. The FAA acknowledges that a single AD is typically more appropriate. However, AD 2021–25–12 is an immediately adopted rule (*i.e.,* a final rule; request for comment) that includes actions with short compliance times. The FAA could not include Part I of TCCA AD CF–2009–29R4 in AD 2021–25–12 due to the longer compliance time for the required modification, which necessitated issuing an NPRM with a public comment period. The FAA considered superseding AD 2021–25–12 to include retained actions and the modification, which has a 1,600 flight cycles or 9-month compliance time. However, issuing an NPRM to supersede AD 2021–25–12 would have delayed the rulemaking process. The FAA determined issuing a stand-alone NPRM for the modification addresses the unsafe condition in a timely manner as the final rule for the stand-alone NPRM (this AD) will be published sooner than when a final rule for an NPRM that supersedes AD 2021–25–12 would be published. The FAA has not changed this AD in this regard.

Request To Include a Statement To Indicate the Association With AD 2021–25–12

Horizon Air requested that the FAA include a statement to indicate the association with AD 2021–25–12. Horizon Air stated that the actions required by AD 2021–25–12 are only applicable to airplanes with pivot pin retention bolt part number (P/N) NAS6204–14D installed on the NLG assembly; consequently, if this part is not installed the rule is not applicable. Horizon Air also stated that this AD mandates the installation of this part. Horizon Air concluded that a statement indicating the association with AD 2021–25–12 would enhance the awareness of the compliance requirements.

The FAA concurs with the commenter's request. The actions required by AD 2021–25–12 only apply to airplanes that have installed pivot pin retention bolt P/N NAS6204–14D in the NLG assembly and therefore do not apply to those airplanes that do not have that pivot pin retention bolt installed. The modification required by paragraph (g) of this AD results in the installation of pivot pin retention bolt P/N NAS6204–14D. After an operator has complied with this AD, the operator is then subject to AD 2021–25–12. As specified in paragraph (g) of AD 2021–25–12, the operator must revise the existing maintenance or inspection program ''. . . within 30 days after the installation of pivot pin retention bolt part number P/N NAS6204–14D. . . .'' As specified in paragraph (i) of AD 2021–25–12, repetitive lubrications of the part are required at intervals not to exceed 400 flight cycles. The FAA has added Note 1 to paragraph (g) of this AD to refer to AD 2021–25–12 after installing pivot pin retention bolt P/N NAS6204–14D.

Conclusion

The FAA reviewed the relevant data, considered the 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. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products.

Related Service Information Under 1 CFR Part 51

De Havilland Aircraft of Canada Limited has issued Service Bulletin 84–32–161, Revision B, dated March 31,

2021, including UTC Aerospace Systems Service Bulletin 47100–32–145, Revision 3, dated March 26, 2021. This service information describes procedures for modifying the NLG shock strut assembly by replacing special bolt, part number (P/N) 47205–1 or 47205–3, with a new retention bolt, P/N NAS6204–14D (the modification includes a reverse orientation of the retention bolt and a rework of the weight on wheel (WOW) proximity sensor cover to provide clearance for the re-oriented retention bolt).

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.

Difference Between This AD and the MCAI

This AD only requires the modification specified in Part I of TCCA AD CF–2009–29R4. The other actions specified in TCCA AD CF–2009–29R4 are required by FAA AD 2021–25–12.

Costs of Compliance

The FAA estimates that this AD affects 54 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
4 work-hours × $85 per hour = $340	$8	$348	$18,792

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:

2022–11–11 De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.): Amendment 39–22061; Docket No. FAA–2022–0143; Project Identifier MCAI–2021–01401–T.

(a) Effective Date

This airworthiness directive (AD) is effective July 8, 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–8–401 and –402 airplanes, certificated in any category, serial numbers 4001 and 4003 and subsequent.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Unsafe Condition

This AD was prompted by reports of a certain bolt at the pivot pin link being found missing or having stress corrosion cracking. The FAA is issuing this AD to address failure of the pivot pin retention bolt, which could result in a loss of directional control or loss of a nose landing gear (NLG) tire during takeoff or landing, which could lead to runway excursions.

(f) Compliance

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

(g) Modification

For any airplane having an NLG shock strut assembly, part number (P/N) 47100–XX (where XX represents any number), that has special bolt P/N 47205–1 or 47205–3: Within 1,600 flight cycles or 9 months after the effective date of this AD, whichever occurs first, modify the NLG shock strut assembly, in accordance with paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of De Havilland Aircraft of Canada Limited Service Bulletin 84–32–161, Revision B, dated March 31, 2021, including UTC Aerospace Systems Service Bulletin 47100–32–145, Revision 3, dated March 26, 2021.

Note 1 to paragraph (g): After installing pivot pin retention bolt part number NAS6204–14D, AD 2021–25–12, Amendment 39–21856 (86 FR 72174, December 21, 2021) applies to pivot pin retention bolt part number NAS6204–14D.

(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 De Havilland Aircraft of Canada Limited Service Bulletin 84–32–161, dated April 7, 2020, including UTC Aerospace Systems Service Bulletin 47100–32–145, dated April 3, 2020; or De Havilland Aircraft of Canada Limited Service Bulletin 84–32–161, Revision A, dated January 27, 2021, including UTC Aerospace Systems Service Bulletin 47100–32–145, Revision 2, dated January 4, 2021.

(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 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.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2009–29R4, dated October 1, 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–2022–0143.

(2) For more information about this AD, contact Antariksh Shetty, 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 (k)(3) and (4) of this AD.

(k) 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 84–32–161, Revision B, dated March 31, 2021, including UTC Aerospace Systems Service Bulletin 47100–32–145, Revision 3, dated March 26, 2021.

Note 2 to paragraph (k)(2)(i): De Havilland issued De Havilland Service Bulletin 84–32–161, Revision B, dated March 31, 2021, with UTC Aerospace Systems Service Bulletin 47100–32–145, Revision 3, dated March 26, 2021, attached as one ''merged'' file for the convenience of affected operators.

(ii) [Reserved]

(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 May 17, 2022.

Gaetano A. Sciortino,

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

[FR Doc. 2022–11758 Filed 6–2–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0294; Project Identifier MCAI–2021–00550–R; Amendment 39–22057; AD 2022–11–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH (AHD) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Helicopters Deutschland GmbH (AHD) Model MBB–BK117 A–1, MBB–BK117 A–3, MBB–BK117 A–4, MBB–BK117 B–1, MBB–BK117 B–2, MBB–BK117 C–1, MBB–BK117 C–2, and MBB–BK117 D–2 helicopters. This AD was prompted by the FAA's determination that aging of the elastomeric material of certain tension torsion straps (TT-Straps), during the period since manufacturing date up to first flight on a helicopter, may affect its structural characteristics. This AD requires the replacement of certain TT-Straps, implementation of storage life limits for TT-Straps, a prohibition on installing certain TT-Straps, and conditions for installation of certain other TT-Straps, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 8, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 8, 2022.

ADDRESSES: For EASA material incorporated by reference (IBR) in this final rule, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find the EASA material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0294.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0294; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the EASA AD, 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: Kristi Bradley, Program Manager, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; phone: (817) 222–5110; email: *kristin.bradley@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0122, dated May 6, 2021 (EASA AD 2021–0122), to correct an unsafe condition for all Airbus Helicopters Deutschland GmbH (AHD) (formerly Eurocopter Deutschland GmbH, Eurocopter Hubschrauber GmbH, Messerschmitt-Bölkow-Blohm GmbH; Airbus Helicopters Inc., formerly American Eurocopter LLC) Model MBB–BK117 A–1, MBB–BK117 A–3, MBB–BK117 A–4, MBB–BK117 B–1, MBB–BK117 B–2,

MBB–BK117 C–1, MBB–BK117 C–2, and MBB–BK117 D–2 helicopters.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Helicopters Deutschland GmbH (AHD) Model MBB–BK117 A–1, MBB–BK117 A–3, MBB–BK117 A–4, MBB–BK117 B–1, MBB–BK117 B–2, MBB–BK117 C–1, MBB–BK117 C–2, and MBB–BK117 D–2 helicopters. The NPRM published in the **Federal Register** on March 28, 2022 (87 FR 17201). The NPRM was prompted by the FAA's determination that aging of the elastomeric material of certain TT-Straps, during the period since manufacturing date up to first flight on a helicopter, may affect its structural characteristics. The NPRM proposed to require the replacement of certain TT-Straps, implementation of storage life limits for TT-Straps, a prohibition on installing certain TT-Straps, and conditions for installation of certain other TT-Straps, as specified in EASA AD 2021–0122.

The FAA is issuing this AD to address aging of the elastomeric material of certain TT-Straps. The unsafe condition, if not addressed, could result in premature failure of a TT-Strap, possibly resulting in loss of control of the helicopter. See EASA AD 2021–0122 for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Conclusion

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters. Except for minor editorial changes, this AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0122 requires the replacement of certain TT-straps, implementation of storage life limits for TT-Straps since cure date, a prohibition on installing certain TT-Straps, and provides conditions for installation of certain other TT-Straps. 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 213 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace the TT-Strap	5 work-hours × $85 per hour = $425	$4,800	$5,225	$1,112,925

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:

2022–11–07 Airbus Helicopters Deutschland GmbH (AHD): Amendment 39–22057; Docket No. FAA–2022–0294; Project Identifier MCAI–2021–00550–R.

(a) Effective Date

This airworthiness directive (AD) is effective July 8, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Helicopters Deutschland GmbH (AHD) Model MBB–BK117 A–1, MBB–BK117 A–3, MBB–BK117 A–4, MBB–BK117 B–1, MBB–BK117 B–2, MBB–BK117 C–1, MBB–BK117 C–2, and MBB–BK117 D–2 helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6200, Main Rotor System.

(e) Unsafe Condition

This AD was prompted by the FAA's determination that aging of the elastomeric material of certain tension torsion straps (TT-Straps), during the period since manufacturing date up to first flight on a helicopter, may affect its structural

characteristics. The FAA is issuing this AD to address aging of the elastomeric material of certain TT-Straps. The unsafe condition, if not addressed, could result in premature failure of a TT-Strap, possibly resulting in loss of control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0122, dated May 6, 2021 (EASA AD 2021–0122).

(h) Exceptions to EASA AD 2021–0122

(1) Where EASA AD 2021–0122 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2021–0122 specifies the ''cure date'' of a TT-Strap, the cure date can be determined using the information provided in the service information specified in EASA AD 2021–0122, or by contacting Airbus Helicopters Deutschland GmbH for applicable instructions. If the option of contacting Airbus Helicopters Deutschland GmbH for instructions is chosen, those instructions must be approved by the Manager, General Aviation & Rotorcraft Section, International Validation Branch, FAA; or EASA; or Airbus Helicopters' EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2021–0122.

(4) Where the service information referenced in EASA AD 2021–0122 specifies scrapping a part, this AD requires removing that part from service.

(5) Where paragraph (1) of EASA AD 2021–0122 specifies to replace each Lord TT-Strap and Bendix TT-Strap ''in accordance with the instructions of the applicable ASB,'' for this AD, the replacement must be done using FAA-approved procedures.

(6) Where EASA AD 2021–0122 refers to the airworthiness limitations items of the airworthiness limitations section of the aircraft maintenance manual (AMM) for the definition of service life limit (SLL), this AD requires using the life limits specified in paragraphs (h)(6)(i) through (iii) of this AD, as applicable.

(i) For Bendix TT-Strap P/N 2604067 and P/N 117–14110: Before 10 years or 25,000 flight cycles on the part, whichever occurs first.

(ii) For Lord TT-Strap P/N J17322–1 and P/N 117–14111: Before 12 years or 40,000 flight cycles on the part, whichever occurs first.

(iii) For Lord TT-Strap P/N B622M10T1001: Before 12 years or 30,000 flight cycles on the part, whichever occurs first.

(7) Where table 1 of EASA AD 2021–0122 specifies a compliance time of ''During the next helicopter periodical inspection or within 2 months, whichever occurs later after the effective date of this AD, but not exceeding the SLL,'' for this AD, the compliance time is ''Within 2 months after the effective date of this AD but not exceeding the applicable SLL specified in paragraphs (h)(6)(i) through (iii) of this AD.''

(i) Special Flight Permit

Special flight permits, as described in 14 CFR 21.197 and 21.199, are not allowed.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Related Information

For more information about this AD, contact Kristi Bradley, Program Manager, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; phone: (817) 222–5110; email: *kristin.bradley@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2021–0122, dated May 6, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0122, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find the EASA material on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0294.

(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 May 17, 2022.

Gaetano A. Sciortino,

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

[FR Doc. 2022–11936 Filed 6–2–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0297; Project Identifier MCAI–2021–01099–R; Amendment 39–22058; AD 2022–11–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350D, EC130B4, and EC130T2 helicopters. This AD was prompted by the identification of certain parts needing maintenance actions, including life limits and maintenance tasks. This AD requires incorporating into maintenance records requirements (airworthiness limitations), as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 8, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 8, 2022.

ADDRESSES: For EASA material incorporated by reference (IBR) in this final rule, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find the EASA material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0297.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0297; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the EASA AD, 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: Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0194R1, dated October 8, 2021 (EASA AD 2021–0194R1), to correct an unsafe condition for all Airbus Helicopters, formerly Eurocopter, Eurocopter France, and Aerospatiale, Model AS 350 B, AS 350 BA, AS 350 BB, AS 350 B1, AS 350 B2, AS 350 B3, AS 350 D, EC 130 B4, and EC 130 T2 helicopters. Model AS 350 BB helicopters are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those helicopters in the applicability.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350D, EC130B4, and EC130T2 helicopters. The NPRM published in the **Federal Register** on March 28, 2022 (87 FR 17206). The NPRM was prompted by the identification of certain parts needing maintenance actions, including life limits and maintenance tasks. The NPRM proposed to require incorporating into maintenance records requirements (airworthiness limitations), as specified in EASA AD 2021–0194R1.

The FAA is issuing this AD to address the failure of certain parts, which could result in the loss of control of the helicopter. See EASA AD 2021–0194R1 for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Conclusion

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters. Except for minor editorial changes, this AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0194R1 requires certain actions and associated thresholds and intervals, including life limits and maintenance tasks.

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.

ADs Mandating Airworthiness Limitations

The FAA has previously mandated airworthiness limitations by mandating each airworthiness limitation task (*e.g.,* inspections and replacements (life limits)) as an AD requirement or issuing ADs that require revising the airworthiness limitations section (ALS) of the existing maintenance manual or instructions for continued airworthiness to incorporate new or revised inspections and life limits. This AD, however, requires operators to incorporate into maintenance records required by 14 CFR 91.417(a)(2) or 135.439(a)(2), as applicable for your helicopter, the requirements (airworthiness limitations) specified in a civil aviation authority AD. The FAA does not intend this as a substantive change. For these ADs, the ALS requirements for operators are the same but are complied with differently. Requiring the incorporation of the new ALS requirements into the maintenance records, rather than requiring individual ALS tasks (*e.g.,* repetitive inspections and replacements), requires operators to record AD compliance once after updating the maintenance records, rather than after every time the ALS task is completed.

In addition, paragraph (h) of this AD allows operators to incorporate later approved revisions of the ALS document as specified in the Ref. Publications section of EASA AD 2021–0194R1 without the need for an alternative method of compliance (AMOC).

Differences Between This AD and the EASA AD

Paragraph (1) of EASA AD 2021–0194R1 requires compliance with actions and associated thresholds and intervals, including life limits and maintenance tasks, from September 3, 2021, the effective date of EASA AD 2021–0194, dated August 20, 2021 (EASA AD 2021–0194). Paragraph (3) of EASA AD 2021–0194R1 requires incorporating the actions and associated thresholds and intervals, including life limits and maintenance tasks, into the approved maintenance program within 12 months after the effective date of EASA AD 2021–0194. This AD requires incorporating into maintenance records requirements (airworthiness limitations) within 30 days after the effective date of this AD.

Costs of Compliance

The FAA estimates that this AD affects 1,191 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD. Incorporating requirements (airworthiness limitations) into maintenance records requires about 2 work-hours for a cost of $170 per helicopter and a cost of $202,470 for the U.S. fleet.

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:

2022–11–08 Airbus Helicopters: Amendment 39–22058; Docket No. FAA–2022–0297; Project Identifier MCAI–2021–01099–R.

(a) Effective Date

This airworthiness directive (AD) is effective July 8, 2022.

(b) Affected ADs

This AD affects AD 2011–22–05 R1, Amendment 39–17765 (79 FR 14169, March 13, 2014) (AD 2011–22–05 R1); and AD 2016–25–20, Amendment 39–18746 (81 FR 94954, December 27, 2016) (AD 2016–25–20).

(c) Applicability

This AD applies to all Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350D, EC130B4, and EC130T2 helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Codes: 2400, Electrical Power System; 2800, Aircraft Fuel System; 2900, Hydraulic Power System; 5200, Doors; 5300, Fuselage Structure; 6200, Main Rotor System; 6300, Main Rotor Drive System; 6400, Tail Rotor System; 6500, Tail Rotor Drive System; and 6700, Rotorcraft Flight Control.

(e) Unsafe Condition

This AD was prompted by the identification of certain parts needing maintenance actions, including life limits and maintenance tasks. The FAA is issuing this AD to address the failure of certain parts, which could result in the loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

Within 30 days after the effective date of this AD, incorporate into maintenance records required by 14 CFR 91.417(a)(2) or 135.439(a)(2), as applicable for your rotorcraft, the requirements (airworthiness limitations) specified in paragraph (1) of European Union Aviation Safety Agency (EASA) AD 2021–0194R1, dated October 8, 2021 (EASA AD 2021–0194R1).

(h) Provisions for Alternative Requirements (Airworthiness Limitations)

After the action required by paragraph (g) of this AD has been done, no alternative requirements (airworthiness limitations) are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2021–0194R1.

(i) Terminating Action for ADs 2011–22–05 R1 and 2016–25–20

(1) Accomplishing the actions required by this AD terminates all requirements of AD 2011–22–05 R1 for Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, and AS350D helicopters only.

(2) Accomplishing the actions required by this AD terminates all requirements of AD 2016–25–20 for Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350D, EC130B4, and EC130T2 helicopters only.

(j) Special Flight Permit

Special flight permits, as described in 14 CFR 21.197 and 21.199, are prohibited.

(k) Alternative Methods of Compliance (AMOCs)

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

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

(l) Related Information

For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.*

(m) 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) European Union Aviation Safety Agency (EASA) AD 2021–0194R1, dated October 8, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0194R1, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find the EASA material on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0297.

(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 May 17, 2022.

Gaetano A. Sciortino,

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

[FR Doc. 2022–11957 Filed 6–2–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2021–0006; T.D. TTB–183; Ref: Notice No. 203]

RIN 1513–AC83

Establishment of the Rocky Reach Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the 50-square mile ''Rocky Reach'' viticultural area in portions of Chelan and Douglas Counties, in Washington. The newly-established Rocky Reach viticultural area is located entirely within the existing Columbia Valley viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: This final rule is effective July 5, 2022.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated the functions and duties in the administration and enforcement of these provisions to the TTB Administrator through Treasury Order 120–01, dated December 10, 2013 (superseding Treasury Order 120–01, dated January 24, 2003).

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission to TTB of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and, once approved, a name and a delineated boundary codified in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and allows any interested party to petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions to establish or modify AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA;
- If the proposed AVA is to be established within, or overlapping, an existing AVA, an explanation that both identifies the attributes of the proposed AVA that are consistent with the existing AVA and explains how the proposed AVA is sufficiently distinct from the existing AVA and therefore appropriate for separate recognition;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

Rocky Reach Petition

TTB received a petition from Dr. Kevin Pogue, a professor of geology at Whitman College, proposing to establish the ''Rocky Reach'' AVA. Dr. Pogue submitted the petition on behalf of local vineyard owners and winemakers. The proposed AVA is located in portions of Chelan and Douglas Counties, in Washington, and lies entirely within the established Columbia Valley AVA (27 CFR 9.74). The petition notes that, although the proposed AVA covers 50 square miles, the Columbia River and the Rocky Reach Reservoir constitute approximately 24 percent of the total area. Within the proposed AVA, there are 7 commercial vineyards, which cover a total of approximately 117 acres. The distinguishing features of the proposed Rocky Reach AVA are its topography, geology, soils, and climate.

Topography

The proposed Rocky Reach AVA is located along a stretch of the Columbia River where the river has eroded a deep canyon between the foothills of the Cascade Range to the west and the Waterville Plateau and Badger Mountain to the east. Elevations within the proposed AVA are below 1,600 feet. Near the floor of the canyon and low along the canyon sides are flat-topped terraces. According to the petition, the terraces within the AVA have long been used for agricultural purposes, including viticulture, due to the ease of farming on the nearly-level ground.

West of the proposed AVA, the terrain is rugged and mountainous and elevations rise rapidly to over 3,000 feet. To the east of the proposed AVA, elevations are also higher, rising to an average of 2,500 feet on the Waterville Plateau. According to the petition, the terrain is also much steeper to the east of the proposed AVA. To the north of the proposed AVA, within the established Lake Chelan AVA (27 CFR 9.215), glaciers eroded a deep and broad glacial trough that is now filled by Lake Chelan. South of the proposed AVA, the valley of the Columbia River abruptly widens where the bedrock changes from hard, erosion-resistant metamorphic rocks to much softer sedimentary rocks.

Geology

According to the petition, 95 percent of the surface bedrock within the established Columbia Valley AVA consists of Cenozoic volcanic and sedimentary rock, predominantly Miocene Columbia River basalt, which is silica-poor and iron-rich. However, within the proposed Rocky Reach AVA, erosion has removed the basalt and carved a deep valley into the underlying Mesozoic crystalline basement rocks. According to the petition, the region north of the proposed AVA, specifically the established Lake Chelan AVA, is the only other region within the Columbia River AVA that has this crystalline

basement bedrock. These rocks consist primarily of metamorphosed sedimentary and igneous rocks that are silica-rich and dominated by minerals like quartz and mica that are not found in the regions to the east, south, and west of the proposed AVA, which have basalt bedrock. As a result, grapevine roots that reach the bedrock of the proposed AVA come into contact with a chemical environment that is distinct from that associated with basalt bedrock.

Soils

The petition states that the soils of the proposed AVA formed from wind-deposited sand and silt overlying cobblestone gravel, as well as from sand deposited by ice-age floods. The soils are typically clay-poor and well- to excessively well-drained. The thickness of the sand and silt is generally greater on the higher terraces within the proposed AVA, as their greater age has allowed more time for soils to be deposited. Most of the vineyards in the proposed AVA are on the lower terraces, where the soils are very coarse-grained and consist largely of cobblestones deposited by glacial floods and outwash. According to the petition, the stony surfaces of the lower terraces warm quickly. The hot stones then radiate heat to the vines, promoting faster and more complete ripening. The coarse soils also more efficiently transmit water to deeper soil horizons, which encourages deeper root penetration than in silty or sandy soils. Finally, the petition notes that vineyards in the stony soils do not require the use of cover crops since erosion is not an issue due to the coarse texture.

To the north of the proposed AVA, the soils of the glaciated valleys formed from glacial till, which is sediment deposited directly by melting glacial ice. The soils also contain volcanic ash and pumice, which are uncommon within the proposed Rocky Reach AVA. Fine-grained loess and sand over a basalt substratum dominate the soils in the regions to the south and east of the proposed AVA. The petition did not include soil information for the region west of the proposed AVA.

Climate

According to the petition, the proposed AVA's location at low elevations within the deep valley of the Columbia River allows it to have a warmer and longer growing season than the higher elevations of the surrounding mountains and plateaus. The petition included data on temperatures for the period of 2015–2017 measured at two locations within the proposed AVA and two locations in the region to the north of the proposed AVA. The data indicates that the proposed Rocky Reach AVA generally has warmer average annual temperatures than the regions to the north, as well as higher maximum temperatures. The petition included data on temperatures in the region to the east of the proposed AVA for only 1 year, so TTB was unable to determine if temperature distinguishes the proposed AVA from the region to the east. The petition did not include information on temperatures in the regions to the west and south of the proposed AVA.

During the three-year period, the average temperature within the proposed Rocky Reach AVA was 64.7 degrees Fahrenheit (F), with an average maximum temperature of 77.9 degrees F. The highest maximum temperature measured during that time period was 108.9 degrees F. The average minimum temperature within the proposed AVA was 52 degrees F, and the lowest minimum temperature was 29.2 degrees F. The average soil temperature was 68.8 degrees F.

By comparison, during the same three-year period, the average temperature within the region to the north of the proposed AVA was 63 degrees F, with an average maximum temperature of 74.9 degrees F. The highest maximum temperature measured during that time period was 105.4 degrees F. The average minimum temperature within the region to the north was the same as within the proposed AVA, and the lowest minimum temperature was 29.9 degrees F, which was similar to the lowest minimum temperature within the proposed AVA. The average soil temperature was 56.5 degrees F.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 203 in the **Federal Register** on July 15, 2021 (86 FR 37260), proposing to establish the Rocky Reach AVA. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed AVA. The notice also included the information from the petition comparing the distinguishing features of the proposed AVA to the surrounding areas. For a detailed description of the evidence relating to the name, boundary, and distinguishing features of the proposed AVA, and for a detailed comparison of the distinguishing features of the proposed AVA to the surrounding areas, see Notice No. 203.

In Notice No. 203, TTB solicited comments on the accuracy of the name, boundary, and other required information submitted in support of the petition. In addition, given the proposed Rocky Reach AVA's location within the Columbia Valley AVA, TTB solicited comments on whether the evidence submitted in the petition regarding the distinguishing features of the proposed AVA sufficiently differentiates it from the established AVA. TTB also requested comments on whether the geographic features of the proposed AVA are so distinguishable from the established Columbia Valley AVA that the proposed AVA should no longer be part of the established AVA. The comment period closed September 13, 2021.

In response to Notice No. 203, TTB received one comment. The comment supported establishing the proposed AVA based on its distinct terroir. Of particular importance to the commenter was the presence of granitic gneiss/migmatite/schist bedrock, which the commenter claimed distinguishes the proposed AVA from the vast majority of land within the established Columbia Valley AVA.

TTB Determination

After careful review of the petition and the comment received in response to Notice No. 203, TTB finds that the evidence provided by the petitioner supports the establishment of the Rocky Reach AVA. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and parts 4 and 9 of the TTB regulations, TTB establishes the ''Rocky Reach'' AVA in portions of Chelan and Douglas Counties, Washington, effective 30 days from the publication date of this document.

TTB has also determined that the Rocky Reach AVA will remain part of the established Columbia Valley AVA. As discussed in Notice No. 203, the Rocky Reach AVA shares some broad characteristics with the established AVA. For example, elevations within the Columbia Valley AVA are generally below 2,000 feet, and the Rocky Reach AVA is located entirely below 2,000 feet. However, the Rocky Reach AVA has crystalline basement bedrock rich in silica, quartz, and mica, rather than the basalt bedrock that characterizes much of the rest of the Columbia Valley AVA, and the soils of the Rocky Reach AVA are more coarse-grained than the loess-based soils that define most of the Columbia Valley AVA.

Boundary Description

See the narrative description of the boundary of the Rocky Reach AVA in the regulatory text published at the end of this final rule.

Maps

The petitioners provided the required maps, and they are listed below in the regulatory text. The Rocky Reach AVA boundary may also be viewed on the AVA Map Explorer on the TTB website, at *https://www.ttb.gov/wine/ava-map-explorer.*

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

With the establishment of the Rocky Reach AVA, its name, ''Rocky Reach,'' will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the regulations clarifies this point. Consequently, wine bottlers using the name ''Rocky Reach'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the AVA name as an appellation of origin.

The establishment of the Rocky Reach AVA will not affect the existing Columbia Valley AVA, and any bottlers using ''Columbia Valley'' as an appellation of origin or in a brand name for wines made from grapes grown within the Columbia Valley will not be affected by the establishment of this new AVA. The establishment of the Rocky Reach AVA will allow vintners to use ''Rocky Reach'' and ''Columbia Valley'' as appellations of origin for wines made primarily from grapes grown within the Rocky Reach AVA if the wines meet the eligibility requirements for these appellations.

Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.287 to read as follows:

§ 9.287 Rocky Reach.

(a) *Name.* The name of the viticultural area described in this section is ''Rocky Reach''. For purposes of part 4 of this chapter, ''Rocky Reach'' is a term of viticultural significance.

(b) *Approved maps.* The 8 United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the viticultural area are titled:

(1) Ardenvoir, WA, 2003;
(2) Chelan, WA, 2004;
(3) Entiat, WA, 2003;
(4) Orondo, WA, 2003;
(5) Rocky Reach Dam, WA, 2003;
(6) Waterville, WA, 2014;
(7) Wenatchee, WA, 2003; and
(8) Winesap, WA, 2004.

(c) *Boundary.* The Rocky Reach viticultural area is located in Chelan and Douglas Counties in Washington. The boundary of the Rocky Reach viticultural area is as described in paragraphs (c)(1) through (13) of this section:

(1) The beginning point is on the Wenatchee map at the intersection of the 1,200-foot elevation contour and the western boundary of section 15, T23N/R20E. From the beginning point, proceed northeast along the 1,200-foot elevation contour, crossing over the Rocky Reach Dam map and onto the northwest corner of the Orondo map; then

(2) Continue northeasterly, then southwesterly along the 1,200-foot elevation contour, crossing back onto the Rocky Reach Dam map and continuing southwesterly along the 1,200-foot elevation contour to its intersection with the unnamed creek flowing from Spencer Lake; then

(3) Proceed northeasterly along the 1,200-foot elevation contour, crossing over the unnamed creek and continuing across the southeastern corner of the Ardenvoir map and onto the Entiat map; then

(4) Continue northeasterly then westerly along the 1,200-foot elevation contour, crossing back onto the Ardenvoir map, and continuing along the elevation contour to its intersection with the R20E/R21E boundary, which is concurrent with the western boundary of section 18, T25N/R21E; then

(5) Proceed north along the R20E/R21E boundary, crossing over the Entiat River and the Entiat Ditch, to the intersection of the range boundary and the 1,200-foot elevation contour; then

(6) Proceed easterly along the 1,200-foot elevation contour, crossing onto the Winesap map, and continuing northeasterly along the 1,200-foot elevation contour to its intersection with the boundary between sections 11 and 12, T26N/R21E; then

(7) Proceed north along the boundary between sections 11 and 12 for approximately 300 feet to its intersection with the 1,400-foot elevation contour; then

(8) Proceed northeast, then south, then easterly along the 1,400-foot elevation contour, crossing Knapp Coulee and onto the Chelan map, and continuing east along the 1,400-foot elevation contour to its intersection with the northern boundary of section 1, T26N/R22E; then

(9) Proceed south-southeasterly in a straight line, crossing the Columbia River, to the intersection of the 1,600-

foot elevation contour and the R22E/R23E boundary; then

(10) Proceed generally westerly along the 1,600-foot elevation contour, crossing over the southeastern corner of the Winesap map and onto the Entiat map, and continuing southwesterly along the 1,600-foot elevation contour to its intersection with an unnamed stream in section 35, T26N/R21E; then

(11) Proceed westerly (downstream) along the unnamed stream for 0.45 mile to its intersection with the 1,200-foot elevation contour; then

(12) Proceed southerly along the 1,200-foot elevation contour, crossing over the Orondo map and onto the Wenatchee map to the intersection of the elevation contour with the southern boundary of section 14, T23N/R20E; then

(13) Proceed west-northwest in a straight line for 1.47 miles, crossing the Columbia River, to the beginning point.

Signed: May 25, 2022.

Mary G. Ryan,

Administrator.

Approved: May 26, 2022.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2022–11709 Filed 6–2–22; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2020–0008; T.D. TTB–180; Ref: Notice No. 193]

RIN 1513–AC58

Establishment of the Mount Pisgah, Polk County, Oregon Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the approximately 5,850-acre ''Mount Pisgah, Polk County, Oregon'' viticultural area in Polk County, Oregon. The viticultural area is located entirely within the existing Willamette Valley viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: This final rule is effective July 5, 2022.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act provisions pursuant to section 1111(d) of the Homeland Security Act of 2002, as codified at 6 U.S.C. 531(d). In addition, the Secretary of the Treasury has delegated certain administrative and enforcement authorities to TTB through Treasury Order 120–01.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission to TTB of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and allows any interested party to petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions to establish or modify AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- If the proposed AVA is to be established within, or overlapping, an existing AVA, an explanation that both identifies the attributes of the proposed AVA that are consistent with the existing AVA and explains how the proposed AVA is sufficiently distinct from the existing AVA and therefore appropriate for separate recognition;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

Mount Pisgah, Polk County, Oregon Petition

TTB received a petition from the representatives of the vineyards and wineries within the proposed AVA, proposing to establish the ''Mount Pisgah, Polk County, Oregon'' AVA. The proposed AVA is located in Polk County, Oregon, and lies entirely within the established Willamette Valley AVA (27 CFR 9.90). Within the approximately 5,850-acre proposed AVA, there are 10 commercial vineyards which cover a total of approximately 531 acres, as well as 2 wineries. The petition notes that vineyard owners also plan to expand 4 of the existing vineyards by a total of 164 acres. The distinguishing features of the proposed Mount Pisgah, Polk County, Oregon AVA are its topography, climate, geology, and soils.

The proposed Mount Pisgah, Polk County, Oregon AVA is located on a

small mountain in the hills of the Willamette Valley. Elevations range from 260 feet at the foot of the mountain to 835 feet at the peak. The proposed AVA is surrounded in all directions by lower elevations of the Willamette Valley floor. The petition states that the proposed AVA's elevated location protects the proposed AVA from the higher wind speeds that occur on the valley floor.

According to the petition, temperatures within the proposed Mount Pisgah, Polk County, Oregon AVA are cooler than the regions to the east and north-northeast, with average annual growing degree day [1] (GDD) accumulation of 2,543 GDDs. The average annual GDD accumulations favor the production of grape varietals such pinot noir, pinot gris, and chardonnay, which are the most commonly grown grape varietals within the proposed AVA. In comparison, GDD accumulations in the city of Salem, approximately 18 miles east of the proposed AVA, averaged 2,903 GDDs, and the town of McMinnville, 23 miles to the north-northeast of the proposed AVA, averaged 2661 GDDs.

The proposed AVA also has lower average wind speeds than the regions to the east and north-northeast. The average wind speed within the proposed Mount Pisgah, Polk County, Oregon AVA is 2.3 miles per hour (mph), while winds in the city of Salem average 6.1 mph, and winds in the town of McMinnville average 5.2 mph. According to the petition, high winds can break new grapevine shoots and desiccate grapes.

The petition states that the proposed Mount Pisgah, Polk County, Oregon AVA is bounded topographically around a unique geological formation that only occurs within the proposed AVA. The parent material of the mountain comes from the Siletz River volcanics of the middle and lower Eocene and Paleocene (approximately 40 to 60 million years ago). The rocks are zeolotized (contain aluminum) and veined with calcite, and were sea floor mountains. The Siletz River volcanics are exposed near the summit of Mount Pisgah, where it directly affects the soils and viticulture. The Siletz River volcanics are the oldest rocks in the Willamette Valley, and occur below marine sediments six miles from the Willamette River, which makes the proposed AVA unique, according to the petition. Because the geology of the proposed AVA is different from that of the surrounding regions, grapevine roots within the proposed AVA will have access to a different set of minerals and nutrients than grapevines grown elsewhere.

The geology of the proposed Mount Pisgah, Polk County, Oregon AVA also affects the composition of the soils. According to the petition, 97.2 percent of the soils within the proposed AVA contain colluvium or residuum as parent material, both of which are ancient sedimentary soils. The only alluvial parent material in the area is old alluvium coming from the Missoula Flood, which comprises 2.1 percent of the proposed AVA. The soils generally have fine to coarse grains with calcareous concretions and are carbonaceous and micaceous. The main soil series in the proposed AVA are silty clay loams, which make up 92.1 percent of all soils within the proposed AVA and include the Bellpine, Jory, Nekia, Rickreall, and Willakenzie soil series. The soils are classified as well drained but also have adequate water-holding capabilities, which enables dry farming within the proposed AVA.

By comparison, the areas surrounding the proposed Mount Pisgah, Polk County, Oregon AVA all contain alluvial deposits from the recent quaternary period, instead of sedimentary deposits. To the north of the proposed AVA, soils are clayey alluvium and do not drain as well as the soils within the proposed AVA. To the west of the proposed AVA, the soils are alluvial loam and are more poorly drained. To the south of the proposed AVA, soils are silty alluvial. To the east of the proposed AVA, soils are silty alluvium and alluvial loam and also do not drain as well as the soils in the proposed AVA.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 193 in the **Federal Register** on October 1, 2020 (85 FR 61907), proposing to establish the Mount Pisgah, Polk County, Oregon AVA. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed AVA. The notice also compared the distinguishing features of the proposed AVA to the surrounding areas. For a detailed description of the evidence relating to the name, boundary, and distinguishing features of the proposed AVA, and for a detailed comparison of the distinguishing features of the proposed AVA to the surrounding areas, see Notice No. 193.

In Notice No. 193, TTB solicited comments on the accuracy of the name, boundary, and other required information submitted in support of the petition. In addition, given the proposed AVA's location within the Willamette Valley AVA, TTB solicited comments on whether the evidence submitted in the petition regarding the distinguishing features of the proposed AVA sufficiently differentiates it from the established AVA. TTB also requested comments on whether the geographic features of the proposed AVA are so distinguishable from the established Willamette Valley AVA that the proposed AVA should no longer be part of the established AVA. The comment period closed November 30, 2020.

In response to Notice No. 193, TTB received 19 comments. Commenters included local vineyard and winery owners, winemakers, and vineyard managers. All 19 of the comments support the establishment of the proposed Mount Pisgah, Polk County, Oregon AVA.

Proposal To Modify Proposed AVA Name

One comment (comment 7) supports the proposed Mount Pisgah, Polk County Oregon AVA but also suggests modifying the name. The comment claims that, while other regions known as ''Mount Pisgah'' exist in Oregon, those regions are not conducive to viticulture. Therefore, the comment recommends shortening the proposed name to ''Mount Pisgah.'' Two of the other comments support this idea of a shortened name (comments 13 and 15), with one of the comments (comment 15) noting that the other regions in Oregon known as Mount Pisgah are located on public lands and are unlikely to be available for commercial viticulture.

TTB Response

One of the purposes of designating AVAs is to provide consumers more information about the origin of the grapes used to make the wine. Because there are at least three geographic features in Oregon known as ''Mount Pisgah,'' TTB believes that it is important to clarify to which feature the wine label refers. Although the commenters state that the proposed AVA is the only ''Mount Pisgah'' where viticulture takes place in Oregon, consumers might not be aware of this and might assume that the AVA name refers to one of the other regions. Therefore, TTB believes that including the county in the proposed AVA name is necessary in order to reduce the

[1] See Albert J. Winkler et al., *General Viticulture* (Berkeley: University of California Press, 2nd. ed. 1974), pages 61–64. In the Winkler scale, the GDD regions are defined as follows: Region I = less than 2,500 GDDs; Region II = 2,501–3,000 GDDs; Region III = 3,001–3,500 GDDs; Region IV = 3,501–4,000 GDDs; Region V = greater than 4,000 GDDs.

chance of consumer confusion. Additionally, because Polk County is a common county name within the U.S., and multiple States have geographic features known as ''Mount Pisgah,'' TTB does not believe that shortening the proposed AVA name to ''Mount Pisgah, Polk County'' would sufficiently identify the proposed AVA's location. For these reasons, TTB is not considering establishing the AVA with an abbreviated shortened name.

Proposal To Expand the Proposed AVA

One comment (comment 8) supports the establishment of the Mount Pisgah, Polk County, Oregon AVA but also requests modifying the proposed boundary. The comment, submitted on behalf of Atlas Vineyard Management, Inc., requests extending the proposed AVA boundary southward to include a 65-acre vineyard on a neighboring hill. The comment claims that the climate, topography, geology, and soils of the proposed expansion area are similar to those of the proposed AVA. As evidence, the comment included information on the GDDs, mean July temperature, wind speeds, elevation, slope aspect, geology, and soils of the proposed expansion area.

Four other comments submitted in response to Notice No. 193 address this boundary modification, and all four comments oppose it (comments 11, 12, 13, and 15). Two comments (comments 11 and 15) oppose the proposed expansion, in part, because they claim the proposed ''Mount Pisgah, Polk County, Oregon'' name does not apply to the proposed expansion area, which is located on a separate geographic feature known as Fishback Hill. Several of the comments also include anecdotal evidence of temperature differences between the proposed AVA and the proposed expansion area, noting that they have encountered ice or rain in the region of the proposed expansion area on days when the proposed AVA was free of ice or rain.

Comments 12 and 15 both address the soil evidence in the request to expand the proposed AVA. Both comments claim that the soils of the proposed AVA are, in fact, distinguishable from those of the proposed expansion area. Comment 12 claims that the proposed expansion area contains more Willakenzie soils than the proposed AVA. Comment 15 claims that a combination of marine sediments and volcanic basalt is unique to the proposed Mount Pisgah, Polk County, Oregon AVA, as stated in the proposed AVA petition. The comment goes on to say that, contrary to the claims in the expansion proposal, there are at least five acres of vines planted on this combination of soils at the summit of Mount Pisgah. Comment 15 also states that the Spencer Formation, which the expansion proposal claims is a geologic formation shared by the proposed AVA and the proposed expansion area, stretches nearly the entire length of the Willamette Valley AVA. As a result, the comment claims the fact that the proposed AVA and the proposed expansion area share this underlying geologic feature is simply a coincidence and not a distinctive feature of the two regions.

Finally, comment 13 addresses the GDD and wind speed data included in the expansion proposal. The comment notes that the 2015–2018 April/May GDD accumulations from the proposed expansion area are lower than those of the proposed Mount Pisgah, Polk County, Oregon AVA. The comment states that lower GDD accumulations in these months can result in bud break and bloom dates that are later than in the proposed AVA. The comment also notes that the 2016 April/May and June/October wind speeds are 20 and 40 percent higher, respectively, in the proposed expansion area than they are in the proposed AVA.

TTB Response

After examining the information provided, TTB has determined that there is not sufficient evidence to support inclusion of the proposed expansion area at this time. The information presented does not show that the proposed expansion area shares the distinguishing features or name evidence of the proposed Mount Pisgah, Polk County, Oregon AVA. First, TTB has determined that the comment requesting the expanded boundaries does not include evidence that the proposed AVA name extends to the proposed expansion area.

Additionally, based on the information provided, TTB also found that several aspects of the climate, geologic, and soil features of the proposed AVA appear to be dissimilar to those of the expansion area proposed in comment 8. First, comment 8 included one year of wind speed data (2016) from within both the proposed expansion area and the proposed AVA and two years of data (2017–2018) from the proposed expansion area and two regions on the Willamette Valley floor outside of the proposed AVA. Although the two-year data suggests that the proposed expansion area has wind speeds lower than those found on the Willamette Valley floor, the 2016 data suggests that wind speeds in the proposed expansion area may be consistently higher than those within the proposed AVA. Without additional wind speed data from within both the proposed expansion area and the proposed AVA, TTB cannot determine that the proposed expansion area's wind speeds are similar enough to warrant inclusion in the proposed Mount Pisgah, Polk County AVA.

Furthermore, based on the information in comment 8, the early-season GDDs of the proposed expansion area also appear to be different from those of the proposed Mount Pisgah, Polk County, Oregon AVA. The comment included 2014–2016 GDD data from within the proposed expansion area, the proposed AVA, and two locations on the Willamette Valley floor. The comment also included 2017–2018 GDD data from within the proposed expansion area and the two locations on the valley floor, but not from within the proposed AVA. Although the 2014–2016 GDDs in both the proposed AVA and the proposed expansion area are lower than those found in the two locations on the valley floor, the 2014–2016 April/May GDD accumulations are noticeably lower in the proposed expansion area than in the proposed AVA. Furthermore, the 2014–2016 seasonal GDD accumulations for the proposed expansion area are also lower than those for the proposed AVA. Therefore, TTB does not believe that comment 8 provided sufficient evidence to show that the proposed AVA and the proposed expansion share similar GDD accumulations.

With regard to geologic features, comment 8 notes that the Spencer Formation is present beneath both the proposed expansion area and the proposed Mount Pisgah, Polk County, Oregon AVA. However, the proposed AVA petition did not describe the presence of the Spencer Formation as a distinguishing feature. The presence of the Siletz River volcanics is the distinguishing geologic feature of the proposed AVA, and it does not appear to occur in the proposed expansion area. Therefore, TTB does not believe that comment 8 provided sufficient evidence to show that the proposed expansion area shares the distinguishing geologic feature of the proposed AVA.

Based on the soil map included in the expansion request comment (comment 8), TTB cannot determine conclusively whether Willakenzie soils are more prevalent in the proposed expansion area than in the proposed AVA, as suggested in comment 12. However, based on the same map, TTB does believe that the proposed expansion area lacks the Nekia soils, which the proposed AVA petition states make up

8.1 percent of the soils in the proposed AVA. The map also appears to show that Rickreal soils, which comprise 7.8 percent of the proposed AVA soils, are not as common in the proposed expansion area, and that Dupee soils may be more common in the proposed expansion area than in the proposed AVA. For these reasons, TTB has determined that comment 8 provided insufficient evidence to show that the proposed expansion area shares the distinctive soil composition of the proposed Mount Pisgah, Polk County, Oregon AVA.

TTB Determination

After careful review of the petition and the comments received in response to Notice No. 193, TTB finds that the evidence provided by the petitioner supports the establishment of the Mount Pisgah, Polk County, Oregon AVA, as originally proposed. TTB is not expanding the Mount Pisgah, Polk County, Oregon AVA to include the region requested in comment 8, although TTB would be willing to consider a separate petition to establish a new AVA in that region or a separate expansion petition that provides the requisite name and distinguishing features information. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and parts 4 and 9 of the TTB regulations, TTB establishes the ''Mount Pisgah, Polk County, Oregon'' AVA in Polk County, Oregon, effective 30 days from the publication date of this document.

TTB has also determined that the Mount Pisgah, Polk County, Oregon AVA will remain part of the established Willamette Valley AVA. As discussed in Notice No. 193, the Mount Pisgah, Polk County, Oregon AVA shares some broad characteristics with the established AVA. For example, the Mount Pisgah, Polk County, Oregon AVA and the Willamette Valley AVA do not contain elevations over 1,000 feet. Additionally, both areas contain mostly silty and clay loam soils. However, the Mount Pisgah, Polk County, Oregon AVA differs from the Willamette Valley AVA because it is located entirely on a small mountain with elevations that are higher than those of the surrounding valley floor. Due to its higher elevations, wind speeds within the AVA are lower than in other parts of the Willamette Valley AVA that have lower elevations. Lastly, the Siletz River volcanics parent material is a unique geological feature which occurs within the Mount Pisgah, Polk County, Oregon AVA but not within the remainder of the Willamette Valley AVA.

Boundary Description

See the narrative description of the boundary of the Mount Pisgah, Polk County, Oregon AVA in the regulatory text published at the end of this final rule.

Maps

The petitioners provided the required maps, and they are listed below in the regulatory text. The Mount Pisgah, Polk County, Oregon AVA boundary may also be viewed on the AVA Map Explorer on the TTB website, at *https://www.ttb.gov/wine/ava-map-explorer.*

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

With the establishment of the Mount Pisgah, Polk County, Oregon AVA, its name, ''Mount Pisgah, Polk County, Oregon,'' will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). TTB is also designating ''Mt. Pisgah, Polk County, Oregon'' as a term of viticultural significance, and is allowing the word ''Mount'' to be abbreviated as ''Mt.'' The text of the regulations clarifies this point. Consequently, wine bottlers using the name ''Mount (or ''Mt.'') Pisgah, Polk County, Oregon'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the AVA name as an appellation of origin. TTB is not designating ''Mount (or ''Mt.'') Pisgah,'' by itself, as a term of viticultural significance due to the number of locations in the United States known as Mount Pisgah. Therefore, wine bottlers using ''Mount (or ''Mt.'') Pisgah,'' standing alone, in a brand name or in another label reference on their wines will not be affected by the establishment of this AVA.

The establishment of the Mount Pisgah, Polk County, Oregon AVA will not affect the existing Willamette Valley AVA, and any bottlers using ''Willamette Valley'' as an appellation of origin or in a brand name for wines made from grapes grown within the Willamette Valley will not be affected by the establishment of this new AVA. The establishment of the Mount Pisgah, Polk County, Oregon AVA will allow vintners to use ''Mount (or ''Mt.'') Pisgah, Polk County, Oregon'' and ''Willamette Valley'' as appellations of origin for wines made primarily from grapes grown within the Mount Pisgah, Polk County, Oregon AVA if the wines meet the eligibility requirements for the appellation.

Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.284 to read as follows:

§ 9.284 Mount Pisgah, Polk County, Oregon.

(a) *Name.* The name of the viticultural area described in this section is ''Mount Pisgah, Polk County, Oregon''. The word ''Mount'' may be abbreviated as ''Mt.'' in the name of this AVA. For purposes of part 4 of this chapter, ''Mount Pisgah, Polk County, Oregon'' and ''Mt. Pisgah, Polk County, Oregon'' are terms of viticultural significance.

(b) *Approved maps.* The two United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Mount Pisgah, Polk County, Oregon viticultural area are titled:

(1) Dallas, OR, 2014; and

(2) Airlie North, OR, 2014.

(c) *Boundary.* The Mount Pisgah, Polk County, Oregon viticultural area is located in Polk County in Oregon. The boundary of the Mount Pisgah, Polk County, Oregon viticultural area is as described below:

(1) The beginning point is on the Dallas map at the point where the 320-foot elevation contour intersects Mistletoe Road south of the unnamed road known locally as SE Lewis Street. From the beginning point, proceed south along Mistletoe Road for approximately 2 miles to the road's second intersection with the 740-foot elevation contour; then

(2) Proceed due west approximately 0.5 miles to the 400-foot elevation contour; then

(3) Proceed south along the 400-foot elevation contour, crossing onto the Airlie North map, to the contour's intersection with Cooper Hollow Road near Fisher Reservoir; then

(4) Proceed southeasterly along Cooper Hollow Road to its intersection with McCaleb Road; then

(5) Proceed east, then northeast, then east along McCaleb Road for approximately 1.6 miles to its intersection with Mistletoe Road and the 260-foot elevation contour; then

(6) Proceed easterly along the 260-foot elevation contour until it intersects again with Mistletoe Road; then

(7) Proceed east along Mistletoe Road for 0.3 mile to its intersection with Matney Road; then

(8) Proceed north along Matney Road for 0.6 mile to its intersection with the 260-foot elevation contour at a 90 degree turn in the road; then

(9) Proceed northwesterly along the 260-foot elevation contour to its intersection with Bursell Road; then

(10) Proceed east along Bursell Road for 0.2 mile to its intersection with the 260-foot elevation contour; then

(11) Proceed north along the 260-foot elevation contour, crossing onto the Dallas map, to the contour's intersection with Whiteaker Road; then

(12) Proceed southeasterly along Whiteaker Road for 1.0 mile to its intersection with the 260-foot elevation contour at a 90 degree turn in the road; then

(13) Proceed north, then west along the 260-foot elevation contour to its intersection with Ballard Road; then

(14) Proceed south along Ballard Road to its intersection with the 300-foot elevation contour; then

(15) Proceed northwesterly along the 300-foot elevation contour, to its intersection with Cherry Knoll Road; then

(16) Proceed south along Cherry Knoll Road to its intersection with the 320-foot elevation contour; then

(17) Proceed northwesterly along the 320-foot elevation contour, returning to the beginning point.

Signed: May 25, 2022.

Mary G. Ryan,

Administrator.

Approved: May 26, 2022.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2022–11715 Filed 6–2–22; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2021–0001; T.D. TTB–182; Ref: Notice No. 200]

RIN 1513–AC73

Establishment of the Upper Lake Valley Viticultural Area and Modification of the Clear Lake Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the approximately 17,360-acre ''Upper Lake Valley'' viticultural area in Lake County, California. TTB also expands the boundary of the existing 1,093-square mile Clear Lake viticultural area so that the Upper Lake Valley viticultural area is wholly within it. Both viticultural areas are located within the established North Coast viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: This final rule is effective July 5, 2022.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated the functions and duties in the administration and enforcement of these provisions to the TTB Administrator through Treasury Order 120–01, dated December 10, 2013 (superseding Treasury Order 120–01, dated January 24, 2003).

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission to TTB of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and, once approved, a name and a delineated boundary codified in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other

characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and allows any interested party to petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions to establish or modify AVAs. Petitions to establish an AVA, or modify the boundary of an AVA, must include the following:

- Evidence that the area within the proposed AVA boundary, or the region within the proposed expansion area, is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA or defining the boundary of the proposed expansion area;
- A narrative description of the features of the proposed AVA or proposed expansion area affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA or expansion area distinctive and distinguish it from adjacent areas outside the proposed AVA boundary or established AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA or proposed expansion area, with the boundary of the proposed AVA or proposed expansion area clearly drawn thereon;
- If the proposed AVA or proposed expansion area is to be established within, or overlapping, an existing AVA, an explanation that both identifies the attributes of the proposed AVA or proposed expansion area that are consistent with the existing AVA, and explains how the proposed AVA or proposed expansion area is sufficiently distinct from the existing AVA and therefore appropriate for separate recognition; and
- A detailed narrative description of the proposed AVA or proposed expansion area boundary based on USGS map markings.

Petition To Establish the Upper Lake Valley AVA and Modify the Boundary of the Clear Lake AVA

TTB received a petition from Terry Dereniuk, on behalf of the Growers of Upper Lake Valley, proposing the establishment of the ''Upper Lake Valley'' AVA. The proposed Upper Lake Valley AVA is located within Lake County, California, and lies within the established North Coast AVA (27 CFR 9.30) and partially within the established Clear Lake AVA (27 CFR 9.99). The proposed AVA contains approximately 17,360 acres and has 16 commercial vineyards covering a total of approximately 300 acres. At the time the petition was submitted, at least one additional vineyard was planned within the proposed AVA.

Although most of the proposed Upper Lake Valley AVA is located within the existing Clear Lake AVA, a small portion of the northwest corner of the proposed AVA would, if established, extend beyond the boundary of the Clear Lake AVA. To address the overlap of the two AVAs and account for viticultural similarities between the proposed Upper Lake Valley AVA and the larger Clear Lake AVA, the petition also proposes to expand the boundary of the Clear Lake AVA so that the entire proposed Upper Lake Valley AVA would be included within the Clear Lake AVA. The distinguishing features of the proposed Upper Lake Valley AVA are its hydrogeology, soils, and climate.

According to the petition, the proposed Upper Lake Valley AVA has four identified water-bearing formations: Quaternary alluvium; Pleistocene terrace deposits; Pleistocene lake and floodplain deposits; and Plio–pleistocene cache creek. These formations make up the Upper Lake Groundwater Basin, which covers the majority of the proposed AVA. The petition states that groundwater levels within the Upper Lake Groundwater Basin are generally within 10 feet of the surface and fluctuate between 5 and 15 feet lower in the fall. Lowering of water levels during dry months is not excessive and is balanced by rapid recovery of water level elevations during the wet months. The groundwater of the Upper Lake Groundwater Basin has high levels of iron, manganese, and calcium and low levels of boron and dissolved solids. The petition states that although the high levels of iron and manganese may clog irrigation equipment, the high levels of calcium and low levels of boron and dissolved solids are beneficial to grapevine growth.

The Gravelly Valley Groundwater Basin lies to the north of the proposed Upper Lake Valley AVA, within the Mendocino National Forest. The petition states that no additional information was available about the hydrogeology of this basin. To the east of the proposed AVA is the High Valley Groundwater Basin, which is characterized by rocks of the Jurassic–Cretaceous Franciscan Formation and Quaternary Holocene volcanics. The groundwater contains high levels of ammonia, phosphorous, chloride, iron, boron, and manganese. The springtime groundwater level is 10 to 30 feet below the surface, with the summer drawdown 5 to 10 feet below the spring level.

Clear Lake is to the immediate south of the proposed AVA, while the Big Valley Groundwater Basin is farther south. The prominent groundwater formations in the Big Valley Groundwater Basin are Quaternary Alluvium and Upper Pliocene to Lower Pliocene Volcanic Ash Deposit. Groundwater levels in the northern portion of the Big Valley Groundwater Basin are usually 5 feet below the surface and decrease 10 to 50 feet during the summer. In the uplands of the basin, the depth to water in the spring is much deeper, ranging from 70 to 90 feet below the surface and dropping an additional 30 to 40 feet over the summer. Boron is an impairment in the water in some parts of the basin. At levels of 2 mg/l or above, Boron is toxic to most plants. To the west of the proposed AVA is the Scotts Valley Groundwater Basin, which consists of rocks from the Jurassic–Cretaceous Franciscan Formation. Depth to water in the spring is 10 feet below the surface on the average, with summer drawdown ranging from 30 to 60 feet below spring levels depending on location across the basin. Boron, iron, and manganese are impairments of groundwater in this basin.

According to the petition, soils from three general soil map units make up over 56 percent of the total area of the proposed Upper Lake Valley AVA: Millsholm–Skyhigh-Bressa; Still–Lupoyoma; and Tulelake–Fluvaquentic–Haplawuolls. Millsholm–Skyhigh–Bressa soils are formed from sandstone and shale and are primarily loams and clay loams. They are moderately deep, moderately-well to well-drained, and have slopes that range from moderately sloping to steep. These soils are shallower than soils in the other two map units. They may still be suitable for viticulture, however, since the petition states the quality of fruit is better, although yields are usually lower, on soils limited in depth by hardpan, rock,

or clay substrata. Soils from the Still–Lupoyoma general map unit occur on the nearly-level valley floors and consist of very deep, moderately-well to well-drained loams and silt loams. According to the petition, most vineyards in the proposed AVA are planted on these soils due to their gentle slopes, which create less of an erosion hazard and provide good drainage. These soils are also deep, which allows roots to extend further. Soils from the Tulelake–Fluvaquentic–Haplawuolls map unit are very deep, poorly drained silty clay loams that occur in marshy and reclaimed areas around Clear Lake and Tule Lake. The petition states these soils can be suitable for viticulture if the poor drainage can be mitigated.

To the north of the proposed Upper Lake Valley AVA, the soils belong to the Maymen–Etsel and the Sanhedrin–Speaker–Kekawaka soil map units. These shallow soils contain outcroppings of large stones and are not very prevalent in the proposed AVA. To the east of the proposed AVA, the most common soil map units are the Maymen–Etsel, Sobrante–Guenoc–Hambright, and the Sanhedrin–Speake–Kekawaka units, which are also not common within the proposed AVA and occur mostly on very steep slopes. South of the proposed AVA, within the Big Valley District AVA (27 CFR 9.232), the soils belong to the Cole-Clear Lake Variant-Clear Lake general soil map unit. To the west of the proposed AVA, the soils are from the Millsholm–Skyhigh–Bressa soil map unit and then transition to the Maymen–Etsel soil map unit in the higher elevations of the Mayacamas Mountains.

According to the petition, the climate of the proposed Upper Lake Valley AVA is characterized by high annual rainfall amounts, a relatively short frost-free period, low-speed but frequent winds, and low median growing degree (GDD) accumulations.[1] Annual predicted rainfall amounts within the Upper Lake Groundwater Basin, where the proposed AVA is located, range from 35 to 43 inches, which provides sufficient hydration for grapevines. To the east, west and south of the proposed AVA, annual predicted rainfall amounts are lower, while in the region to the north, the annual predicted rainfall is approximately 49 inches.

The proposed AVA has a median of 202 frost-free days per year. The median, minimum, and maximum frost-free periods within the proposed AVA are substantially shorter than those of the established AVAs to the east, southeast, and west. The median and maximum frost-free periods in the proposed AVA are longer than their counterparts in most AVAs to the south of the proposed AVA, with the exception of the established Red Hills Lake County AVA (27 CFR 9.169). The number of frost-free days in the region to the north of the proposed AVA was not available. Late frosts can damage new vine growth and early frosts can impact the ability of grapes to reach a desirable sugar level.

The median GDD accumulation in the proposed Upper Lake Valley AVA is 3,158, while the maximum is 3,434 and the minimum is 2,809. According to the petition, GDD accumulations within the proposed AVA are suitable for growing a variety of grapes, including Sauvignon Blanc. The median GDD accumulation for the proposed AVA is substantially smaller than those of established AVAs to the east, southeast, south, and west. The maximum GDD accumulation in the proposed AVA is less than the maximum GDD accumulation in each of these established AVAs, with the exception of Benmore Valley AVA (27 CFR 9.142) to the west and Big Valley District–Lake County AVA (27 CFR 9.232) to the south. The minimum GDD accumulation in the proposed AVA is lower than those of established AVAs to the east, southeast, south, and west. GDD data was not provided for the region to the north of the proposed AVA.

Within the proposed AVA, wind speeds between 1 and 5 miles per hour account for 82.88 percent of the daytime wind speeds and 88.86 percent of nighttime wind speeds. Winds with speeds below 1 mile per hour, defined as ''calm,'' occurred only 2.23 percent of the time during daytime hours and 3.04 percent of the time during nighttime hours. Wind speeds greater than 20 miles per hour were not recorded within the proposed AVA. The petition states that constant, gentle winds keep grapes and leaf canopies cool and dry, and reduce the risk of mildew. According to the petition, a larger percentage of wind speeds in three established AVAs to the southeast and south of the proposed AVA are less than 1 mile per hour, and in two of these AVAs, winds with speeds exceeding 20 miles per hour were recorded. Wind speed data was not available for the regions to the north and west of the proposed AVA.

The petition also requested the expansion of the Clear Lake AVA boundary so that the entire proposed Upper Lake Valley would be contained within it. The petition noted that the proposed expansion area, located in the northern portion of Scotts Valley along Scotts Creek, has elevations within the range of those found elsewhere in the Clear Lake AVA. T.D. ATF–147, which established the Clear Lake AVA, states that elevations for vineyards planted within the AVA range from 1,300 to 1,800 feet. For comparison, the expansion petition notes that the vineyard within the proposed expansion area sits at 1,360 feet. The expansion petition also notes that T.D. ATF–147 included a map of the Clear Lake watershed, which was described as having an important effect on the climate of the Clear Lake AVA. The expansion petition notes that the map includes all of Scotts Valley, including the proposed expansion area, in the Clear Lake watershed. Finally, T.D. ATF–147 stated that the climate of the Clear Lake AVA places it in Winkler Regions II and III. The expansion petition notes that annual GDD accumulations in the proposed expansion area range from 2,985 to 3,364, which also places the proposed expansion area in Winkler Regions II and III.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 200 in the **Federal Register** on April 16, 2021 (86 FR 20102), proposing to establish the Upper Lake Valley AVA and expand the boundary of the established Clear Lake AVA. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed AVA. The notice also compared the distinguishing features of the proposed AVA to the surrounding area, including the existing Clear Lake and North Coast AVAs, and provided a comparison of the features of the proposed expansion area to those of the established Clear Lake AVA. For a detailed description of the evidence relating to the name, boundary, and distinguishing features of the proposed AVA, and for a detailed comparison of the distinguishing features of the proposed AVA and the proposed expansion area to the surrounding areas, see Notice No. 200. In Notice No. 200, TTB solicited comments on the accuracy of the name, boundary, and other required information submitted in support of the petition. The comment period closed on June 15, 2021.

[1] Heat summation is calculated as the sum of the mean monthly temperature above 50 degrees Fahrenheit (F) during the growing season from April 1 to October 31 and is expressed as growing degree days (GDDs). A baseline of 50 degrees F is used because there is almost no shoot growth below this temperature. See Albert J. Winkler et al., *General Viticulture* (Berkeley: University of California Press, 2nd ed. 1974), pages 67–71.

TTB received two comments in response to Notice No. 200. One comment was anonymous, and the second comment was submitted by the Lake County Winegrape Commission. Both comments support establishing the proposed Upper Lake Valley AVA and also specifically supported the proposed expansion of the Clear Lake AVA.

TTB Determination

After careful review of the petition, TTB finds that the evidence provided by the petitioner supports the establishment of the Upper Lake Valley AVA. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and parts 4 and 9 of the TTB regulations, TTB establishes the ''Upper Lake Valley'' AVA in Lake County, California. Additionally, TTB expands the boundary of the Clear Lake AVA in order to entirely encompass the Upper Lake Valley AVA. The establishment of the Upper Lake Valley AVA and the expansion of the Clear Lake AVA are both effective 30 days from the publication date of this document.

Boundary Description

See the narrative description of the boundary of the Upper Lake Valley AVA and the modified Clear Lake AVA boundary in the regulatory text published at the end of this final rule.

Maps

The petitioner provided the required maps, and they are listed below in the regulatory text. The Upper Lake Valley AVA boundary and the expanded Clear Lake Valley AVA boundary may also be viewed on the AVA Map Explorer on the TTB website, at *https://www.ttb.gov/wine/ava-map-explorer.*

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

With the establishment of the Upper Lake Valley AVA, its name, ''Upper Lake Valley,'' will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the regulations clarifies this point. Consequently, wine bottlers using the name ''Upper Lake Valley'' in a brand name, including a trademark, or in another label reference to the origin of the wine, will have to ensure that the product is eligible to use the AVA name as an appellation of origin.

The establishment of the Upper Lake Valley AVA will allow vintners to use ''Upper Lake Valley'' and ''North Coast'' as appellations of origin for wines made primarily from grapes grown within the Upper Lake Valley AVA if the wines meet the eligibility requirements for the appellations. The expansion of the Clear Lake AVA will also allow vintners to use ''Clear Lake'' as an appellation of origin for wines made primarily from grapes grown anywhere in the Upper Lake Valley AVA if the wines meet the eligibility requirements for the appellation.

Bottlers who wish to label their wines with ''Upper Lake Valley'' as an appellation of origin must obtain a new Certificate of Label Approval (COLA) for the label, even if the currently approved label already contains another AVA appellation of origin. Please do not submit COLA requests to TTB before the date shown in the Dates section of this document, or your request will be rejected.

Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Amend § 9.99 by:
■ a. Removing the period at the end of paragraph (b)(4) and adding a semicolon in its place;
■ b. Adding paragraph (b)(5);
■ c. Redesignating paragraphs (c)(11) through (c)(17) as paragraphs (c)(15) through (c)(21); and
■ d. Adding new paragraphs (c)(11) through (c)(14).

The additions read as follows:

§ 9.99 Clear Lake.

* * * * *

(b) * * *

(5) ''Upper Lake Quadrangle, California,'' 7.5 minute series, 1996.

(c) * * *

(11) Then southeasterly in a straight line, crossing onto the Upper Lake quadrangle, to the intersection of the 1,600-foot elevation contour and an unnamed 4-wheel drive road in Section 9, T15N/R10W;

(12) Then northwesterly, then southwesterly along the 1,600-foot elevation contour to a point in Section 8, T15N/R10W, that is due north of the westernmost structure in a row of three structures located south of Scotts Creek;

(13) Then south in a straight line, crossing over Scotts Creek and the westernmost structure, to the intersection with an unnamed, unimproved road and the 1,600-foot elevation contour in Section 17, T15N/R10W;

(14) Then generally east along the 1,600-foot elevation contour to its second intersection with an unnamed, unimproved road in section 15, T15N/R10W;

* * * * *

■ 3. Add § 9.286 to read as follows:

§ 9.286 Upper Lake Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Upper Lake Valley''. For purposes of part 4 of this chapter, ''Upper Lake Valley'' is a term of viticultural significance.

(b) *Approved maps.* The four United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Upper Lake Valley viticultural area are titled:

(1) Lakeport, 1958; photorevised 1978; minor revision 1994;

(2) Upper Lake, 1996;

(3) Bartlett Mountain, 1996; and

(4) Lucerne, 1996.

(c) *Boundary.* The Upper Lake Valley viticultural area is located in Lake County, California. The boundary of the Upper Lake Valley viticultural area is as described as follows:

(1) The beginning point is on the Lakeport map at the intersection of Lyons Creek and the western shore of Clear Lake in Section 31, T15N/R9W. From the beginning point, proceed south in a straight line to an unnamed light-duty road known locally as Lafferty Road; then

(2) Proceed west along Lafferty Road to its intersection with an unnamed secondary highway known locally as Lakeshore Boulevard; then

(3) Proceed north on Lakeshore Boulevard to its intersection with an unnamed light-duty road known locally as Whalen Way; then

(4) Proceed west on Whalen Way to its intersection with State Highway 29; then

(5) Proceed north on State Highway 29, crossing onto the Upper Lake map, to the intersection of the highway and the southern boundary of Section 13, T15N, R10W; then

(6) Proceed west along the southern boundary of Sections 13 and 14 to the intersection of the southern boundary of Section 14 with the 1,600-foot elevation contour; then

(7) Proceed in a generally northwesterly direction along the meandering 1,600-foot elevation contour to its intersection with an unnamed, unimproved road in Section 17, T15N/R10W; then

(8) Proceed north in a straight line, crossing Scotts Creek, to the 1,600-foot elevation contour in Section 8, T15N/R10W; then

(9) Proceed northeasterly, then southeasterly along the 1,600-foot elevation contour to its intersection with an unnamed 4-wheel drive road in Section 9, T15N/R10W; then

(10) Proceed northwest in a straight line to the marked 2,325-foot elevation point on Hell's Peak; then

(11) Proceed southeast in a straight line to the intersection of the 1,600-foot elevation contour and the southern boundary of Section 30 along the Mendocino National Forest boundary, T16N/R9W; then

(12) Proceed southeast along the meandering 1,600-foot elevation contour to its third intersection with the Mendocino National Forest boundary, along the eastern boundary of Section 31, T16N/R9W; then

(13) Proceed south, then west along the Mendocino National Forest boundary to its intersection with the 1,600-foot elevation contour along the northern boundary of Section 5, T15N/R9W; then

(14) Proceed southeasterly along the meandering 1,600-foot elevation contour, crossing onto the Bartlett Mountain map, to the intersection of the 1,600-foot elevation contour and the Mendocino National Forest boundary along the eastern boundary of Section 9, T15N/9RW; then

(15) Proceed south, then east along the Mendocino National Forest boundary to its intersection with the 1,600-foot elevation contour along the northern boundary of Section 15, T15N/R9W; then

(16) Proceed south, then northwest along the meandering 1,600-foot elevation contour, crossing onto the Upper Lake map, and continuing southeasterly along the 1,600-foot elevation contour crossing back and forth between the Bartlett Mountain map and the Upper Lake map, to the intersection of the 1,600-foot elevation contour and an unimproved 4-wheel drive road in Section 21, T15N/R9W; then

(17) Continue southeast along the 1,600-foot elevation contour, crossing onto the Lucerne map, to the intersection of the 1,600-foot elevation contour and an unimproved 4-wheel drive road in Section 36, T15N/R9W; then

(18) Proceed south in a straight line to the shoreline of Clear Lake; then

(19) Proceed northeasterly along the shoreline of Clear Lake, crossing onto the Lakeport map, and continuing southwesterly along the shoreline, crossing Rodman Slough, to return to the beginning point.

Signed: May 25, 2022.

Mary G. Ryan,

Administrator.

Approved: May 26, 2022.

Timothy E. Skud,

Deputy Assistant Secretary, (Tax, Trade, and Tariff Policy).

[FR Doc. 2022–11717 Filed 6–2–22; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2021–0005; T.D. TTB–181; Ref: Notice No. 202]

RIN 1513–AC81

Establishment of the Paulsell Valley Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the 34,155-acre ''Paulsell Valley'' viticultural area (AVA) in Stanislaus County, California. The Paulsell Valley viticultural area is not located within, nor does it contain, any other established viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: This final rule is effective July 5, 2022.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated the functions and duties in the administration and enforcement of these provisions to the TTB Administrator through Treasury Order 120–01, dated December 10, 2013 (superseding Treasury Order 120–01, dated January 24, 2003).

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission to TTB of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and, once approved, a name and a delineated boundary codified in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and allows any interested party to petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions to establish or modify AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

Paulsell Valley AVA Petition

TTB received a petition from Patrick Shabram, on behalf of Rock Ridge Ranch, proposing the establishment of the ''Paulsell Valley'' AVA. The proposed AVA is located in Stanislaus County, California, and is not within any established AVA. The proposed AVA covers 34,155 acres and includes 3 commercial vineyards covering a total of approximately 826 acres. The petition notes that a fourth vineyard is planned that would include an additional 700 acres of vines. The petition identifies the distinguishing features of the proposed Paulsell Valley AVA as its topography, climate, and soils.

The proposed Paulsell Valley AVA is located in a valley carved by Dry Creek in and around the unincorporated community of Paulsell, California. The topography of the proposed AVA is dominated by rolling hills marked by cut arroyos and interspersed with steep, isolated hills. This type of topography is referred to as a ''mound-intermound relief.'' Elevations within the proposed AVA are between 140 and 612 feet, with most of the proposed AVA in the 180–400 foot range. According to the petition, the gentle slopes of the proposed AVA ensure good drainage for vineyards, while the isolated nature of higher mounds within the proposed AVA decrease shadows on the valley floor and allow most vineyards to receive long hours of solar radiation.

To the north of the proposed Paulsell Valley AVA is the floodplain of the Stanislaus River. Along the floodplain are alluvial terraces and fans that differ from the mound-intermound topography of the proposed AVA. Elevations to the north of the proposed AVA are generally below 300 feet. East of the proposed AVA are the Sierra Nevada Mountains, which can rise to several thousand feet. South of the proposed AVA is the Modesto Reservoir. To the southeast and southwest of the proposed AVA, the mound-intermound relief is present, but is less pronounced than in the proposed AVA because the upper depositional layers have weathered and eroded away. West of the proposed AVA is the San Joaquin Valley, whose floor has significantly flatter topography and elevations that are typically below 200 feet.

The petition also describes the climate of the proposed Paulsell Valley AVA. From 2012 to 2017, annual growing degree day (GDD) [1] accumulations within the proposed AVA ranged from 4,201 to 5,204. Average growing season low temperatures during the same time period were between 55.4 and 57.9 degrees Fahrenheit (F). Annual precipitation amounts during the same time period ranged from 7.6 inches to 26.4 inches. The petition states that the temperatures within the proposed AVA impact the timing of bud break, grape development and sugar accumulations, and harvest dates. The annual precipitation amounts provide adequate soil moisture and reduce the need for irrigation.

West of the proposed Paulsell Valley AVA, in the San Joaquin Valley, GDD accumulations were lower during the 2012–2017 period and ranged from 3,780 to 4,308. Precipitation amounts during the same period were also generally lower in the San Joaquin Valley than in the proposed AVA, as was the average growing season low temperature. In the region to the southwest of the proposed AVA, GDD accumulations were also generally lower than within the proposed AVA, ranging from 3,949 to 4,437. Precipitation amounts in this region were also lower than within the proposed AVA, ranging from 6.6 to 19.6 inches. East of the proposed AVA, GDD accumulations were similar to slightly lower than those within the proposed AVA, ranging from 4,586 to 4,711. Precipitation amounts were higher in the region to the east, ranging from 30.5 to 37.6 inches. Climate data was not available for the regions due north and south of the proposed AVA.

Layers of volcanic tuff, which is rock created from the deposition of volcanic ash instead of from direct lava flow, form the parent material for the most common soil types in the proposed Paulsell Valley AVA. The most common soils are the Pentz series soils, which comprise 23 percent of the soil within the proposed AVA. Soils in this series include Pentz cobbly loam and Pentz sandy loam. Soils from the Peters series account for 11 percent of the soils within the proposed AVA, while the Peters–Pentz complex make up a little more than 22 percent of the soils. The petition describes a ''complex'' as similar soil types mixed at such a scale

[1] *See* Albert J. Winkler, *General Viticulture* (Berkeley: University of California Press, 2nd Ed. 1974), pages 61–64. In the Winkler climate classification system, annual heat accumulation during the growing season, measured in annual GDDs, defines climatic regions. One GDD accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees F, the minimum temperature required for grapevine growth.

that they are not defined as one type or the other.

Soils within the proposed AVA are well-drained, which helps prevent soil-borne pathogens that can harm vines. The petition states that the soils have a different mineral content and holding capacity than the soils of surrounding regions. Holding capacity impacts how much moisture from rainfall can be utilized by grape vines. The mineral content of a soil is often credited with creating subtle distinctions in the flavors of grapes.

The petition notes that Peters and Pentz soils are found in the regions to the west and southeast of the proposed Paulsell Valley AVA. However, the petition states that sharp contrasts in soils exist to the north, northeast, and south of the proposed AVA. To the north of the proposed AVA, along the floodplain of the Stanislaus River, alluvial sandy soils are abundant, including soils of the Honcut, Hanford, and Columbia series. To the northeast of the proposed AVA, the Amador and Auburn soils are more common. These soils derive from tuffaceous sediments, similar to the Pentz and Peters soils, although the Auburn soil has metamorphic parent material. Other soils in the region to the northeast of the proposed AVA include soils derived from metamorphosed igneous rocks, such as the Exchequer soils, and soils derived from sedimentary rock, such as the Hornitos soils. South of the proposed AVA, Hopeton clays, Montpellier coarse sandy loam, and Whitney sandy loams are more common. These soils are formed from deposited sediments usually of granitic origin, or weakly consolidated sandstone of igneous material, and lack volcanic tuff material.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 202 in the **Federal Register** on July 15, 2021 (86 FR 37265), proposing to establish the Paulsell Valley AVA. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed AVA. The notice also included information from the petition comparing the distinguishing features of the proposed AVA to the surrounding areas. For a detailed description of the evidence relating to the name, boundary, and distinguishing features of the proposed AVA, and for a detailed comparison of the distinguishing features of the proposed AVA to the surrounding areas, see Notice No. 202. In Notice No. 202, TTB solicited comments on the accuracy of the name, boundary, and other required information submitted in support of the petition. The comment period closed on September 13, 2021. TTB did not receive any comments in response to Notice No. 202.

TTB Determination

After careful review of the petition, TTB finds that the evidence provided by the petitioner supports the establishment of the Paulsell Valley AVA. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and parts 4 and 9 of the TTB regulations, TTB establishes the ''Paulsell Valley'' AVA in Stanislaus County, California, effective 30 days from the publication date of this document.

Boundary Description

See the narrative description of the boundary of the Paulsell Valley AVA in the regulatory text published at the end of this final rule.

Maps

The petitioner provided the required maps, and they are listed below in the regulatory text. The Paulsell Valley AVA boundary may also be viewed on the AVA Map Explorer on the TTB website, at *https://www.ttb.gov/wine/ava-map-explorer.*

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

With the establishment of the Paulsell Valley AVA, its name, ''Paulsell Valley,'' will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the regulations clarifies this point. Consequently, wine bottlers using the name ''Paulsell Valley'' in a brand name, including a trademark, or in another label reference to the origin of the wine, will have to ensure that the product is eligible to use the AVA name as an appellation of origin.

The establishment of the Paulsell Valley AVA will not affect any existing AVA. The establishment of the Paulsell Valley AVA will allow vintners to use ''Paulsell Valley'' as an appellation of origin for wines made primarily from grapes grown within the Paulsell Valley AVA if the wines meet the eligibility requirements for the appellation.

Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Add § 9.285 to subpart C to read as follows:

§ 9.285 Paulsell Valley AVA.

(a) *Name.* The name of the viticultural area described in this section is ''Paulsell Valley''. For purposes of part

4 of this chapter, ''Paulsell Valley'' is a term of viticultural significance.

(b) *Approved maps.* The four United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the viticultural area are titled:

(1) Knights Ferry, California, 2015;

(2) Keystone, California, 2015;

(3) Cooperstown, California, 2015; and

(4) Paulsell, California, 2015.

(c) *Boundary.* The Paulsell Valley viticultural area is located in Stanislaus County, California. The boundary of the Paulsell Valley viticultural area is as described in the following paragraphs:

(1) The beginning point is on the Knights Ferry map at the intersection of Willms Road, Kennedy Road/Sonora Road, and State Highway 108/State Highway 120. From the beginning point, proceed southeasterly along Willms Road for 7.2 miles, crossing over the Keystone map and onto the Cooperstown map, to the intersection of Willms Road and Warnerville Road at the Warnerville Cemetery; then

(2) Proceed west, then south along Warnerville Road for a total of 0.5 mile to its intersection with Crabtree Road at the railroad tracks west of the town of Warnerville; then

(3) Proceed in a southerly direction along Crabtree Road for 6.7 miles to its intersection with the canal known locally as the Modesto Main Canal; then

(4) Proceed westerly along the canal, crossing onto the Paulsell map, and continuing along the canal for a total of 1.6 miles to the Modesto Reservoir; then

(5) Proceed along the eastern shore, then northern shore, of the Modesto Reservoir for 12.9 miles to the fifth intersection of the shore with an unnamed, intermittent creek at the northernmost point of the reservoir; then

(6) Proceed southwesterly in a straight line to the northern terminus of Reservoir Road; then

(7) Proceed south-southwest along Reservoir Road for 2.2 miles to its intersection with the 200-foot elevation contour; then

(8) Proceed northwest in a straight line for 1.2 miles to the intersection of Hazeldean Road and Tim Bell Road; then

(9) Proceed north along Tim Bell Road for 3.1 miles to its intersection with Claribel Road south of the town of Paulsell; then

(10) Proceed west along Claribel Road for 2.4 miles, crossing Cashman Creek, to the intersection of the road with the 260-foot elevation contour; then

(11) Proceed north in a straight line for 2 miles to the intersection of Warnerville Road and the 300-foot elevation contour east of Cashman Creek; then

(12) Proceed northeast in a straight line, crossing onto the Knights Ferry map and continuing for a total of 1.1 miles to the intersection of Fogarty Road and a railroad track; then

(13) Proceed east in a straight line for 0.9 mile to Paulsell Lateral; then

(14) Proceed northerly along Paulsell Lateral for 2.4 miles to its intersection with Cashman Creek; then

(15) Proceed northwest in a straight line for 1.3 miles to State Highway 108/State Highway 120; then

(16) Proceed northeast in a straight line for 2.4 miles to the third intersection of State Highway 108/State Highway 120 with the 300-foot elevation contour; then

(17) Proceed southeast along State Highway 108/State Highway 120 for 1 mile to its intersection with the 260-foot elevation contour; then

(18) Proceed northeasterly along the 260-elevation contour for 1.4 miles to its intersection with Sonora Road southeast of Knights Ferry; then

(19) Proceed southeast along Sonora Road for 0.1 mile to its intersection with Kennedy Road; then

(20) Proceed northeast, then east, then south along Kennedy Road/Sonora Road for 0.4 mile, returning to the beginning point.

Signed: May 25, 2022.

Mary G. Ryan,

Administrator.

Approved: May 26, 2022.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2022–11716 Filed 6–2–22; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2022–0361]

Safety Zones; Annual Events in the Captain of the Port Buffalo Zone—June–August 2022, NY

AGENCY: Coast Guard, Homeland Security (DHS).

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce certain safety zones located in the Federal regulations for Annual Events in the Captain of the Port Buffalo Zone. This action is necessary and intended to protect the safety of life and property on navigable waters prior to, during, and immediately after these events. During each enforcement period, no person or vessel may enter the respective safety zone without the permission of the Captain of the Port Buffalo or a designated representative.

DATES: The regulations in 33 CFR 165.939 as listed in Table 165.939 will be enforced for the safety zones identified in the **SUPPLEMENTARY INFORMATION** section below for the dates and times specified.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, contact LT Sean Dolan, Chief of Waterways Management, Sector Buffalo, U.S. Coast Guard; telephone 716–843–9391, email *D09-SMB-SECBuffalo-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zones; Annual Events in the Captain of the Port Buffalo Zone listed in the table to 33 CFR 165.939 for the following events:

i. *Seneca River Days Fireworks, Baldwinsville, NY:* The safety zone listed in Table 165.939 as (a)(4) will be enforced on all waters of the Seneca River, Baldwinsville, NY within a 840-foot radius of land position 43°09′25.0″ N, 076°20′21.0″ W, from 8:45 p.m. through 9:45 p.m. on June 10, 2022.

ii. *Flagship Niagara League Mariners Ball, Erie, PA:* The safety zone listed in (a)(5) will be enforced on all waters of Presque Isle Bay, Erie, PA within a 350-foot radius of position 42°08′22.5″ N, 080°05′15.6″ W, from 5:45 p.m. through 11:15 p.m. on June 4, 2022.

iii. *Hope Chest Buffalo-Niagara Dragon Boat Festival, Buffalo, NY:* The safety zone listed in (a)(6) will be enforced within All waters of the Buffalo River, Buffalo, NY starting at position 42°52′12.0″ N, 078°52′17.0″ W then Southeast to 42°52′03.0″ N, 078°52′12.0″ W then East to 42°52′03.0″ N, 078°52′10.0″ W then Northwest to 42°52′13.0″ N, 078°52′16.0″ W and then returning to the point of origin, from 7:45 a.m. through 5:15 p.m. on June 18, 2022.

iv. *Town of Newfane Fireworks, Olcott, NY:* The safety zone listed in (b)(24) will be enforced on all waters of the Buffalo River, Buffalo, NY within a 1,120 foot radius of land position 43°20′23.6″ N, 078°43′09.5″ W, from 9:15 p.m. through 10:45 p.m. on July 3, 2022.

v. *City of Tonawanda Fireworks, Tonawanda, NY:* The safety zone listed in (b)(25) will be enforced on all U.S. waters of the East Niagara River within a 1,400 foot radius of land position

43°01′39.6″ N, 078°53′07.5″ W, from 9:15 p.m. through 10:15 p.m. on July 4, 2022.

vi. *Tom Graves Memorial Fireworks, Port Bay, NY:* The safety zone listed in (b)(27) will be enforced on all waters of Port Bay, NY, within a 840 foot radius of the barge located in position 43°17′52.4″ N, 076°49′55.7″ W, from 9:45 p.m. through 10:45 p.m. on July 3, 2022.

vii. *Hamburg Beach Blast, Hamburg, NY:* The safety zone listed in (b)(33) will be enforced on all waters of Lake Erie contained within a 280 foot radius of 42°45′59.21″ N, 078°52′41.51″ W, from 9:15 p.m. through 10:45 p.m. on July 30, 2022.

viii. *Thunder on the Niagara Hydroplane Boat Races, Tonawanda, NY:* The safety zone listed in (c)(4) will be enforced on all U.S. waters of the Niagara River near the North Grand Island Bridge, encompassed by a line starting at 43°03′32.9″ N, 078°54′46.9″ W to 43°03′14.6″ N, 078°55′16.0″ W then to 43°02′39.7″ N, 078°54′13.1″ W then to 43°02′59.9″ N, 078°53′42.0″ W and returning to the point of origin from 8:15 a.m. August 6, 2022 through 8:45 a.m. on August 7, 2022.

Pursuant to 33 CFR 165.23, entry into, transiting, or anchoring within these safety zones during an enforcement period is prohibited unless authorized by the Captain of the Port Buffalo or his designated representative; designation need not be in writing. Those seeking permission to enter these safety zones may request permission from the Captain of the Port Buffalo via channel 16, VHF–FM. Vessels and persons granted permission to enter the safety zone shall obey the directions of the Captain of the Port Buffalo or his designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of the enforcement periods via Broadcast Notice to Mariners or other suitable means. If the Captain of the Port Buffalo determines that the safety zone need not be enforced for the full duration stated in this notification, he may use a Broadcast Notice to Mariners to grant general permission to enter the respective safety zone.

Dated: May 16, 2022.

M.I. Kuperman,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2022–11935 Filed 6–2–22; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0439; FRL–9870–03–R9]

Determination To Defer Sanctions; California; San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: The Environmental Protection Agency (EPA) is making an interim final determination that the California Air Resources Board (CARB) has submitted revised rules on behalf of the San Diego County Air Pollution Control District (SDCAPCD or District) that correct deficiencies in its Clean Air Act (CAA or Act) state implementation plan (SIP) provisions concerning ozone nonattainment requirements for controlling volatile organic compounds (VOCs) from the transfer of organic compounds into mobile transport tanks and concerning a negative declaration for non-Control Techniques Guidelines (CTG) major VOC sources. This determination is based on a proposed approval, published elsewhere in this **Federal Register**, of SDCAPCD's Rule 61.2 regulating the above source category and of the negative declaration for non-CTG major VOC sources. The effect of this interim final determination is that the imposition of sanctions that were triggered by a previous disapproval by the EPA in 2020 is now deferred. If the EPA finalizes its approval of the SDCAPCD's submissions, relief from these sanctions will become permanent.

DATES: This rule is effective on June 3, 2022. However, comments will be accepted on or before July 5, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2022–0439 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Donnique Sherman, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4129 or by email at *sherman.donnique@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to the EPA.

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I. Background

On December 3, 2020 (85 FR 77996), the EPA issued a final partial approval/partial disapproval for the SDCAPCD's 2008 Eight-Hour Ozone Reasonably Available Control Technology Demonstration for San Diego County (2008 RACT demonstration) that had been submitted by CARB to the EPA for approval. The 2008 RACT demonstration action addressed the SDCAPCD's 2008 ozone standard RACT SIP requirements under the Act. In our 2008 RACT demonstration action, we determined that while the SDCAPCD's SIP revision submittal strengthened the SIP, the submittal did not fully meet the requirements for RACT SIPs under the CAA. Our 2008 RACT demonstration action included a final partial disapproval action under title I, part D of the Act, relating to requirements for nonattainment areas. Pursuant to section 179 of the CAA and our regulations at 40 CFR 52.31, this partial disapproval action under title I, part D started a sanctions clock for imposition of offset sanctions 18 months after the action's effective date of January 4, 2021, and highway sanctions 6 months later.

On December 29, 2020, CARB submitted to the EPA the SDCAPCD's 2020 RACT submittal, which addressed requirements for the 2015 ozone

standard, and also included a negative declaration adopted for non-CTG major VOC sources for the 2008 ozone standard. On April 20, 2021, CARB submitted to the EPA an amended Rule 61.2 that included a decrease in the emission limit for bulk terminals to 0.08 pound per 1000 gallons. This negative declaration and revised rule were intended to address the partial disapproval issues under title I, part D that we identified in our 2008 RACT demonstration action. In the Proposed Rules section of this **Federal Register**, we have proposed approval of the SDCAPCD's 2020 RACT submittal's negative declaration for non-CTG major VOC sources and Rule 61.2. Based on this proposed approval action, we are also taking this interim final determination, effective on publication, to defer imposition of the offset sanctions and highway sanctions that were triggered by our 2008 RACT demonstration action, because we believe that the 2020 RACT submittal's negative declaration for non-CTG major VOC sources and Rule 61.2 correct the deficiencies that triggered such sanctions.

The EPA is providing the public with an opportunity to comment on this deferral of sanctions. If comments are submitted that change our assessment described in this interim final determination and the proposed full approval of the SDCAPCD Rule 61.2 and the negative declaration for non-CTG VOC major sources with respect to the title I, part D deficiencies identified in our 2008 RACT demonstration action, we would take final action to lift this deferral of sanctions under 40 CFR 52.31. If no comments are submitted that change our assessment, then the sanction clocks triggered by our 2008 RACT demonstration action for mobile transport tanks and non-CTG major VOC sources would be permanently terminated on the effective date of our final approval of the SDCAPCD Rule 61.2 and negative declaration for non-CTG VOC major sources.

II. The EPA's Evaluation and Action

We are making an interim final determination to defer CAA section 179 sanctions associated with our partial disapproval on the 2008 RACT demonstration with respect to the requirements of part D of title I of the CAA. This determination is based on our concurrent proposal to approve SDCAPCD's 2020 RACT *Negative Declaration for Non-CTG Major VOC Sources* submittal and Rule 61.2, which resolve the deficiencies that triggered sanctions under section 179 of the CAA.

Because the EPA has preliminarily determined that the 2020 RACT submittal and Rule 61.2 address the deficiencies under part D of title I of the CAA identified in our 2008 RACT demonstration action and is fully approvable, relief from sanctions should be provided as quickly as possible. Therefore, the EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action, the EPA is providing the public with a chance to comment on the EPA's determination after the effective date, and the EPA will consider any comments received in determining whether to reverse such action.

The EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. The EPA has reviewed the State's submittals and, through its proposed action, is indicating that it is more likely than not that the State has submitted a revision to the SIP that corrects deficiencies under part D of the Act that were the basis for the action that started the sanctions clocks. Therefore, it is not in the public interest to impose sanctions. The EPA believes that it is necessary to use the interim final rulemaking process to defer sanctions while the EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, the EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action defers sanctions and imposes no additional requirements. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).
- Is not approved to apply on any Indian reservation land or in any other area where the 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).
- Is subject to the Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.,* and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this rule as discussed in section II of this preamble, including the basis for that finding.

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

enforce its requirements (see CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Volatile Organic Compounds, Reporting and recordkeeping requirements.

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

Dated: May 31, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2022–11972 Filed 6–2–22; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 87, No. 107
Friday, June 3, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 875

RIN 3206–AO21

Enhancing Stability and Flexibility for the Federal Long Term Care Insurance Program (FLTCIP)—Abbreviated Underwriting, Applications for FLTCIP Coverage, and Technical Corrections

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is proposing amendments to support FLTCIP program stability and flexibility by amending when abbreviated underwriting will be offered to prospective enrollees and proposing rules for the suspension of applications for coverage and the requirements around any such suspension periods. OPM is also proposing technical corrections for the sake of clarity and to remove redundancies. Finally, with the publication of this rule, OPM is also providing notice of an anticipated suspension period.

DATES: OPM must receive comments on or before July 5, 2022.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by the following method:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Julia Elam, Supervisory Analyst, *julia.elam@opm.gov,* (202) 606–1560.

SUPPLEMENTARY INFORMATION:

Background

The Federal Long Term Care Insurance Program (FLTCIP) was created as a result of the enactment of the Long Term Care Security Act of 2000, Public Law 106–265 (''the FLTCIP statute''). This Act required OPM to make long term care (LTC) benefits available to Federal employees, annuitants, active and retired members of the uniformed services, and the qualified relatives of these individuals. As of September 2021, FLTCIP has approximately 267,000 enrollees.

FLTCIP is administered by OPM in accordance with 5 U.S.C. chapter 90 and implementing regulations (5 CFR part 875). FLTCIP is an enrollee-pay-all program; there is no Government contribution toward premiums. Pursuant to 5 U.S.C. 9008, OPM has authority to administer the FLTCIP and is proposing changes, including to the use of abbreviated underwriting and suspension of applications for coverage, as a part of our administrative functions. More information on the program can be found at *LTCFEDS.com*.

Discussion of the Changes

Changes to the Use of Abbreviated Underwriting

Underwriting is the process of reviewing medical and health-related information furnished in an insurance application process to determine if an applicant presents what an insurance carrier considers an acceptable level of risk. Under current regulations at 5 CFR 875.101 full underwriting is the more comprehensive type of underwriting under FLTCIP which requires an applicant to answer many questions about their health status to enable the Carrier to determine whether the application will be approved. It may also include a review of the applicant's medical records, a phone interview, or an in-home interview. Under the regulations, abbreviated underwriting in FLTCIP asks fewer questions about an applicant's health status than with full underwriting to enable the Carrier to determine whether the application for coverage will be approved. It may also include a review of the applicant's medical records, a phone interview, or an in-home interview.

While eligible individuals may apply for FLTCIP coverage at any time with full underwriting, current rules also provide a 60-day abbreviated underwriting period to newly eligible active workforce members and their spouses. An individual becomes newly eligible as an active workforce member when they enter a position that conveys eligibility, enter a position that conveys eligibility from a position that did not convey eligibility, or return to active service after a break in service of at least 180 days to a position that conveys eligibility. However, experience has shown that the 60-day abbreviated underwriting period for newly eligible active workforce members and spouses is not well-suited to FLTCIP. FLTCIP enrollment is much more common later in one's career than when someone is newly hired. According to a Treasury Report of the Federal Interagency Task Force on Long-Term Care Insurance, people typically purchase long term care insurance (LTCI) in their 50s or 60s, and then hold the insurance while paying premiums for a lengthy period.[1] Since the inception of FLTCIP, only approximately 8% of FLTCIP applicants have applied during the 60-day abbreviated underwriting period. The remaining 92% of FLTCIP applicants have applied during an open season or with full underwriting.

The proposed changes would eliminate the 60-day abbreviated underwriting period, but not remove abbreviated underwriting entirely from the FLTCIP application process. Instead, OPM would continue to announce in the **Federal Register** any period during which active workforce members and spouses may apply with abbreviated underwriting, as OPM has done with open seasons in the past. To use more accurate terminology that reflects the underwritten nature of the benefit, and to reduce confusion between a FLTCIP abbreviated underwriting opportunity and the annual Federal Benefits Open Season, OPM is proposing to change the name of any such period to a ''special application period'' rather than an

[1] U.S. Department of the Treasury, ''Long-Term Care Insurance: Recommendations for Improvement of Regulation.'' Report of the Federal Interagency Task Force on Long-Term Care Insurance, August 2020, *https://home.treasury.gov/system/files/136/Report-Federal-Interagency-Task-Force-Long-Term-Care-Insurance.pdf.*

''open season.'' Each future special application period may offer its own underwriting rules. Individual agencies will provide notice to their Federal employees of any special application period.

Suspension of Applications for FLTCIP Coverage

Current rules permit eligible individuals to apply for FLTCIP coverage at any time with full underwriting. As a result, the FLTCIP is continuously open to new enrollment. However, it may be appropriate from time to time for OPM to suspend applications for FLTCIP coverage. For example, it may be appropriate to suspend applications to allow a period of time for revisions to underwriting processes or for premium repricing after a review of actuarial assumptions, in order to ensure that premium rates reasonably and equitably reflect the cost of the benefits provided as required by the statute, and to ensure that OPM can provide eligible individuals with the information needed to enable them to fully evaluate the advantages and disadvantages of obtaining LTCI under FLTCIP. The proposed changes create a process for suspending applications and communicating the start and end of such a suspension period.

Technical Corrections

The current rules have some language that may be considered duplicative or would benefit from greater clarity. The proposed changes make such technical corrections, which do not make any substantive changes to the FLTCIP rules.

Proposed Changes by Section

OPM proposes to make technical corrections to several sections. In 5 CFR 875.101, OPM makes such corrections to the definitions of ''Carrier'' and ''Eligible individual.'' Additional technical corrections are proposed to 5 CFR 875.102, 875.203, 875.204, 875.213, and 875.404.

In 5 CFR 875.101, OPM proposes to amend the definition of ''Free look'' to clarify that the 30-day period is only ''after you are approved for coverage and receive the Benefit Booklet,'' and not just any time after receiving the Benefit Booklet. The free look applies to any approved coverage, including coverage increases. OPM proposes to add a definition of ''special application period'' to identify periods of applications for coverage with abbreviated underwriting for active workforce members and spouses. The term ''open season'' was not used here because such periods require some form of underwriting for enrollment and are held as determined by OPM and not on an annual basis. Conforming amendments are proposed throughout 5 CFR part 875 to use the term ''special application period'' instead of ''open season.''

In 5 CFR 875.107, OPM proposes to add holding special application periods and suspending applications for FLTCIP coverage in its list of responsibilities. OPM proposes the process for such a suspension period in a new section at 5 CFR 875.110. Under this process, OPM may suspend applications for FLTCIP coverage, including coverage increases, for up to 24 months when it determines a suspension to be in the best interests of the Program. A duration of up to 24 months may be necessary to allow for revisions to underwriting processes or for the development and review of pricing assumptions and rates in order to ensure the premium rates reasonably and equitably reflect the cost of the benefits provided, and to ensure that OPM can provide eligible individuals with the information needed to enable them to fully evaluate the advantages and disadvantages of obtaining LTCI under FLTCIP. OPM will issue a **Federal Register** notice announcing the beginning and end date of the suspension period, at least 30 days before the start of the suspension period. The suspension period may be extended with another notice in the **Federal Register** at least 30 days before the end of the current suspension period. Additional conforming amendments are proposed throughout 5 CFR part 875 to note that applications for FLTCIP coverage are only permitted outside of a suspension period.

OPM proposes to delete the language at 5 CFR 875.206. This section provided for the 60-day abbreviated underwriting period for new, newly eligible, or returning active workforce members and their spouses. This proposed rule eliminates this 60-day abbreviated underwriting period, thereby limiting abbreviated underwriting to special application periods, for which a definition and conforming amendments are proposed throughout 5 CFR part 875.

In 5 CFR 875.207, OPM previously addressed nonpay status during an open season. OPM proposes to amend this section to use the term ''special application period'' instead of ''open season.'' To limit program risk, OPM also proposes to allow only those individuals that return to pay status within 180 days after the end of a special application period to apply using the special application period's rules. Anyone who returns to pay status after missing at least half of the special application period and is eligible to apply using the rules of the special application period will have at least 60 days to do so.

In 5 CFR 875.209, OPM proposes to amend paragraph (a) to require a qualified relative to provide identifying information about the workforce member that makes the qualified relative an eligible individual. This amendment clarifies the regulation and makes it consistent with the application required for the FLTCIP.

In 5 CFR 875.210, OPM proposes to amend paragraph (b)(1) to clarify that the qualified relative of a workforce member that has been involuntarily separated remains eligible for coverage if their application has already been submitted even if coverage has not become effective. This situation only applies where the involuntary separation is not for misconduct in the Federal civilian service or a dishonorable discharge from the uniformed services.

In 5 CFR 875.211, an individual that applies as an active workforce member, but whose eligibility status changes to annuitant, retired member of the uniformed services, or qualified relative, must reapply based on the applicable underwriting requirements. Under the proposed changes for abbreviated underwriting, the underwriting rules would be the same for all applications outside of special application periods. As such, OPM proposes to only require notification to the Carrier about a change in eligibility status after submitting an application for coverage as an active workforce member. No reapplication is necessary if the application was originally submitted with full underwriting.

In 5 CFR 875.213, OPM proposes to delete paragraph (b). That paragraph contains a definition of ''domestic partner.'' The applicable definition of ''domestic partner'' is contained in 5 CFR 875.101 and applies to all of 5 CFR part 875.

In 5 CFR 875.401, OPM proposes to remove paragraph (b). The language is now contained in 5 CFR 875.403.

In 5 CFR 875.402, OPM confirms that there are no regularly scheduled open seasons. OPM proposes to amend this section to state that there may be special application periods as appropriate, that those special application periods will be announced in the **Federal Register**, and the special application periods would offer abbreviated underwriting to active workforce members and their spouses. OPM proposes to delete paragraph (c) since abbreviated underwriting would not be tied to new eligibility under the proposed changes to 5 CFR 875.206.

In 5 CFR 875.403, OPM addresses the timing for applications for FLTCIP coverage. OPM proposes to amend this section to confirm that applications for coverage, including coverage increases, are permitted outside of a suspension period. Applications outside of a special application period would be subject to full underwriting. The language from the removed paragraph (b) of 5 CFR 875.401 is now contained in this section.

In 5 CFR 875.405, OPM proposes to remove all specific provisions based on the nature of the relationship. With the proposed changes to abbreviated underwriting, this language is unnecessary. All applications for FLTCIP coverage outside of a special application period would be subject to full underwriting.

In 5 CFR 875.406, OPM proposes to amend paragraph (a)(1) to make it clear that, outside of a suspension period as described in 5 CFR 875.110, applications for coverage increases are permitted with full underwriting.

In 5 CFR 875.410, OPM proposes to amend the language by deleting the second sentence referencing abbreviated underwriting during any future open season. OPM is proposing to use the term ''special application period'' and addresses abbreviated underwriting rules for such a period in the proposed changes to 5 CFR 875.402.

In 5 CFR 875.413, OPM proposes to clarify that the potential reinstatement window will begin with the date of the written notice of termination and not from the termination date itself. The written notice comes after the actual termination date, so this allows more time and does not adversely impact the individual if the Carrier is delayed in sending the written notice. The provisions reinstating coverage to the termination date remain unchanged.

Notice of Anticipated Suspension Period

Based on the facts available to OPM at the time of publication of this NPRM, OPM anticipates a 24-month suspension period. Due to emerging program experience, OPM has determined that there is a strong likelihood that FLTCIP premium rates will need to be revised. OPM anticipates a need for a 24-month suspension period in order to ensure FLTCIP premium rates reasonably and equitably reflect the cost of benefits provided, and to revise or adjust as necessary. Based on the facts available to OPM at the time of publication of this NPRM, the suspension period pursuant to 5 CFR 875.110 will begin at the time this rule is finalized. OPM considers this NPRM to serve as the notice required under the proposed paragraph (b) of 5 CFR 875.110(b). In the final rule, OPM will confirm the specific dates and duration for the suspension period based on the most up-to-date information about the Program.

Expected Impact of Proposed Changes

The proposed changes, including underwriting changes and any future suspensions of applications for FLTCIP coverage, would not affect current FLTCIP enrollees. Individuals already enrolled in FLTCIP will retain their coverage as long as they continue to pay premiums. The proposed changes impact new enrollment and are expected to impose no more than de minimus administrative costs to Federal agencies since FLTCIP is an enrollee-pay-all program, and there is no Government contribution toward enrollee premiums.

We expect that the rule will not result in a significant impact on the eligible or newly eligible population. Approximately 6,000 eligible individuals enroll in FLTCIP annually, which is less than 0.1% of 11 million eligible federal and military actives and annuitants (not including spouses and other qualified relatives who are also eligible). This low percentage mirrors the low uptake for purchasing LTCI in the broader LTC market. The previously mentioned Treasury Report states that sales of new LTCI policies have declined since the early 2000s, as numerous insurers decided to exit the market due to the poor financial performance of the product line; and, low take-up rates for LTCI appear to stem in part from low demand for these products.[2] The report identifies factors influencing demand including: Substitutes for private LTCI such as Medicaid; unpaid care or the ability to receive informal care from family; a desire to leave assets to heirs can suppress demand because people may be motivated to postpone consumption and save money; lack of information and awareness about LTC costs and the ways to finance those costs; lack of trust in insurers; and premiums, costs, and loads.[3]

Since less than 0.1% of the eligible population annually enroll in FLTCIP, based on this trend and market trends, it is unlikely that newly eligible individuals would have a high demand for LTCI during a suspension of applications. Further, there are other options for eligible individuals to plan for LTC needs. Some other options to plan for LTC needs during a suspension period include the following: Saving for future needs by setting aside funds to invest in a 401(k), an IRA, or a non-retirement investment account; investing in a long-term care annuity; purchasing a ''combination'' or ''hybrid'' product that combines a life insurance policy with a LTC rider; or purchasing a short-term care insurance policy.

Indirect Effects on Other Parties

OPM does not believe this regulation will have a large impact on the broader LTCI market. Approximately 6,000 eligible individuals enroll in FLTCIP annually, which is less than 0.1% of the eligible population. At an average premium of $125 per month or $1,500 per year, the forgone annual premium for new enrollees would total less than $10 million per year during any FLTCIP enrollment suspension. The forgone annual premium for new enrollees would total less than $10 million per year during a FLTCIP enrollment suspension. As discussed above, affected individuals would likely pursue substitute savings and insurance products during a suspension period. OPM estimates that the magnitude of the forgone $10 million on other parties, such as LTC insurers in the LTCI market, would be quite small compared to the larger LTCI market.

Benefits of the Proposed Changes

This proposed rule establishes provisions for OPM to suspend applications to FLTCIP when it is in the best interest of the program. For example, in order to allow for adjustment to underwriting processes or to reprice premium rates after a review of actuarial assumptions. The rule aims to protect eligible individuals from applying to enroll when it has been determined that underwriting processes may need revisions or when the current premium rates may not reflect the cost of the benefits provided due to market volatility and changes to projections about future costs. This allows OPM and the FLTCIP carrier to agree on underwriting changes or new premium rates that reasonably and equitably reflect the cost of the benefits provided as required by the FLTCIP statute.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and

[2] See footnote 1.

[3] See footnote 1.

equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits and of reducing costs, harmonizing rules, and promoting flexibility. This rule has been designated as a significant, but not economically significant, regulatory action under Executive Order 12866.

Congressional Review Act

This rule is not a major rule under 5 U.S.C. 804(2). Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, 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. A major rule under the CRA cannot take effect until 60 days after it is published in the **Federal Register**.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

List of Subjects in 5 CFR Part 875

Administration and general provisions, Eligibility, Cost, and Coverage.

Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

Accordingly, OPM proposes to amend title 5, Code of Federal Regulations part 875, as follows:

PART 875—FEDERAL LONG TERM CARE INSURANCE PROGRAM

■ 1. The authority citation for 5 CFR part 875 continues to read as follows:

Authority: 5 U.S.C. 9008; Pub. L. 116–92, 133 Stat. 1198 (5 U.S.C. 8956 note).

Subpart A—Administration and General Provisions

■ 2. Amend § 875.101 by revising the definitions of Carrier, Eligible individual, and Free look; and adding, in alphabetical order, the definition of special application period.

The revisions and addition read as follows:

§ 875.101 Definitions

* * * * *

Carrier means a ''qualified carrier'' as defined in section 9001 of title 5, United States Code, with which OPM has contracted to provide long term care insurance coverage under this section. A Carrier may designate one or more administrators to perform some of its obligations.

* * * * *

Eligible individual means an employee, annuitant, member of the uniformed services, retired member of the uniformed services or qualified relative, as defined in section 9001 of title 5, United States Code.

* * * * *

Free look means that within 30 days after you are approved for coverage and receive the Benefit Booklet, you may cancel that coverage if you are not satisfied with it and receive a refund of any premium you paid for that coverage. It will be as if the coverage was never issued.

* * * * *

Special application period is a period in which active workforce members and their spouses may apply based on abbreviated underwriting. Such application periods will be provided for pursuant to OPM's authority in section 9008 of title 5, United States Code.

■ 3. Revise § 875.102 to read as follows:

§ 875.102 Where do I send benefit claims?

You must submit your benefit claims to the FLTCIP Carrier.

■ 4. Amend § 875.107 by replacing ''and'' with '';'' at the end of paragraph (b); replacing ''.'' with '';'' at the end of paragraph (c); and adding paragraphs (d) and (e).

The revisions and additions read as follows:

§ 875.107 What are OPM's responsibilities as regulator under this Program?

* * * * *

(d) Suspending applications for FLTCIP coverage, including coverage increases as specified in § 875.110; and

(e) Holding special application periods as specified in § 875.402.

■ 5. Add § 875.110 to read as follows:

§ 875.110 May OPM suspend applications for FLTCIP coverage?

(a) OPM may suspend applications for FLTCIP coverage, including coverage increases, when OPM determines that a suspension is in the best interest of the Program.

(b) OPM will issue a notice in the **Federal Register** with the effective date of the suspension period, during which no applications for FLTCIP coverage will be accepted. The effective date will be determined at the discretion of the Director and will be at least 30 days after the date of the notice.

(c) The duration of the suspension period, as determined at the discretion of the Director and not to exceed 24 months, will be announced in the **Federal Register** notice.

(d) At least 30 days before the end of the suspension period, OPM may issue a notice in the **Federal Register** announcing an extension to the suspension period when OPM determines that such extension is in the best interest of the Program. Any extension will conform to the requirements of this subsection.

Subpart B—Eligibility

■ 6. Revise § 875.203 to read as follows:

§ 875.203 Am I eligible if I separated under the FERS MRA+10 provision?

If you have separated from service under the FERS Minimum Retirement Age and 10 years of service (MRA+10) provision of 5 U.S.C. 8412(g), and have postponed receiving an annuity under that provision, you are eligible to apply for coverage as an annuitant under this part.

■ 7. Amend § 875.204 by revising paragraph (c) to read as follows:

§ 875.204 Am I eligible as a member of the uniformed services?

* * * * *

(c) You are not eligible to apply for coverage solely because you belong to the Individual Ready Reserve. The Individual Ready Reserves includes Reservists who are assigned to a Voluntary Training Unit in the Naval Reserve and Category E in the Air Force Reserve.

§ 875.206 [Reserved]

■ 8. Remove and reserve § 875.206.

■ 9. Revise § 875.207 to read as follows:

§ 875.207 What happens if I am in nonpay status during a special application period?

(a) If you return to pay status from nonpay status during a special application period, you have 60 days from the date of your return, or until the end of the special application period, whichever gives you more time, to apply for coverage pursuant to the rules of that special application period.

(b) If you return to pay status from nonpay status within 180 days after the end of the special application period, you have 60 days from the date of your return to apply for coverage pursuant to the rules of that special application period.

(c) Paragraphs (a) and (b) of this section apply only when you have been in nonpay status for more than one-half of a special application period, unless you went into nonpay status for a reason beyond your control.

■ 10. Amend § 875.209 by revising paragraph (a) to read as follows:

§ 875.209 How do I demonstrate that I am eligible to apply for coverage?

(a) When you submit your application for coverage, you must make known your status as a member of an eligible group. If you are a qualified relative, you need to provide identifying information about the workforce member who makes you an eligible individual.

* * * * *

■ 11. Amend § 875.210 by revising paragraph (b)(1) to read as follows:

§ 875.210 What happens if I become ineligible after I submit an application?

* * * * *

(b) * * *

(1) When you are involuntarily separated from Federal civilian service (except for misconduct) or from the uniformed services (except for a dishonorable discharge); or, when you are the qualified relative of a workforce member who has been involuntarily separated from Federal civilian service (except for misconduct) or from the uniformed services (except for a dishonorable discharge).

* * * * *

■ 12. Revise § 875.211 to read as follows:

§ 875.211 What happens if my eligibility status changes after I submit my application?

(a) If you applied as an active workforce member, and you retire or separate from service after you submit an application for coverage, but before your coverage becomes effective, you must notify the Carrier of this change.

(b) If you applied with abbreviated underwriting during a special application period as an active workforce member or the spouse of an active workforce member, and the active workforce member retires or separates from service before your coverage becomes effective, you must reapply based on your new eligibility status.

■ 13. Revise § 875.213 to read as follows:

§ 875.213 May I apply as a qualified relative if I am the domestic partner of an employee or annuitant?

You may apply for coverage as a qualified relative if you are a domestic partner, as described in § 875.101 of this chapter. As prescribed by OPM, you will be required to provide documentation to demonstrate that you meet these requirements, and you must submit to full underwriting requirements. However, as explained in § 875.210 of this chapter, if you lose your status as a domestic partner, and therefore status as a qualified relative, before your coverage goes into effect, you are no longer eligible for FLTCIP coverage.

Subpart D—Coverage

■ 14. Revise § 875.401 to read as follows:

§ 875.401 How do I apply for coverage?

To apply for coverage, you must complete the application in a form appropriate for your eligibility status as prescribed by the Carrier and approved by OPM.

■ 15. Revise § 875.402 to read as follows:

§ 875.402 When will open seasons be held?

(a) There are no regularly scheduled open seasons for long term care insurance. OPM may have special application periods in which active workforce members and their spouses may apply based on abbreviated underwriting.

(b) In situations where OPM determines that it is appropriate to have a special application period, OPM will announce any such period via a **Federal Register** Notice. The Notice will include the requirements for eligible applicants during the special application period.

■ 16. Revise § 875.403 to read as follows:

§ 875.403 When may I apply for coverage?

If you are an eligible individual, you may apply at any time outside of a suspension period described in § 875.110. You will be subject to full underwriting requirements. The only exceptions to the full underwriting requirements are described in § 875.402. You may apply as a qualified relative of a workforce member even if the workforce member does not apply for coverage.

■ 17. Revise § 875.404 to read as follows:

§ 875.404 What is the effective date of coverage?

(a)(1) The effective dates of coverage under special application period enrollments will be announced in a **Federal Register** Notice that announces special application period dates.

(2) If you are an active workforce member or the spouse of an active workforce member and you are applying for coverage during a special application period, the workforce member must be actively at work at least 1 day during the calendar week immediately before the week which contains your coverage effective date for your coverage to become effective. You must inform the Carrier if you do not meet this requirement. In the event you do not meet this requirement, the Carrier will issue you a revised effective date, which will be the 1st day of the next month. The workforce member also must meet the actively at work requirement for any revised effective date for coverage to become effective, or you will be issued another revised effective date in the same manner.

(b) If you enroll at any time outside of a special application period, your coverage effective date is the 1st day of the month after the date your application is approved.

■ 18. Revise § 875.405 to read as follows:

§ 875.405 May a spouse, domestic partner, or other qualified relative of a workforce member apply for coverage?

A spouse, domestic partner, or other qualified relative of a workforce member may apply for coverage with full underwriting at any time following the marriage or commencing date of the domestic partnership, outside of a suspension period as described in § 875.110.

■ 19. Amend § 875.406 by revising paragraph (a)(1) to read as follows:

§ 875.406 May I change my coverage?

* * * * *

(a) * * *

(1) At any time outside of a suspension period described in § 875.110, you may apply to increase your coverage with full underwriting.

* * * * *

■ 20. Revise § 875.410 to read as follows:

§ 875.410 May I continue my coverage when I leave Federal or military service?

If you are an active workforce member, your coverage will automatically continue when you leave active service, as long as the Carrier continues to receive the required premium when due.

■ 21. Revise § 875.413 to read as follows:

§ 875.413 Is it possible to have coverage reinstated?

(a) Under certain circumstances, your coverage can be reinstated. The Carrier will reinstate your coverage if it receives proof satisfactory to it, within 6 months from the date of the written notice of termination, that you suffered from a cognitive impairment or loss of functional capacity, before the grace period ended, that caused you to miss making premium payments. In that event, you will not be required to submit to underwriting. Your coverage will be reinstated retroactively to the termination date but you must pay back premiums for that period. The premium will be the same as it was prior to termination.

(b) If your coverage has terminated because you did not pay premiums or because you requested cancellation, the Carrier may reinstate your coverage within 12 months from the date of the written notice of termination at your request. You will be required to reapply based on full underwriting, and the Carrier will determine whether you are still insurable. If you are insurable, your coverage will be reinstated retroactively to the termination date and you must pay back premiums for that period. The premium will be the same as it was prior to termination.

[FR Doc. 2022–11720 Filed 6–2–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0514; Project Identifier AD–2022–00357–E]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

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 General Electric Company (GE) GEnx-1B model turbofan engines. This proposed AD was prompted by several reports of fuel leaks caused by high cycle fatigue (HCF) cracks found at the braze joints on fuel manifolds, and the subsequent manufacturer redesign of the high-pressure turbine (HPT) fuel hose variable stator vane (VSV) manifold, VSV fuel hose manifold, low-pressure turbine (LPT) fuel hose variable bleed valve (VBV) manifold, and VBV fuel hose manifold. This proposed AD would require removal and replacement of the fuel hydraulic lines. 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 July 18, 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 General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272; email: *aviation.fleetsupport@ge.com;* website: *www.ge.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. 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–2022–0514; 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 NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Alexei Marqueen, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7178; email: *Alexei.T.Marqueen@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–2022–0514; Project Identifier AD–2022–00357–E'' 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 Alexei Marqueen, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. 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 received reports of fuel manifold leaks resulting in multiple flight delays and cancellations on four separate occasions between 2018 and 2021 on airplanes with GEnx-1B model turbofan engines installed. The manufacturer's investigation revealed that variations in braze coverage and braze fillet radii caused high stress concentration factors at the braze block

joints, leading to HCF failure in the tube bundles with brazed joints. As a result of its investigation, the manufacturer determined that the HPT fuel hose VSV manifold, VSV fuel hose manifold, LPT fuel hose VBV manifold, and VBV fuel hose manifold required redesign by replacing all braze features and cushioned clamps with block clamps. The manufacturer published GE GEnx-1B Service Bulletin 73–0099 R00, dated February 28, 2022, which specifies procedures for the replacement of fuel hydraulic lines with redesigned fuel hydraulic lines. This condition, if not addressed, could result in engine fire and damage to the airplane.

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 Under 1 CFR Part 51

The FAA reviewed GE GEnx-1B Service Bulletin 73–0099 R00, dated February 28, 2022. This service information specifies procedures for the removal and replacement of the fuel hydraulic lines. 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**.

Proposed AD Requirements in This NPRM

This proposed AD would require the removal and replacement of the fuel hydraulic lines.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 298 engines installed on 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 product	Cost on U.S. operators
Remove fuel hydraulic lines	2 work-hours × $85 per hour = $170	$0	$170	$50,660
Install redesigned fuel hydraulic lines	2.5 work-hours × $85 per hour = $212.50	232,000	232,212.50	69,199,325

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:

General Electric Company: Docket No. FAA–2022–0514; Project Identifier AD–2022–00357–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 18, 2022.

(b) Affected ADs

None.

(c) Applicability

General Electric Company (GE) GEnx-1B64, GEnx-1B64/P1, GEnx-1B64/P2, GEnx-1B67, GEnx-1B67/P1, GEnx-1B67/P2, GEnx-1B70, GEnx-1B70/75/P1, GEnx-1B70/75/P2, GEnx-1B70/P1, GEnx-1B70/P2, GEnx-1B70C/P1, GEnx-1B70C/P2, GEnx-1B74/75/P1, GEnx-1B74/75/P2, GEnx-1B76/P2, and GEnx-1B76A/P2 model turbofan engines with engine serial numbers 956–102 through 958–775, inclusive, 958–795, and 958–802.

(d) Subject

Joint Aircraft System Component (JASC) Code 7310, Engine Fuel Distribution.

(e) Unsafe Condition

This AD was prompted by several reports of fuel leaks caused by high cycle fatigue cracks found at the braze joints on certain GEnx-1B fuel manifolds. The FAA is issuing this AD to prevent fuel leaks on the variable bypass valve and variable stator vane fuel hose manifolds. The unsafe condition, if not addressed, could result in engine fire and damage to the airplane.

(f) Compliance

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

(g) Required Actions

At the next engine shop visit after the effective date of this AD, remove and replace the fuel hydraulic lines using the Accomplishment Instructions, paragraphs 3.A and 3.B, of GE GEnx-1B Service Bulletin (SB) 73–0099 R00, dated February 28, 2022.

(h) Definition

For the purpose of this AD, an ''engine shop visit'' is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine case flanges, except for the following situations, which do not constitute an engine shop visit:

(1) Separation of engine flanges solely for the purposes of transportation of the engine without subsequent maintenance.

(2) Separation of engine flanges solely for the purposes of replacing the fan or propulsor without subsequent maintenance.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD and email to: *ANE-AD-AMOC@faa.gov.*

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

(j) Related Information

(1) For more information about this AD, contact Alexei Marqueen, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7178; email: *Alexei.T.Marqueen@faa.gov.*

(2) For service information identified in this AD, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272; email: *aviation.fleetsupport@ge.com;* website: *www.ge.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

Issued on May 5, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–11896 Filed 6–2–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0694; Airspace Docket No. 22–ACE–12]

RIN 2120–AA66

Proposed Amendment of Class D and Class E Airspace and Establishment of Class E Airspace; Columbia, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class D and Class E airspace and establish Class E airspace at Columbia, MO. The FAA is proposing this action as the result of a biennial airspace review. The geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before July 18, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2022–0694/Airspace Docket No. 22–ACE–12 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2022–0694/Airspace Docket No. 22–ACE–12.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by:

Amending the Class D airspace at Columbia Regional Airport, Columbia, MO, by updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database; and replacing the outdated terms ''Notice to Airmen'' with ''Notice to Air Missions'' and ''Airport/Facility Directory'' with ''Chart Supplement'';

Amending the Class E surface airspace at Columbia Regional Airport by updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database; and adding the missing part-time language to the airspace legal description;

Establishing Class E airspace designated as an extension to Class D and Class E surface airspace at Columbia Regional Airport within 2.4 miles each side of the Columbia VOR/DME 019° radial extending from the 4.3-mile radius of the Columbia Regional Airport to 7 mile north of the Columbia VOR/DME; and within 2 miles each side of the 315° bearing from the airport extending from the 4.3-mile radius of the airport to 9.7 miles northwest of the airport;

And amending the Class E airspace extending upward from 700 feet at Columbia Regional Airport by removing the Columbia Regional Airport ILS Localizer and the associated extensions from the airspace legal description as they are no longer needed; adding an extension 2.4 miles each side of the Columbia VOR/DME 019° radial extending from the 6.8-mile radius of the airport to 7 miles north of the Columbia VOR/DME; adding an extension 2 miles each side of the 315° bearing from the airport extending from the 6.8-mile radius of the airport to 10.7 miles northwest of the airport; adding an extension 2 miles each side of the Columbia VOR/DME 333° radial extending from the 6.8-mile radius of the airport to 11.1 miles northwest of the airport; and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is necessary due to a biennial airspace review.

Class D and E airspace designations are published in paragraphs 5000, 6002, 6004, and 6005, respectively, of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

ACE MO D Columbia, MO [Amended]

Columbia Regional Airport, MO
(Lat. 38°49′04″ N, long. 92°13′04″ W)

That airspace extending upward from the surface to and including 3,400 feet MSL within a 4.3-mile radius of Columbia Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective dates and times will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

ACE MO E2 Columbia, MO [Amended]

Columbia Regional Airport, MO
(Lat. 38°49′04″ N, long. 92°13′04″ W)

Within a 4.3-mile radius of Columbia Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective dates and times will thereafter be continuously published in the Chart Supplement.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class E or Class E Surface Area.

* * * * *

ACE MO E4 Columbia, MO [Establish]

Columbia Regional Airport, MO
(Lat. 38°49′04″ N, long. 92°13′04″ W)
Columbia VOR/DME
(Lat. 38°48′29″ N, long. 92°13′06″ W)

That airspace extending upward from the surface within 2.4 miles each side of the Columbia VOR/DME 019° radial extending from the 4.3-mile radius of the Columbia Regional Airport to 7 miles north of the Columbia VOR/DME; and within 2 miles each side of the 315° bearing from the Columbia Regional Airport extending from the 4.3 mile radius of the airport to 9.7 miles northwest of the airport.

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

* * * * *

ACE MO E5 Columbia, MO [Amended]

Columbia Regional Airport, MO
(Lat. 38°49′04″ N, long. 92°13′04″ W)
Columbia VOR/DME
(Lat. 38°48′29″ N, long. 92°13′06″ W)

That airspace extending upward from 700 feet above the surface within a 6.8-mile

radius of Columbia Regional Airport; and within 2.4 miles each side of the Columbia VOR/DME 019° radial extending from the 6.8-mile radius of the Columbia Regional Airport to 7 miles north of the Columbia VOR/DME; and within 2 miles each side of the 315° bearing from the Columbia Regional Airport extending from the 6.8-mile radius of the airport to 10.7 miles northwest of the airport; and within 2 miles each side of the Columbia VOR/DME 333° radial extending from the 6.8-mile radius of the Columbia Regional Airport to 11.1 miles northwest of the airport.

Issued in Fort Worth, Texas, on May 31, 2022.

Martin A. Skinner,

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

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FEDERAL TRADE COMMISSION

16 CFR Part 310

RIN 3084–AB19

Telemarketing Sales Rule

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: As part of the Federal Trade Commission's (''FTC'' or ''Commission'') regulatory review of the Telemarketing Sales Rule (''TSR'' or ''Rule''), the Commission issues this advance notice of proposed rulemaking (''ANPR'') to seek public comment on whether the Rule should continue to exempt telemarketing calls to businesses, whether the Rule should require a notice and cancelation mechanism with negative option sales, and whether to extend the Rule to apply to telemarketing calls that consumers initiate to a telemarketer (*i.e.,* ''inbound telemarketing calls'') regarding computer technical support services.

DATES: Comments must be received on or before August 2, 2022.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Telemarketing Sales Rule ANPR, R411001'' on your comment, and file your comment through *https://www.regulations.gov.* If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Benjamin R. Davidson, (202) 326–3055, *bdavidson@ftc.gov,* or Patricia Hsue, (202) 326–3132, *phsue@ftc.gov,* Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Mail Stop CC–8528, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission reviews its rules and guides periodically to seek information about their costs and benefits and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides it should modify or rescind. Where appropriate, the Commission combines such periodic general reviews with reviews seeking information on specific questions about an industry.

On August 11, 2014, the Commission initiated a regulatory review by publishing a notice in the **Federal Register** requesting public comment on the TSR (''Regulatory Review'').[1] It sought comment on questions including whether the Rule continues to be necessary and serve a useful purpose, whether and how the Rule's compliance burdens and costs can be decreased and its benefits increased, and the impact of changes in the marketplace and new technologies on the Rule. It also requested comment on three specific issues; namely, whether the Rule should: (1) Prohibit the sharing of preacquired account information for any purpose; (2) enhance protections for negative option and free offers, and apply them to inbound calls induced by general media advertising; and (3) require sellers and telemarketers to maintain records of the numbers they dial in their telemarketing campaigns.

Having reviewed the record, the Commission is issuing a Notice of Proposed Rulemaking (''NPRM'') seeking comments on the Commission's proposal to amend the TSR's recordkeeping provisions and to prohibit deception in business-to-business telemarketing calls.[2] The Commission is also issuing this ANPR seeking comment on whether to repeal all exemptions regarding telemarketing calls to businesses and inbound telemarketing of computer technical support services, and whether the TSR should provide consumers additional protections for negative option products or services.

II. Background

A. Statutory Basis for the TSR

Enacted in 1994, the Telemarketing and Consumer Fraud and Abuse Prevention Act (''Telemarketing Act'' or ''Act'') targeted deceptive and abusive practices in telemarketing. It directed the Commission to adopt a rule with anti-fraud and privacy protections for consumers receiving telephone solicitations to purchase goods or services, and authorized the Commission and state attorneys general or other appropriate state officials, as well as private persons who meet certain jurisdictional requirements, to bring civil actions against violators in Federal district court.[3]

In determining whether certain practices that do not fall distinctly within the parameters of the Telemarketing Act's emphasis on protecting consumer privacy are ''abusive,'' the Commission has applied the unfairness analysis set forth in Section 5(n) of the FTC Act.[4] An act or practice is unfair under Section 5 of the Federal Trade Commission Act (''FTC Act'') if it causes or is likely to cause substantial injury to consumers, if any countervailing benefits to consumers or competition do not outweigh the consumer harm, and if that harm is not reasonably avoidable by consumers.[5]

B. TSR History and Key Provisions

Pursuant to the Telemarketing Act's directive, the FTC promulgated the TSR on August 23, 1995.[6] The Commission subsequently amended the Rule on four occasions: (1) In 2003 to add the National Do-Not Call Registry and other requirements;[7] (2) in 2008 to prohibit

[1] 79 FR 46732.

[2] The Commission addresses the comments on recordkeeping submitted in response to the Regulatory Review in its proposed NPRM being published in conjunction with this ANPR.

[3] 15 U.S.C. 6101–6108. Subsequently, the USA PATRIOT Act, Public Law 107–56, 115 Stat. 272 (Oct. 26, 2001), expanded the Telemarketing Act's definition of ''telemarketing'' to encompass calls soliciting charitable contributions, donations, or gifts of money or any other things of value.

[4] Statement of Basis and Purpose and Final Rule Amendments (''2010 TSR Amendments''), 75 FR 48458, 48469 (Aug. 10, 2010) (discussing the Commission's use of the unfairness standard in determining whether a practice is ''abusive''); *see also* 15 U.S.C. 45(n) (codifying the Commission's unfairness analysis, set forth in a letter from the FTC to Hon. Wendell Ford and Hon. John Danforth, Committee on Commerce, Science and Transportation, United States Senate, Commission Statement of Policy on the Scope of Consumer Unfairness Jurisdiction, reprinted in In re Int'l Harvester Co., 104 F.T.C. 949, *95–101 (1984)) (''Unfairness Policy Statement'').

[5] 15 U.S.C. 45(n).

[6] Statement of Basis and Purpose and Final Rule (''Original TSR''), 60 FR 43842 (Aug. 23, 1995). The effective date of the original Rule was December 31, 1995.

[7] *See* Statement of Basis and Purpose and Final Amended Rule (''2003 TSR Amendments''), 68 FR 4580 (Jan. 29, 2003) (adding Do Not Call Registry and other provisions).

unwanted sales robocalls;[8] (3) in 2010 to ban the telemarketing of debt relief services requiring an advance fee;[9] and (4) in 2015 to ban the use in telemarketing of certain payment mechanisms widely used in fraudulent transactions.[10]

The TSR applies to virtually all ''telemarketing,'' defined in accordance with the Telemarketing Act to mean ''a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call.''[11]

The Rule wholly or partially exempts several types of calls from its coverage. For example, it generally exempts telemarketing calls to businesses.[12] It also generally exempts inbound calls placed by consumers in response to direct mail or general media advertising.[13] However, there are certain ''carve-outs'' from some of the TSR's exemptions that bring certain conduct back within the ambit of the rule, such as the carve-out for calls initiated by a consumer in response to a general media advertisement relating to investment opportunities.[14]

The TSR is designed to protect consumers in a number of different ways. First, the TSR includes provisions governing communications between telemarketers and consumers, requiring certain disclosures and prohibiting material misrepresentations.[15] Second, the TSR requires telemarketers to obtain consumers' ''express informed consent'' to be charged on a particular account before billing or collecting payment and, through a specified process, to obtain consumers' ''express verifiable authorization'' to be billed through any payment system other than a credit or debit card.[16] Third, the TSR prohibits as an abusive practice requesting or receiving any fee or consideration in advance of obtaining any credit repair services;[17] recovery services;[18] offers of a loan or other extension of credit, the granting of which is represented as ''guaranteed'' or having a high likelihood of success;[19] and debt relief services.[20] Fourth, the TSR prohibits credit card laundering[21] and assisting and facilitating sellers or telemarketers engaged in violations of the TSR.[22] Fifth, the TSR, with narrow exceptions, prohibits telemarketers from calling consumers whose numbers are on the National Do Not Call Registry or who have specifically requested not to receive calls from a particular entity.[23] Finally, the TSR requires that telemarketers transmit to consumers' telephones accurate Caller ID information[24] and places restrictions on calls made by predictive dialers[25] and those delivering prerecorded messages.[26]

C. Legal Standard for Retaining, Amending, or Repealing the TSR

There is a presumption that an existing rule should be retained.[27] A decision to retain any portion of a current rule may be based upon evidence gathered during the original rulemaking and the Commission's subsequent enforcement experience, as well as evidence adduced during a new rulemaking.[28] Moreover, the Telemarketing Act's rulemaking authorization applies not only to an initial rulemaking, but also to the amendment or repeal of a telemarketing rule.[29]

Because of the ''potentially pervasive and deep effect'' of FTC rules,[30] the Commission carefully scrutinizes the regulatory review record to determine whether the record is reliable and provides sufficient support for undertaking an industry-wide rulemaking or amendment proceeding. In particular, the Commission routinely evaluates a number of factors, including the relative costs and benefits of the Rule, industry compliance, the effect on competition and consumer choice, its enforcement experience, and the adequacy of case-by-case law enforcement under the FTC Act to address existing problems that fall outside the Rule's scope.[31] In addition, as a responsible steward of the public funds allocated to it by Congress, the Commission considers whether a rulemaking or amendment proceeding would serve the public interest, recognizing the rulemaking process requires a substantial, long-term investment of the Commission's finite resources that could otherwise be

[8] *See* Statement of Basis and Purpose and Final Rule Amendments (''2008 TSR Amendments''), 73 FR 51164 (Aug. 29, 2008) (addressing the use of robocalls).

[9] *See* 2010 TSR Amendments (adding debt relief provisions). The Commission subsequently published correcting amendments to the text of section 310.4 the TSR. Telemarketing Sales Rule; Correcting Amendments, 76 FR 58716 (Sept. 22, 2011).

[10] *See* Statement of Basis and Purpose and Final Rule Amendments (''2015 TSR Amendments''), 80 FR 77520 (Dec. 14, 2015) (prohibiting the use of remotely created checks and payment orders, cash-to-cash money transfers, and cash reload mechanisms).

[11] 16 CFR 310.2(gg) (using the same definition as the Telemarketing Act, 15 U.S.C. 6106(4)). The TSR, like the Telemarketing Act, also excludes catalog sales solicitations. *Id.* The Act also explicitly states that the jurisdiction of the Commission in enforcing the Rule is coextensive with its jurisdiction under Section 5 of the FTC Act. 15 U.S.C. 6105(b).

[12] 16 CFR 310.6(b)(7); *See also* 2015 TSR Amendments, 80 FR at 77555 (clarifying that the ''business-to-business'' exemption under 310.6(b)(7) applies only to telemarketing calls that are ''soliciting the purchase of goods or services or a charitable contribution [from a] business itself, rather than personal purchases or contributions by employees of the business'').

[13] 16 CFR 310.6(b)(5)–(6). Moreover, the Rule exempts from the National Do Not Call Registry provisions calls placed by for-profit telemarketers to solicit charitable contributions; such calls are not exempt, however, from the ''entity-specific'' do not call provisions or the TSR's other requirements. 16 CFR 310.6(a).

[14] *See, e.g.,* 16 CFR 310.6(b)(5)–(6) (provisions related to general advertisements and direct mail solicitations); 16 CFR 310.2(s) (definition of ''investment opportunity''). The TSR's definition of ''investment opportunity'' includes anything sold in part based on a representation of future income. In addition to traditional passive investments, the definition can also encompass work-from-home opportunities, real estate seminars, multi-level-marketing programs, and programs that purport to educate consumers about the stock market.

[15] The TSR requires that telemarketers soliciting sales of goods or services promptly disclose several key pieces of information in an outbound telephone call or an internal or external upsell: (1) The identity of the seller; (2) the fact that the purpose of the call is to sell goods or services; (3) the nature of the goods or services being offered; and (4) in the case of prize promotions, that no purchase or payment is necessary to win. 16 CFR 310.4(d); *see also* 16 CFR 310.2(ee) (defining ''upselling''). Telemarketers also must disclose in any telephone sales call the cost of the goods or services and certain other material information. 16 CFR 310.3(a)(1). In addition, the TSR prohibits misrepresentations about, among other things, the cost and quantity of the offered goods or services. 16 CFR 310.3(a)(2). It also prohibits making false or misleading statements to induce any person to pay for goods or services or to induce charitable contributions. 16 CFR 310.3(a)(4).

[16] 16 CFR 310.4(a)(7); 16 CFR 310.3(a)(3).

[17] 16 CFR 310.4(a)(2).

[18] 16 CFR 310.4(a)(3). As the Commission has previously explained, ''[in] recovery room scams . . . a deceptive telemarketer calls a consumer who has lost money, or who has failed to win a promised prize, in a previous fraud. The recovery room telemarketer falsely promises to recover the lost money, or obtain the promised prize, in exchange for a fee paid in advance. After the fee is paid, the promised services are never provided. In fact, the consumer may never hear from the telemarketer again.'' Original TSR, 60 FR at 43854.

[19] 16 CFR 310.4(a)(4); *see* 2003 TSR Amendments, 68 FR at 4614 (finding that these three services were ''fundamentally bogus'').

[20] 16 CFR 310.4(a)(5).

[21] 16 CFR 310.3(c).

[22] 16 CFR 310.3(b).

[23] 16 CFR 310.4(b)(1)(iii).

[24] 16 CFR 310.4(a)(8).

[25] 16 CFR 310.4(b)(1)(iv); 16 CFR 310.4(b)(4) (call abandonment safe harbor).

[26] 16 CFR 310.4(b)(1)(v).

[27] *See Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 41–42 (1983).

[28] Amended Funeral Rule Statement of Basis and Purpose, 59 FR 1592, 1596 (Jan. 11, 1994).

[29] Federal Trade Commission Organization, Procedures and Rules of Practice, 16 CFR 1.25. *See* 15 U.S.C. 553(e); *see also* 2003 TSR Amendments, 68 FR at 4583.

[30] *American Optometric Ass'n* v. *FTC,* 626 F.2d 896, 905 (D.C. Cir. 1980).

[31] *See, e.g.,* 2003 TSR Amendments and 2008 TSR Amendments.

devoted to enforcement actions against rule violators.

D. Summary of the Regulatory Review Record

The regulatory review record contains 114 unique responsive comments.[32] They include: two comments from other law enforcement agencies;[33] one comment from a telemarketer;[34] one from an industry services provider;[35] one from a credit card association;[36] and ten comments from industry trade associations representing companies that provide telemarketing services, employ telemarketers, or make their own telemarketing calls to consumers.[37] There are three comments on behalf of 13 consumer advocacy groups,[38] one from an academic,[39] two submissions attaching essentially identical comments from 2,064 Illinois residents,[40] and 92 unique comments from individual consumers.[41]

III. Regulatory Review: Continuing Need for the TSR

All commenters generally agree on the continuing need for the TSR but differ in their opinions as to whether amendments are necessary. Consumers and their advocates largely argue for amendments they believe will enhance consumer protection including by closing ''loopholes'' in the TSR, and for more enforcement. Industry representatives, on the other hand, largely advocate against any amendments, arguing the current regulatory requirements, coupled with the existence of self-policing industry organizations, provide consumers sufficient protections.

A. Consumer Perspective

Consumers and their advocates all support the continuing need for the TSR. The 2,064 largely identical comments from Illinois consumers ask the Commission to ''keep and strengthen'' the TSR's consumer protections that have ''battled telemarketing fraud and deception for nearly two decades,''[42] and four other individual consumers expressly agree the TSR is still needed and should be retained.[43] AARP asserts it ''strongly agrees that there is a continuing need for the [TSR],[44] and the National Consumer Law Center (''NCLC'') and other consumer groups state the TSR ''provides important protections for consumers and clear rules of the road for the telemarketing industry.''[45]

Comments from two other consumer advocates,[46] an academic engaged in relevant behavioral research,[47] and two state and Federal law enforcement agencies[48] state while the TSR is still needed, it is also in need of improvements. In particular, consumers and their advocates argue for additional protections. These include heightened restrictions on the ''data pass'' of preacquired account information from an initial seller to a third party seller[49] comparable to those of the Restore Online Shoppers' Confidence Act (''ROSCA'') for online transactions,[50] extending the TSR's requirements to inbound calls,[51] and requiring sellers and telemarketers to create and maintain their own records of the numbers dialed in telemarketing campaigns to facilitate enforcement by Federal and state agencies and private lawsuits by injured consumers.[52]

More than half of the unique individual consumer comments make a case that more enforcement is needed. They include requests for enforcement against particular violators,[53] reports about specific violations of the TSR,[54] complaints about continuing unwanted calls,[55] demands for more general enforcement of the TSR's Do Not Call provisions,[56] appeals for more severe penalties to deter violations or a ban on all telemarketing,[57] and concern that violators are calling with impunity due to inadequate enforcement.[58] The 2,064 Illinois consumer comments request amendments that: (1) Require telemarketers to provide recordings of their calls, (2) ban third-party use of pre-acquired account information, and (3) request stronger consumer protection against inbound telemarketing calls placed in response to advertisements.[59] AARP also notes the number of telemarketing complaints filed with the FTC and Federal Communications Commission (''FCC'') has risen

[32] We cite public comments here by the name of the commenting organization or individual and the comment number. Although the comment record lists 118 submissions, one is a duplicate, American Resort Development Association, Nos. 00100, 00101; one is listed twice, Abrams, No. 00038; one contains a final attachment to a prior submission, Citizens Utility Board, No. 00037 (supplementing No. 00036); and one is simply a comment period extension request, PACE, No. 00039, that was granted by the Commission. 79 FR 61267 (Oct. 10, 2014).

[33] National Assn. of Attorneys General (''NAAG''), No. 00117 (on behalf of the attorneys general from 37 states and one territory); U.S. Department of Justice (''DOJ''), No. 00111.

[34] InfoCision Management Corp., No. 00108.

[35] NobelBiz, Inc., No. 00104.

[36] Visa, Inc., No. 00109.

[37] American Bankers Insurance Association (''ABIA''), No. 00106; American Resort Development Association (''ARDA''), No. 00100; Brand Activation Association (''BAA''), No. 00115; Consumer Credit Industry Association (''CCIA''), No 00098; Direct Marketing Association (''DMA''), No. 00103; Electronic Retailing Association (''ERA''), No. 00095; MPA-The Association of Magazine Media (''MPA''), No. 00116; National Automobile Dealers Association (''NADA''), No. 00112; Newspaper Association of America (''NAA''), No. 00099; and the Professional Association for Customer Engagement (''PACE''), No. 00107.

[38] AARP, No. 00097; Center for Responsible Lending (''CRL''), No. 00093; and National Consumer Law Center on behalf of itself and the Consumer Federation of America, Americans for Financial Reform, Consumers Union, Consumer Action, Consumer Federation of California, The Maryland Consumer Rights Coalition, National Association of Consumer Advocates, U.S. PIRG, Virginia Citizens Consumer Council, and Consumer Assistance Council, Inc. of Cape Cod and the Islands (collectively, ''NCLC''), No. 00110.

[39] The Pennsylvania State University, No. 00114.

[40] Citizens Utility Board, Nos. 000356 and 00037.

[41] Aside from the Citizens Utility Board comments, the record contains 93 consumer comments, but there are duplicate entries for Abrams, No. 00038. Several consumer comments sought relief from collection agency calls that the TSR does not cover. *See, e.g.,* Gray, No. 00007; Castallo, No. 00128; Wysong, No.00015; Branner, No. 00121; Lehman, No. 00120; and Valdes, No.00014. Several advocate extending the TSR's do-not-call provisions to cover political, charity, or survey calls. *See, e.g.,* Wright, No. 00002; Anonymous, No. 00089; Rosenow, No. 00067; Goodman, No. 00032; and Lehnen, No. 00030.

[42] Citizens Utility Board, Nos. 00036 and 00037; *see* Rusch, 00046.

[43] Ashley L., No. 00052 (TSR is ''still greatly needed, in its entirety''); Leef, No. 00085 (''Please improve—or at least maintain the status quo''); Wright, No. 00002 (''The Do Not Call registry is a valuable resource for consumers and should be continued''); West Italian, No. 00113 at 1 (''We need the TSR, and its enforcement, more than ever'').

[44] AARP, No. 00097, at 2.

[45] NCLC, No. 00110, at 1.

[46] CRL, No. 00093, at 1; American Association for Justice, No. 00102, at 1.

[47] Grossklags, No. 00114.

[48] NAAG, No. 00117, at 1–2; DOJ, No. 00111, at 1.

[49] Citizens Utility Board, Nos. 00036 and 00037.

[50] 15 U.S.C. 8401. ROSCA requires a third-party merchant that offers add-on products or services after a sale by the initial seller to obtain billing information directly from the consumer, rather than from the initial seller, so the purchaser will understand that there is or will be a charge for any add-on purchase. *See also* AARP, No. 00097, at 3.

[51] Citizens Utility Board, Nos. 00036 and 00037.

[52] West Italian, No. 00113 at 1; AARP, No. 00097, at 5.

[53] Moody, No. 00094; Smith, No. 00091; Austin, No. 00050; Pecoraro, No. 00126; Hall, No. 00012; Peterson, No. 00004; Macias, No. 00123; and Ramseur, No. 00118.

[54] Buchko, No. 00122; Harr, No. 00020; Branner, No. 00121; Alabi, No. 00006; Mercurio, No. 00127; Texas Child, No. 00018; Hines, 00124; Greenwood, No. 00125 Taylor, No. 00022; and Hays, No. 00049.

[55] Swirsky, No. 00025; Duffield, No. 00021; and Harr, No. 00020.

[56] Johannsen, No. 00078; Hardy, No. 00071; Boles, No. 00056; Olson, No. 00027; Taylor, No. 00022; Burton, No. 00005; Kavanaugh, No. 00041; Love, No. 00068; Bradshaw, No. 00065; Gallagher, No. 00051; Waterbury, No. 00044; Dougherty, No. 00043; Schugardt, No. 00031; McGlinchey, No. 00042; Lennon, No. 00028; Cockerill, No. 00082; West Italian, No. 00113 at 2; Rynearson-Moody, 00029; and Whi, No. 00017.

[57] Thompson, No. 00010; Abrams, No. 00038; and Bethea, No. 00016; and Keung, No. 00023.

[58] Miller, No. 00057; Marcus, No. 00026; Rothenbach, No. 00024; Gindin, No. 00009; Luttrell, 00077; and Karsbaek, No. 00074.

[59] Citizens Utility Board, Nos. 00036 and 00037.

significantly, and ''a rise in complaints means more need for enforcement.'' [60]

B. Industry Perspective

Industry comments support the continuing need for the TSR and generally oppose any amendments. As one trade organization observes, ''the FTC's enforcement actions under the Rule have provided industry with adequate and predictable notice as to what practices the agency views as acceptable and unacceptable.'' [61] Another notes ''[i]n its current form, the TSR has functioned well and continues to serve its purpose of protecting the customers we serve as well as the operations of legitimate businesses.'' [62] The Professional Association for Customer Engagement (''PACE'') states ''[t]he Rule has had an overall positive impact on consumers . . . and there is a continuing need for the majority of its protections.'' [63]

PACE, however, also asserts that while it ''supports strong enforcement against companies that intentionally violate the Rule's DNC provisions,'' ''no additional substantive changes are necessary at this time.'' [64] The Electronic Retailing Association (''ERA'') agrees ''no revisions to the TSR are warranted.'' [65]

Most of the industry comments maintain ''the current framework of laws, regulations, and industry self-regulation adequately covers telemarketing.'' [66] The Direct Marketing Association (''DMA'') stresses ''[a]ny changes to the Rule would have adverse impacts on the industry and consumers alike,'' [67] and the Consumer Credit Industry Association (''CCIA'') states ''[d]ue to the multiple layers of [Federal and state] regulation and legislation, the industry is in a precarious position in attempting to comply.'' [68] PACE similarly asks that the Commission ''consider the impact other laws and regulations have had on businesses before adopting any additional regulations of its own or expanding the reach of current regulations.'' [69]

Several industry trade associations emphasize the voluntary compliance steps they have taken by establishing Self-Regulatory Organizations (''SROs'') to enhance consumer protection. DMA's Guidelines for Ethical Business Practice (''DMA Guidelines'') [70] and the PACE SRO [71] were created to ensure compliance not only with the TSR, but also all state telemarketing laws and regulations. DMA asserts its Guidelines include a ''robust accountability program'' that is ''enforced by DMA's Ethics Committee that ''processes tens of thousands of complaints annually, and takes action against members and non-members alike,'' including disclosure of ''cases where companies failed to conform their practices to industry requirements.'' [72] The PACE–SRO accredits contact centers that ''undergo an initial and recurring onside compliance assessment, and are subject to quarterly data audits of their outbound calling records, and those that do not comply fail to obtain accreditation or have their accreditation revoked.'' [73]

Both DMA and PACE emphasize that their SRO programs require compliance not only with telemarketing regulations, but also with industry ''best practices,'' and that they can amend SRO requirements to address new technology and other issues more quickly than government can amend regulations.[74] The associations ask the FTC to encourage and support their SRO efforts as a ''strong tool that can assist in preventing the need for increased regulations.'' [75]

The public comments on the record from industry and consumer stakeholders, as well as the Commission's own law enforcement experience, persuade the Commission that the TSR continues to serve an important and useful public purpose. The Commission invites comment on the specific issues discussed below.

IV. Regulatory Review: Comments on Specific Issues

Commenters also provided responses to the specific issues identified in the Regulatory Review. The majority of the comments focused on whether the Rule should: (1) Prohibit or regulate the use or retention of preacquired account information; (2) enhance protections for negative option and free offers, and apply them to inbound calls induced by general media advertising; and (3) require sellers and telemarketers to maintain records of the numbers they dial in their telemarketing campaigns.

A. Should the TSR Ban the Data Pass of Preacquired Account Information?

The TSR prohibits the disclosure or receipt, for consideration, of unencrypted consumer account numbers for use in telemarketing, except to process a payment.[76] It also prohibits telemarketers and sellers from causing a consumer to be charged, directly or indirectly, without the consumer's express informed consent (*i.e.* ''unauthorized billing'') for all transactions, including those using preacquired account information.[77] It does not, however, generally bar the transfer or ''data pass'' of preacquired consumer account information from one seller or telemarketer to a third party seller or telemarketer, unless doing so results in unauthorized billing.[78] In 2010, Congress enacted ROSCA,[79] requiring a post-transaction third-party seller to obtain a consumer's ''express informed consent'' to be charged,[80] and prohibiting an ''initial merchant'' from disclosing the billing information of a consumer for use in an internet sale.[81]

The operating rules of three of the major credit card associations are consistent with ROSCA in prohibiting any ''disclosure, exchange, or use'' by and among their merchants of

[60] AARP, No. 00097, at 5. *See also* NCLC at 11–12 (applauding FTC enforcement action targeting robocall facilitators).

[61] BAA, No. 00115, at 2.

[62] MPA, No. 00116, at 1.

[63] PACE, No. 00107, at 2; *see also* CASRO, No. 00105 (''strongly believes there is a continuing need'' for the TSR and lauding it for preventing harm to consumers and the legitimate research industry).

[64] PACE, No. 00107, at 2.

[65] ERA, 00095, at 2 (the TSR provides ''the FTC with the tools it needs to prosecute offensive telemarketing behavior''). *See also* BAA, 00115, at 2 (the TSR provides a ''robust and effective regulatory tool with which to investigate and prosecute offensive telemarketing activities'').

[66] DMA, No. 00103, at 2; *see also, e.g,* BAA, No. 00115, at 2; PACE, No. 00107, at 2; ERA, No. 00095, at 2 (likewise supporting the TSR but opposing any changes).

[67] DMA, No 00103 at 2.

[68] CCIA, No. 00098, at 4.

[69] PACE, No. 00107, at 2.

[70] DMA, No. 00103, at 3–4.

[71] PACE, No. 00107, at 3–4 (discussing PACE–SRO, *available at http://www.pacesroconnect.org*) (last visited Jan. 31, 2022).

[72] DMA No. 00103, at 3–4; *cf.* ERA, No. 00095, at 6.

[73] PACE, No. 00107, at 3–4.

[74] DMA, No. 00103, at 3; *cf.* PACE, No. 00107, at 3 (SROs ''provide greater flexibility for constantly changing business environments and technologies'').

[75] ERA, No. 00095, at 7; *cf.* PACE, No. 00107, at 3 (arguing ''effective SROs are a strong tool that can assist in preventing the need for increased regulations''); DMA, No. 00103, at 3 (''Self-Regulation is the Appropriate Approach'').

[76] 16 CFR 310.4(a)(6).

[77] 16 CFR 310.4(a)(7). The Commission reiterates that Section 310.4(a)(7) is not limited to transactions involving preacquired account information, but applies to all transactions. *See* 2003 TSR Amendments, 68 FR at 4620 (stating the unauthorized billing provision applies to all transactions and not just transactions involving preacquired account information).

[78] 16 CFR 310.4(a)(7); *see also* 2003 TSR Amendments, 68 FR at 4620 (The Commission considered a general data pass ban on the use of preacquired account information but instead focused on the harm resulting from the use of preacquired account information and included a broader prohibition generally banning unauthorized billing under Part 310.4(a)(7).).

[79] 15 U.S.C. 8401.

[80] 15 U.S.C. 8402(a)(2).

[81] 15 U.S.C. 8402(b).

preacquired account information for their branded credit, debit and prepaid cards, except to process payments.[82] Thus, the card association rules now require each merchant to obtain a consumer's full account number directly from the consumer at the time of her first purchase from the merchant. In light of ROSCA's passage and the subsequent operating rule changes of the credit card industry, the Regulatory Review sought comment on whether the TSR should be amended to generally ban the data pass of preacquired account information.

AARP's comment expresses the view ''allowing telemarketers to share information with third parties without consent creates a large loophole that will allow data collectors and lead generators to . . . harm consumers by signing them up for products and services they never intended to purchase or hassling them with unwanted telephone calls.'' [83] The National Association of Attorneys General (''NAAG'') concurs, arguing the ''very nature of telemarketing makes the use of preacquired account information difficult to identify'' and consumers should have the same protection against unauthorized charges arising from the exchange of preacquired account information in telemarketing sales as ROSCA provides in internet sales, because the same consumer confusion that spurred ROSCA's passage exists in the telemarketing context.[84] NCLC also supports a ban, and asserts data pass is not necessary to conduct legitimate business, arguing that such transfers meet the unfairness test the Commission employs to ban abusive telemarketing practices.[85] VISA likewise urges the Commission to consider ''[h]armonizing the TSR with ROSCA'' to ensure data pass in telemarketing is not just prevented by the credit card associations and cannot ''migrate to other forms of payment to the detriment of consumers.'' [86]

Industry advocates do not recommend adding a data pass ban to the TSR. The Association of Magazine Media (''MPA'') asserts that in the wake of ROSCA and the credit card rules, ''usage of the data pass process has declined steadily,'' and suggests that ''concerns regarding deceptive or unfair transfers of preacquired account information are no longer necessary.'' [87] DMA notes its Guidelines ''instruct DMA members not to transfer or exchange credit card numbers when a consumer has a reasonable expectation that the information will be kept confidential.'' [88] Another possible explanation is that Federal laws bar financial institutions from disclosing account numbers to non-affiliates for marketing purposes, including telemarketing.[89]

DMA and PACE argue against the need for a data pass prohibition for a different reason; namely, the TSR already requires a business to obtain a consumer's ''express informed consent'' before it can charge her account for a purchase, even if it already has her billing information.[90] Moreover, for payments not made by a debit or credit card, the TSR requires ''express verifiable authorization'' of the charge by a written authorization signed by the consumer, an audio recording of an oral authorization, or written confirmation of the transaction by mail.[91] DMA and MPA also assert the evidence underpinning enactment of ROSCA cannot support a TSR data pass ban, because online sales are fundamentally different from telemarketing sales.[92]

At this time, it is unclear a TSR amendment restricting the data pass of preacquired account information is necessary to prevent unauthorized billing. The TSR currently prohibits data pass that causes unauthorized billing.[93] It also requires sellers and telemarketers to obtain a consumer's ''express informed consent'' to be charged for a good, service, or charitable contribution for any form of payment [94] and ''express verifiable authorization'' for payments other than credit or debit cards.[95] Further, card association rules and other Federal laws, including the 2015 TSR payment method prohibitions,[96] provide additional protections against unauthorized billing.

The Commission, however, does recognize it may be difficult to identify when preacquired account information has resulted in unauthorized billing in the context of telemarketing, in part because it is not always clear whether consumers have provided ''express informed consent'' or ''express verifiable authorization'' (collectively, ''consent'') for a particular transaction.[97] To address this challenge, among others, the Commission is issuing an NPRM that would require telemarketers and sellers to retain complete records of consumer consent, including documentation on the purpose for which consent is sought, in the same manner and format that the request for consent is presented to consumers.[98] The Commission believes the proposed recordkeeping requirements will help clarify the extent to which the use of preacquired account information may result in unauthorized billing, and whether additional protections against the data pass of preacquired account information are necessary. Thus, the Commission is seeking comment on these issues in the NPRM.

B. Should the TSR Require Consumer Consent for the Retention of Account Information?

When a consumer gives a seller or telemarketer her account information to pay for a purchase, that information will be covered by the TSR's definition of

[82] 79 FR at 46734–35 & n. 34; VISA, No. 00109, at 2.

[83] AARP, No. 00097, at 3; *see also* Rusch, No. 00046; Beverly Anne, No. 00066; Tripp, No. 00063; and West Italian, No. 00113, at 2.

[84] NAAG, No. 00117, at 4; AARP, No. 00097, at 3, 5.

[85] NCLC, No. 00110, at 4–5 (citing the harm from data pass that consumers cannot avoid and the lack of benefits to consumers or competition).

[86] VISA, No. 00109, at 4.

[87] MPA, No. 00116, at 2.

[88] DMA, No. 00103, at 6.

[89] ABIA, No. 00106, at 2; *see also* 15 U.S.C. 6802(d); 12 CFR 1016; 15 CFR 313.12.

[90] DMA, No. 00103, at 6; PACE, No. 00107, at 4; *see* 16 CFR 310.4(a)(7). PACE also expresses concern that a data pass ban would prevent sellers from using third-party telemarketers, who must be able to transmit billing information back to the seller.

[91] 16 CFR 310.3(a)(3).

[92] DMA, No. 00103, at 5; MPA, No. 00116, at 2; *but see* NAAG No. 00117, at 5 (''the same consumer confusion which spurred ROSCA's passage also exists in the telemarketing arena'').

[93] 16 CFR 310.4(a)(7).

[94] *Id.*

[95] 16 CFR 310.3(a)(3).

[96] On December 14, 2015, one year after the regulatory review comment period closed, the Commission issued antifraud amendments to the TSR. 2015 TSR Amendments, 80 FR at 77520. The amendments prohibited the use of remotely created checks, remotely created payment orders, cash-to-cash money transfers and cash reload mechanisms in telemarketing. 16 CFR 310.4(a)(9) & (10). Each of the prohibited payment mechanisms had been widely used by fraudulent sellers and telemarketers and three commenters urged the Commission to adopt these amendments during the regulatory review comment period. AARP, No. 00097, at 3; NCLC, No. 00110, at 15; NAAG, No. 00117, at 12–13. During its rulemaking, the Commission concluded that the TSR's ''express verifiable authorization'' requirement for payments other than credit or debit cards was not sufficient to prevent consumer harm because unscrupulous telemarketers that use these payment methods typically ignore the TSR's restrictions. 2015 TSR Amendments, 80 FR at 77543. Given the pervasiveness of fraud resulting from these payment mechanisms and the minimal legitimate uses for them, the Commission decided to ban these payment mechanisms as a bright line rule that benefits competition and consumers. *Id.* at 77537.

[97] *See, e.g.,* NAAG, No. 00117, at 4–5. *See also FTC* v. *Vacation Property Services,* No. 8:110cv099585, 2012 WL 1854231, at *3 (M.D. Fla. May 21, 2012) (rejecting defendant's arguments that it had obtained consumers' express consent through a separate verification call); *FTC* v. *Publishers Business Services, Inc.,* 821 F. Supp. 2d 1205, 1224 (D. Nev. 2010) (same).

[98] *See* NPRM Section III.B.4.

''preacquired account information'' if the seller retains and uses the information for subsequent purchases in the same or a subsequent telemarketing call.[99] The Regulatory Review asked whether sellers and telemarketers should be required to obtain consumer consent to retain preacquired account information to prevent unauthorized billing.

Consumer advocates acknowledge consumers would not be surprised that a seller to whom they have given their account information has retained it, since sellers may need it for purposes such as canceling the transaction and crediting the consumer's account.[100] PACE and DMA also argue that from an industry perspective, sellers need to keep account information obtained directly from a consumer not only for cancellation purposes, but also to facilitate and expedite returns, exchanges, refunds, and order modifications.[101]

NCLC urges the Commission to amend the TSR to add four safeguards to protect consumers if sellers retain their billing information.[102] Specifically, NCLC requests the following protections in transactions involving preacquired account information: (1) Sellers should obtain a consumers' ''express verifiable consent'' to retain their billing information; (2) sellers should confirm the last four digits of the consumers' account number, and if the account has an expiration date, to confirm the expiration date; (3) sellers should allow consumers the right to revoke their consent to retain their account information at any time; and (4) sellers should allow consumers to use a different account than the one previously provided to complete a transaction.

Industry advocates argue against amending the TSR to add safeguards for transactions involving preacquired account information. They point out that the ''retention [of preacquired account information] is different from charging a consumer's account,'' [103] and consumers have sufficient protection because the TSR already requires sellers to obtain a consumer's authorization to charge her account even if they have the information on file.[104] DMA also emphasizes that sellers and telemarketers must obtain a consumer's ''express informed consent'' before charging an account, and must ''identify the account to be charged with 'sufficient specificity for the customer or donor to understand what account will be charged.' '' [105]

While NCLC's proposals may have merit, neither the Commission's law enforcement experience nor the regulatory review provide sufficient evidence to warrant further Commission action at this time.

C. Should the TSR provide additional protections for negative option offers, including Free-to-Pay Conversion transactions?

For telemarketing transactions involving preacquired account information, such as negative option offers, the TSR requires sellers and telemarketers to: (1) Identify the account to be charged with sufficient specificity so that a consumer understands what account will be charged; and (2) confirm the consumer's ''express agreement'' to charge that account to complete the transaction. [106] For transactions involving both preacquired account information and a ''free-to-pay conversion [107] feature, such as free-trial offers, the TSR provides additional protections by requiring sellers and telemarketers to record the entire telemarketing call, obtain the last four digits of the account number to be used, and confirm the consumer's ''express agreement'' to charge that account to complete the transaction.[108] For payment mechanisms other than credit or debit cards, the telemarketer or seller must also obtain ''express verifiable authorization,'' which for oral authorizations includes the number of times a consumer will be charged and the dates of those charges.[109] The Regulatory Review sought comment on whether changes in the marketplace require additional protections for negative option offers, including ''free-to-pay conversion'' transactions.[110]

Consumer advocates argue the existing protections are inadequate and offer a myriad of recommendations for enhanced protections. NAAG argues additional protections are necessary because all negative option offers generate ''confusion, misunderstanding, and outright deception'' because some consumers do not understand that sellers will interpret their silence and inaction as authorization to charge recurring payments.[111] NAAG suggests an amendment to the TSR requiring a statement of the negative option terms in the initial telemarketing transaction that is separate from the other terms of the offer, and a separate audible acceptance of the negative option terms.[112] NAAG also suggests the TSR should require telemarketers to send a ''confirmation to the consumer, whether by mail or otherwise'' whenever a consumer is enrolled in a negative option feature.[113] NCLC suggests that for all negative option offers using preacquired account information, the TSR should require sellers and telemarketers to obtain full account numbers directly from the consumer every time they charge the consumer so consumers will understand their account will be charged.[114]

For ''free-to-pay conversion'' offers in particular, NCLC urges the Commission to adopt an amendment barring sellers from obtaining account information until the end of the trial period, or at least an amendment requiring sellers to give consumers timely phone or email reminders about how to avoid a charge a few days before they will charge the consumer's account.[115] AARP's comment concurs and proposes requiring sellers to send a reminder notice and obtain confirmation of a consumer's continued desire to complete the purchase not only for ''free-to-pay conversion'' offers, but for all negative option offers.[116]

[99] 16 CFR 310.2(z).

[100] NCLC, No. 00110, at 6.

[101] PACE, No. 00107, at 4; DMA, No. 00103, at 7. MPA notes that its members generally do not retain account information except in the case of automatic renewal transactions in which case the information is retained as ''a service of convenience.'' No. 00116 at 2.

[102] NCLC, No. 00110, at 7.

[103] DMA, No. 00103, at 6.

[104] PACE, No. 00107, at 4.

[105] DMA, No. 00103, at 3 (quoting 16 CFR 310.4(a)(7)(ii)(A) (requiring, in any transaction involving preacquired account information, that sellers and telemarketers obtain a consumer's ''express agreement'' to be charged using an account identified with sufficient specificity for the consumer to understand what account will be charged as evidence of her ''express informed consent'')).

[106] 16 CFR 310.4(a)(7)(ii).

[107] 16 CFR 310.2(r) (defining ''free-to-pay conversion'' as an offer in which the consumer will receive a product or service for free for an initial period and will incur an obligation to pay for it if she does not take affirmative action to cancel before the end of that trial period).

[108] 16 CFR 310.4(a)(7)(i).

[109] 16 CFR 310.3(a)(3)(ii); *see also* 2015 TSR Amendments.

[110] 79 FR at 46735.

[111] NAAG, No. 00117, at 3, 6.

[112] *Id.*

[113] *Id.*

[114] NCLC, No. 00110, at 7.

[115] *Id.* at 9–10. NCLC also advocates requiring that an automated toll-free telephone number be made available to accept cancellations without speaking to a representative 24 hours a day, and forbidding requirements for a written notice of cancellation, along with other conditions that make it unduly burdensome to cancel.

[116] AARP, No. 00097, at 4; *cf.* NAAG, No. 00117, at 11 (urging that the TSR require a telemarketer to send a confirmation to the consumer at the time of enrollment in a negative option that clearly and conspicuously sets forth the terms of the negative option plan).

NAAG also advocates for stronger protections in the context of free-to-pay conversion offers. Specifically, NAAG suggests that the Commission extend Section 310.4(a)(7) to all such offers, even if no preacquired account information is used, to ensure telemarketers obtain a consumer's express informed consent before telemarketers are able to bill or send invoices to consumers after the ''free trial'' is over.[117]

Industry advocates object to all of these proposed changes. DMA emphasizes both card association rules and SRO Guidelines require a third-party seller with preacquired account information to obtain the full account number directly from the consumer for ''free-to-pay conversion'' offers.[118]

Industry also contends the TSR's current requirements appropriately balance consumer convenience and protection. For example, MPA argues free trials and automatic renewals benefit consumers, particularly in situations where consumers are repeat customers and already have an established business relationship with the seller. MPA and other industry representatives state that requiring consumers to repeat their full 16-digit card number for each additional negative option offer, such as an automatic magazine subscription renewal, would frustrate consumers and would negatively impact legitimate business.[119]

DMA concurs, emphasizing the TSR and its SRO Guidelines require sellers to disclose all material terms of the offer, ''identify the account [to be charged] with specificity,'' and ''obtain affirmative consent from the consumer to charge that account.'' [120] DMA further argues requiring sellers to obtain full account information from existing customers simply increases the cost and time involved in the transaction, thus frustrating consumers without providing any additional protections.[121] PACE adds the TSR's requirement that sellers and telemarketers obtain a consumer's authorization to charge her account gives the FTC ''ample authority to pursue entities charging accounts without proper authorization.[122]

As discussed above, the Commission is proposing to amend the TSR's recordkeeping provisions to explicitly require telemarketers and sellers to retain complete and accurate records of consumers' ''express informed consent'' to be charged for a particular transaction.[123] In the event a transaction includes a negative option, including ''free-to-pay'' or ''fee-to-pay'' conversion offers, a complete record of ''express informed consent'' must include the purpose for which consent is requested, the account that will be charged, the date a consumer provided consent, and the consumer's consent to be charged using the identified account for the relevant good or service. The proposed recordkeeping requirements also require sellers and telemarketers to retain records that demonstrate they have comported with Section 310.4(a)(7)'s requirements regarding the use of preacquired account information. The Commission believes the new recordkeeping requirements will provide additional protections to consumers by ensuring sellers and telemarketers obtain actual ''express informed consent'' from consumers to be charged for a transaction with a negative option feature.[124] The Commission also believes these requirements will be more effective than requiring third-party telemarketers to obtain the full account information from consumers as an indication of consent because consumers providing full account information may not understand that they are being sold a transaction with a negative option feature.

The Commission is also interested in exploring the commenters' suggestions that sellers or telemarketers provide consumers notice and the opportunity to cancel negative option transactions whenever they are billed.[125] Requiring sellers or telemarketers to provide consumers with reminders of negative option programs and simple cancelation mechanisms may be an effective way of reducing consumer harm without overburdening industry. However, the Commission is aware of potential logistical hurdles to providing notification and cancelation with telemarketing transactions. For example, do telemarketers typically obtain consumers' email addresses, and if so, would email be an effective method to send a notification? Should telemarketers provide cancelation mechanisms by phone or would online mechanisms be more convenient for consumers? As outlined below in Section V, the Commission is seeking comment on whether the TSR should require negative-option sellers to provide simple notice and cancelation mechanisms, and how these mechanisms should be provided.

Beyond the changes the Commission is proposing to the recordkeeping provisions, and the Commission's request for information about notice and cancelation mechanisms, the Commission does not agree with the additional rule proposals made by commenters. Commenters proposed the rule: (1) Require sellers and telemarketers to obtain a full account number from consumers every time they are charged; or (2) defer payment authorization until the end of the trial period. The Commission does not believe these proposals would provide protections against deceptive negative option offers that outweigh the likely increased consumer frustration due to longer, complicated transactions and additional burdens on industry. And with respect to NAAG's suggestion that Section 310.4(a)(7) should be extended to all free-to-pay conversion transactions regardless of whether preacquired account information is involved, the Commission does not believe such an amendment is necessary. Section 310.4(a)(7) already requires telemarketers or sellers to obtain a consumer's express informed consent to be charged for the good, service, or charitable contribution in all telemarketing transactions, including those that do not involve the use of preacquired account information. The Commission nonetheless reiterates that Section 310.4(a)(7)'s requirement of obtaining a consumer's express informed consent before billing a consumer applies to all telemarketing transactions, including those in which the consumer is billed for a good or service at a later date after the ''free trial'' is over.

[117] NAAG, No. 00117, at 11.

[118] DMA, No. 00103, at 4, 6.

[119] MPA, No. 00116, at 3; *see also* DMA, No. 00103 at 6–7; ARDA, No. 00100, at 7. PACE, No. 00107, at 4.

[120] DMA, No. 00103, at 6–7.

[121] *Id.* at 3.

[122] PACE, No. 00107, at 4.

[123] *See supra* VI.A.

[124] *See* NPRM Section III.B.4. NAAG also reports that telemarketers are circumventing the heightened ''express informed consent'' requirements for ''free-to-pay'' conversion offers by charging a ''nominal upfront fee.'' No. 00117, at 5. (''By offering their products and services for an initial term at a nominal upfront price . . . telemarketers relying on preacquired account information circumvent the TSR's requirement of obtaining the last four (4) digits of the consumer's account number and the equally important requirement of maintaining an audio recording of the entire transaction.''). The proposed recordkeeping requirements that clarify the records necessary to prove that a consumer has consented to a transaction should eliminate any incentive to circumvent the express informed consent requirement.

[125] AARP suggests that companies ''send a reminder to the consumer and receive confirmation the consumer still wants to purchase the service or product.'' AARP, No. 00097, at 4. *cf.* NAAG, No. 00117, at 11 (urging that the TSR require a telemarketer to send a confirmation to the consumer at the time of enrollment in a negative option that clearly and conspicuously sets forth the terms of the negative option plan).

D. Is there a need to apply outbound call protections to inbound calls?

The TSR generally exempts inbound calls responding to media advertising, with some specific exceptions.[126] The Regulatory Review asked if there is a need to amend the exemption in view of the proliferation of infomercials in the marketplace, including for negative option offers.

Consumers and their advocates regard the general media exemption as a ''loophole'' in the TSR, advocating that the TSR should apply to all telemarketing calls regardless of which party initiated the call.[127] NAAG cites the Commission's 2013 Consumer Fraud Survey as support because it reports that more than half of frauds are marketed through means other than telemarketing.[128] Consumer advocates specifically suggest the TSR should apply equally to inbound and outbound telemarketing for negative option offers. NCLC asserts the TSR requirements for the use of preacquired account information in negative option offers should apply to all inbound calls responding to general media and direct mail ads because ''the potential risks are the same'' as offers in outbound telemarketing.[129] NAAG agrees, and advocates an amendment to extend the TSR's outbound call material terms disclosure requirements for negative option offers, as well as the ban on misrepresenting any aspect of such offers, to all inbound calls induced by direct mail or general media ads.[130]

Industry advocates uniformly oppose adding any limitations to either the general media or direct mail exemptions. PACE and ERA agree all material terms and conditions of negative option offers should be disclosed prior to any sale, but argue against amending the TSR to require the disclosures be made during an inbound call.[131] DMA explains that required oral disclosures during inbound calls would be duplicative in many cases of disclosures in the marketing materials that induced the call.[132] BAA adds that unlike answering outbound telemarketing calls, consumers placing inbound calls have the ''luxury, time and discretion to decide whether to respond'' to general media or direct mail ads, and can obtain ''the information they need to make an informed purchasing decision'' in advance of or during the call.[133]

MPA argues applying the TSR's disclosure requirements to inbound telemarketing for newspaper subscriptions, particularly for existing customers, would add time and expense for industry to comply without providing additional consumer protections when the general media advertisement includes all material terms of the offer.[134] ERA similarly argues against a disclosure requirement without evidence of widespread abuse.[135] ERA joins PACE in contending the Commission can always rely on its authority under Section 5 of the FTC Act to bring cases against sellers that fail to disclose material terms in their advertising or during an inbound call.[136]

The general media and direct mail exemptions for inbound calls contain additional limitations that narrow the scope of the exemptions. For example, negative option sales in inbound telemarketing that are upsells after an initial purchase are expressly excluded from both the general media and direct mail exemptions.[137] The TSR's outbound call provisions therefore are equally applicable to inbound call upsells.

Whether and to what extent there may be a problem with inbound telemarketing calls offering a negative option is unclear from the regulatory review record. It therefore is difficult to determine at this time whether there is a need for an amendment that would apply the negative option disclosure requirements and prohibitions or other protections to such calls. The Commission is mindful, however, of the rising trend of certain types of goods or services that are marketed through general media or direct mail and induce inbound telemarketing sales that often include a negative option feature. In particular, the Commission's law enforcement experience indicates that scams offering computer technical support services (or ''tech support'') have been a rising trend that particularly impacts older adults and are marketed through inbound telemarketing.[138] Many of these tech support services also include negative options. As a result, as outlined below in Section V, the Commission is seeking comment on whether the TSR should apply to inbound telemarketing of tech support services.[139] The Commission also seeks comment in Section V.E on the number of sellers or telemarketers who deceptively sell products or services with negative options, other than tech support services, solely through inbound telemarketing.

E. Should the rule continue to exempt business-to-business telemarketing?

Currently the TSR exempts telemarketing calls to ''any business to induce the purchase of goods or services or a charitable contribution by the business,'' (*i.e.,* ''business-to-business exemption'' or ''B2B exemption'').[140] The Commission sought comment on how sales to a ''home-based business should be treated'' under the Rule.[141] One comment suggests ''home business[es] should be treated more like [ ] consumer[s] . . . out of deference to the overall home environment. . . . The same phone often handles both personal and business calls in a home business or in a home occupied by an independent consultant or freelancer.'' [142]

PACE, however, argues the current exemption ''properly strikes a balance between consumer protection and overregulation and should be left intact.'' [143] PACE also asserts allowing the exemption to continue ''represents sound public policy and equitableness because it is impossible for callers to know whether the phone provider classifies the number as a residential or business number.'' [144]

Although the Commission did not receive many comments on this

[126] 16 CFR 310.6(b)(5).

[127] Kapecki, No. 00084; Rosenow, No. 00067; Beverly Anne, No. 00066; Tripp, No. 00063; and Steel, No. 00070.

[128] NAAG, No. 00117, at 8 (stating that the 2013 survey reported 59.3% of fraud incidents were the result of fraudulent offers through general media advertising).

[129] NCLC, No. 00110, at 7.

[130] NAAG, No. 00117, at 10.

[131] PACE, No. 00107, at 6; ERA, No. 00095, at 3.

[132] DMA, No. 00103, at 7.

[133] BAA, No. 00115, at 3.

[134] MPA, No. 00116, at 4.

[135] ERA, No. 00095, at 3. ERA disputes NAAG's contention that the FTC's Third Consumer Fraud Survey provides evidence of pervasive fraud in general media advertising. *Compare* ERA, No. 00095, at 5 *with* NAAG, No. 00117, at 8.

[136] ERA, No. 00095, at 5. ERA and PACE made these comments before the Supreme Court held that Section 13(b) of the FTC Act does not authorize courts to award equitable monetary relief. *See AMG Capital Management, LLC* v. *FTC,* 141 S.Ct. 1341 (2021).

[137] 16 CFR 310.6(b)(5)(iii) and (b)(6)(iii).

[138] *See* FTC Data Spotlight, *Older Adults Hardest Hit by Tech Support Scams* (''FTC Data Spotlight'') (Mar. 7, 2019) (tech support scams particularly impact older adults), *available at https://www.ftc.gov/news-events/blogs/data-spotlight/2019/03/older-adults-hardest-hit-tech-support-scams* (last visited Jan. 31, 2022); FTC Report to Congress, Protecting Older Consumers, 2019–2020 (''2020 Protecting Older Consumers Report'') at 6 (Oct. 18, 2020), *available at https://www.ftc.gov/system/files/documents/reports/protecting-older-consumers-2019-2020-report-federal-trade-commission/p144400_protecting_older_adults_report_2020.pdf* (last visited Jan. 31, 2022).

[139] *See infra* Section V.A.

[140] 16 CFR 310.6(b)(7). This exemption, however, does not apply to the telemarketing of nondurable office or cleaning supplies. *Id.*

[141] 79 FR at 46738.

[142] West Italian, No. 00113, at 3.

[143] PACE, No. 00107, at 6.

[144] *Id.*

question, the Commission's law enforcement experience with deceptive business-to-business telemarketing along with changing market forces influencing where consumers perform their jobs and the nature of those jobs raise the question whether the TSR should continue to exempt such calls. Thus, for the reasons outlined below in Section V, the Commission is seeking additional comment on whether the TSR should continue to exempt business-to-business telemarketing.[145]

F. Other Commenter Proposals

A number of comments have recommended a variety of other amendments to the TSR. These comments fall into the following categories: (1) Revision of prior determinations or interpretations the Commission is not inclined to reconsider;[146] (2) amendments the Commission does not believe are necessary;[147] (3) amendments outside of the agency's jurisdiction;[148] and (4) amendments that lack data to support the suggested change.[149] As such, the Commission is not inclined to further consider or implement these requested amendments.

V. Request for Comments

In determining the advisability of exempting certain calls from complying with the TSR the Commission considers the following factors: (1) Did Congress intend the TSR to cover such calls; (2) is the conduct or business in question regulated extensively by Federal or state law; (3) in the Commission's law enforcement experience, does the conduct or business lend itself to the type of deceptive acts and practices that the TSR is intended to address; and (4) would it be unduly burdensome to require businesses to comply with the TSR compared to the likelihood that sellers or telemarketers engaged in fraud will use the existing exemption to circumvent the TSR's coverage.[150]

To assist the Commission in evaluating these factors, the Commission seeks comments on whether the TSR should: (1) Apply to inbound telemarketing of tech support services; (2) apply to telemarketing to businesses; and (3) require telemarketers to provide consumers with notice that they are about to be billed for a negative option product or service and provide consumers with a simple cancellation mechanism. The Commission also seeks comments on the benefits and estimated burdens these potential rule changes would impose on sellers and telemarketers. In their replies, commenters should provide any available evidence and data that supports their position, such as empirical data on the harm to consumers caused by deceptive inbound telemarketing of tech support services, deceptive telemarketing to businesses, or the failure to provide consumers with notice and simple cancellation mechanism in negative option telemarketing. Commenters should also provide any empirical data on the costs to sellers or telemarketers that would be caused by applying the TSR's requirements on inbound telemarketing of tech support services, telemarketing to businesses, or requiring notification and a simple cancellation mechanism for negative option products or services. The questions are designed to assist the public and should not be construed as a limitation on the issues about which a public comment may be submitted.

A. Inbound Telemarketing of Computer Technology Support Services

Consumer complaints about tech support scams have increased dramatically over the last few years, ranging from approximately 40,000 complaints in 2017 to approximately 100,000 complaints in 2020.[151] In 2018, consumers reported losing more than $55 million to these scams, with an average individual loss of approximately $400, and an average individual loss for consumers over the age of 60 of approximately $500.[152] Indeed, tech support scams disproportionately harm older consumers, with consumers age 60 and over being six times more likely to report a financial loss to tech support scams compared to younger consumers.[153] From 2015 to 2018, older adults filed more reports on tech support scams than on any other fraud category.[154]

The scam typically begins with an outbound telemarketing call, a pop-up message on a consumer's computer, or an advertisement that induces inbound telemarketing calls.[155] The scammers typically pretend to represent well-known companies such as Microsoft, McAfee, or Symantec, and in their outbound calls, they inform consumers

[145] *See infra* Section V.B.

[146] Infocision, No. 00108, at 2 (amendment to exempt for-profit telemarketers who offer goods or services on behalf of non-profits (*i.e.,* ticket sales on behalf of a ballet company)); NAA, No. 00099, at 1–6 (amendment of the ''established business relationship'' exception to allow live calls to introduce digital offerings to former newspaper subscribers with numbers on the Do Not Call Registry); ARDA, No. 00100, at 2–4 (*e.g.,* amendments to the prohibition to send robocalls and relaxing the restrictions on abandoned calls to existing customers); NCLC, No. 00110, at 14 (amendment to change the assisting and facilitating knowledge standard from ''knows or consciously avoids knowing'' to ''knows or has reason to know''); NobelBiz, No. 00104, at 5 (amendment stating that the transmission of an erroneous name or failure to transmit a name pursuant to the TSR's caller ID provision is not a violation unless there was intent to deceive the call recipient).

[147] NAA, No. 00099, at 7–8 (amendment to require monthly purging of disconnected and reassigned numbers on the Registry which is unnecessary since the agency already performs such purging—*see* FTC, Do-Not-Call Improvement Act of 2007, Report To Congress: Regarding the Accuracy of the Do Not Call Registry (Oct. 2008), *available at https://www.ftc.gov/sites/default/files/documents/reports/do-not-call-improvement-act-2007-report-congress-regarding-accuracy-do-not-call-registry/p034305dncreport.pdf*); Air Rehab. Corp., No. 00047 (amendment to exempt calls to arrange face-to-face sales meetings which are already exempt under Section 310.6(b)(3)); Whi, No. 00017 (amendment to permit private lawsuits, which are already permitted under the Telemarketing Act, 15 U.S.C. 6104, and the Telephone Consumer Protection Act, 47 U.S.C. 227(b)(3)).

[148] *See, e.g.,* ARDA, No. 00100, at 2, 4–6 (amendments relating to issues under the FCC's jurisdiction, including autodialers, cell phones, and SMS texts).

[149] *See, e.g.,* CRL, No. 00093 at 4, 10 (acknowledging lack of data); NCLC, No. 001100, at 18–19.

[150] Original TSR, 60 FR at 43859.

[151] *See* FTC Consumer Sentinel Network Databook 2020, at 86, (Feb. 2021), *available at https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2020/csn_annual_data_book_2020.pdf* (last visited Jan. 31, 2022); FTC Consumer Sentinel Network Databook 2017, at 93, (list visited Jan. 31, 2022), *available at https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2017/consumer_sentinel_data_book_2017.pdf* (last visited Jan. 31, 2022).

[152] *See,* FTC Data Spotlight, *available at https://www.ftc.gov/news-events/blogs/data-spotlight/2019/03/older-adults-hardest-hit-tech-support-scams* (last visited Jan. 31, 2022).

[153] *See* 2020 Protecting Older Consumers Report, at 6, *available at https://www.ftc.gov/system/files/documents/reports/protecting-older-consumers-2019-2020-report-federal-trade-commission/p144400_protecting_older_adults_report_2020.pdf* (last visited Jan. 31, 2022).

[154] FTC Data Spotlight, *available at https://www.ftc.gov/news-events/blogs/data-spotlight/2019/03/older-adults-hardest-hit-tech-support-scams* (last visited Jan. 31, 2022); *see also* FTC Report to Congress, Protecting Older Consumers, 2018–2019, at 5 (Oct. 18, 2019), *available at https://www.ftc.gov/reports/protecting-older-consumers-2018-2019-report-federal-trade-commission* (last visited Jan. 31, 2022). In 2019, reports of online shopping frauds became the top fraud complaint for older consumers, with tech support scams dropping to second place. 2020 Protecting Older Consumers Report, at 7, *available at https://www.ftc.gov/system/files/documents/reports/protecting-older-consumers-2019-2020-report-federal-trade-commission/p144400_protecting_older_adults_report_2020.pdf* (last visited Jan. 31, 2022). Older consumers, however, are less likely to report losing money to online shopping frauds, compared to younger consumers. *Id.*

[155] *See, e.g.,* Prepared Statement of the Federal Trade Commission Before the United States Senate Special Committee on Aging on Combatting Technical Support Scams (''Tech Support Testimony''), at 3–5 (Oct. 21, 2015), *available at https://www.ftc.gov/system/files/documents/public_statements/826561/151021techsupport testimony.pdf* (last visited Jan. 31, 2022).

that they have detected an issue on their computers.[156] Alternatively, scammers use deceptive computer pop-up messages that tell consumers to run a scan resulting in numerous ''error'' messages.[157] Or, they place search engine advertisements displayed when a consumer searches online for either the phone number of her computer company or for information about an issue she is having with her computer.[158] The pop-up messages and search engine advertisements typically direct consumers to call a phone number to fix the purported problems. Once consumers connect with telemarketers, whether through outbound telemarketing or inbound, the telemarketers convince consumers there are a variety of problems with their computers and persuade consumers to purchase subscription tech support services [159] or software they do not need.[160]

The Commission has brought a multitude of cases against sellers and telemarketers perpetrating tech support frauds on consumers.[161] In many of those cases, telemarketers have induced inbound telemarketing by placing advertisements via search engine ads, thus falling outside of the TSR's purview unless the telemarketer also upsells the consumer on a good or service.[162] Given this rising threat and the harm it causes to consumers, particularly those aged 60 and older, the Commission believes the time is ripe to consider repealing the TSR exemption for inbound telemarketing of tech support services.

In considering this proposal, in addition to the questions listed below, the Commission seeks comment on whether: (1) It should add tech support services to the list of goods or services for which the inbound telemarketing exemptions do not apply; [163] (2) it should repeal the exemption only for general media advertisements (*e.g.,* search engine ads) that induce inbound telemarketing of tech support services but retain the exemption for direct mail solicitation under Section 310.6(b)(6); or (3) it should repeal the exemption in its entirety but carve out an exemption for sellers who manufacture the computer at issue, and with whom the consumer has an existing business relationship (*i.e.,* if a consumer purchased a computer from Microsoft, the TSR would not apply to any inbound telemarketing calls induced by or on behalf of Microsoft to that consumer). The Commission also seeks comment on whether tech support service scams impact other devices such as mobile phones or tablets.

B. Questions for Inbound Telemarketing of Tech Support Services

1. Should the TSR apply to inbound telemarketing of tech support services? If not, why not? If yes, why? What harm is caused by such calls? What benefits do such calls confer? What existing Federal or state laws apply to such calls, and are the existing laws sufficient or insufficient to address the identified harm?

2. What kind of tech support services do sellers offer to consumers? What kinds of products do the tech support services cover? What is the nature of the services offered? Do the services require consumers to sign up for a subscription plan? How many services require a subscription plan?

3. How many sellers or telemarketers sell tech support services through inbound telemarketing without using unfair or deceptive acts or practices? How many sellers offer those services only through inbound telemarketing and do not employ any outbound telemarketing? How do consumers learn about these sellers? Do they advertise through general media advertisements or direct mail solicitations? What kind of advertisements? How would requiring such sellers to comply with the TSR affect their business? How would it affect consumers?

4. How many inbound telemarketing calls for tech support services do sellers or telemarketers receive on average per year, per month, or per day? How many of those calls or what percentage of those calls result in a sale?

5. Do sellers or telemarketers that sell tech support services through inbound telemarketing sell those services to consumers, businesses, or both? If sellers or telemarketers are engaged in inbound telemarketing of tech support services to consumers, how many such calls do sellers or telemarketers receive on average per year, per month, or per day? How many of those calls or what percentage of those calls result in a sale? If sellers or telemarketers are engaged in inbound telemarketing of tech support services to businesses, how many such calls do sellers or telemarketers receive on average per year, per month, or per day? How many of those calls or what percentage of those calls result in a sale?

6. How many inbound tech support telemarketing calls were induced by general media advertising such as search engine advertisements? How many of those calls or what percentage of calls induced by general media resulted in a sale?

7. How many inbound tech support telemarketing calls were induced by a direct mail solicitation? How many of those calls or what percentage of calls induced by direct mail solicitations resulted in a sale?

8. Do entities that manufacture and sell computers engage in inbound telemarketing of tech support services to businesses or consumers? If so, do such entities use unfair or deceptive acts or practices to sell their tech support services? If such entities engage in inbound telemarketing of tech support services to consumers, how many calls do such entities receive from consumers on average per year, per month, or per day? How many calls result in a sale? If such entities engage in inbound telemarketing of tech support services to businesses, how many calls do such entities receive from businesses on

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[156] *Id.*

[157] *See, e.g.,* Tech Support Testimony, at 3–5, *available at https://www.ftc.gov/system/files/documents/public_statements/826561/151021techsupport03JNtestimony.pdf* (last visited Jan. 31, 2022).

[158] *See, e.g., FTC* v. *Click4Support, LLC, et. al.,* No. 15–cv–05777–SD, at 9–10 (E.D. Pa. Oct. 26, 2015), *available at https://www.ftc.gov/system/files/documents/cases/151113click4supportcmpt.pdf* (last visited Jan. 31, 2022).

[159] *See, e.g., FTC* v. *Vylah Tec LLC, et. al.,* No. 17–cv–228–FtM–99MRM (M.D. Fa. May 17, 2017), *available at https://www.ftc.gov/system/files/documents/cases/162_3253_vylah_tec_llc_complant.pdf* (last visited Jan. 31, 2022).

[160] *Id.*

[161] *See, e.g., FTC* v. *RevenueWire, Inc.,* No. 1:20–cv–1032 (D.D.C. April 21, 2020) (the companies to which RevenueWire provided payment processing services used pop-up dialog boxes that claimed to have detected computer infections and directed consumers to call a 1–800 number) *available at https://www.ftc.gov/system/files/documents/cases/revcomp3.pdf* (last visited Jan. 31, 2022); *FTC* v. *Boost Software, Inc.,* No. 14–cv–81397 (S.D. Fla. Nov. 10, 2014) (same as RevenueWire) *available at https://www.ftc.gov/system/files/documents/cases/141119vastboostcmpt.pdf* (last visited Jan. 31, 2022); *FTC* v. *PCCare247, Inc.,* 12–cv–7189 (S.D.N.Y. Oct. 3, 2012) (PCCare used paid advertisements that made it appear PCCare was affiliated with established computer companies in order to trick consumers to call PCCare's telemarketers) *available at https://www.ftc.gov/sites/default/files/documents/cases/2012/10/121003pccarecmpt.pdf* (last visited Jan. 31, 2022). *See also,* Press Release, FTC and Federal, State and International Partners Announce Major Crackdown on Tech Support Scams (May 12, 2017) (announcing 16 new cases as part of tech support sweep) *available at https://www.ftc.gov/news-events/press-releases/2017/05/ftc-federal-state-international-partners-announce-major-crackdown* (last visited Jan. 31, 2022) and ''Operation Tech Trap Law Enforcement Actions'' (May 2017) (listing cases brought as part of tech support sweep) *available at https://www.ftc.gov/system/files/attachments/press-releases/ftc-federal-state-international-partners-announce-major-crackdown-tech-support-scams/operation_tech_trap_chart_of_actions.pdf* (last visited Jan. 31, 2022).

[162] The TSR generally exempts inbound telemarketing calls induced by general media advertisements. 16 CFR 310.6(b)(5) and (6). As noted in Section IV.D, *supra,* the TSR's coverage extends to all upsells, including those in inbound telemarketing. 16 CFR 310.6(b)(5)(iii) & (b)(6)(iii).

[163] *See* 16 CFR 310.6(b)(5) and (6).

average per year, per month, or per day? How many calls result in a sale?

9. Should the TSR apply to inbound telemarketing of tech support services induced by advertisements through any medium? If yes, why, and what is the harm caused by such solicitations? If not, why not, and should the TSR apply to inbound telemarketing of tech support services induced by particular types of advertisements?

10. Should the TSR apply to inbound telemarketing of tech support services induced by direct mail solicitation? If yes, why and what harm is caused by such solicitations? If not, why not?

11. Should the TSR continue to exempt inbound telemarketing of tech support services but apply the TSR's provisions regarding the use of prerecorded messages, including those that use soundboard technology? If yes, why and what is the harm caused by the use of prerecorded messages in inbound telemarketing of tech support services? If not, why not?

12. If the Commission repeals the exemptions for inbound telemarketing of tech support services, should it create a carve out? What kind of carve out and why? Should the Commission carve out an exemption for entities who manufacture the computer at issue and have an existing business relationship with the consumer? Why or why not?

13. How should the Commission define ''tech support services''? Should the definition apply to any type of technology assistance, including for any device (*e.g.,* mobile phones and tablets)? If not, why not? If yes, why and what is the harm caused in connection with those technology assistance services? Have there been instances of fraud occurring in connection with those technology assistance services? How pervasive is this type of fraud?

14. If the Commission considers employing a broad definition of tech support so that it either encompasses multiple types of services, or any form of technology assistance, should the Commission consider carve outs for a particular type of technology assistance? If yes, what carve out should the Commission consider and why?

15. If the Commission repeals the exemptions for inbound telemarketing of tech support services, what burden would be imposed on industry? How do you quantify that burden? How can the Commission repeal the exemption for inbound telemarketing of tech support services but lessen that burden on industry?

B. Business-to-Business Telemarketing Calls

1. Regulatory History of Business-to-Business Telemarketing Exemption

The Commission has considered whether to narrow or clarify the business-to-business (''B2B'') exemption on several occasions since its promulgation in 1995.[164] First, in 2003 the Commission considered whether to include a carve out from the exemption for the sale of internet or web services[165] to prevent small businesses from being defrauded as they navigated the then-new world of internet advertising. The Commission defined internet or web services as services that enable businesses to access the internet or the world wide web.[166] The Commission noted that reports of frauds from small businesses about telemarketers promoting services that could help them increase their internet presence had risen dramatically with the rapid adoption of internet use from 1997 to 2002.[167]

Consumer advocates and law enforcement agencies argued the TSR should not exempt telemarketing of internet or web services to businesses based on extensive law enforcement efforts to combat the proliferation of fraudulent telemarketing of those services.[168] Industry proponents argued the record did not support applying the TSR to those services in such a sweeping fashion and overregulation would result in harming small businesses because ''it would increase their costs and hamper their use of Web-based advertising such as online Yellow Pages.''[169] The Commission decided imposing regulations without further evidence that its law enforcement tools were insufficient might negatively impact small businesses by increasing their cost and impeding their use of internet advertising.[170] The Commission stated it needed to ''move cautiously so as not to chill innovation in the development of cost-efficient methods for small businesses to join in the internet marketing revolution.''[171]

The Commission revisited the B2B exemption in 2013 when it issued a Notice of Proposed Rulemaking (''2013 NPRM'') seeking comment on whether to amend the exemption to explicitly limit it to telemarketing calls selling a good or service to that business or seeking a charitable contribution from that business, rather than personal purchases or charitable contributions of employees of the business.[172] The Commission noted in its 2013 NPRM that it had allowed business telephone numbers to be listed on the FTC's Do Not Call (''DNC'') Registry ''because, among other reasons, telemarketers who seek to circumvent the Registry have solicited employees at their place of business to buy goods or services such as dietary products, auto warranties, and credit assistance.''[173] In implementing the amendment in 2015, the Commission reiterated the amendment is ''simply a clarification of the scope of the existing exemption, not a change in its substance'' and the ''clarification should further deter telemarketers from attempting to circumvent the Registry.''[174]

2. Law Enforcement Experience in Deceptive Business-to-Business Telemarketing

Since the Commission last considered, and declined, to substantively amend the B2B exemption to exclude services providing access to the internet, the marketplace has substantially evolved. The digital marketing landscape has become increasingly complex and rife with opportunities for sellers or telemarketers to defraud small businesses by selling them services to help them advertise their businesses online. Indeed, the

[164] *See* Original TSR, 60 FR at 43861.

[165] 2003 TSR Amendments, 68 FR at 4662. The Commission also considered whether to carve out solicitations for charitable contributions from the TSR's B2B exemption. On balance, the Commission decided to rely on its Section 5 authority to address fraudulent fundraising rather than impose additional regulatory burdens on legitimate non-profit organizations that already operate on very narrow margins. *Id.* at 4663.

[166] The Commission proposed two definitions in its proposed rulemaking—internet Services and Web Services. 2002 Notice of Proposed Rulemaking, 67 FR at 4500. Internet Services meant any service that allowed a business to access the internet, including internet service providers, providers of software and telephone or cable connections, as well as services that provide access to email, file transfers, websites, and newsgroups. *Id.* Web services was defined as ''designing, building, creating, publishing, maintaining, providing, or hosting a website on the internet.'' *Id.* The Commission intended for the term internet services to encompass any and all services related to accessing the internet and the term web services to encompass any and all services related to the world wide web. *Id.*

[167] *Id.* at 4531; *see also* Press Release, *FTC Cracks Down on Small Business Scams* (June 17, 1999) (announcing sweep of cases against fraudulent telemarketers who scammed small businesses by offering a negative option website design and hosting service to help small businesses create an internet presence), *available at https://www.ftc.gov/news-events/press-releases/1999/06/ftc-cracks-down-small-business-scams* (last visited Jan. 31, 2022).

[168] 2003 TSR Amendments, 68 FR at 4662.

[169] *Id.* at 4663.

[170] *Id.*

[171] *Id.*

[172] Notice of Proposed Rule Making (''2013 TSR NPRM''), 78 FR 41200, 41219 (July 9, 2013).

[173] *Id.* at 41219.

[174] *Id.*

expansion of the different ways to advertise online has been accompanied by numerous types of deceptive telemarketing schemes aimed at small businesses, including schemes that have purportedly sold business directory listing services, the very same services industry proponents claimed small businesses would not be able to access if the Commission implemented its proposed amendments.[175] The Commission has brought many cases against fraudulent telemarketers selling services that purportedly assist small businesses to advertise online, including business directory listings,[176] web hosting or design scams,[177] and search engine optimization (''SEO'') services.[178] The Commission has also seen deceptive telemarketing schemes that target businesses in other areas not related to online advertising services.[179] In fact, the Commission has filed cases against other telemarketing frauds targeting small businesses such as market-specific advertising opportunities [180] and government imposter scams.[181] Given the Commission's law enforcement experience in this area showing the prevalence of fraud in digital marketing services targeting businesses, and the maturation of this industry, the Commission believes it is time to reconsider whether the TSR should continue to exempt B2B telemarketing at all, or at a minimum, B2B telemarketing of digital marketing services or imposter scams that harm businesses.[182] The Commission also believes there is sufficient evidence to apply the TSR's prohibitions against making material misrepresentations or false or misleading statements in B2B telemarketing and seeks comment on this proposal in the NPRM.

3. Market Changes in People's Work Experience

In addition to the Commission's law enforcement experience, the Commission also notes that since it last considered making substantive changes to the exemption in 2003, technological advancements, along with current events, have drastically affected where people typically perform their jobs as well as the types of jobs they perform. Specifically, technological changes have provided people more workplace flexibilities,[183] resulting in greater numbers of people working from home on either a part-time or full-time basis.[184] But more significantly, the COVID–19 pandemic has resulted in an unprecedented number of people working from home since March 2020.[185] Although it is difficult to predict whether people will continue to work from home in such large numbers in the future, industry analysts currently believe businesses will provide greater work flexibilities to their employees post-pandemic.[186] The Commission's

[175] *See supra* note 169.

[176] *See, e.g., FTC* v. *Your Yellow Book Inc.,* No. 14–cv–786–D (W.D. Ok. July 24, 2014), *available at https://www.ftc.gov/system/files/documents/cases/140807youryellowbookcmpt.pdf* (last visited Jan. 31, 2022); *FTC* v. *OnlineYellowPagesToday.com, Inc.,* No. 14–cv–0838 RAJ (W.D. Wa. June 9, 2014), *available at https://www.ftc.gov/system/files/documents/cases/140717onlineyellowpagescmpt.pdf* (last visited Jan. 31, 2022); *FTC* v. *Modern Tech. Inc., et. al.,* No. 13–cv–8257 (Nov. 18, 2013) *available at https://www.ftc.gov/sites/default/files/documents/cases/131119yellowpagescmpt.pdf* (last visited Jan. 31, 2022); *FTC* v. *6555381 Canada Inc. d/b/a Reed Publishing,* No. 09–cv–3158 (N.D. Ill. May 27, 2009) *available at https://www.ftc.gov/sites/default/files/documents/cases/2009/06/090602reedcmpt.pdf* (last visited Jan. 31, 2022); *FTC* v. *6654916 Canada Inc. d/b/a Nat'l. Yellow Pages Online, Inc.,* No. 09–cv–3159 (N.D. Ill. May 27, 2009), *available at https://www.ftc.gov/sites/default/files/documents/cases/2009/06/090602nypocmpt.pdf* (last visited Jan. 31, 2022); *FTC* v. *Integration Media, Inc.,* No. 09–cv–3160 (N.D. Ill. May 27, 2009), *available at https://www.ftc.gov/sites/default/files/documents/cases/2009/06/090602goamcmpt.pdf* (last visited Jan. 31, 2022); *FTC* v. *Datacom Mktg. Inc., et. al.,* No. 06–cv–2574 (N.D. Ill. May 9, 2006), *available at https://www.ftc.gov/sites/default/files/documents/cases/2006/05/060509datacomcomplaint.pdf* (last visited Jan. 31, 2022); *FTC* v. *Datatech Commc'ns, Inc.,* No. 03–cv–6249 (N.D. Il. Aug. 3, 2005) (filing amended complaint), *available at https://www.ftc.gov/sites/default/files/documents/cases/2005/08/050825compdatatech.pdf* (last visited Jan. 31, 2022); *FTC* v. *Ambus Registry, Inc.,* No. 03–cv–1294 RBL (W.D. Wa. June 16, 2003), *available at https://www.ftc.gov/sites/default/files/documents/cases/2003/07/ambuscomp.pdf* (last visited Jan. 31, 2022).

[177] *See FTC* v. *Epixtar Corp., et. al.,* No. 03–cv–8511(DAB) (S.D.N.Y. Nov. 3, 2003), *available at https://www.ftc.gov/sites/default/files/documents/cases/2003/11/031103comp0323124.pdf* (last visited Jan. 31, 2022); *FTC* v. *Mercury Marketing of Delaware, Inc.,* No. 00–cv–3281 (E.D. Pa. Aug. 12, 2003) (filing for an Order to Show Cause Why Defendants Should Not be Held in Contempt), *available at https://www.ftc.gov/sites/default/files/documents/cases/2003/08/030812contempmercurymarketing.pdf* (last visited Jan. 31, 2022).

[178] *See, e.g., FTC* v. *Pointbreak Media, LLC,* No. 18–cv–61017–CMA (S.D. Fla. May 7, 2018), *available at https://www.ftc.gov/system/files/documents/cases/matter_1723182_pointbreak_complaint.pdf* (last visited Jan. 31, 2022); *FTC* v. *7051620 Canada, Inc.* No. 14–cv–22132 (S.D. Fla. June 9, 2014), *available at https://www.ftc.gov/system/files/documents/cases/140717nationalbusadcmpt.pdf* (last visited Jan. 31, 2022).

[179] A 2018 survey conducted by the Better Business Bureau revealed that the same scams that harm consumers, such as tech support scams and imposter scams, also harm small businesses, and that 57% of scams that impact small businesses are perpetrated through telemarketing. Better Business Bureau, *Scams and Your Small Business Research Report,* at 9–10 (June 2018), *available at https://www.bbb.org/globalassets/local-bbbs/council-113/media/small-business-research/bbb_smallbizscamsreport-final-06-18.pdf* (last visited Jan. 31, 2022).

[180] *See, e.g., FTC* v. *Production Media Co.,* No. 20–cv–00143–BR (D. Or. Jan. 23, 2020), *available at https://www.ftc.gov/system/files/documents/cases/production_media_complaint.pdf* (last visited Jan. 31, 2022).

[181] *See, e.g., FTC* v. *DOTAuthority.com,* No. 16–cv–62186 (S.D. Fla. Sept. 13, 2016) *available at https://www.ftc.gov/system/files/documents/cases/162017dotauthoriity-cmpt.pdf* (last visited Jan. 31, 2022); *FTC* v. *D & S Mktg. Solutions LLC,* No. 16–cv–01435–MSS–AAS (M.D. Fla. June 6, 2016), *available at https://www.ftc.gov/system/files/documents/cases/160621dsmarketingcmpt.pdf* (last visited Jan. 31, 2022).

[182] *See supra* note 186; *see also,* FTC Blog, *Protecting Small Business from Imposters* (Jan. 9 2020), *available at https://www.consumer.ftc.gov/blog/2020/01/protecting-small-business-imposters* (last visited Jan. 31, 2022).

[183] *See* Rachel M. Krantz-Kent, Monthly Labor Review: Where did Workers Perform Their Jobs in the Early 21st Century?, U.S. Bureau of Labor and Statistics (July 2019), *available at https://www.bls.gov/opub/mlr/2019/article/where-did-workers-perform-their-jobs.htm* (last visited Jan. 31, 2022) (noting that ''advances in information and communication technology allow people to reach their colleagues and clients by phone, email, or text from nearly anywhere, at all hours of the day'' and that the ''development and expansion of secure computer networks, cloud computing, and wireless connections provide additional flexibility in where and when work can be done'').

[184] A 2017 survey estimated that approximately 43% of Americans spend some time working from home, with increasing numbers working remotely four to five days a week. Niraj Chokshi, *Out of the Office: More People Are Working Remotely, Survey Finds,* N.Y. Times, Feb. 15, 2017, *available at https://www.nytimes.com/2017/02/15/us/remote-workers-work-from-home.html* (last visited Jan. 31, 2022). *See also* U.S. Bureau of Labor Statistics (''BLS''), *Ability to Work From Home: Evidence From Two Surveys and Implications for the Labor Market in the COVID–19 Pandemic,* at n.1 (June 2020), *available at https://www.bls.gov/opub/mlr/2020/article/ability-to-work-from-home.htm#_edn1* (last visited Jan. 31, 2022) (citing to a survey conducted by Global Workforce Analytics that reported the number of workers who worked at home at least half the time increased by 115% from 2005 to 2017); *see also* BLS, Job *Flexibilities and Work Schedules—2017–2018: Data from the American Time Use Survey* (Sept. 19, 2019), *available at https://www.bls.gov/news.release/flex2.nr0.htm* (last visited Jan. 31, 2022) (reporting that approximately 25% of wage and salary workers worked at home occasionally); BLS, *Work at Home Summary in 2004* (Sept. 25, 2005), *available at https://www.bls.gov/news.release/homey.nr0.htm* (last visited Jan. 31, 2022) (reporting that approximately 15% of workers reported working from home at least once per week).

[185] The Federal Reserve, *Update on the Economic Well-Being of U.S. Households: July 2020 Results,* at 4 (Sept. 22, 2020), *available at https://www.federalreserve.gov/publications/files/2019-report-economic-well-being-us-households-update-202009.pdf* (last visited Jan. 31, 2022) (reporting that approximately 41% and 31% of workers were working from home when the surveys were conducted in April 2020 and July 2020, respectively.).

[186] *See* Press Release, Gartner, Inc., Gartner HR Survey Reveals 41% of Employees Likely to Work Remotely at Least Some of the Time Post Coronavirus Pandemic (April 14, 2020), *available at https://www.gartner.com/en/newsroom/press-releases/2020-04-14-gartner-hr-survey-reveals-41—of-employees-likely-to-* (last visited Jan. 31, 2022); *See also,* McKinsey & Company, The Future of Telework after Covid–19 (Feb. 18, 2021), *available at https://www.mckinsey.com/featured-insights/future-of-work/the-future-of-work-after-covid-19*

Continued

DNC Registry is meant, in part, to protect consumers' privacy from an abusive pattern of calls.[187] With more people working from home, the likelihood B2B telemarketing will impinge on the privacy of a consumer's home is escalating. This raises the question whether the DNC Registry will still be able to effectively protect consumers' privacy if the TSR is not extended to cover B2B telemarketing.

Additionally, the rise of the gig economy and the economic impact of the pandemic has resulted in more people utilizing alternative work arrangements to supplement their income, or as a means of full-time employment.[188] The gig economy refers to alternative work arrangements including independent contractors, online platform workers, contract firm work, on-call workers, and temporary workers.[189] Given the nature of gig work, it is likely gig workers utilize their personal phones for business purposes rather than relying on separate phone lines dedicated for business purposes. Thus, for gig workers, allowing B2B telemarketing might subject them to an increasing number of unwanted calls they cannot avoid by using call-blocking technology [190] or by placing their numbers on the FTC's DNC Registry.[191] This is not a new dilemma; one commenter to the Regulatory Review highlighted it as a challenge for home-based businesses several years ago.[192] But it may be on the rise along with the gig economy. This issue likely affects more than just home-based businesses and applies to any person who utilizes one phone for both personal purposes and business purposes. Despite the Commission's amendments in 2015 to make explicit that the B2B telemarketing exemption only applies to the sale of goods or services to a business, unscrupulous telemarketers could take advantage of this rising trend to assert the B2B exemption should apply if a person does have a dual purpose phone.

In light of these changes in workforce dynamics, the Commission is seeking comment on whether the TSR should continue to exempt B2B telemarketing calls. Specifically, the Commission seeks comments on whether: (1) The exemption should be repealed in its entirety; [193] (2) the exemption should be partially repealed so that only specific provisions of the TSR would apply to B2B telemarketing; or (3) the exemption should be partially repealed so that the TSR applies to a subset of B2B telemarketing based on, for example, the particular goods or services offered for sale.

Because, as PACE has noted, telemarketers cannot easily differentiate between residential phone numbers and business phone numbers,[194] the Commission believes it is possible many telemarketers who engage in telemarketing to businesses may already ensure that they do not make calls to numbers on the FTC's DNC Registry even though they are not currently required to comply with the DNC provisions of the TSR. As such, the Commission is also particularly interested in seeking comment on the number of sellers or telemarketers who engage in telemarketing to businesses. The Commission is also interested in whether, in the ordinary course of business, such sellers or telemarketers make any attempts to determine whether a phone number is on the FTC's DNC Registry or to differentiate between phone numbers used for personal purposes and those used for business purposes.

From its law enforcement experience and through its policy work in connection with the Every Community Initiative, the Commission is cognizant that fraud and other consumer and business concerns can have disproportionate negative impacts on underserved communities.[195] Thus, the Commission is also interested in understanding whether its proposal to apply more completely the TSR to B2B telemarketing will impact underserved communities differently. For example, would applying the TSR to B2B telemarketing impose greater burdens on minority-owned businesses engaged in telemarketing? Would it create barriers to entrepreneurship when entrepreneurs from communities of color are already underrepresented compared to their share of the population?[196] Or would it provide greater protection to minority-owned businesses against fraud and disruptive telemarketing? The Commission has found very few sources of data on these issues and invites comments that can help the Commission understand the full impact of its proposal on underserved communities.

(last visited Jan. 31, 2022) (reporting that approximately 4–5 times more telework is possible post Covid–19 in advanced economies and in jobs in which remote work can be done without loss of productivity and that a survey of executives revealed they planned to reduce their office footprint by approximately 30%); PwC, US Remote Work Survey (Jan. 12, 2021), *available at https://www.pwc.com/us/en/library/covid-19/us-remote-work-survey.html#content-free-1-24f5* (last visited Jan. 31, 2022) (reporting a hybrid workplace where employees rotate in and out of the offices configured for shared spaces is a likely outcome post Covid–19).

[187] 2003 TSR Amendments, 68 FR at 4631.

[188] Shane McFeely and Ryan Pendell, *The Gig Economy and Alternative Work Arrangements,* at 6 (Aug. 18, 2018), *available at https://www.gallup.com/workplace/240929/workplace-leaders-learn-real-gig-economy.aspx* (last visited Jan. 31, 2022) (reporting approximately 36% of workers are involved in the gig economy); *see also* The Federal Reserve, Report on the Economic Well-Being of U.S. Households in 2019, Featuring Supplemental Data from April 2020, at 18 (May 2020), *available at https://www.federalreserve.gov/publications/files/2019-report-economic-well-being-us-households-202005.pdf* (last visited Jan. 31, 2022) (reporting approximately one in three of all adults engaged in gig work). Another survey estimated that approximately 30% of the population freelanced or participated in the gig economy in the U.S., and projected that approximately 50% of the population will be freelancing in 10 years. Elaine Pofeldt, *Are We Ready For A Workforce That Is 50% Freelance?,* Forbes, Oct. 17, 2017, *available at https://www.forbes.com/sites/elainepofeldt/2017/10/17/are-we-ready-for-a-workforce-that-is-50-freelance/#6c123af23f82* (last visited Jan. 31, 2022). *See also,* Matthew Lavietes and Michael McCoy, *Waiting for Work: Pandemic Leaves U.S. Gig Workers Clamoring for Jobs,* Reuters, Oct. 19, 2020, available at *https://www.reuters.com/article/us-biggerpicture-health-coronavirus-gigw/waiting-for-work-pandemic-leaves-u-s-gig-workers-clamoring-for-jobs-idUSKBN2741DM* (last visited Jan. 31, 2022) (reporting that with unemployment soaring, more workers are joining the gig economy).

[189] *See* Shane McFeely and Ryan Pendell, *The Gig Economy and Alternative Work Arrangements,* at 6 (Aug. 18, 2018), *available at https://www.gallup.com/workplace/240929/workplace-leaders-learn-real-gig-economy.aspx* (last visited Jan. 31, 2022) (examples of gig workers include Uber drivers, Task Rabbit workers, contract nurses, and free lancers).

[190] While call-blocking technology may be effective for a consumer's personal phone, businesses and individuals using their personal phones for business purposes may not feel able to employ call-blocking technology to the same extent if they anticipate receiving calls from prospective customers.

[191] Because the TSR exempts B2B telemarketing calls, a seller or telemarketer engaged in B2B telemarketing may argue that it is not prohibited from calling people on the FTC's Do Not Call registry if those people are also using their phone numbers for business purposes and the seller or telemarketer is calling to sell a good or service to a business.

[192] West Italian, No. 00113, at 3.

[193] The Commission is publishing an NPRM in conjunction with this ANPR. The NPRM proposes, among other things, prohibiting deception in business-to-business telemarketing calls. This ANPR seeks additional comment on the B2B exemption including whether it should be repealed in its entirety.

[194] PACE, No. 00107, at 6.

[195] *See* Serving Communities of Color: A Staff Report on the Federal Trade Commission's Efforts to Address Fraud and Consumer Issues Affecting Communities of Color, *available at https://www.ftc.gov/system/files/documents/reports/serving-communities-color-staff-report-federal-trade-commissions-efforts-address-fraud-consumer/ftc-communities-color-report_oct_2021-508-v2.pdf* (last visited Jan. 31, 2022).

[196] *See,* Michael McManus, Minority Business Ownership: Data from the 2012 Survey of Business Owners, Office of Advocacy, U.S. Small Business Administration, at 1–2 (Sept. 14, 2016), *available at https://cdn.advocacy.sba.gov/wp-content/uploads/2016/09/07141514/Minority-Owned-Businesses-in-the-US.pdf* (last accessed June 29, 2021).

C. Questions for Business-to-Business Telemarketing Calls

Questions Regarding Possible Benefits to People and Businesses From Repealing the B2B Exemption

1. How many telemarketing calls do businesses and non-profit charitable organizations receive on average per year, per month, or per day? What kinds of goods or services are the subject of those B2B telemarketing calls? Do businesses and non-profit charitable organizations receive B2B telemarketing calls utilizing prerecorded messages, including soundboard technology? If yes, how many do businesses receive on average per year, per month, or per day? What kinds of goods or services are sold to businesses and non-profit charitable organizations via prerecorded message? How many of these calls involve soundboard technology?

2. Do businesses and non-profit charitable organizations receive telemarketing calls soliciting charitable contributions? If yes, how many such calls do businesses receive on average per year, per month, or per day? On behalf of what kinds of organizations do telemarketers solicit charitable contributions from businesses and non-profit charitable organizations? Do businesses and non-profit charitable organizations receive B2B telemarketing that use prerecorded messages to solicit charitable contributions? How many such calls do businesses and non-profit charitable organizations receive on average per year, per month, or per day? Do those messages utilize soundboard technology?

3. Do people or businesses support repealing the business-to-business exemption from the TSR? If not, why not? If yes, what harm does B2B telemarketing cause to people, to small businesses, or to businesses of any size? What is an accurate estimate of annual harm suffered by businesses as a result of B2B telemarketing?

4. Do underserved communities support repealing the business-to-business exemption from the TSR? If not, why not? If yes, what harm does B2B telemarketing cause to underserved communities? What is an accurate estimate of annual harm suffered by underserved communities as a result of B2B telemarketing?

5. Do B2B telemarketing calls cause harm to non-profit charitable organizations? If yes, what harm does B2B telemarketing calls cause? If not, why not?

6. Should the TSR apply to all B2B telemarketing calls? If so, why? If not, why not? If not, what types of B2B telemarketing calls should the TSR apply to and why? What harm do those B2B telemarketing calls cause to people, businesses, or non-profit charitable organizations?

7. Should the TSR apply only to B2B telemarketing calls offering digital marketing goods or services to businesses or non-profit charitable organizations and imposter scams? If not, why not? If yes, why? How would you define digital marketing goods or services? What harm is caused by telemarketing these goods or services to businesses or non-profit charitable organizations? If the TSR were applied to B2B telemarketing calls of digital marketing goods or services or imposter scams harming businesses, should the TSR carve out any exceptions? If yes, what exceptions and why?

8. Should the TSR be limited to B2B telemarketing calls of specific goods or services? If yes, what goods or services? What harm is caused by telemarketing those goods or services to businesses or non-profit charitable organizations? What existing Federal or state laws apply to the telemarketing of those goods or services to businesses or non-profit charitable organizations? Why are the existing laws governing the sale of those goods or services to businesses or non-profit charitable organizations insufficient to prevent the identified harm? Should all provisions of the TSR apply to the telemarketing of those goods or services to businesses? If not, why not and what specific TSR provisions should apply? Should there be any carve outs from applying the TSR or specific provisions of the TSR to the telemarketing of those goods or services to businesses or non-profit charitable organizations?

9. Should the TSR eliminate the exemption for inbound B2B telemarketing calls? If not, why not? If so, why? What harm is caused by inbound B2B telemarketing?

10. Should the TSR eliminate the exemption for outbound B2B telemarketing calls? If not, why not? If so, why? What harm is caused by outbound telemarketing that affects businesses or non-profit charitable organizations?

11. Should all of the provisions of the TSR apply to B2B telemarketing calls? If yes, why? If not, which provision(s) of the TSR should apply to B2B telemarketing calls? What harm would be prevented by applying that provision?

12. Should the TSR's provisions regarding the use of prerecorded messages apply to B2B telemarketing calls? If no, why not? If yes, why? What harm is caused by B2B telemarketing calls that utilize prerecorded messages?

13. How many people work from home? How many days per week do people work from home? Do people who work from home use a separate phone number for business purposes? Do people who work from home use their personal mobile or home landline for business purposes? Do people who work from home receive B2B telemarketing calls? Do they receive those calls on their personal phone numbers or business phone numbers? How many B2B telemarketing calls do they receive? Do any of those B2B telemarketing calls use prerecorded messages? How many B2B telemarketing calls using prerecorded messages do they receive? What types of goods or services are offered for sale in B2B telemarketing calls that use prerecorded messages?

14. How many people are employed in the gig economy? How many gig workers use a separate business phone number for their gig work? How many gig workers use one phone number for personal purposes and another for their gig work? Do gig workers receive B2B telemarketing calls? How many B2B telemarketing calls do they receive? Do any of those B2B telemarketing calls use prerecorded messages? How many B2B telemarketing calls that use prerecorded messages do they receive? What types of goods or services are offered for sale in the B2B telemarketing calls that gig workers receive?

15. Do businesses or non-profit organizations employ call-blocking technologies? If yes, do they successfully reduce the number of unwanted B2B telemarketing calls? If they don't use such technologies, why not?

16. Do people who work from home or gig workers use call-blocking technologies? If yes, do they use such technologies on their business phones or personal phones? Do the call-blocking technologies successfully reduce the number of unwanted telemarketing calls, including unwanted B2B calls, if any? If they don't use such technologies, why not?

17. How many home-based businesses have a dedicated phone number for business purposes? How many B2B telemarketing calls do such businesses receive on their business phone numbers on average per year, per month, or per day? How many home-based businesses utilize one phone number for both personal and business purposes? How many B2B telemarketing calls do such businesses receive on their dual purpose phone number on average per year, per month, or per day? Do home-based businesses use call-blocking technologies? If yes, do such businesses use call-blocking

technologies on their business lines? Do call-blocking technologies successfully reduce the number of unwanted telemarketing calls, including unwanted B2B calls, if any? If not, why don't home-based businesses use call-blocking technologies? What types of goods or services are offered for sale in the B2B telemarketing calls that home-based businesses receive?

18. How many small businesses have a dedicated phone number for business purposes? How many B2B telemarketing calls do such businesses receive on their business lines on average per year, per month, or per day? How many small businesses have one phone number that they use for personal and business purposes? How many B2B telemarketing calls do such businesses receive on their dual purpose phone number on average per year, per month, or per day? Do small businesses use call-blocking technologies? If yes, do small businesses use call-blocking technologies on their business lines? Do call-blocking technologies successfully reduce the number of telemarketing calls, including unwanted B2B calls, if any? If not, why don't small businesses use call-blocking technologies? What types of goods or services are offered for sale in the B2B telemarketing calls that small businesses receive?

19. How do sellers or telemarketers determine whether a phone number belongs to a person or a business? Has this determination been made more difficult by people working from home or participating in the gig economy?

Questions Regarding the Potential Burden to Telemarketers and Sellers From Repealing the B2B Exemption

1. How many sellers or telemarketers engage in telemarketing to businesses? How much revenue do sellers or telemarketers make in telemarketing to businesses and how would removing the exemption for B2B sales affect their revenue?

2. How many sellers or telemarketers engage in telemarketing exclusively to businesses and do not engage in telemarketing to people?

3. How many telemarketers solicit charitable contributions from businesses? Do those same telemarketers also solicit charitable contributions from people?

4. What goods or services do sellers offer for sale to businesses through telemarketing? Do sellers utilize other means of marketing those same goods or services to businesses? Do sellers sell those same goods or services to people?

5. How many outbound B2B telemarketing calls do sellers or telemarketers make on average per year, per month, or per day? How many of those calls or what percentage of those outbound B2B telemarketing calls result in a sale? How many inbound B2B telemarketing calls do sellers or telemarketers receive on average per year, per month, or per day? How many of those calls or what percentage of those inbound telemarketing calls result in a sale? Do sellers or telemarketers keep records of the outbound calls or inbound B2B telemarketing calls in the ordinary course of business? What type of records do sellers or telemarketers keep of those telemarketing calls? How long are they kept?

6. Do sellers or telemarketers offer goods or services to businesses by using prerecorded messages, including through soundboard technology? If so, how many B2B telemarketing calls do sellers or telemarketers make using prerecorded messages on average per year, per month, or per day? How many of those calls result in a sale?

7. Do sellers or telemarketers make B2B telemarketing calls involving debt relief services? If so, how many calls involving debt relief services do sellers or telemarketers make on average per year, per month, or per day? How many of those calls or what percentage of those calls result in a sale?

8. What is the estimated burden of complying with the TSR if the B2B exemption is repealed for both outbound and inbound telemarketing? What is the basis for the estimated burden?

9. What is the estimated burden of complying with the TSR if the B2B exemption for outbound telemarketing is repealed? What is the basis for the estimated burden?

10. What is the estimated burden to underserved communities of complying with the TSR if the B2B exemption is repealed for outbound telemarketing? What is the estimated burden to underserved communities of complying with the TSR if the B2B exemption is repealed for inbound telemarketing? What is the basis for the estimated burden?

11. What is the estimated burden of complying with the TSR if the B2B exemption is repealed for the sale of digital marketing goods or services or imposter scams that harm businesses? What is the basis for the estimated burden?

12. What is the estimated burden of complying with the TSR if the B2B telemarketing calls are required to comply with the TSR's provisions regarding prerecorded messages? What is the basis for the estimated burden?

13. Do sellers or telemarketers who engage in B2B telemarketing take any steps to ensure they are not making calls to phone numbers on the DNC Registry? If so, what steps do sellers or telemarketers take? Do such sellers or telemarketers also engage in telemarketing to people? Do sellers or telemarketers who engage in B2B telemarketing exclusively take steps to ensure that they are not making calls to phone numbers on the FTC's DNC Registry? If so, what steps do such sellers or telemarketers take? Do they access the DNC Registry?

D. Questions for Negative Option Notice and Cancelation Mechanisms

As discussed in Section IV.C, the Commission seeks comment on the proposal that negative option sellers and telemarketers provide consumers with notice and the opportunity to cancel before they are billed for negative option products. The Commission also seeks comment on the scope of deceptive or abusive inbound telemarketing with a negative option feature.

1. How many telemarketing calls involve a negative option feature on average per year, per month, or per day? How many of those calls or what percentage of those calls result in a sale?

2. Which industries offer negative option goods or services through telemarketing and what products do they sell? How many of the goods or services sold by these industries are sold through telemarketing that includes negative options?

3. When sellers or telemarketers sell goods, or services with negative option features, how often (*e.g.,* weekly, monthly, annually) do the sellers bill consumers and businesses?

4. Do sellers or telemarketers already provide consumers notice when consumers and businesses are billed as part of negative option programs? How is that notice provided? How often is the notice provided before the consumer and business is billed? What is the cost of providing this notice?

5. Do consumers want notification that they are about to be charged for a subscription plan? If so, how would they like to be notified? How often would they like to be notified? When would they like the notification to take place (*e.g.,* one week before being charged)?

6. What cancelation mechanisms do sellers or telemarketers provide for consumers and businesses to cancel their negative option programs? What is the cost of these mechanisms? Are some mechanisms easier for consumers to use than others? If sellers or telemarketers offer multiple cancelation mechanisms, how often do consumers use each mechanism?

7. Do consumers and businesses who purchase a negative option product or service through telemarketing have a preference for how they communicate with the seller (*e.g.,* email, phone, online chat, or some other method)?

8. Do consumers and businesses who purchase negative option products or services through telemarketing typically have email accounts where they can receive notice of negative option programs? Do they typically provide email addresses to sellers or telemarketers? Do they have a preference for how they cancel the negative option or service? If not, what is the best way for those consumers and businesses to cancel negative-option programs?

9. When sellers or telemarketers sell negative option programs to consumers and businesses, what personal information do they obtain? How often do sellers or telemarketers communicate with consumers by email?

10. How often do sellers or telemarketers use unfair or deceptive acts or practices to sell goods or services with a negative option feature solely through inbound telemarketing that are not part of an upsell? Are goods or services other than tech support sold in this manner? If so, which goods or services and how often are they sold in this manner? Should the TSR be further amended to provide consumers with additional protections against these deceptive acts or practices? How so?

VI. Comment Submissions

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before August 2, 2022. Write ''Telemarketing Sales Rule ANPR, R411001'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Because of the public health emergency in response to the COVID–19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comment online through the *https://www.regulations.gov* website. To ensure the Commission considers your online comment, please follow the instructions on the web-based form.

If you file your comment on paper, write ''Telemarketing Sales Rule ANPR, R411001'' on your comment and on the envelope and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website, *https://www.regulations.gov,* you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else'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 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.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov*—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this document and the news release describing it. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments it receives on or before August 2, 2022. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2022–10922 Filed 6–2–22; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 310

RIN 3084–AB19

Telemarketing Sales Rule

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') seeks public comment on proposed amendments to the Telemarketing Sales Rule (''TSR''). The proposed amendments would require telemarketers and sellers to maintain additional records of their telemarketing transactions, prohibit material misrepresentations and false or misleading statements in business to business (''B2B'') telemarketing transactions, and add a new definition for the term ''previous donor.'' The modified recordkeeping requirements are necessary to protect consumers from deceptive or abusive telemarketing practices and support the Commission's law enforcement mandate to enforce the TSR. The prohibition on material misrepresentations and false or misleading statements is necessary to protect businesses from deceptive telemarketing practices. The new definition of ''previous donor'' will clarify that a telemarketer may not use prerecorded messages to solicit charitable donations on behalf of a charitable organization unless the recipient of the call made a donation to that particular charitable organization within the prior two years.

DATES: Comments must be received by August 2, 2022.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Telemarketing Sales Rule (16 CFR part 310—NPRM) (Project No. R411001)'' on your comment and file your comment through *https://www.regulations.gov.* If you prefer to file your comment on paper, mail your

comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT:

Benjamin R. Davidson, (202) 326–3055, *bdavidson@ftc.gov,* or Patricia Hsue, (202) 326–3132, *phsue@ftc.gov,* Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Mail Stop CC–8528, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Trade Commission issues this notice of proposed rulemaking (''NPRM'') to invite public comment on proposed amendments to the TSR (part 310). The proposed amendments to the recordkeeping requirements reflect evolutions in the marketplace that make it more difficult for the Commission and other regulators to obtain records of sellers' and telemarketers' telemarketing activities to enforce the TSR. The principal proposed amendments would require sellers or telemarketers to retain additional records of their telemarketing activities and clarify the existing recordkeeping requirements to more clearly delineate the information telemarketers or sellers must keep to comply with those provisions. The Commission is also proposing to prohibit in B2B telemarketing transactions: (1) Several types of material misrepresentations in the sale of goods or services; and (2) false or misleading statements to induce a person to pay for goods or services or to induce a charitable contribution (collectively, ''misrepresentations''). This prohibition is necessary to help protect businesses from deceptive telemarketing practices. Finally, the Commission is proposing a new definition of the term ''previous donor'' to clarify that telemarketers are prohibited from using prerecorded messages to solicit charitable contributions from consumers on behalf of a non-profit charitable organization unless the consumer donated to that non-profit charitable organization within the last two years.

This NPRM invites written comments on all issues raised by the proposed amendments, including answers to the specific questions set forth in Section IV of this document.

II. Overview of the Telemarketing Sales Rule

Congress enacted the Telemarketing and Consumer Fraud and Abuse Prevention Act (''Telemarketing Act'' or ''Act'') in 1994 to curb deceptive and abusive telemarketing practices and provide key anti-fraud and privacy protections for consumers receiving telephone solicitations to purchase goods or services.[1] The Telemarketing Act directed the Commission to adopt a rule prohibiting deceptive or abusive telemarketing practices, including prohibiting telemarketers from undertaking a pattern of unsolicited calls that reasonable consumers would consider coercive or abusive of their privacy, restricting the time of day telemarketers may make unsolicited calls to consumers, and requiring telemarketers to promptly and clearly disclose that the purpose of the call is to sell goods or services.[2] The Act also generally directed the Commission to address in its rule other acts or practices it found to be deceptive or abusive, including acts or practices of entities or individuals that assist and facilitate deceptive telemarketing, and to consider including recordkeeping requirements.[3] Finally, the Act authorized state Attorneys General, or other appropriate state officials, and private litigants to bring civil actions in federal district court to enforce compliance with the FTC's rule.[4]

Pursuant to the Act's directive, the FTC promulgated the TSR on August 23, 1995.[5] The FTC included recordkeeping requirements in § 310.5, stating the provision was ''necessary to enable law enforcement agencies to ascertain whether sellers and telemarketers are complying with the requirements of the Final Rule, to identify persons who are involved in any challenged practices, and to identify customers who may have been injured.''[6] The FTC also included a prohibition on misrepresenting several categories of material information in § 310.3(a)(2).[7] The categories were based on ''established case law'' and ''allegations in complaints filed in recent years by the Commission.''[8] The Commission also included a prohibition on making false or misleading statements to induce a person to pay for goods or services, or to induce a charitable contribution, in § 310.3(a)(4).[9] Section 310.3(a)(4) was designed to ''provide[] law enforcement with flexibility to address new ways that sellers and telemarketers engaged in fraud might attempt to take consumers' money.''[10]

The original TSR excluded several types of calls, including B2B calls other than those that sold office and cleaning supplies.[11] The Commission required B2B calls that sold office and cleaning supplies to comply with the TSR because, in the Commission's experience, calls involving the sale of those products were ''by far the most significant business-to-business problem area.''[12]

Since then, the Commission has amended the Rule on four occasions: (1) In 2003 to, among other things, create the National Do-Not Call Registry and extend the Rule to telemarketing calls soliciting charitable contributions;[13] (2) in 2008 to prohibit prerecorded messages (''robocalls'') selling a good or service or soliciting charitable contributions;[14] (3) in 2010 to ban the telemarketing of debt relief services requiring an advance fee;[15] and (4) in 2015 to bar the use in telemarketing of certain novel payment mechanisms widely used in fraudulent transactions.[16]

[1] 15 U.S.C. 6101–6108.

[2] 15 U.S.C. 6102(a)(3). The Telemarketing Act was subsequently amended in 2001 to add Section 15 U.S.C. 6102(a)(3)(D), which requires a telemarketer to promptly and clearly disclose that the purpose of the call is to solicit charitable contributions. *See* Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (''USA PATRIOT Act''), Public Law 107–56, 115 Stat. 272 (Oct. 26, 2001).

[3] 15 U.S.C. 6101(a). *See also* 2002 notice of proposed rulemaking, 67 FR 4492, 4510 (Jan. 30, 2002).

[4] 15 U.S.C. 6103, 6104.

[5] *See* Statement of Basis and Purpose and Final Rule (''Original TSR''), 60 FR 43842 (Aug. 23, 1995).

[6] *Id.* at 43857.

[7] *Id.* at 43848.

[8] *Id.*

[9] *Id.* at 43851.

[10] *Id.*

[11] *Id.* at 43867.

[12] *Id.* at 43861.

[13] *See* Statement of Basis and Purpose and Final Amended Rule (''2003 TSR Amendments''), 68 FR 4580 (Jan. 29, 2003) (adding Do Not Call Registry, charitable solicitations, and other provisions).

[14] *See* Statement of Basis and Purpose and Final Rule Amendments (''2008 TSR Amendments''), 73 FR 51164 (Aug. 29, 2008) (addressing the use of robocalls).

[15] *See* Statement of Basis and Purpose and Final Rule Amendments (''2010 TSR Amendments''), 75 FR 48458 (Aug. 10, 2010) (adding debt relief provisions). The prohibition on misrepresenting material aspects of debt relief services in 310.3(a)(2)(x) was added in 2010 along with other debt relief provisions. *See* 2010 TSR Amendments, 75 FR at 48498. The Commission subsequently published correcting amendments to the text of § 310.4 of the TSR. Telemarketing Sales Rule; Correcting Amendments, 76 FR 58716 (Sept. 22, 2011).

[16] *See* Statement of Basis and Purpose and Final Rule Amendments (''2015 TSR Amendments''), 80 FR 77520 (Dec. 14, 2015) (prohibiting the use of remotely created checks and payment orders, cash-to-cash money transfers, and cash reload mechanisms).

A. 2008 Robocall Amendment for Charitable Solicitations

Pursuant to the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (''USA PATRIOT Act''),[17] the Commission amended the TSR in 2003 to extend its coverage to telemarketing calls soliciting charitable contributions.[18] As part of that amendment, the Commission defined ''donor'' as ''any person solicited to make a charitable contribution.'' [19] The Commission declined to limit the definition of donor to those who have ''an established business relationship with the non-profit charitable organization.'' [20] The Commission stated its intent was for the term ''donor. . .[to] encompass not only those who have agreed to make a charitable contribution but also any person who is solicited to do so, to be consistent with [the Rule's] use of the term 'customer.' '' [21]

In 2008, the Commission amended the TSR to prohibit robocalls soliciting charitable donations unless the robocall was delivered to a ''member of, or previous donor to, a non-profit charitable organization on whose behalf the call is made'' and the seller or telemarketer otherwise complied with the provisions of § 310.4(b)(1)(v)(B).[22] In allowing robocalls to previous donors, the Commission stated it was recognizing the strong interests of non-profit charitable organizations in reaching those with ''whom the charity has an existing relationship—*i.e.,* members of, or previous donors to[,] the non-profit organization on whose behalf the calls are made . . . .'' [23] The Commission concluded that allowing ''telefunders to make impersonal prerecorded cold calls on behalf of charities that have no prior relationship with the call recipients . . . would defeat the amendment's purpose of protecting consumers' privacy.'' [24] Although the Commission's Statement of Basis and Purpose for the 2008 Amendment makes clear the Commission intended previous donor to mean a donor who has previously provided a charitable contribution to the particular non-profit charitable organization, the Commission did not include a definition of the term ''previous donor'' to explicitly effect that intention.

Because the TSR's definition of donor is ''any person solicited to make a charitable contribution,'' the Commission's 2008 Amendment could be misinterpreted as allowing a telemarketer to send robocalls to any consumer it had previously *solicited* for a donation on behalf of a non-profit charitable organization, regardless of whether the consumer actually agreed to donate to that charitable organization. Thus, the Commission proposes to add a new definition of ''previous donor'' to clarify the exemption, explicitly referencing consumers from whom the non-profit charitable organization has received a donation in the last two years.[25]

B. TSR's Recordkeeping Provisions Regulatory History

Since the Commission promulgated the TSR in 1995, it has not made substantial changes to its recordkeeping requirements under § 310.5. The TSR generally requires telemarketers and sellers to keep for a 24-month period records of: (1) Any substantially different advertisement, including telemarketing scripts; (2) lists of prize recipients, customers, and telemarketing employees directly involved in sales or solicitations; and (3) all verifiable authorizations or records of express informed consent or express agreement.[26] They may keep the records in any form and in the same manner and format as they would keep such records in the ordinary course of business, and they may allocate responsibilities of complying with the Rule's recordkeeping requirements between the seller and telemarketer.[27]

During its 2003 and 2010 rulemaking processes, the Commission considered whether it should modify the recordkeeping provisions in tandem with the substantive amendments under consideration.[28] In each instance, however, the Commission declined to make substantial modifications to that provision, deeming such changes unnecessary to enact the substantive amendments it was promulgating.[29] In its 2003 Amendment adding the DNC provisions and extending the TSR to charitable solicitations, the Commission inserted a reference to ''solicitations'' in § 310.5(a)(4) to require telemarketers and sellers to keep records of employees involved in charitable solicitations.[30] It also inserted the phrase ''express informed consent or express agreement'' in § 310.5(a)(5) to require sellers and telemarketers to keep records of those agreements, in addition to verifiable authorizations, since those agreements were newly added terms in the 2003 amendments.[31] For its 2010 Amendment, the Commission noted the existing recordkeeping requirements would extend to new providers of debt relief services as a result of the Amendment.[32]

In 2015, the Commission amended the TSR to expressly state a seller or telemarketer bears the burden of demonstrating that a seller has an existing business relationship (''EBR'') with a consumer whose number is on the Commission's Do Not Call (''DNC'') Registry, or has obtained express written agreement (''EWA'') from such a consumer, as required by § 310.4(b)(1)(iii)(B)(1)–(2).[33] The Commission stated that these two amendments reflected existing law, but the Commission adopted the amendments to make clear the burden of proof was on sellers and telemarketers to assert these affirmative defenses.[34] The Commission also reiterated this carve out from the DNC prohibitions applies only to sellers ''that obtained the EWA directly from, or has an EBR directly with, the person called.'' [35] The Commission, however, did not amend the recordkeeping requirements to clarify what records a seller or telemarketer must keep to assert these affirmative defenses, believing that telemarketers and sellers would naturally maintain such records in the ordinary course of business

[17] Public Law 107–56, 115 Stat. 272 (Oct. 26, 2001).

[18] 2003 TSR Amendments, 68 FR at 4582.

[19] *Id.* at 4590.

[20] *Id.*

[21] *Id.* at 4590–91.

[22] *See* 2008 TSR Amendments, 73 FR at 51185.

[23] *Id.* at 51193.

[24] *Id.* at 51194.

[25] The Commission proposes implementing a time limit for the existence of an established relationship so that consumers will not receive robocalls in perpetuity from organizations to which they have donated. The Commission chose two years to account for the possibility that consumers who donate annually may not necessarily donate exactly one year apart (*i.e.,* one year the consumer might donate in January and the following year the consumer might not donate until December). The Commission seeks public comment on whether two years is an appropriate time period.

[26] 16 CFR 310.5(a).

[27] 16 CFR 310.5(b) and (c).

[28] In 2003, the Commission added a recordkeeping requirement for the abandoned call safe harbor but did not include that provision in § 310.5(a). *See* 2003 TSR Amendments, 68 FR at 4645.

[29] *See, e.g.,* 2003 TSR Amendments, 68 FR at 4653–54 (declining to implement any of the suggested recordkeeping revisions that were raised in the public comments); 2010 TSR Amendments, 75 FR at 48502.

[30] 2003 TSR Amendments, 68 FR at 4653–54.

[31] *Id.*

[32] 2010 TSR Amendments, 75 FR at 48502.

[33] 2015 TSR Amendments, 80 FR at 77555–56.

[34] *Id.*

[35] *Id.* (emphasis added). As such, ''cold calls to consumers whose name and numbers were purchased from a third-party list broker are [still] prohibited under the TSR's do-not-call provisions because the calls are not placed by the specific seller that obtained the EWA or EBR.'' *Id.*

without affirmatively being required to do so.

The telemarketing landscape has changed drastically since the Commission promulgated the Rule's original recordkeeping provisions. Technological advancements have made it easier and cheaper for unscrupulous telemarketers to engage in illegal telemarketing, resulting in a greater proliferation of unwanted calls.[36] Technological advancements have also reduced the burden and costs of recordkeeping.[37] While the Commission has made substantial amendments to the TSR over the last 25 years to address the rise in unwanted calls—including by identifying new abusive and deceptive telemarketing practices such as prohibiting robocalls and calls to consumers on the DNC Registry [38]—the TSR's recordkeeping provisions have remained largely static. As such, they no longer adequately meet the needs of the Commission's law enforcement mission to protect consumers.

C. Law Enforcement Challenges in Enforcing the TSR

To date, the Commission has brought more than 150 enforcement actions against companies and telemarketers under the TSR for DNC, robocall, spoofed caller identification (''caller ID''), and assisting and facilitating violations.[39] In bringing those cases, the Commission has identified several challenges in obtaining the necessary records to determine whether a particular telemarketing campaign is covered by and compliant with the TSR, which entities are involved in the telemarketing campaign, and which consumers have been harmed by violations of the TSR.

The primary hurdles are in: (1) Identifying the telemarketer and seller responsible for the telemarketing campaign; (2) obtaining records of the telemarketing calls reflecting the date, time, duration, and disposition of each call, as well as the phone number(s) that placed and received each call (*i.e.* ''call detail records''); and (3) linking the content of the telemarketing calls with the call detail records to determine which TSR provisions might apply to the telemarketing activity.

The TSR currently requires telemarketers and sellers to retain records of ''all substantially different advertising, brochures, telemarketing scripts and promotional materials'' used in their telemarketing activities.[40] It does not require sellers or telemarketers to keep other records of their telemarketing activities including call detail records or records of the nature of their telemarketing campaigns, such as whether the campaign used prerecorded messages, placed calls to consumers (''outbound telemarketing'') or induced calls from consumers through advertising (''inbound telemarketing''), or solicited from consumers or businesses. Nor does it require telemarketers or sellers to keep records that link a particular telemarketing campaign to a set of call detail records. The Commission's law enforcement experience has shown, absent a recordkeeping requirement, it is increasingly difficult to obtain these critical records and associate the records with the nature, purpose, or content of a particular telemarketing campaign, frustrating the Commission's law enforcement efforts. As discussed below, the Commission proposes recordkeeping requirements that ensure it is able to adequately assess whether a telemarketing campaign complies with the TSR and remedy the current gaps impeding effective law enforcement.

When the TSR was promulgated in 1995, the Commission relied on consumer complaints about unwanted calls to evaluate whether a particular telemarketing campaign likely violated the TSR and warranted further investigation. It also relied on consumer complaints to identify the relevant telemarketer responsible for making the calls. Specifically, the Commission could use the calling number included in the consumer's complaint to identify the voice service provider (''voice provider'') [41] responsible for sending the call and send a civil investigative demand (''CID'') to the voice provider in question to identify the responsible telemarketer through the voice provider's billing records. The Commission could also obtain the voice provider's call detail records for that telemarketer and use that data as a proxy for the seller's or telemarketer's telemarketing campaign.

The proliferation of new technologies over the years has enabled bad actors to ''spoof'' or fake a calling number and send calls cheaply from within the United States and abroad.[42] As a result, bad actors have sent increasingly large numbers of unlawful spoofed calls, making it more difficult for law enforcement to identify the telemarketer and seller responsible for a particular telemarketing campaign and obtain the applicable call detail records.[43] For example, to identify a suspect telemarketer using ''spoofed'' calls, the Commission needs to issue CIDs to multiple voice providers in order to trace the call from the consumer to the telemarketer's voice provider. In some instances, by the time the Commission has identified the relevant voice provider, the voice provider may not have retained the records.[44] As such, the call detail records either no longer exist or are not available for law enforcement purposes, and the Commission cannot identify the bad actor responsible for the spoofed calls. While the Commission has employed other tools to successfully identify and take action against telemarketers violating the law, the absence of call detail records can present challenges, particularly in

[36] *See, e.g.,* Prepared Statement of the Federal Trade Commission Before the United States Senate Aging Committee on Commerce Science and Transportation: Abusive Robocalls and How We Can Stop Them (Apr. 18, 2018), *available at https://www.ftc.gov/system/files/documents/public_statements/1366628/p034412_commission_testimony_re_abusive_robocalls_senate_04182018.pdf* (last visited Jan. 31, 2022). From 2016 to 2020, the Commission received on average over 5.5 million Do Not Call complaints per year, and the DNC Registry currently has over 240 million active telephone numbers. FTC, Do Not Call Data Book 2020 (''2020 DNC Databook''), at 6 (Oct. 2020), *available at https://www.ftc.gov/system/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2020/dnc_data_book_2020.pdf* (last visited Jan. 31, 2022). By comparison, within one year of its launch, the DNC Registry had over 62 million active telephone numbers registered, and the Commission received over 500,000 Do Not Call complaints. *See* Annual Report to Congress for FY 2003 and 2004 Pursuant to the Do Not Call Implementation Act on Implementation of the National Do Not Call Registry, at 3 (Sept. 2005), *available at https://www.ftc.gov/sites/default/files/documents/reports/national-do-not-call-registry-annual-report-congress-fy-2003-and-fy-2004-pursuant-do-not-call/051004dncfy0304.pdf* (last visited Jan. 31, 2022); National Do Not Call Registry Data Book for Fiscal Year 2009, at 4 (Nov. 2009), *available at https://www.ftc.gov/sites/default/files/documents/reports_annual/fiscal-year-2009/091208dncadatabook.pdf* (last visited Jan. 31, 2022).

[37] *See infra* Section V.C. and note 95.

[38] *See supra* notes 5–13.

[39] *See* Enforcement of the Do Not Call Registry, *available at https://www.ftc.gov/news-events/media-resources/do-not-call-registry/enforcement* (last visited Jan. 31, 2022).

[40] 16 CFR 310.5(a).

[41] In this NPRM, a voice service provider broadly refers to any provider of telephony services, including telecommunications carriers, interconnected VoIP service providers, and any other voice service providers.

[42] *See supra* note 36. On June 25, 2019, the FTC announced ''Operation Call it Quits,'' which included 94 actions against illegal robocallers, many of which used spoofing technology. *See* Press Release, FTC, Law Enforcement Partners Announce New Crackdown on Illegal Robocalls (June 25, 2019), *available at https://www.ftc.gov/news-events/press-releases/2019/06/ftc-law-enforcement-partners-announce-new-crackdown-illegal* (last visited Jan. 31, 2022).

[43] *Id.*

[44] In other instances, voice providers assert it is cost prohibitive to retrieve because they only maintain records in an easily retrievable format for several months before archiving them in the ordinary course of business.

demonstrating violations of the TSR's do-not-call provisions.[45]

Even when the Commission is successful in obtaining the call detail records from the voice provider and identifying the seller or telemarketer responsible for the telemarketing campaign, that information is limited. As noted above, call detail records typically include only: (1) The phone number that placed the call (''calling number''); (2) the phone number that received the call (''called number''); (3) the date, time, and duration of the call; and (4) the disposition of the call (*i.e.,* was the call answered or connected, transferred to another phone number, disconnected or dropped). The records do not contain other important information, including the purpose of the call, the identity of the seller or charitable organization, or the nature of the call, such as whether the telemarketer used prerecorded messages. Although sellers and telemarketers are required to keep records of their advertisements, such as telemarketing scripts, which may include information on the purpose of the call or the identity of the seller, they are not currently required to maintain records that identify the specific telemarketing campaign in which they used each advertisement or the associated call detail records.[46]

The lack of records linking the call detail records to the nature, purpose, and content of the telemarketing campaign presents challenges to law enforcement. Without this link, it is difficult for the Commission to ascertain, among other issues: (1) The seller or charitable organization for which the telemarketer is placing calls; (2) the good or service the telemarketer is offering for sale or the charitable purpose for which the telemarketer is soliciting contributions; (3) whether the telemarketer used robocalls, was telemarketing to consumers or businesses, or the caller ID,[47] if any, they transmitted in outbound telephone calls; and (4) the representations made during the call. Moreover, without information linking the call detail records to a particular telemarketing campaign, the Commission cannot tell when the telemarketing campaigns began and ended or how many calls the telemarketer made in a particular telemarketing campaign.

In the FTC's law enforcement experience, sellers and telemarketers often claim they cannot provide this information because they do not keep call detail records or records associating a telemarketing campaign with the voice provider's call detail records. For example, telemarketers typically assert the voice provider's call detail records include both their telemarketing and non-telemarketing calls (*i.e.,* non-sales calls) but they cannot identify those that are telemarketing calls because they do not keep such records. In other instances, telemarketers who run telemarketing campaigns on behalf of numerous sellers or non-profit charitable organizations assert they cannot identify the telemarketing calls they made on behalf of a particular client. Without such information, the Commission cannot readily determine whether all the calls pertain to a particular telemarketing campaign the Commission is seeking information about or if the calls are for an unrelated seller and telemarketing campaign.

The ability to associate relevant call detail records with information on the nature and content of the call is also critical for inbound telemarketing campaigns. Although many such calls are exempt from the TSR under § 310.6(b)(4) through (b)(6), the exemptions do not apply to all inbound telemarketing calls and many such calls must still comply with the TSR.[48] Telemarketers frequently claim the voice provider's records of their inbound calls (when they exist) do not uniformly reflect calls that would be subject to the TSR. For example, they claim the voice providers' records of inbound calls include customer service calls that would be exempt from the TSR.

Sellers or telemarketers are in the best position to have information about their telemarketing calls. Thus, the Commission proposes new recordkeeping requirements that require sellers and telemarketers to retain records of this information. Such records are important in enabling the Commission to ascertain what sections of the TSR apply to their telemarketing campaigns and whether the telemarketing campaigns are compliant with the TSR.

The Commission also proposes to clarify existing recordkeeping requirements to address telemarketers' and sellers' frequent assertion that the TSR does not apply to their telemarketing campaigns because one of the TSR exemptions applies. Commonly asserted defenses to the FTC's law enforcement actions include that the calls were sales calls to business entities and not consumers, the seller or telemarketer has an EBR or EWA to make calls to consumers registered on the DNC Registry, or the seller has an express agreement, in writing, authorizing that particular seller to place robocalls to a consumer. Another frequently asserted defense is the consumer never requested to be placed on the entity-specific do-not-call list, made the request only after the telemarketing call had been made, or the consumer had asked to be placed on the entity-specific do-not-call list for one seller but the telemarketer had made subsequent calls on behalf of a different seller.

While the Commission has amended the TSR to address some of these defenses, making clear the seller or telemarketer bears the burden of proof,[49] some sellers and telemarketers still assert the defense in response to law enforcement inquiries even if their records are incomplete. For example, in some instances, the telemarketer's purported proof of a consumer's express written agreement is simply a list of the consumers' IP addresses and timestamps of the purported agreement. The Commission does not believe that information is sufficient proof to demonstrate a consumer has provided express written agreement to receive robocalls or to receive outbound telemarketing calls when a consumer has placed her phone number on the FTC's DNC Registry. Thus, in addition to proposing new recordkeeping requirements, the Commission also proposes amending existing

[45] In March 2020, the FCC adopted new rules requiring all originating and terminating voice providers to adopt the implementation of caller ID authentication using technical standards known as ''STIR/SHAKEN'' in their internet Protocol (IP) portions of their networks by June 30, 2021 to reduce the number of spoofed robocalls. *See* FCC, Press Release, *FCC Mandates That Phone Companies Implement Caller ID Authentication to Combat Spoofed Robocalls* (Mar. 31, 2020), *available at https://docs.fcc.gov/public/attachments/DOC-363399A1.pdf* (last visited Jan. 31, 2022). The FCC is also exploring whether to expand the mandate to intermediate voice providers and whether adoption of similar standards on the non-IP portions of voice provider networks is feasible. *Id.* While the adoption of STIR/SHAKEN standards will provide a means of authenticating the caller ID information for some calls, spoofed calls will continue to challenge law enforcement in the future.

[46] 16 CFR 310.5(a)(1).

[47] Voice providers frequently state that their call detail records contain the calling number, or the phone number that actually placed the call, but they do not have information on the name that the telemarketer chooses to submit to the call recipient's caller identification service, which provides caller identification name information to the call recipient.

[48] 16 CFR 310.6(b)(5) and (6) (*e.g.,* inbound telemarketing calls regarding prize promotions, investment opportunities, and debt relief services, among others, are excluded from the inbound telemarketing exemption).

[49] *See, e.g.,* 2015 TSR Amendments, 80 FR at 77555–56.

recordkeeping provisions to provide further guidance and clarification on the type of information necessary to assert an applicable affirmative defense.

D. Public Comments on Recordkeeping

In 2014, the Commission embarked on a regulatory review of the TSR, in which it sought feedback on a number of issues including the existing recordkeeping requirements.[50] It raised some of the challenges the Commission has faced in bringing enforcement actions under the TSR, including the difficulty in obtaining call detail records, and sought feedback on whether the current recordkeeping requirements are sufficient for law enforcement agencies to enforce the Rule's DNC provisions.[51] Specifically, the Commission raised the possibility of requiring sellers and telemarketers to ''retain records of the telemarketing calls they have placed'' to address the Commission's ongoing law enforcement challenges. It asked for public comments on: (1) The cost and burden that the lack of such a requirement imposed on law enforcement and consumers, (2) the cost and burden such a provision would impose, particularly for small businesses, and (3) whether there is an alternative solution that would reduce the law enforcement challenges and minimize the burden on industry.[52]

The Commission received comments from other state and federal law enforcement agencies confirming the problems the Commission has experienced in enforcing the TSR are not unique to the agency.[53] The Department of Justice (''DOJ'') cited ''extreme difficulties'' in obtaining call records from voice providers that provide usable information because they ''may contain, among other things, non-telemarketing calls'' or calls by telemarketers for other clients not targeted in the investigation.[54] DOJ also argued the burden of keeping call detail records would be ''slight'' since ''computer data storage prices are no longer an obstacle to maintaining records,'' and stated it is ''confident that most, if not all, reputable sellers and telemarketers currently maintain accurate records of their outbound calls.'' [55]

The National Association of Attorneys General (''NAAG'') stated in its experience subpoenas to voice providers are ''time-consuming and frequently fruitless,'' with those served on offshore voice providers going unanswered and U.S. voice providers either refusing to provide the records or requesting an ''exorbitant fee for doing so.'' [56] NAAG also argued ''savings realized by telemarketers'' from modern dialing technologies ''should not be realized at the expense of law enforcement's resources and consumer protection.'' [57]

Consumer advocacy groups concurred that requiring the retention of outbound call detail records would benefit consumers. The National Consumer Law Center, Consumer Federation of America, Americans for Financial Reform, Consumers Union, Consumer Action, Consumer Federation of California, The Maryland Consumer Rights Coalition, National Association of Consumer Advocates, U.S. PIRG, Virginia Citizens Consumer Council, and Consumer Assistance Council, Inc. of Cape Cod and the Islands (collectively, ''NCLC, et al.'') submitted a joint comment supporting a recordkeeping requirement for all outbound telemarketing calls, and further advocating sellers and telemarketers should also be required to record the entirety of all completed calls so it is possible to examine the ''overall net impression'' of the representations made to determine if they are unfair or deceptive.[58] AARP argued that in addition to call detail records, sellers and telemarketers should also maintain complete recordings of calls to ''ease the burden on federal and state enforcers as well as make it easier for citizens to bring private cases.'' [59] Another commenter also noted ''TCPA plaintiffs would benefit from companies keeping internal records.'' [60]

Industry comments generally opposed any mandatory requirement to maintain call detail records, arguing that imposing such a requirement would be overly burdensome, particularly for small businesses.[61] None of the industry comments, however, provided concrete information or data on the costs associated with requiring telemarketers to maintain call detail records, nor did they suggest any alternative solutions that address the Commission's law enforcement challenges while minimizing the burden on industry.

Additionally, a few industry comments confirmed some businesses are already requiring telemarketers to retain call detail records in the regular course of business.[62] Notably, the Association of Magazine Media (''MPA'') supported requiring ''telemarketers to retain their own call records'' as a ''reasonable and workable approach.'' [63] MPA also stated ''[s]ome magazine publishers are currently requiring third party telemarketing providers to maintain outbound call records for three years,'' and argued recordkeeping requirements would provide ''an added layer of transparency that further blocks opportunities for fraudulent behavior.'' [64]

E. The Business-to-Business Exemption

The Original TSR included an exemption for B2B calls other than B2B calls that sold office and cleaning supplies.[65] The Commission decided not to exempt from the TSR B2B calls that sold office and cleaning supplies because, in the Commission's experience, those calls were ''by far the most significant business-to-business problem'' at the time.[66] The Commission also commented it would ''reconsider that position if additional business-to-business telemarketing activities become problems after the Final Rule has been in effect.'' [67]

In 2003, the Commission reconsidered the scope of the B2B exemption and issued a Notice of Proposed Rulemaking that would require B2B sales of internet or web services to also comply with the TSR.[68] The Commission explained the sale of these services had ''increased dramatically'' and these product areas

[50] *See* 2014 TSR Rule Review, 79 FR 46732, 46735 (Aug. 11, 2014).

[51] *Id.*

[52] *Id.* at 46738.

[53] The public comments submitted in response to the 2014 TSR Rule Review are available at *https://www.ftc.gov/policy/public-comments/2014/08/initiative-578 (last visited Jan. 31, 2022).*

[54] DOJ, No. 00111, at 1. DOJ notes that multiple defendants have ''asserte[d] as a defense the inaccuracies of *their own* telemarketing call records.'' *Id.* (emphasis in original).

[55] *Id.* at 2.

[56] NAAG, No. 00117, at 11–12.

[57] *Id.* at 12.

[58] NCLC et. al., No. 00110, at 10.

[59] AARP, No.00097, at 5.

[60] West Italian, No. 00113, at 3.

[61] *See, e.g.,* Professional Association for Customer Engagement (''PACE''), No. 00107, at 5; American Bankers Insurance Association (''ABIA''), No. 00106, at 1, 3; National Automobile Dealers Association (''NADA''), No. 00112, at 2.

[62] *See* American Resort Development Association (''ARDA''), No.00100, at 7; Association of Magazine Media (''MPA''), No. 00116, at 4.

[63] MPA, No. 00116, at 4.

[64] *Id.*

[65] Original TSR, 60 FR at 43867.

[66] Original TSR at 43861.

[67] *Id.*

[68] 2002 notice of proposed rulemaking, 67 FR at 4500. ''internet Services'' meant any service that allowed a business to access the internet, including internet service providers, providers of software and telephone or cable connections, as well as services that provide access to email, file transfers, websites, and newsgroups. *Id.* ''Web services'' was defined as ''designing, building, creating, publishing, maintaining, providing, or hosting a website on the internet.'' *Id.* The Commission intended for the term internet services to encompass any and all services related to accessing the internet and the term web services to encompass any and all services related to operating a website. *Id.*

''ha[d] emerged as one of the leading sources of complaints.'' [69] The Commission ultimately decided not to modify the B2B exemption because the Commission wanted to ''move cautiously so as not to chill innovation in the development of cost-efficient methods for small businesses to join in the internet marketing revolution.'' [70] The Commission again noted it would ''continue to monitor closely'' the B2B telemarketing practices in this area and ''may revisit the issue in subsequent Rule Reviews should circumstances warrant.'' [71]

Since 2003, the Commission has continued to see businesses harmed by deceptive B2B telemarketing. Deceptive B2B telemarketing comes in many forms,[72] including schemes that sell business directory listings,[73] web hosting or design services,[74] search engine optimization services,[75] and market-specific advertising opportunities,[76] as well as schemes that impersonate the government.[77] For example, some of these schemes were the subject of a coordinated FTC-led crackdown on scams targeting small businesses, called ''Operation Main Street,'' announced in June of 2018.[78] The Commission believes it is now time to reassess the B2B exemption and address problems associated with B2B telemarketing.

The Commission is issuing an ANPR that seeks comments on the B2B exemption generally, including comments addressing whether the Commission should remove the exemption entirely.[79] The Commission recognizes requiring all B2B calls to comply with all TSR requirements would be a significant change that will require careful consideration.[80] While that process is underway, the Commission proposes in this NPRM to require all B2B telemarketing calls to comply with the TSR's existing prohibitions on misrepresentations articulated in § 310.3(a)(2) and (4).

When the Commission issues a rule prohibiting deceptive practices pursuant to the Telemarketing Act, the Commission assesses whether the rule prohibits conduct that involves a material representation likely to mislead consumers acting reasonably under the circumstances.[81] When the Commission included the prohibition on specific material misrepresentations [82] in § 310.3(a)(2) of the original TSR, the Commission identified these particular misrepresentations ''based on established case law and the Commission's policy statement on deception.'' [83] The prohibition in § 310.3(a)(4) on making false or misleading statements to induce any person to pay for goods or services or induce a charitable contribution was included to prohibit sellers ''from gaining access to consumers' money through false and misleading statements.'' [84] The prohibitions in § 310.3(a)(2) and (4) have been critical tools in the Commission's efforts to combat deceptive telemarketing.

The Commission is of the view that requiring B2B calls to comply with these provisions should not impose any burden on the telemarketing industry because Section 5 of the FTC Act generally prohibits telemarketers from making misrepresentations when they sell products or solicit charitable contributions.[85] As noted above, the Commission is not, at this time, proposing B2B sellers and telemarketers comply with other provisions of the TSR, such as the TSR's recordkeeping requirements, or the requirements that

[69] *Id.* at 4531.

[70] 2003 TSR Amendments 68 FR at 4663.

[71] *Id.*

[72] A 2018 survey conducted by the Better Business Bureau revealed that the same scams that harm consumers, such as tech support scams and imposter scams, also harm small businesses, and that 57% of scams that impact small businesses are perpetrated through telemarketing. Better Business Bureau, *Scams and Your Small Business Research Report,* at 9–10 (June 2018), *available at https://www.bbb.org/SmallBizScams* (last visited Jan. 31, 2022).

[73] *See, e.g., FTC* v. *Your Yellow Book Inc.,* No. 14–cv–786–D (W.D. Ok. July 24, 2014), *available at https://www.ftc.gov/system/files/documents/cases/140807youryellowbookcmpt.pdf* (last visited Jan. 31, 2022); *FTC* v. *OnlineYellowPagesToday.com, Inc.,* No. 14–cv–0838 RAJ (W.D. Wa. June 9, 2014), *available at https://www.ftc.gov/system/files/documents/cases/140717onlineyellowpagescmpt.pdf* (last visited last visited Jan. 31, 2022); *FTC* v. *Modern Tech. Inc., et. al.,* No. 13–cv–8257 (Nov. 18, 2013) *available at https://www.ftc.gov/sites/default/files/documents/cases/131119yellowpagescmpt.pdf* (last visited Jan. 31, 2022); *FTC* v. *6555381 Canada Inc. d/b/a Reed Publishing,* No. 09–cv–3158 (N.D. Ill. May 27, 2009) *available at https://www.ftc.gov/sites/default/files/documents/cases/2009/06/090602reedcmpt.pdf* (last visited Jan. 31, 2022); *FTC* v. *6654916 Canada Inc. d/b/a Nat'l. Yellow Pages Online, Inc.,* No. 09–cv–3159 (N.D. Ill. May 27, 2009), *available at https://www.ftc.gov/sites/default/files/documents/cases/2009/06/090602nypocmpt.pdf* (last visited Jan. 31, 2022); *FTC* v. *Integration Media, Inc.,* No. 09–cv–3160 (N.D. Ill. May 27, 2009), *available at https://www.ftc.gov/sites/default/files/documents/cases/2009/06/090602goamcmpt.pdf* (last visited Jan. 31, 2022); *FTC* v. *Datacom Mktg. Inc., et. al.,* No. 06–cv–2574 (N.D. Ill. May 9, 2006), *available at https://www.ftc.gov/sites/default/files/documents/cases/2006/05/060509datacomcomplaint.pdf* (last visited Jan. 31, 2022); *FTC* v. *Datatech Commc'ns, Inc.,* No. 03–cv–6249 (N.D. Il. Aug. 3, 2005) (filing amended complaint), *available at https://www.ftc.gov/sites/default/files/documents/cases/2005/08/050825compdatatech.pdf* (last visited Jan. 31, 2022); *FTC* v. *Ambus Registry, Inc.,* No. 03–cv–1294 RBL (W.D. Wa. June 16, 2003), *available at https://www.ftc.gov/sites/default/files/documents/cases/2003/07/ambuscomp.pdf* (last visited Jan. 31, 2022).

[74] *See FTC* v. *Epixtar Corp., et. al.,* No. 03–cv–8511(DAB) (S.D.N.Y. Nov. 3, 2003), *available at https://www.ftc.gov/sites/default/files/documents/cases/2003/11/031103comp0323124.pdf* (last visited Jan. 31, 2022); *FTC* v. *Mercury Marketing of Delaware, Inc.,* No. 00–cv–3281 (E.D. Pa. Aug. 12, 2003) (filing for an Order to Show Cause Why Defendants Should Not be Held in Contempt), *available at https://www.ftc.gov/sites/default/files/documents/cases/2003/08/030812contempmercurymarketing.pdf* (last visited Jan. 31, 2022).

[75] *See, e.g., FTC* v. *Pointbreak Media, LLC,* No. 18–cv–61017–CMA (S.D. Fla. May 7, 2018), *available at https://www.ftc.gov/system/files/documents/cases/matter_1723182_pointbreak_complaint.pdf* (last visited Jan. 31, 2022); *FTC* v. *7051620 Canada, Inc.* No. 14–cv–22132 (S.D. Fla. June 9, 2014), *available at https://www.ftc.gov/system/files/documents/cases/140717nationalbusadcmpt.pdf* (last visited Jan. 31, 2022).

[76] *See, e.g., FTC* v. *Production Media Co.,* No. 20–cv–00143–BR (D. Or. Jan. 23, 2020), *available at https://www.ftc.gov/system/files/documents/cases/production_media_complaint.pdf* (last visited Jan. 31, 2022).

[77] *See, e.g., FTC* v. *DOTAuthority.com,* No. 16–cv–62186 (S.D. Fla. Sept. 13, 2016) *available at https://www.ftc.gov/system/files/documents/cases/162017dotauthoriity-cmpt.pdf* (last visited Jan. 31, 2022); *FTC* v. *D & S Mktg. Solutions LLC,* No. 16–cv–01435–MSS–AAS (M.D. Fla. June 6, 2016), *available at https://www.ftc.gov/system/files/documents/cases/160621dsmarketingcmpt.pdf* (last visited Jan. 31, 2022).

[78] *See* Press Release, FTC, BBB, and Law Enforcement Partners Announce Results of Operation Main Street: Stopping Small Business Scams Law Enforcement and Education Initiative (June 18, 2018), *available at https://www.ftc.gov/news-events/press-releases/2018/06/ftc-bbb-law-enforcement-partners-announce-results-operation-main* (last visited Jan. 31, 2022).

[79] The ANPR is published elsewhere in this issue of the **Federal Register**.

[80] Among other things, it would require telemarketers to ensure their recordkeeping systems comply with the TSR's requirements, pay fees to access the National Do Not Call Registry, and provide mandatory disclosures in telemarketing calls. *See, e.g.,* 16 CFR 310.3(a)(1) (required disclosures); 310.5 (recordkeeping requirements); 310.8 (fee for access to the Do Not Call Registry).

[81] *See* 15 U.S.C. 6102(a); 2003 TSR Amendments, 68 FR at 4612. The Commission assesses abusive telemarketing practices using its traditional unfairness analysis. *See, e.g.,* 2013 Notice of Proposed Rulemaking, 78 FR 41201 (July 9, 2013).

[82] 310.3(a)(2) prohibits, among other things, misrepresenting: The total cost to purchase a good or service, material restrictions on the use of the good or service, material aspects of the central characteristics of the good or service, material aspects of the seller's refund policy, or the seller's affiliation with or endorsement by any person or government agency. *See* 16 CFR 310.3(a)(2)(i) through (vii).

[83] Original TSR at 43848. The Commission added § 310.3(a)(2)(x) in 2010. 2010 TSR Amendments, 75 FR at 48498. This section contains prohibitions ''related to the sale of debt relief services,'' which the Commission also determined are likely to be material and misleading.

[84] *Id.* at 43851. The Commission created a broad prohibition to ''provide[ ] law enforcement with flexibility to address new ways that sellers and telemarketers engaged in fraud might attempt to take consumers' money.'' *Id.*

[85] 15 U.S.C. 45(a)(1).

sellers and telemarketers access the Do Not Call Registry and pay fees.[86]

III. Proposed Revisions

The Commission proposes amending the § 310.5 recordkeeping provisions to require sellers and telemarketers to maintain additional records of their telemarketing activities. The proposed amendments identify specific records that, in the Commission's law enforcement experience, are difficult for the Commission to obtain if the telemarketer or seller does not maintain these records, but are necessary for the Commission to ensure compliance with the TSR.

The proposed amendments also clarify certain of the existing recordkeeping requirements by providing additional guidance to sellers and telemarketers regarding what the Commission considers a complete record and the penalties for failing to keep such records. In developing the proposed amendments, the Commission carefully considered the types of records sellers and telemarketers likely keep in the ordinary course of business, any additional burden the proposed amendments would impose, and the types of records the Commission considers necessary to enforce the TSR.

The Commission also proposes amending the exemption for B2B telemarketing calls in § 310.6(b)(7) to require all such calls to comply with § 310.3(a)(2) and (4). The proposed amendments would provide businesses the same protections the TSR provides consumers against misrepresentations. Finally, the Commission proposes adding a definition of ''previous donor'' to effectuate its original intent in the 2008 TSR Amendments.

The Commission invites written comments on the proposed amendments, and in particular, seeks answers to the questions set forth in Section IV below. The written comments will assist the Commission in determining whether to implement the proposed amendments and whether the amendments as proposed strike an appropriate balance between the goal of protecting consumers from deceptive and abusive telemarketing and harm from imposing compliance burdens.

A. New Recordkeeping Requirements

The proposed amendments require sellers and telemarketers to retain new categories of information the Commission considers necessary for it to pursue law enforcement actions against those who have violated the TSR. Specifically, the proposed amendments require the retention of the following new categories: (1) A copy of each unique prerecorded message; (2) call detail records of telemarketing campaigns; (3) records sufficient to show a seller has an established business relationship with a consumer; (4) records sufficient to show a consumer is a previous donor to a particular charitable organization; (5) records of the service providers a telemarketer uses to deliver outbound calls; (6) records of a seller or charitable organization's entity-specific do-not-call registries; and (7) records of the Commission's DNC Registry that were used to ensure compliance with this Rule.[87]

1. Section 310.5(a)(1)—Substantially Different Advertising Materials and Each Unique Prerecorded Message

Section 310.5(a)(1) currently requires sellers and telemarketers to keep records of ''all substantially different advertising, brochures, telemarketing scripts, and promotional materials.'' The proposed amendments to § 310.5(a)(1) would require telemarketers and sellers to also keep a copy of each unique prerecorded message they use in telemarketing, including each call a telemarketer makes using soundboard technology.[88] In the FTC's law enforcement experience, records of each unique prerecorded message are necessary for the Commission to ensure compliance with the TSR. The Commission does not believe keeping copies of each unique robocall will be unduly burdensome because the recordings are typically of short duration. For calls utilizing soundboard technology, the Commission is mindful such calls may be of longer duration than a typical robocall. As such, the Commission seeks comment on the burden that may be imposed by requiring sellers or telemarketers to keep each unique prerecorded message involving the use of soundboard technology, including how many telemarketers employ soundboard technology in telemarketing, how many calls they make using soundboard technology, the average duration of each call, and whether the telemarketer typically keeps recordings of such calls in the ordinary course of business.[89]

The proposed amendments also clarify a copy of each substantially different advertising, brochure, telemarketing script, promotional material, and each unique robocall constitutes one record, and failure to keep one substantially different version of such records is one violation of the TSR.[90] This provision applies to each telemarketing script, including robocall and upsell scripts. Telemarketers or sellers would be required to keep such records for 5 years from the date the record is no longer used in telemarketing. The Commission is proposing to modify this time period so it dates from the time the record is no longer in use to account for the possibility the advertisement may be in use for more than 5 years, which would exceed the proposed recordkeeping time period.

2. § 310.5(a)(2)—Call Detail Records

As discussed above, the Commission frequently has difficulty obtaining the call detail and other records of a seller or telemarketer's telemarketing activities.[91] Ensuring the availability of such records is necessary to enable the Commission to adequately determine whether the telemarketer or seller is complying with the TSR.[92]

To address these problems, the Commission proposes to amend the TSR to add § 310.5(a)(2), which would require the retention of call detail records. Such call detail records include, for each call a telemarketer places or receives, the calling number; called number; time, date, and duration of the call; and the disposition of the call, such as whether the call was answered, dropped, transferred, or connected. If the call was transferred, the record should also include the phone number or IP address the call was transferred to as well as the company name, if the call was transferred to a company different from the seller or telemarketer that placed the call.

The proposed addition of § 310.5(a)(2) would require the retention of other records that help identify the nature and purpose of each call including: (1) The identity of the telemarketer who placed or received each call; (2) the seller or

[86] *See* 16 CFR 310.5 (recordkeeping requirements); § 310.8 (fee for access to the Do Not Call Registry).

[87] As discussed in Sections III.A.3 and III.A.4, the proposed amendments requiring records of EBR or previous donor status will only apply if a seller or telemarketer intends to assert that a consumer has an EBR with the seller or is a previous donor to a particular charitable organization.

[88] Soundboard technology is technology that allows a live agent to communicate with a call recipient by playing recorded audio snippets instead of using his or her own live voice. *See* FTC Staff Opinion Letter on Soundboard Technology, at 1 (Nov. 10, 2016), *available at https://www.ftc.gov/system/files/documents/advisory_opinions/letter-lois-greisman-associate-director-division-marketing-practices-michael-bills/161110staffopsoundboarding.pdf* (last visited Jan. 31, 2022).

[89] *See infra* Section IV.B.4.

[90] *See infra* Section III.B.6 (clarifying that a failure to keep one record constitutes one violation of the TSR).

[91] *See supra* Section II.C

[92] *See supra* Section II.C–D.

charitable organization for which the telemarketing call is placed or received; (3) the good, service, or charitable purpose that is the subject of the call; (4) whether the call is to a consumer or business, utilizes robocalls, or is an outbound call; and (5) the telemarketing script(s) and robocall (if applicable) that was used in the call. Finally, proposed § 310.5(a)(2) would require the retention of records regarding the caller ID transmitted if the call was an outbound call, including the name and phone number that was transmitted, and records of the telemarketer's authorization to use the phone number and name that was transmitted.

As stated above, the proposed addition of § 310.5(a)(2) is necessary for the Commission to determine whether the TSR applies to the calls in the telemarketing campaign and which particular sections of the TSR the seller and telemarketer must comply with for that particular telemarketing campaign.[93]

Although some consumer advocates recommended telemarketers and sellers should also be required to retain recordings of all their telemarketing calls,[94] the Commission believes at this time, it would be overly burdensome to require retention of call recordings of each telemarketing call, particularly for small businesses. Requiring telemarketers and sellers to retain records of the substantially different telemarketing script(s) and unique robocall used in each call should provide the Commission with sufficient information regarding the content of the call, thus striking an appropriate balance between the Commission's interest in ensuring compliance with the TSR and avoiding the imposition of unnecessary burdens on businesses.

The Commission also believes implementing this new provision should not be overly burdensome for telemarketers or sellers since the cost of electronic storage is decreasing over time.[95] Additionally, given the prevalent use of technology such as autodialers in telemarketing campaigns, the Commission believes telemarketers likely already prepare similar call detail records in the regular course of business and can do so in an automated fashion. For the categories of information that may not be generated in an automated fashion, such as records of which script was used in the telemarketing calls, the seller's identity, or other information regarding the content of the call, the Commission believes telemarketers should be able to create a record of this information without much difficulty. For example, if the script contains information about the identity of the seller and the product or service being sold or the charitable purpose for which contributions are being solicited, the telemarketer or seller need only keep records of which telemarketing script is used for a particular telemarketing campaign.

3. § 310.5(a)(5)—Established Business Relationship

As discussed above, the Commission proposes adding § 310.5(a)(5) to further clarify what records a seller must keep in order to ''demonstrate that the seller has an established business relationship'' with a consumer. Specifically, for each consumer with whom a seller asserts it has an established business relationship, the seller must keep a record of the name and last known phone number of that consumer, the date the consumer submitted an inquiry or application regarding that seller's goods or services, and the goods or services inquired about.[96] The Commission does not believe adding this provision to the recordkeeping requirements will impose any significant burdens on sellers or telemarketers because sellers or telemarketers must already collect and use this information to ensure they are complying with the requirements of this affirmative defense. They are only being asked to retain the records demonstrating their compliance.

4. § 310.5(a)(6)—Previous Donor

Similar to the EBR requirements described above, the Commission also proposes adding § 310.5(a)(6) to clarify that if a telemarketer intends to assert a consumer is a previous donor to a particular non-profit charitable organization,[97] the telemarketer must keep a record, for each such consumer, of the name and last known phone number of that consumer, and the last date the consumer donated to the particular non-profit charitable organization. The Commission does not believe this provision will impose any new burdens on telemarketers since this is information a non-profit charitable organization already keeps and telemarketers that comply with the TSR will likely seek this information in the ordinary course of business.

5. § 310.5(a)(9)—Other Service Providers

The Commission proposes including a new record keeping requirement in § 310.5(a)(9) requiring sellers and telemarketers to keep records of all service providers the telemarketer uses to deliver outbound calls in each telemarketing campaign. Such service providers include, but are not limited to, voice providers, autodialers, sub-contracting telemarketers, or soundboard technology platforms. The Commission does not intend for this provision to include every voice provider involved in delivering the outbound call, but limits this provision to the service providers with which the seller or telemarketer has a business relationship. For each such entity, the seller or telemarketer must keep records of any applicable contracts, the date the contract was signed, and the time period the contract is in effect.

The Commission also proposes that the seller or telemarketer maintain such records for five years from the date the contract expires or five years from the date the telemarketing activity covered by the contract ceases, whichever is shorter. The Commission proposes that the telemarketer or seller maintain such records for that specified time period to provide the Commission and other law enforcement agencies sufficient time to complete any investigation of noncompliance. Such information is

[93] *See supra* Section II.C.

[94] *See* NCLC, No. 00110, at 10 (recommending that sellers keep recordings of all outbound calls); AARP, No.00097, at 5 (same). In response to the FTC's Advance Notice of Proposed Rulemaking Concerning the Use of Prenotification Negative Option Plans, 84. FR 52393 (Oct. 2, 2019), a number of state attorneys general (''State AGs'') submitted a comment requesting amendments to the TSR to address negative option offers. Specifically, the State AGs suggested that for all negative option offers, sellers and telemarketers should ''record the entire transaction and retain it for a specified period of time and provide a full refund if the consumer [complains] of unauthorized charges, unless the company is able to provide the consumer with the recording of the phone call establishing the consumer's affirmative consent to be charged.'' *See* State AGs' Comment (#0082–0012), *available at https://www.regulations.gov/comment/FTC-2019-0082-0012* (last visited Jan. 31, 2022). For the reasons stated above and the reasons stated in Section IV.C of the Advance Notice of Proposed Rulemaking that the Commission is issuing simultaneously with this NPRM, the Commission does not believe imposing this requirement is necessary.

[95] For example, electronic storage can cost $.74 per gigabyte for onsite storage including hardware, software, and personnel costs. *See* Gartner, Inc. ''IT Key Metrics Data 2020: Infrastructure Measures—Storage Analysis.'' Gartner December 18, 2019.

[96] A seller may also show it has an established business relationship with a consumer if that consumer purchased, rented, or leased the seller's goods or services or had a financial transaction with the seller during the 18 months before the date of the telemarketing call. The Commission is modifying the existing recordkeeping provisions to state that records of existing customers should also include the date of the financial transaction to establish EBR under these circumstances. *See infra* Section III.B.3.

[97] The Commission also proposes adding a new definition of ''previous donor.'' *See supra* Section II.A.

necessary for the Commission to determine whether any other entities assisted and facilitated in violating the TSR. The Commission calculates the five-year period from the date the contract expires or the date the telemarketing activity ceases rather than the date the contract was signed to account for the possibility the contract could be of long-standing duration. The Commission does not believe this requirement is overly burdensome because telemarketers and sellers likely keep such records in the ordinary course of business.

6. §§ 310.5(a)(10) and (11)—DNC and Entity-Specific DNC

The NPRM also includes two new provisions requiring telemarketers and sellers to maintain for five years records related to the entity-specific do-not-call registry and the FTC's DNC Registry. For the entity-specific do-not-call registry, the Commission proposes requiring telemarketers and sellers to retain records of: (1) The consumer's name, (2) the phone number(s) associated with the DNC request, (3) the seller or charitable organization from which the consumer does not wish to receive calls, (4) the telemarketer that made the call; (5) the date the DNC request was made; and (6) the good or service being offered for sale or the charitable purpose for which contributions are being solicited.

For the FTC's DNC Registry, the Commission proposes requiring telemarketers or sellers to keep records of every version of the FTC's DNC Registry the telemarketer or seller downloaded to ensure compliance with the TSR. The Commission does not believe these two proposed recordkeeping requirements impose a substantial burden on the telemarketer or seller since telemarketers complying with the TSR already keep such records in the ordinary course of business to avail themselves of the TSR's safe harbor provisions.[98]

The Commission, however, invites public comment on whether and for how long telemarketers and sellers maintain records in the ordinary course of business of every version of the FTC's DNC Registry they access to comply with the TSR's safe harbor rules, and if not, whether requiring them to do so would be overly burdensome. The Commission also invites comment from other law enforcement agencies and any other interested parties regarding whether a record of the name of the telemarketer or seller who accessed the registry, the subscription account number used to access the registry, the telemarketing campaign for which it was accessed, and the date of access would suffice to ensure telemarketers and sellers are complying with the TSR.[99]

B. Modification of Existing Recordkeeping Requirements

1. Time Period To Keep Records

In this NPRM, the Commission proposes changing the time period telemarketers and sellers must keep records from two years to five years from the date the record is made, except for § 310.5(a)(1) and (9), which require retention of records for five years from the date such records are no longer in use.[100] The Commission is proposing to change the time period from two years to five years because the Commission needs adequate time to complete its investigations of non-compliance with the TSR. Given the additional complexities of identifying the telemarketer and seller responsible for particular telemarketing campaigns and gathering the necessary evidence, two years is no longer a sufficient amount of time for the Commission to fully complete its investigations of noncompliance. Given the decreasing cost of data storage, the Commission does not believe changing the length of time sellers and telemarketers are required to keep records will be unduly burdensome.

2. § 310.5(a)(3)—Prize Recipients

The TSR currently requires telemarketers and sellers to retain the ''name and last known address'' of each prize recipient.[101] The Commission is proposing to modify this provision also to require sellers and telemarketers to retain the last known telephone number and the last known physical or email address for each prize recipient.[102] The Commission is proposing this change to reflect current business practices in communicating with customers. The Commission does not believe retention of such records is unduly burdensome since telemarketers and sellers likely keep such information in the regular course of business.

3. § 310.5(a)(4)—Customer Records

The TSR currently requires sellers or telemarketers to retain the ''name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services.'' [103] To account for the new requirement telemarketers and sellers keep records of each consumer with whom a seller intends to assert it has an EBR, the Commission proposes modifying § 310.5(a)(4) to require the seller or telemarketer to keep records of the date the customer purchased the good or service.[104] The Commission also proposes modifying § 310.5(a)(4) to require the retention of the customer's last known telephone number and the customer's last known physical address or email address to account for current business practices in communicating with existing customers. Because the Commission believes sellers likely already keep records of this information in the ordinary course of business, the Commission does not believe these modifications will cause significant additional burden.

The Commission recognizes requiring telemarketers and sellers to retain information regarding consumers' names, phone numbers, and either their email or physical addresses, in combination with the goods or services they have purchased, raises privacy concerns. The Commission emphasizes telemarketers and sellers have an obligation under Section 5 of the FTC Act to adhere to commitments they make about their information practices, and take reasonable measures to secure consumers' data.[105]

4. § 310.5(a)(8)—Records of Consent

Section 310.5(a)(5) of the TSR currently requires sellers or telemarketers to keep records of ''[a]ll verifiable authorizations or records of express informed consent or express agreement required to be provided or received under [the TSR] .'' The Commission proposes modifying this

[98] 16 CFR 310.4(b)(3)(iii) and (b)(3)(iv).

[99] *See infra* Section IV.B.9.

[100] The records covered by these two sections include advertising materials and the service providers who assisted in outbound telemarketing, respectively. *See supra* Sections III.A.1 and III.A.5.

[101] 16 CFR 310.5(a)(2).

[102] The Commission proposes to modify the form of this section so that it aligns with the new additions to § 310.5(a) but makes no substantive changes except adding the prize recipient's last known phone number and last known physical or email address as described above.

[103] 16 CFR 310.5(a)(3).

[104] The Commission proposes to modify the form of this section so that it aligns with the new additions to § 310.5(a) but makes no substantive changes except adding the date the customer purchased the good or service, the customer's last known phone number, and the customer's last known physical or email address as described above.

[105] *See generally* Federal Trade Commission 2020 Privacy and Data Security Update, *available at https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-2020-privacy-data-security-update/20210524_privacy_and_data_security_annual_update.pdf* (last visited Jan. 31, 2022).

requirement to keep records of verifiable authorizations, express informed consent or express agreement (collectively, ''consent'') to clarify what information the Commission believes is a complete record sufficient for a telemarketer or seller to assert such an affirmative defense.[106] Specifically, for each consumer from whom a seller or telemarketer states it has obtained consent, the Commission proposes requiring sellers or telemarketers to maintain records of that consumer's name and phone number, a copy of the consent requested in the same manner and format it was presented to that consumer, a copy of the consent provided, the date the consumer provided consent, and the purpose for which consent was given and received.

For a copy of the consent provided under § 310.3(a)(3), 310.4(a)(7), (b)(1)(iii)(B)(1), or (b)(1)(v)(A), a complete record must include all of the requirements outlined in those respective sections. For example, a copy of the consent provided to receive prerecorded sales messages under § 310.4(b)(1)(v)(A) must evidence, in writing: (1) The consumer's name, telephone number, and signature; (2) the consumer states she is willing to receive prerecorded messages from or on behalf of a specific seller; (3) the seller obtained consent only after clearly and conspicuously disclosing that the purpose of the written agreement is to authorize that seller to place prerecorded messages to that consumer; and (4) the seller did not condition the sale of the relevant good or service on the consumer providing consent to receive prerecorded messages.

If the telemarketer or seller requested consent verbally, the copy of consent requested need not be a recording of the conversation unless such a recording is required by another provision of the TSR. For such consent requests, unless such a recording is required by another provision of the TSR, a copy of the telemarketing script of the request for consent will suffice as a complete record. The Commission does not believe requiring the telemarketer or seller to keep records of consent imposes significant additional burden since it is likely telemarketers and sellers who comply with the TSR already keep such records in the ordinary course of business.

5. § 310.5(b)—Format of Records

The NPRM includes a modification to the formatting requirements for records that include phone numbers, time, or duration. For such records, the Commission proposes to require that international phone numbers must comport with the International Telecommunications Union's Recommendation E.164 format and domestic numbers must comport with the North American Numbering plan. For time and duration, the Commission proposes such records be kept to the closest whole second, and time must be recorded in Coordinated Universal Time (UTC). The Commission does not believe specifying these format requirements will cause any undue burden since the numbering formats are standard practice across the telecommunications industry, and the proposed time and duration formats are widely used, so sellers and telemarketers can easily select them when they set up an automated method of maintaining call detail records.

6. § 310.5(c)—Violation of Recordkeeping Provisions

The Commission proposes clarifying that the failure to keep each record required by § 310.5 in a complete and accurate manner constitutes a violation of this Rule. The Commission wants to state clearly that a violation does not mean a failure to keep all records, but instead that failure to keep each required record constitutes a separate violation. To do otherwise would create a perverse incentive for deceptive telemarketers to choose not to comply with the recordkeeping provisions when the only consequence would be liability for a single violation of the TSR. Such an outcome would negate the entire purpose of implementing recordkeeping requirements.

7. § 310.5(d)—Safe Harbor for Incomplete or Inaccurate Records Kept Pursuant to § 310.5(a)(2)

The Commission proposes including a safe harbor provision for temporary and inadvertent errors in keeping call detail records pursuant to § 310.5(a)(2). Specifically, a seller or telemarketer would not be liable for failing to keep records under § 310.5(a)(2) if it can demonstrate: (1) It has established and implemented procedures to ensure completeness and accuracy of its records under § 310.5(a)(2); (2) it trained its personnel in the procedures; (3) it monitors compliance and enforces the procedures, and documents its monitoring and enforcement activities; and (4) any failure to keep accurate or complete records under § 310.5(a)(2) was temporary and inadvertent.

The Commission believes providing a safe harbor for the recordkeeping requirements under § 310.5(a)(2) is appropriate since the process of maintaining such records will likely be automated by technology, and telemarketers and sellers should not be held liable under this section of the TSR for brief and inadvertent technological errors so long as they make good faith efforts to comply.

8. § 310.5(e)—Compliance Obligations

The Commission also proposes modifying the compliance obligations in § 310.5(e). In the event the seller and telemarketer fail to allocate responsibility for maintaining the required records, the TSR currently designates which recordkeeping obligations fall on the telemarketer and which fall on the seller. The Commission is proposing to modify the TSR so that if the seller and telemarketer fail to allocate recordkeeping obligations between themselves, the responsibility for complying with this Section will fall on both parties. This would avoid disputes between sellers and telemarketers over which party is responsible for recordkeeping. Also, because the parties may still allocate the recordkeeping obligations, the Commission does not believe modifying this provision would alter the overall burden of complying with the TSR; rather, it should incentivize the parties to delineate clearly their respective responsibilities.

C. Modification of the B2B Exemption

The Commission proposes narrowing the B2B exemption to require B2B telemarketing calls to comply with § 310.3(a)(2)'s prohibition on misrepresentations and § 310.3(a)(4)'s prohibition on false or misleading statements. The Commission believes a prohibition on such deceptive conduct will protect businesses from illegal telemarketing without burdening industry since the FTC Act already prohibits businesses from making misrepresentations and false or misleading statements.

D. New Definitions

The Commission proposes adding a new definition for the term ''previous donor'' to implement the Commission's original intent to allow robocalls soliciting charitable donations on behalf of a particular non-profit charitable organization only to consumers who have an established relationship with that organization. The proposed definition also specifies the consumer

[106] *See supra* Section II.C at 14 (a list of consumer IP addresses is not a complete record of consent when the Commission cannot tell the name of the consumer allegedly providing consent and cannot know the nature of the purported consent).

must have made a donation to the non-profit charitable organization within the two-year period immediately preceding the date of the robocall. The Commission proposes implementing a time limit for the existence of an established relationship and chose two years to account for the possibility that consumers who donate annually may not necessarily donate exactly one year apart (*i.e.,* one year the consumer might donate in January and the following year the consumer might not donate until December). The Commission, however, seeks public comment on whether two years is an appropriate time period to use in determining whether the consumer has an established relationship with a particular organization.

E. Corrections to the Rule

The Commission also proposes five corrections to the Rule. The first is a clerical correction to the cross-reference citations in § 310.6(b)(1), (2), and (3) changing the cross-references from § 310.4(a)(1) and (7), (b), and (c) to § 310.4(a)(1) and (8), (b), and (c).

The second is modifying the time requirements in the definition of EBR to change it from months to days. For § 310.2(q)(1), the time requirement to qualify for EBR will be modified from 18 months between the date of the telephone call and financial transaction to 540 days. For § 310.2(q)(2), the time requirement to qualify for EBR will be modified from three months between the date of the telephone call and the date of the consumer's inquiry or application to 90 days. The Commission is proposing these modifications to make the technical calculations of whether a consumer has an EBR with a particular seller easier to determine since the number of days to qualify would be fixed instead of fluctuating depending on which months were applicable.

The third correction is to add an email address to § 310.7 so state officials or private litigants can more easily provide notice to the Commission that the state official or private litigant intends to bring an action under the Telemarketing Act.

The fourth correction is amending § 310.5(a)(7) so it is consistent in form with the new proposed additions to § 310.5(a). The substantive requirements of this section will remain the same.

The fifth correction is amending § 310.5(f) to remove an extraneous word. The substantive requirements of this section will remain the same.

IV. Request for Comment

The Commission seeks comments on all aspects of the proposed requirements, including the likely effectiveness of the proposed requirements to combat violations of the TSR and any alternatives to the proposed requirements. The Commission also seeks comments on the estimated burden compliance with the proposed regulations will impose on sellers and telemarketers. In their replies, commenters should provide any available evidence and data that supports their position, such as empirical data on the costs of complying with the proposed amendments.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before August 2, 2022. Write ''Telemarketing Sales Rule (16 CFR part 310—NPRM) (Project No. R411001)'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Because of the public health emergency in response to the COVID–19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comment online through the *https://www.regulations.gov* website. To ensure the Commission considers your online comment, please follow the instructions on the web-based form.

If you file your comment on paper, write ''Telemarketing Sales Rule (16 CFR part 310—NPRM) (Project No. R411001)'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website, *https://www.regulations.gov,* you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else'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 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.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov*—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this document and the news release describing it. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments it receives on or before August 2, 2022. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy*.

In addition to the issues raised above, the Commission solicits public comment on the list of questions below regarding the costs and benefits of the proposed amendments. The Commission requests that comments

provide the factual data upon which they are based. These questions are designed to assist the public and should not be construed as a limitation on the issues on which a public comment may be submitted.

A. General Questions for Comments

1. What would be the impact (including any benefits and costs), if any, of the proposed amendments on consumers?

2. What would be the impact (including any benefits and costs), if any, of the proposed amendments on individual firms (including small businesses) that must comply with them?

3. What would be the impact (including any benefits and costs), if any, on industry, including those who may be affected by the proposed amendments but not obligated to comply with the Rule?

4. What changes, if any, should be made to the proposed amendments to minimize any costs to consumers or to industry and individual firms (including small businesses) that must comply with the Rule?

5. How would each change suggested in response to Question 4 affect the benefits that might be provided by the proposed amendment to consumers or to industry and individual firms (including small businesses) that must comply with the Rule?

6. How would the proposed amendments impact small businesses with respect to costs, profitability, competitiveness, and employment? What other burdens, if any, would the proposed amendments impose on small businesses, and in what ways could the proposed amendments be modified to reduce any such costs or burdens?

7. How many small businesses would be affected by each of the proposed amendments?

8. With respect to each of the proposed amendments, are there any potentially duplicative, overlapping, or conflicting federal statutes, rules, or policies currently in effect?

B. Specific Questions for Comments

1. Is 5 years an appropriate time period to require telemarketers and sellers to maintain records? If not, what is an appropriate time period and why?

2. What are the current practices of sellers and telemarketers in keeping records of their telemarketing activities? How will the proposed amendments alter the current practices?

3. Is the proposed requirement to retain a record of each unique robocall recording used in telemarketing, under § 310.5(a)(1), overly burdensome? If so, what are the costs or burdens associated with keeping a record of each unique robocall recording?

4. What are the costs or burdens associated with keeping a record of each call in which soundboard technology is used? How many telemarketers employ soundboard technology in telemarketing? How many calls do telemarketers make on average in one year using soundboard technology? What is the average duration of each call using soundboard technology? Do telemarketers typically keep recordings of such calls in the ordinary course of business? If so, how long do telemarketers typically keep such recordings in the ordinary course of business?

5. Do the proposed recordkeeping requirements of 310.5(a)(2) adequately identify all data categories a telemarketer or seller should retain from the call detail records of their telemarketing activities? If not, what data categories are missing? Alternatively, are there data categories that are overly burdensome or unnecessary to ensure the telemarketer and seller are complying with the TSR? If the data categories are overly burdensome, is there an alternative proposal on how a telemarketer or seller can retain the information from that data category in a less burdensome manner?

6. Is the proposed requirement to identify the robocall recording used in each call, under § 310.5(a)(2), overly burdensome? If so, what are the costs or burdens associated with this requirement? Is there an alternative proposal that would still give the Commission information on what robocall was used in the call but is less burdensome for the seller or telemarketer?

7. Does the proposed amendment to § 310.5(a)(8) adequately describe the information the telemarketer or seller needs to retain to provide proof of verifiable authorizations, express informed consent, or express agreement? If not, what other information should the telemarketer or seller be required to retain to show proof of verifiable authorizations, express informed consent, or express agreement?

8. Does the proposed amendment to § 310.5(a)(8) require sufficient records to demonstrate whether telemarketers or sellers who obtain preacquired account information through data pass are authorized to bill consumers? If not, what other information should the telemarketer or seller be required to retain?

9. Does the proposed amendment to § 310.5(a)(8) sufficiently address any potential harms caused by telemarketers or sellers using preacquired account information through data pass? Does it also sufficiently address any new harms that have emerged since 2014 caused by telemarketers or sellers using preacquired account information through data pass? If not, what harms have emerged since 2014? What other changes should be made to the TSR to address harms caused by data pass of preacquired account information?

10. Does the proposed amendment in § 310.5(a)(9) requiring the telemarketer or seller to retain records of all service providers a telemarketer uses to deliver an outbound call provide adequate guidance on which service providers are referenced in this provision? If not, is there an alternative description that would more accurately provide guidance on what service providers a telemarketer or seller would need to retain records of as required by this provision? Would such a description be flexible enough to account for changes in the telecommunications industry, including technological developments?

11. Should the Commission require the telemarketer or seller to retain records of every version of the Commission's DNC Registry that it downloaded to ensure compliance with the TSR or would requiring a record of each instance the telemarketer or seller accessed the registry, including the date of access, the subscription account number used to access, the telemarketing campaign for which it was accessed, and the entity that accessed the registry, be sufficient to ensure compliance with the TSR?

12. Should the Commission include the safe harbor provision in § 310.5(d) for the retention of records identified in § 310.5(a)(2)? Is such a safe harbor necessary? Alternatively, does the proposed safe harbor provide adequate protection to the seller or telemarketer against mistakes that cannot readily be prevented? Should the safe harbor provision apply only to records identified in § 310.5(a)(2) or should it also apply to other records required by § 310.5?

13. Should sellers and telemarketers be allowed to decide by contract which entity is responsible for retaining records under this Rule? If not, should both sellers and telemarketers be required to retain records under this Rule? Alternatively, should the Commission specify which entity should be required to retain specific categories of records?

14. Should the definition of previous donor include a two-year time limit

after which a consumer is no longer considered a previous donor to a particular charitable organization? If not, what is the appropriate amount of time that can lapse before a consumer should no longer be considered a previous donor to a particular charitable organization?

15. How many calls on average do sellers and telemarketers make per year?

16. What call detail records do sellers and telemarketers currently keep?

17. How much do sellers and telemarketers pay to retain call detail records on a monthly basis?

18. Are there other costs associated with creating and preserving call detail records?

19. How many different prerecorded messages do sellers and telemarketers use with their campaigns and what is the file size of the messages?

20. To what extent do existing recordkeeping requirements, such as those found under the Telephone Consumer Protection Act, overlap with the proposed rule's recordkeeping requirements?

21. Are businesses harmed by deception in B2B telemarketing? Would requiring B2B telemarketing to comply with the TSR's prohibitions on misrepresentations and making false or misleading statements help businesses?

22. Are businesses harmed by B2B telemarketing in ways not addressed by the FTC's past law enforcement work?

23. Would the proposed amendment to the B2B exemption burden sellers or telemarketers? If so, in what way, and what is the burden?

V. Paperwork Reduction Act

The current Rule contains various provisions that constitute information collection requirements as defined by 5 CFR 1320.3(c), the definitional provision within the Office of Management and Budget (''OMB'') regulations implementing the Paperwork Reduction Act (PRA). 44 U.S.C. chapter 35. OMB has approved the Rule's existing information collection requirements through September 30, 2022 (OMB Control No. 3084–0097). The proposed amendments will make changes in the Rule's recordkeeping requirements that will increase the PRA burden as detailed below. Accordingly, FTC staff will submit this notice of proposed rulemaking and the associated Supporting Statement to OMB for review under the PRA.[107]

The proposed rule contains new recordkeeping requirements and modifications to existing recordkeeping requirements. The new recordkeeping provisions would require sellers or telemarketers to retain: (1) A copy of each unique prerecorded message; (2) call detail records of telemarketing campaigns; (3) records sufficient to show a seller has an established business relationship with a consumer; (4) records sufficient to show a consumer is a previous donor to a particular charitable organization; (5) records regarding the service providers a telemarketer uses to deliver outbound calls; (6) records of a seller or charitable organization's entity-specific do-not-call registries; and (7) records of the Commission's DNC Registry that were used to ensure compliance with this Rule. The proposed modifications to the existing recordkeeping requirements would: (1) Change the time period for retaining records from two years to five years; [108] (2) clarify the records necessary for sellers or telemarketers to demonstrate the person it is calling has consented to receive the call; and (3) specify the format for records that include phone numbers, time, or duration.

As explained above, the Commission believes for the most part, sellers and telemarketers already generate and retain these records in the ordinary course of business. For example, to comply with the TSR, sellers and telemarketers must already have a reliable method to identify whether they have a previous business relationship with a customer or whether the customer is a prior donor. They must also access the DNC Registry and maintain an entity-specific DNC registry. Moreover, sellers and telemarketers are also likely to keep records about their existing customers or donors and service providers in the ordinary course of business. The proposed rule would also require telemarketers and sellers to keep call detail records of their telemarketing campaigns, but in the Commission's experience the technological methods sellers and telemarketers use to implement their campaigns can also reliably generate the records of those campaigns that would be required under the proposed rule.

A. Estimated Annual Hours Burden

The Commission estimates the PRA burden of the proposed amendments based on its knowledge of the telemarketing industry and data compiled from the Do Not Call Registry. In calendar year 2021, 11,756 telemarketing entities accessed the Do Not Call Registry; however, 536 were exempt entities obtaining access to data.[109] Of the non-exempt entities, 6,835 obtained data for a single state. Staff assumes these 6,835 entities are operating solely intrastate, and thus would not be subject to the TSR. Therefore, Staff estimates approximately 4,385 telemarketing entities (11,756—536 exempt—6,835 intrastate) are currently subject to the TSR. The Commission also estimates there will be 75 new entrants to the industry per year.

The Commission has previously estimated that complying with the TSR's current recordkeeping requirements requires 100 hours for new entrants to develop recordkeeping systems that comply with the TSR and 1 hour per year for established entities to file and store records after their systems are created, for a total annual recordkeeping burden of 4,385 hours for established entities and 7,500 hours for new entrants who must develop required record systems.[110]

Because the proposed rule contains new recordkeeping requirements, the Commission anticipates in the first year after the proposed amendments take effect, every entity subject to the TSR would need to ensure their recordkeeping systems meet the new requirements. The Commission estimates this undertaking will take 50 hours. This includes 10 hours to verify the entities are maintaining the required records, and 40 hours to create and retain call detail records. This yields an additional burden of 219,250 hours for established entities (50 hours × 4,385 covered entities).

For new entrants, the Commission estimates the new requirements will increase their overall burden for establishing new recordkeeping systems from 100 hours per year to 150 hours

[107] This PRA analysis focuses specifically on the information collection requirements created by or otherwise affected by the proposed amendments.

[108] As described above, changing industry practice including increased spoofing of Caller ID information has made it more difficult to identify the telemarketers and sellers responsible for particular telemarketing campaigns and has hindered evidence gathering. As a result, two years is no longer always a sufficient amount of time for the Commission to fully complete its investigations of noncompliance and therefore the Commission is proposing to increase the required retention period for recordkeeping under the Rule. Given the decreasing cost of data storage, the Commission does not believe that changing the length of time sellers and telemarketers are required to keep records will be unduly burdensome.

[109] *See* National Do not Call Registry Data Book for Fiscal Year 2020 (''Data Book''), *available at https://www.ftc.gov/system/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2020/dnc_data_book_2020.pdf* (last visited Jan. 31, 2022). An exempt entity is one that, although not subject to the TSR, voluntarily chooses to scrub its calling lists against the data in the Registry.

[110] *See* Information Collection Activities; Proposed Collection; Comment Request 87 FR 23177 (Apr. 19, 2022).

per year. This yields a total burden for new entrants of 11,250 hours (150 hours × 75 new entrants per year).

B. Estimated Annual Labor Costs

The Commission estimates annual labor costs by applying appropriate hourly wage rates to the burden hours described above. The Commission estimates established entities will employ skilled computer support specialists to modify their recordkeeping systems.

Applying a skilled labor rate of $29.11/hour [111] to the estimated 50 burden hours for established entities yields approximately $6,384,560 in labor costs in the first year after the proposed amendments would take effect (4,385 respondents × $1,456).

As described above, the Commission estimates new entrants will spend approximately 150 hours per year to establish new recordkeeping systems. Applying a skilled labor rate of $29.11/hour to the estimated 150 burden hours for new entrants, the Commission estimates the annual labor costs for new entrants would be approximately $327,525 (75 entrants × $4,367).

C. Estimated Non-Annual Labor Costs

Staff previously estimated the non-labor costs to comply with the TSR's recordkeeping requirements were *de minimis* because most affected entities would maintain the required records in the ordinary course of business. Staff estimated the recordkeeping requirements could require $50 per year in office supplies to comply with the Rule's recordkeeping requirements. Because the proposed recordkeeping requirements require retaining additional records, Staff estimates these requirements will increase to $60 per year in office supplies.

The new recordkeeping requirements also require entities to retain call detail records and audio recordings of prerecorded messages used in calls. Staff estimates the costs associated with preserving these records will also be *de minimis.* The Commission regularly obtains call detail records from voice providers when investigating potential TSR violations, and these records are kept in databases with small file sizes even when the database contains information about a substantial number of calls. For example, the Commission received a 2.9 gigabyte database that contained information about 56 million calls. The Commission also received a 1.2 gigabyte database that contained information about 5.5 million calls. Similarly, audio files of most prerecorded messages will not be very large because prerecorded messages are typically short in duration. Storing electronic data is very inexpensive. Electronic storage can cost $.74 per gigabyte for onsite storage including hardware, software, and personnel costs.[112] Commercial cloud-based storage options are less expensive and can cost around $.20 per gigabyte per year.[113] The Commission estimates the non-labor costs associated with electronically storing audio files of prerecorded messages and call detail records will cost around $5 a year.

The Commission invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the FTC's burden estimates, including whether the methodology and assumptions used are valid; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collecting information. 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 and recommendations for the proposed information collection should be sent within 30 days of publication of this document to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. 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.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires that the Commission conduct an analysis of the anticipated economic impact of the proposed amendments on small entities.[114] The RFA requires the Commission provide an Initial Regulatory Flexibility Analysis (''IRFA'') with a proposed rule unless the Commission certifies the rule will not have a significant economic impact on a substantial number of small entities.[115]

The Commission believes that the proposed amendment would not have a significant economic impact upon small entities, although it may affect a substantial number of small businesses. In the Commission's view, the proposed amendment should not significantly increase the costs of small entities that are sellers or telemarketers because the proposed amendments primarily require these entities to retain records they are already generating and preserving in the ordinary course of business. The Commission does not believe the proposed amendments requiring small entities that are sellers or telemarketers to comply with the TSR's prohibitions on misrepresentations should impose any additional costs on small entities. Therefore, based on available information, the Commission certifies that amending the Rules as proposed will not have a significant economic impact on a substantial number of small entities, and hereby provides notice of that certification to the Small Business Administration (''SBA''). Nonetheless, the Commission has determined it is appropriate to publish an IRFA in order to inquire into the impact of the proposed amendments on small entities. The Commission invites comment on the burden on any small entities that would be covered and has prepared the following analysis.

A. Description of the Reasons the Agency Is Taking Action

The Commission proposes amending the TSR to require telemarketers and sellers to maintain additional records regarding their telemarketing transactions. As described in Section II, the proposed amendments are intended to update the TSR's existing recordkeeping requirements so the requirements comport with the substantial amendments to the TSR since the recordkeeping requirements were first made. The requirements are

[111] This figure is derived from the mean hourly wage shown for ''Computer Support Specialist.'' *See* ''Occupational Employment and Wages-May 2021'' Bureau of Labor Statistics, U.S. Department of Labor, Last Modified March 31, 2022, Table 1 (''National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2021'') *available at https://www.bls.gov/news.release/ocwage.t01.htm* (last visited April 5, 2022).

[112] *See* Gartner, Inc. ''IT Key Metrics Data 2020: Infrastructure Measures—Storage Analysis.'' Gartner December 18, 2019.

[113] Amazon's storage rate for S3 Standard—Infrequent Access storage is $0.0125 per GB per month. *Available at https://aws.amazon.com/s3/pricing/?nc=sn&loc=4* (last visited Jan. 31, 2022); Google's storage rate for Archive Storage in parts of North America is $0.0012 per GB per month. *Available at https://cloud.google.com/storage/pricing* (last visited Jan. 31, 2022).

[114] 5 U.S.C. 601–612.

[115] 5 U.S.C. 605.

also necessary in light of the technological advancements that have made it easier and cheaper for unscrupulous telemarketers to engage in illegal telemarketing. The proposed amendments would also require B2B telemarketers to comply with the TSR's prohibition on misrepresentations. These amendments are necessary to help protect businesses from deceptive telemarketing practices. The proposed amendments would also amend the definition of ''previous donor'' to clarify that a seller or telemarketer may not use prerecorded messages to solicit charitable donations on behalf of a charitable organization unless the recipient of the call previously donated to that charitable organization within the last two years.

B. Statement of Objectives of, and Legal Basis for, the Proposed Amendments

The objective of the proposed amendments is to update the TSR's recordkeeping requirements in order to assist the Commission's enforcement of the TSR, and to prohibit misrepresentations in B2B telemarketing. The legal basis for the proposed amendments is the Telemarketing Act, which authorizes the Commission to issue rules to prohibit deceptive or abusive telemarketing practices.

C. Description and Estimated Number of Small Entities To Which the Rule Will Apply

The proposed amendments to the Rule affect sellers and telemarketers engaged in ''telemarketing,'' defined by the Rule to mean ''a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call.'' [116] As noted above, staff estimate 4,385 telemarketing entities are currently subject to the TSR, and approximately 75 new entrants enter the market per year. For telemarketers, a small business is defined by the SBA as one whose average annual receipts do not exceed $16.5 million.[117] Because virtually any business could be a seller under the TSR, it is not possible to identify average annual receipts that would make a seller a small business as defined by the SBA. Commission staff are unable to determine a precise estimate of how many sellers or telemarketers constitute small entities as defined by SBA. The Commission invites comment and information on this issue.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements, Including Classes of Small Entities and Professional Skills Needed To Comply

The proposed rule contains new recordkeeping requirements and modifications to existing recordkeeping requirements. The new recordkeeping requirements would require sellers or telemarketers to retain: (1) A copy of each unique prerecorded message; (2) call detail records of telemarketing campaigns; (3) records sufficient to show a seller has an established business relationship with a consumer; (4) records sufficient to show a consumer is a previous donor to a particular charitable organization; (5) records regarding the service providers a telemarketer uses to deliver outbound calls; (6) records of a seller or charitable organization's entity-specific do-not-call registries; and (7) records of the Commission's DNC Registry that were used to ensure compliance with this Rule. The proposed modifications to the existing recordkeeping requirements would: (1) Change the time period for retaining records from two years to five years; (2) clarify the records necessary for sellers or telemarketers to demonstrate the person they are calling has consented to receive the call; and (3) specify the format for records that include phone numbers, time, or duration. The small entities potentially covered by the proposed amendment will include all such entities subject to the Rule. The Commission has described the skills necessary to comply with these recordkeeping requirements in Section V above.

E. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

The Telephone Consumer Protection Act of 1991, 47 U.S.C. 227, and its implementing regulations, 47 CFR 64.1200 (collectively, ''TCPA'') contain recordkeeping requirements that may overlap with the recordkeeping requirements proposed by the new rule. For example, the proposed provision requiring sellers or telemarketers to keep a record of consumers who state they do not wish to receive any outbound calls made on behalf of a seller or telemarketer, 16 CFR 310.5(a)(10), overlaps to some degree with the TCPA's prohibition on a person or entity initiating a call for telemarketing unless such person or entity has procedures for maintaining lists of persons who request not to receive telemarketing calls including a requirement to record the request.[118] The Commission's proposed recordkeeping requirements do not conflict with the TCPA's recordkeeping requirements because sellers and telemarketers can comply with both sets of requirements simultaneously. Moreover, in the Commission's experience, the recordkeeping requirements under the TCPA do not lessen the need for the more robust recordkeeping requirements the Commission is proposing to further its law enforcement efforts. The Commission invites comment and information regarding any potentially duplicative, overlapping, or conflicting federal statutes, rules, or policies.

F. Significant Alternatives to the Proposed Amendments

The Commission has not proposed any specific small entity exemption or other significant alternatives to the proposed rule. The Commission has made every effort to avoid imposing unduly burdensome requirements on sellers and telemarketers by limiting the recordkeeping requirements to records both necessary for the Commission's law enforcement and typically already kept in the ordinary course of business.

VII. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner's advisor, will be placed on the public record.[119]

VIII. Incorporation by Reference

Consistent with 5 U.S.C. 552(a) and 1 CFR part 51, the Commission proposes to incorporate the specifications of the following standard issued by the International Telecommunications Union: ITU–T E.164: Series E: Overall Network Operation, Telephone Service,

[116] 16 CFR 310.2(dd). The Commission notes that, as mandated by the Telemarketing Act, the interstate telephone call requirement in the definition excludes small business sellers and the telemarketers which serve them in their local market area, but may not exclude some small business sellers and telemarketers in multi-state metropolitan markets, such as Washington, DC.

[117] Telemarketers are typically classified as ''Telemarketing Bureaus and Other contact Centers,'' (NAICS Code 561422). *See* Table of Small Business Size Standards Matched to North American Industry Classification System Codes, *available at https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019,%202019.pdf* (last visited Jan. 31, 2022).

[118] 47 CFR 65.1200(d)(3).

[119] *See* 16 CFR 1.26(b)(5).

Service Operation and Human Factors (published 11/2010). The E.164 standard establishes a common framework for how international telephone numbers should be arranged so calls can be routed across telephone networks. Countries use this standard to establish their own international telephone number formats and ensure those numbers have the information necessary to route telephone calls successfully between countries.

This ITU standard is reasonably available to interested parties. The ITU provides free online public access to view read-only copies of the standard. The ITU website address for access to the standard is: *https://www.itu.int/en/pages/default.aspx.*

List of Subjects in 16 CFR Part 310

Incorporation by reference, Telemarketing, Trade practices.

For the reasons stated above, the Federal Trade Commission proposes to amend part 310 of title 16 of the Code of Federal Regulations as follows:

PART 310—TELEMARKETING SALES RULE

■ 1. The authority for part 310 continues to read as follows:

Authority: 15 U.S.C. 6101–6108.

PART 310—[AMENDED]

■ 2. In § 310.2,
■ a. Revise paragraph (q)
■ b. Redesignate paragraphs (aa) through (hh) as follows:

Old section	New section
(aa)	(bb)
(bb)	(cc)
(cc)	(dd)
(dd)	(ee)
(ee)	(ff)
(ff)	(gg)
(gg)	(hh)
(hh)	(ii)

■ c. Add new paragraph (aa).

The revision and addition read as follows:

§ 310.2 Definitions.

* * * * *

(q) Established business relationship means a relationship between a seller and a consumer based on:

(1) The consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and seller, within the 540 days immediately preceding the date of a telemarketing call; or

(2) the consumer's inquiry or application regarding a good or service offered by the seller, within the 90 days immediately preceding the date of a telemarketing call.

* * * * *

(aa) Previous donor means any person who has made a charitable contribution to a particular charitable organization within the two-year period immediately preceding the date of the telemarketing call soliciting on behalf of that charitable organization.

* * * * *

■ 3. Revise § 310.5 to read as follows:

§ 310.5 Recordkeeping.

(a) Any seller or telemarketer must keep, for a period of 5 years from the date the record is produced unless specified otherwise, the following records relating to its telemarketing activities:

(1) A copy of each substantially different advertising, brochure, telemarketing script, and promotional material, and a copy of each unique prerecorded message. Such records must be kept for a period of 5 years from the date that they are no longer used in telemarketing;

(2) A record of each telemarketing call, which must include:

(i) The telemarketer that placed or received the call;

(ii) the seller or person for which the telemarketing call is placed or received;

(iii) the good, service, or charitable purpose that is the subject of the telemarketing call;

(iv) whether the telemarketing call is to a consumer or a business;

(v) whether the telemarketing call is an outbound telephone call;

(vi) whether the telemarketing call utilizes a prerecorded message;

(vii) the calling number, called number, date, time, and duration of the telemarketing call;

(viii) the telemarketing script(s) and prerecorded message, if any, used during the call;

(ix) the caller identification telephone number, and if it is transmitted, the caller identification name that is transmitted in an outbound telephone call to the recipient of the call, and any contracts or other proof of authorization for the telemarketer to use that telephone number and name, and the time period for which such authorization or contract applies; and

(x) the disposition of the call, including but not limited to, whether the call was answered, connected, dropped, or transferred. If the call was transferred, the record must also include the telephone number or IP address that the call was transferred to as well as the company name, if the call was transferred to a company different from the seller or telemarketer that placed the call;

(3) For each prize recipient, a record of the name, last known telephone number, and last known physical or email address of that prize recipient, and the prize awarded for prizes that are represented, directly or by implication, to have a value of $25.00 or more;

(4) For each customer, a record of the name, last known telephone number, and last known physical or email address of that customer, the goods or services purchased, the date such goods or services were purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services; [1]

(5) For each consumer with whom a seller asserts it has an established business relationship under § 310.2(q)(2), a record of the name and last known telephone number of that consumer, the date that consumer submitted an inquiry or application regarding the seller's goods or services, and the goods or services inquired about;

(6) For each consumer that a telemarketer intends to assert is a previous donor to a particular charitable organization under § 310.2(aa), a record of the name and last known telephone number of that consumer, and the last date that consumer donated to that particular charitable organization;

(7) For each current or former employee directly involved in telephone sales or solicitations, a record of the name, any fictitious name used, the last known home address and telephone number, and the job title(s) of that employee; provided, however, that if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee;

(8) All verifiable authorizations or records of express informed consent or express agreement (collectively, ''Consent'') required to be provided or received under this Rule. A complete record of Consent includes the following:

(i) The name and telephone number of the person providing Consent;

(ii) a copy of the request for Consent in the same manner and format in which it was presented to the person providing Consent;

(iii) the purpose for which Consent is requested and given;

[1] For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.,* and Regulation Z, 12 CFR part 226, compliance with the recordkeeping requirements under the Truth in Lending Act, and Regulation Z, will constitute compliance with paragraph (a)(4) of this section.

(iv) a copy of the Consent provided;

(v) the date Consent was given; and

(vi) for the copy of Consent provided under § 310.3(a)(3) or 310.4(a)(7), (b)(1)(iii)(B)(1), or (b)(1)(v)(A), a complete record must also include all information specified in those respective sections of this Rule;

(9) A record of each service provider a telemarketer used to deliver an outbound telephone call to a consumer on behalf of a seller for each good or service the seller offers for sale through telemarketing. For each such service provider, a complete record includes the contract for the service provided, the date the contract was signed, and the time period the contract is in effect. Such contracts must be kept for 5 years from the date the contract expires, or 5 years from the date the telemarketing activity that the contract applies to ceased, whichever period of time is shorter;

(10) A record of each consumer who has stated she does not wish to receive any outbound telephone calls made on behalf of a seller or charitable organization pursuant to § 310.4(b)(1)(iii)(A) including: The name of the consumer, the telephone number(s) associated with the request, the seller or charitable organization from which the consumer does not wish to receive calls, the telemarketer that called the consumer, the date the consumer requested that she cease receiving such calls, and the goods or services the seller was offering for sale or the charitable purpose for which a charitable contribution was being solicited; and

(11) A record of each version of the Commission's ''do-not-call'' registry that was used to ensure compliance with § 310.4(b)(1)(iii)(B). Such record must include the date the version was obtained, and the seller or telemarketer who obtained that version.

(b) A seller or telemarketer may keep the records required by paragraph (a) of this section in the same manner, format, or place as they keep such records in the ordinary course of business. The format for records required by paragraph (a)(2)(vii) of this section, and any other records that include a time or telephone number, must also comply with the following:

(1) The format for domestic telephone numbers must comport with the North American Numbering plan;

(2) The format for international telephone numbers must comport with the standard established in the ITU–T E.164;

(3) The time and duration of a call must be kept to the closest second; and

(4) Time must be recorded in Coordinated Universal Time (UTC).

(c) Failure to keep each record required by paragraph (a) of this section in a complete and accurate manner, and in compliance with paragraph (b) of this section, as applicable, is a violation of this Rule.

(d) For records kept pursuant to paragraph (a)(2) of this section, the seller or telemarketer will not be liable for failure to keep complete and accurate records pursuant to this section if it can demonstrate, with documentation, that as part of its routine business practice:

(1) It has established and implemented procedures to ensure completeness and accuracy of its records;

(2) It has trained its personnel, and any entity assisting it in its compliance, in such procedures;

(3) It monitors compliance with and enforces such procedures, and maintains records documenting such monitoring and enforcement; and

(4) Any failure to keep complete and accurate records was temporary and due to inadvertent error.

(e) The seller and the telemarketer calling on behalf of the seller may, by written agreement, allocate responsibility between themselves for the recordkeeping required by this section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement will govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If by written agreement the telemarketer bears the responsibility for the recordkeeping requirements of this section, the seller must establish and implement practices and procedure to ensure the telemarketer is complying with the requirements of this section. If the agreement is unclear as to who must maintain any required record(s), or if no such agreement exists, both the telemarketer and the seller are responsible for complying with this section.

(f) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that seller or telemarketer must maintain all records required under this section. In the event of any sale, assignment, or other change in ownership of the seller's or telemarketer's business, the successor business must maintain all records required under this section.

(g) The material required in this section is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the Federal Trade Commission (FTC) and at the National Archives and Records Administration (NARA). Contact FTC at: FTC Library, (202) 326–2395, Federal Trade Commission, Room H–630, 600 Pennsylvania Avenue NW, Washington, DC 20580; or by email at *Library@ftc.gov.* For information on the availability of this material at NARA, email: *fr.inspection@nara.gov* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.* It is available from: The International Telecommunications Union, Telecommunications Standardization Bureau, Place des Nations, CH–1211 Geneva 20; (+41 22 730 5852); *https://www.itu.int/en/pages/default.aspx.*

(1) Recommendation ITU–T E.164: Series E: Overall Network Operation, Telephone Service, Service Operation and Human Factors, 2010.

(2) [Reserved.]

■ 4. Amend § 310.6 as follows:

■ a. In paragraphs (b)(1) through (3), remove the text ''§§ 310.4(a)(1), (a)(7), (b), and (c)'' and add, in its place, the text ''§§ 310.4(a)(1), (a)(8), (b), and (c)''; and

■ b. Revise paragraph (b)(7) to read as follows:

§ 310.6 Exemptions.

* * * * *

(b) * * *

(7) Telephone calls between a telemarketer and any business to induce the purchase of goods or services or a charitable contribution by the business, *provided,* however that this exemption does not apply to:

(i) The requirements of § 310.3(a)(2) and (4); or

(ii) Calls to induce the retail sale of nondurable office or cleaning supplies; *provided,* however, that §§ 310.4(b)(1)(iii)(B) and 310.5 shall not apply to sellers or telemarketers of nondurable office or cleaning supplies.

■ 5. Amend § 310.7 by revising paragraph (a) to read as follows:

§ 310.7 Actions by states and private persons.

(a) Any attorney general or other officer of a state authorized by the state to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, must serve written notice of its action on the Commission, if feasible, prior to its initiating an action under this part. The notice must be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade

Commission, Washington, DC 20580, at *tsrnotice@ftc.gov* and must include a copy of the state's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the state or private person must serve the Commission with the required notice immediately upon instituting its action.

* * * * *

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2022–09914 Filed 6–2–22; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0372]

RIN 1625–AA00

Safety Zone; Parade, Willamette River, Portland, OR

AGENCY: Coast Guard, Homeland Security (DHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for certain waters of the Willamette River. This action is necessary to provide for the safety of participants and the maritime public during a float parade on the Willamette River in Portland, Oregon on July 10, 2022. This proposed rulemaking would prohibit non-participant persons and vessels from being in the safety zone unless authorized by the Captain of the Port Columbia River or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 21, 2022.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0372 using the Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LT Sean Murphy, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone 503–240–9319, email *D13-SMB-MSUPortlandWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code
COTP Captain of the Port Columbia River

II. Background, Purpose, and Legal Basis

On April 22, 2022, the Human Access Project notified the Coast Guard that it will need to reschedule The Big Float, an annually recurring marine event. The event consists of a float parade from 11 a.m. to 6 p.m. on July 10, 2022. Hazards from a float parade include potentially oversized decorations, lower traffic speed, and falling debris. The Captain of the Port Columbia River (COTP) has determined that the potential hazards associated with the float parade would be a safety concern for anyone within the designated area of the safety zone before, during, or after the parade.

The purpose of this rulemaking is to protect personnel, vessels, and the marine environment in these navigable waters before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone from 10:30 a.m. until 6:30 p.m. on July 10, 2022. The safety zone will cover all navigable waters of the Willamette River, in Portland Oregon, enclosed by the Hawthorne Bridge, the Marquam Bridge, and west of a line beginning at the Hawthorne Bridge at approximate location 45°30′50″ N; 122°40′21″ W, and running south to the Marquam Bridge at approximate location 45°30′27″ N; 122°40′11″ W. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 11 a.m. to 6 p.m. parade. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed 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 NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. The safety zone created by this proposed rule is designed to minimize its impact on navigable waters. This proposed rule will prohibit entry into certain navigable waters of the Willamette River and is not anticipated to exceed 7 hours in duration. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Moreover, under certain conditions vessels may still transit through the safety zone when permitted by the COTP. The Coast Guard will issue a broadcast notice to mariners via VHF–FM marine channel 16 about the zone and the rulemaking 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree

this rulemaking would economically affect it.

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 proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would 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 proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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 proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination 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 proposed rule involves a safety zone lasting 7 hours that will prohibit entry within a 1 mile length of the Willamette River for the duration of the float event. Normally such actions are categorically excluded from further review under paragraph L60a of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2022–0372 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 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.T13–0372 to read as follows:

§ 165.T13–0372 Safety Zone; Parade, Willamette River, Portland, OR.

(a) *Location.* The following area is a safety zone: all navigable waters of the Willamette River, in Portland Oregon, enclosed by the Hawthorne Bridge, the Marquam Bridge, and west of a line beginning at the Hawthorne Bridge at approximate location 45°30′50″ N; 122°40′21″ W, and running south to the

Marquam Bridge at approximate location 45°30′27″ N; 122°40′11″ W.

(b) *Definitions.* As used in this section—

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Columbia River (COTP) in the enforcement of the safety zone.

Participant means all persons and vessels registered with the event sponsor as a participant in the parade.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, all non-participants may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by calling (503) 209–2468 or the Sector Columbia River Command Center on Channel 16 VHF–FM. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(3) The COTP will provide notice of the regulated area through advanced notice via broadcast notice to mariners and by on-scene designated representatives.

(d) *Enforcement period.* This section will be enforced from 10:30 a.m. until 6:30 p.m. on July 10, 2022. It will be subject to enforcement this entire period unless the COTP determines it is no longer needed, in which case the Coast Guard will inform mariners via notice to mariners.

Dated: May 24, 2022.

G.M. Bailey,

Captain, U.S. Coast Guard, Alternate Captain of the Port Columbia River.

[FR Doc. 2022–11629 Filed 6–2–22; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0439; FRL–9870–01–R9]

Air Plan Approval; California; San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the San Diego County Air Pollution Control District's (SDCAPCD or District) portion of the California State Implementation Plan (SIP). This revision concerns a volatile organic compound (VOC) rule covering transfer of organic compounds into mobile transport trucks and a negative declaration for non-Control Techniques Guidelines (CTG) major VOC sources. We are proposing to approve the local rule to regulate these emission sources under the Clean Air Act (CAA or the Act) and the negative declaration. We are taking comments on this proposal and plan to follow with a final action. Elsewhere in this **Federal Register**, we are making an interim final determination to defer CAA sanctions associated with our previous disapproval action concerning the CTG categories addressed by the rule and negative declaration.

DATES: Comments must be received on or before July 5, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2022–0439 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Donnique Sherman, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4129 or by email at *sherman.donnique@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

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I. The State's Submittal

A. What documents did the State submit?

Table 1 lists the submissions addressed by this proposal with the dates they were adopted or amended by the local air agency and submitted by the California Air Resources Board (CARB) to the EPA.

TABLE 1—SUBMITTALS

Local agency	Document title	Adopted/amended	Submitted
SDCAPCD	Rule 61.2 Transfer of Organic Compounds into Mobile Transport Tanks	02/10/2021	04/20/2021
SDCAPCD	2020 Reasonably Available Control Technology (RACT) Demonstration for the National Ambient Air Quality Standards for Ozone in San Diego County, October 2020—*Negative Declaration for Non-CTG Major VOC Sources.*	10/14/2020	12/29/2020

Under CAA section 110(k)(1), the EPA must determine whether a SIP submittal meets the minimum completeness criteria established in 40 CFR part 51, appendix V for an official SIP submittal on which the EPA is obligated to take action. If the EPA does not make an affirmative determination of completeness or incompleteness within six months of receipt of a SIP submittal, the submittal is deemed to be complete by operation of law. The submittals listed in Table 1 were deemed complete by operation of law on October 20, 2021 (Rule 61.2) and June 29, 2021 (SDCAPCD's negative declaration).

B. Are there other versions of these documents?

We approved a previous version of Rule 61.2 (locally amended on July 26, 2000) into the California SIP on August 26, 2003 (68 FR 51186). The SDCAPCD adopted revisions to the SIP-approved version on February 10, 2021, and CARB submitted them to us on April 20, 2021. If we take final action to approve the February 10, 2021 version of Rule 61.2, this version will replace the previously approved version of this rule in the SIP.

We approved portions of the RACT SIP and negative declarations on December 3, 2020 (85 FR 77996), not including the negative declaration for non-CTG major VOC sources because the SDCAPCD had not formally adopted it. The SDCAPCD formally adopted the negative declaration for non-CTG major VOC sources on October 14, 2020, and CARB submitted it to us on December 29, 2020.

C. What is the purpose of the submitted documents?

Emissions of VOCs contribute to the production of ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Sections 182(b)(2) and (f) require that SIPs for ozone nonattainment areas classified as Moderate or above implement RACT for any source covered by Control Techniques Guidelines (CTG). The SDCAPCD is subject to this requirement as it regulates an ozone nonattainment area that, at the time it prepared the original submittal for the negative declaration and Rule 61.2, was designated and classified as a Moderate nonattainment area for the 2008 8-hour ozone NAAQS. Therefore, the SDCAPCD must, at a minimum, adopt RACT-level controls for all sources covered by a CTG document and for all major non-CTG sources of VOCs within the ozone nonattainment area that it regulates. Any stationary source that emits or has the potential to emit at least 100 tons per year (tpy) of VOCs or NO_X is a major stationary source in a Moderate ozone nonattainment area (CAA section 182(b)(2), (f) and 302(j)).

On December 3, 2020 (85 FR 77996), the EPA partially disapproved the SDCAPCD's 2008 RACT SIP demonstration for the source category covering the CTG for ''Control of Hydrocarbon from Tank Truck Gasoline Loading Terminals'' (EPA 450/2–77–026) (Tank Truck Gasoline Loading CTG). The EPA's technical support document (TSD) for the proposal (August 10, 2020, 85 FR 48127) states that, ''. . . Rule 61.2 sets a limit of 0.29 lb/1,000 gallons for transfers at bulk terminals. We determined that Rule 61.2 did not meet current RACT for tank truck loading at bulk terminals. This limit is higher than the emissions limit in nearly every nonattainment area in California, and in a number of nonattainment areas outside California.'' In addition, our partial disapproval of SDCAPCD's 2008 RACT SIP also included a disapproval of the District's RACT demonstration for non-CTG major sources of VOCs. The District had not formally adopted a negative declaration for non-CTG major VOC sources.

On December 29, 2020, CARB submitted to the EPA the SDCAPCD's 2015 RACT SIP, which includes a negative declaration adopted for non-CTG major VOC sources for the 2008 RACT SIP which corrects the deficiency in EPA's 2020 disapproval action for the non-CTG major VOC source category. On April 20, 2021, CARB submitted to the EPA amended Rule 61.2 that included a decrease in emission limit for bulk terminals to 0.08 pound per 1,000 gallons, which corrects the deficiency in EPA's 2020 disapproval action for the Tank Truck Gasoline Loading CTG category. The EPA's TSD has more information.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the submitted documents?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require reasonably available control technology (RACT) for each category of sources covered by a CTG document as well as each major source of VOCs in ozone nonattainment areas classified as Moderate or above (see CAA section 182(b)(2)). The SDCAPCD regulates an ozone nonattainment area that is currently classified as a ''Severe'' nonattainment area for the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS).[1] Therefore, this rule must implement RACT. Our action evaluates whether Rule 61.2 implements RACT for the Tank Truck Gasoline Loading CTG source category.

States must submit for SIP approval negative declarations for those source categories for which they have not adopted CTG-based regulations (because they have no sources above the CTG-recommended applicability threshold) regardless of whether such negative declarations were made for an earlier SIP.[2] The submittal should provide reasonable assurance that no sources subject to the CTG requirements currently exist in the portion of the ozone nonattainment area that is regulated by the SDCAPCD. Our action evaluates the negative declaration for non-CTG major VOC sources.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
4. ''Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals,'' EPA–450/2–77–026, October 1977.
5. ''Control of Volatile Organic Emissions from Bulk Gasoline Plants,'' EPA–450/2–77–035, December 1977.
6. ''Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems,'' EPA–450/2–78–051, December 1978.

B. Do the documents meet the evaluation criteria?

This rule and negative declaration are consistent with CAA requirements and relevant guidance regarding enforceability, RACT, and SIP revisions. Specifically, the rule requirements sufficiently ensure that affected sources

[1] 86 FR 29522 (June 2, 2021).

[2] 57 FR 13498, 13512 (April 16, 1992).

and regulators can consistently evaluate and determine compliance. Additionally, our analysis finds that Rule 61.2 represents current RACT for the Tank Truck Gasoline Loading CTG because the rule is as stringent as the CTG and is generally consistent with requirements in other air districts for tank truck gasoline loading at bulk terminals. In addition, our analysis of the District's negative declaration determined that there are no non-CTG VOC sources that exceed the 100 tpy VOC threshold for Moderate ozone nonattainment areas. The Technical Support Document (TSD) has more information on our evaluation.

C. The EPA's Recommendations To Further Improve the Submitted Rule

The TSD includes a recommendation for the next time the local agency modifies the Rule 61.2.

D. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted Rule 61.2 because it fulfills all relevant requirements. In addition, the EPA proposes approval of the submitted negative declaration for non-CTG major VOC sources for 2008 RACT SIP Moderate area requirements. We will accept comments from the public on this proposal until July 5, 2022. If we take final action to approve the submitted rule and negative declaration, our final action will incorporate this rule into the federally enforceable SIP and stop the sanctions and FIP clocks that are associated with our previous disapproval.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference SDCAPCD Rule 61.2, ''Transfer of Organic Compounds into Mobile Transport Tanks'' as amended on February 10, 2021. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the 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 proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

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

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

Dated: May 31, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2022–11971 Filed 6–2–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2021–0553; FRL–9736–01–R2]

Approval of Air Quality Implementation Plans; New York; Revision to 6 NYCRR Part 235 Consumer Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the New York State Implementation Plan (SIP) for the purposes of implementing control of air pollution for volatile organic compounds (VOC). The proposed SIP revision consists of amendments to New York's Codes, Rules, and Regulations (NYCRR) that implement control measures for Consumer Products. The intended effect of this action is to approve control strategies which will result in VOC emission reductions that will help attain and maintain the national ambient air quality standards (NAAQS) for ozone. These actions are being taken in accordance with the requirements of the Clean Air Act.

DATES: Written comments must be received on or before July 5, 2022.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R02–OAR–2021–0553, at *https://www.regulations.gov*. Follow the online instructions for submitting comments. 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 internet, 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://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Linda Longo at (212) 637–3356 or by email at *longo.linda@epa.gov,* or by mail at Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007–1866.

SUPPLEMENTARY INFORMATION:

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I. Background

Ozone Requirements

Section 182 of the Clean Air Act (CAA) specifies the required SIP submissions and requirements for areas classified as nonattainment for ozone and when these submissions and requirements are to be submitted to the EPA by the States. The specific requirements vary depending upon the severity of the ozone problem. CAA section 182(b)(2)(A) requires that for ozone nonattainment areas classified as Moderate or above, States must revise their SIPs to include provisions to implement Reasonably Available Control technology (RACT). CAA section 184(b)(1)(B) extends the RACT obligation to all areas of the State within the Ozone Transport Region. In addition to New York being classified as nonattainment for the 2008 and 2015 ozone standards for the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT area, New York is a member of the Ozone Transport Region. States subject to RACT requirements are required to adopt controls through the adoption of regulations, or by issuance of single source orders or permits that outline what the source is required to do to meet RACT. The Ozone Transport Commission developed control measures into model rules for a number of source categories and estimated emission reduction benefits from implementing these model rules. These model rules were designed for use by States in developing their own regulations to achieve additional emission reductions. The proposed revisions to the consumer products rule will provide VOC emission reductions to address, in part, attainment of the 8-hour ozone standard in the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area, which is composed of the five boroughs of New York City and the surrounding counties of Nassau, Suffolk, Westchester, and Rockland. These revisions will also address, in part, the RACT requirements by providing VOC emission reductions statewide.

II. What was included in New York's submission of part 235?

On March 2, 2021, New York submitted a proposed SIP revision to Title 6 NYCRR part 235, ''Consumer Products,'' including attendant revisions to part 200, section 200.9, ''General Provisions, Reference material.'' The EPA finds the State's submission is complete. The proposed rulemaking applies to any person who sells, supplies, offers for sale, or manufactures consumer products for use in the State of New York.

III. What is the EPA's evaluation of part 235?

The most recent federally approved version of 6 NYCRR part 235, ''Consumer Products,'' was published on May 28, 2010. *See* 75 FR 29897 (May 28, 2010). The current proposed revision was submitted by the State on March 2, 2021, with a State enforceability date of January 1, 2022. The proposed regulations target a group of household and commonly used products, referred to as ''consumer products,'' and are submitted for EPA approval with the goal of limiting and reducing VOC emissions statewide. The EPA's evaluation recognizes that the proposal is consistent with the Ozone Transport Commission Model Rule for consumer products and will help the State attain the NAAQS by improving air quality through reduced VOC emissions and promoting regional consumer product consistency. The proposed revisions to part 235 are expected to reduce VOC released to the air by 5.3 tons per day. Since the use of consumer products is highest in population centers, the reductions in the New York City metro area alone, where the 2008 ozone standard is exceeded, is expected to be 3.4 tons per day. To achieve these emission reductions, new product categories were added with new VOC limits and existing product categories were revised to reduce their VOC limits. In addition, revisions were made in the definitions section at 6 NYCRR section 235–2.1 to provide transitional language and to cite which emission standards apply before or after the January 1, 2022 compliance date.

New Product Categories With New VOC Limits

As identified in the ''Table of Standards'' within section 235–3.1, the proposed revision includes nine new product categories, some with sub-categories, with new VOC content limits, percent by weight, as follows: (1) Air freshener product category for *dual purpose air fresheners/disinfectants* subcategory at 60; (2) anti-static product category for *aerosols* subcategory at 80; (3) automotive windshield cleaner at 35; (4) bathroom and tile cleaner product category for *non-aerosols* subcategory at 1; (5) disinfectant product category for *aerosols* subcategory at 70 and *non-aerosols* subcategory at 1; (6) multi-purpose solvent product category at 3; (7) paint thinner product category at 3; (8) sanitizers product category for *aerosols* subcategory at 70 and *non-aerosols* subcategory at 1; (9) temporary hair color product category for *aerosols* subcategory at 55. In addition, two existing product categories have new sub-categories with new VOC content limits, percent by weight, as follows: (1) Furniture maintenance product category for *non-aerosols (except solid or paste)* subcategory at 3; and (2) oven or grill cleaners product category for *non-aerosols* subcategory at 4.

Reduced VOC Limits on Existing Product Categories

As identified in the Table of Standards, section 235–3.1, the proposed revision includes reduced VOC content limits for ten existing product categories or subcategories, percent by weight, for the following: (1) Adhesives product category for *construction paneling and floor covering* subcategory reduced from 15 to 7; (2) automotive brake cleaner[s]/brake cleaner product category from 45 to 10; (3) carburetor or fuel-injection air intake cleaners product category from 45 to 10; (4) engine degreasers product category for *aerosols* subcategory from 35 to 10; (5) floor polishes and waxes product category for *flexible flooring materials* subcategory from 7 to 1, and for *non-resilient flooring* subcategory from 10 to 1; (6) general purpose cleaners product category for *aerosols* subcategory from 10 to 8; (7) general purpose degreaser product category for *aerosols*

subcategory from 50 to 10; (8) laundry starch products category from 5 to 4.5; (9) nail polish remover product category from 75 to 1; (10) shaving gel product category from 7 to 4.

Ozone Transport Commission Consumer Products Model Rule and Neighboring States

New York is implementing the Ozone Transport Commission's model rule for consumer products [1] in order to reduce VOC emissions and maintain regional product consistency in accordance with a Memorandum of Understanding among the Ozone Transport Commission States,[2] of which New York is a signatory. The new and revised emission limits identified in the ''Table of Standards,'' and explained above, reflect New York's contribution to reducing the potential emissions from consumer products. The VOC content limits for part 235 are lower than or equal to neighboring States and maintain regional product consistency. The EPA reviewed New York's submission and confirmed that the regulations are consistent with similar regulations adopted by neighboring States and consistent with the Ozone Transport Commission Model Rule.

Part 235 Public Notice State-Side

New York received six public comments on its proposed rule. New York addressed the comments by: (1) Recognizing that consumer products can contain ozone precursor pollutants and working to reduce ozone precursor pollutants; (2) revising the compliance date to January 1, 2022 to allow manufacturers and distributors additional time to address distribution issues and provide compliant products to retail outlets, and (3) allowing manufacturers the option to sell the existing stock of products that were manufactured before the compliance date (sell-through provisions) specified in the ''Table of Standards'' at section 235–3.1.

The EPA is satisfied with New York's responses to the public comments. Regarding the first topic addressed above, through its rule, New York is addressing emission sources to reduce ozone by regulating products that contain ozone precursor pollutant emissions, such as volatile chemical products. For example, adhesives can be a volatile chemical product, and the proposed revised emission limits will reduce the Construction, Panel, and Floor Covering adhesive category by more than half, from 15 to 7 percent VOC content by weight. Regarding the second topic addressed above, New York is revising the rule to extend the compliance date from January 1, 2021 to January 1, 2022 to address manufacturers' and distributors' distribution challenges and provide compliant products to retail outlets. Lastly, regarding the third topic addressed above, New York revised the sell-through provisions to allow manufacturers to sell their existing stock of products that were manufactured before the January 1, 2022 compliance date.

Part 200, ''General Provisions,'' Section 200.9, Table 1, ''Referenced Materials''

The current proposed revision includes attendant revisions to 6 NYCRR part 200, ''General Provisions,'' section 200.9, Table 1, ''Referenced Materials,'' which include American Society for Testing Materials (ASTM) testing procedures, the California Air Resources Board (CARB) provisions supporting this regulation, and updated references to part 235. The EPA is satisfied that the revisions to section 200.9 are appropriate.

IV. The EPA's Proposed Action

The EPA has evaluated New York's proposed revision for consistency with the Clean Air Act, the EPA regulations, and policy. The EPA is proposing to approve revisions to the New York SIP and amendment to 6 NYCRR part 235, ''Consumer Products,'' including attendant revisions to 6 NYCRR part 200, ''General Provisions,'' section 200.9, Table 1, ''Referenced Materials,'' with a State effective date of February 11, 2021. Specifically, this rulemaking proposes to add nine new product categories and two new subcategories with new VOC emission limits and proposes to reduce the VOC emission limits in ten existing product categories. The proposed revisions will help the State to comply with Federal requirements pertaining to attainment and maintenance of the ozone NAAQS. The EPA is soliciting public comments on the items discussed in this document. These comments will be considered before taking final action.

V. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference revisions to 6 NYCRR part 235, ''Consumer Products,'' including attendant revisions to 6 NYCRR part 200, ''General Provisions,'' section 200.9, Table 1, ''Referenced Materials,'' as described in this preamble. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 2 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 CAA 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 proposed action:

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

[1] The Ozone Transport Commission consumer products model rule documents can be found at *https://otcair.org/document.asp?fview=modelrules.* Scroll to 2018 for ''Regulatory & Technical Guideline for Consumer Products Phase V'' (formerly known as the ''OTC Model Rule for Consumer Products'') and technical support documents for emissions and costs.

[2] The Ozone Transport Commission Memorandum of Understanding, dated June 3, 2010, is provided in the docket.

this action does not involve technical standards; and

• Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629 (February 16, 1994)).

In addition, this proposed rulemaking, addressing New York's 6 NYCRR part 235, ''Consumer Products,'' is not approved to apply on any Indian reservation land or in any other area where the 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, Ozone, Volatile organic compounds.

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

Lisa Garcia,

Regional Administrator, Region 2.

[FR Doc. 2022–11595 Filed 6–2–22; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 87, No. 107
Friday, June 3, 2022

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2022–0019]

National Wildlife Services Advisory Committee; Notice of Solicitation for Membership

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice to solicit nominations for membership.

SUMMARY: Through this notice, the U.S. Department of Agriculture (USDA) is soliciting a call for nominations for membership to fill up to 20 vacancies for the National Wildlife Services Advisory Committee (NWSAC). The full committee consists of 20 members; each person selected is expected to serve a 2-year term. Membership will be composed of persons representing a broad spectrum of agricultural, environmental, conservation, academic, animal welfare, and related interests. The Animal and Plant Health Inspection Service expects the Secretary of Agriculture to appoint new Committee members for the entire committee in 2022. Please note, individuals who are federally registered lobbyists, appointed to committees to exercise their own individual best judgment on behalf of the government (*e.g.,* as Special Government Employees) are ineligible to serve and cannot be considered for USDA advisory committee membership. Members can only serve on one USDA advisory committee at a time. All nominees will undergo a USDA background check. You must submit the following to nominate yourself or someone else to the NWSAC: A resume (required), a USDA Advisory Committee Membership Background Information Form AD–755, which is available online at *https://www.usda.gov/sites/default/files/documents/ad-755.pdf* (required), a cover letter (required), and a list of endorsements or letters of recommendation (optional). The resume or curriculum vitae must be limited to five one-sided pages and should include a summary of the following information: Current and past organization affiliations; areas of expertise; education; career positions held; and any other notable positions held.

DATES: Nomination packages including a cover letter to the Secretary, the nominee's typed resume or curriculum vitae, and a completed USDA Advisory Committee Membership Background Information Form AD–755 must be postmarked or emailed on or before August 2, 2022.

ADDRESSES: Ms. Carrie Joyce, Designated Federal Officer, U.S. Department of Agriculture, WS, APHIS, 4700 River Road, Unit 87, Riverdale, MD 20737; (301) 851–3999; email: *carrie.e.joyce@usda.gov.* Nomination packages should be addressed to the Secretary of Agriculture, at the attention of Ms. Carrie Joyce for the National Wildlife Services Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Carrie Joyce, Designated Federal Officer; email: *carrie.e.joyce@usda.gov* or by phone at (301) 851–3999.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Secretary of Agriculture will appoint members for the upcoming vacancies to serve a 2-year term of office beginning in 2022 and ending in 2024. The National Wildlife Services Advisory Committee (NWSAC) advises the Secretary of the U.S. Department of Agriculture (USDA) on policies, program issues, and research needed to conduct the Wildlife Services program. The Committee also serves as a public forum enabling those affected by the Wildlife Services program to have a voice in the program's policies. The Committee Chairperson and Vice Chairperson shall be elected by the Committee from among its members.

The Secretary of Agriculture invites those individuals, organizations, and groups affiliated with the categories listed in the **SUMMARY** section to nominate individuals or themselves for membership on the NWSAC.

The full Committee expects to meet at approximately once per year in-person, virtually, or by teleconference, and the meetings will be announced in the **Federal Register**. The Secretary of Agriculture seeks a diverse group of members representing a broad spectrum of persons interested in providing suggestions and ideas on the implementation of USDA's Wildlife Services program to protect America's agricultural, industrial, and natural resources and to safeguard public health and safety.

We are soliciting nominations from interested organizations and individuals. An organization may nominate individuals from within or outside of its membership; alternatively, an individual may nominate themselves. Nomination packages should include a nomination form along with a cover letter or resume that documents the nominee's experience. Nomination forms are available on the internet at *https://www.usda.gov/sites/default/files/documents/ad-755.pdf* or may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

USDA Equal Opportunity Statement

Equal opportunity practices, in line with USDA policies, will be followed in all membership appointments to the committee. To ensure that the recommendations of the committee have taken into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The USDA prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, religion, sex (including gender identity and sexual orientation), disability, age, marital status, familial or parental status, income derived from a public assistance program, political beliefs, genetic information, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs).

USDA Non-Discrimination Statement

In accordance with Federal civil rights law and USDA civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender

expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

Dated: May 25, 2022.

Cikena Reid,

Committee Management Officer, USDA.

[FR Doc. 2022–11903 Filed 6–2–22; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Intent To Issue Forest Order Closing Hyalite Canyon on the Custer Gallatin National Forest to Recreational Shooting

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture, is giving notice of its intent to issue a forest order closing the Hyalite drainage on the Custer Gallatin National Forest in Montana to recreational shooting in advance of the public comment period for the proposed closure. At the end of the period of advance notice, the Forest Service will solicit public comments, as specified in this notice, on the proposed forest order.

DATES: Advance notice of the opportunity to provide public comment on the proposed recreational shooting order is being provided until June 10, 2022. Beginning on June 10, 2022, the Forest Service will accept comments on the proposed forest order for 60 days. The notice of opportunity for public comment will be posted on the Custer Gallatin National Forest web page at *https://www.fs.usda.gov/alerts/custergallatin/alerts-notices* and at the Forest Service's website at *www.fs.usda.gov/about-agency/regulations-policies.*

ADDRESSES: The proposed forest order and the justification for the proposed forest order are available on the Custer Gallatin National Forest web page: *https://www.fs.usda.gov/alerts/custergallatin/alerts-notices* and at the Forest Service's website at *www.fs.usda.gov/about-agency/regulations-policies* or can be viewed at the Bozeman Ranger District Office, Custer Gallatin National Forest, 3710 Fallon Street, Suite C, Bozeman, MT 59718. Please call ahead to ensure access: 406–522–2520.

FOR FURTHER INFORMATION CONTACT: Corey Lewellen, District Ranger, 406–522–2531, *corey.lewellen@usda.gov.* Individuals who use telecommunications devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

I. Advance Notice and Public Comment Procedures

Section 4103 of the John D. Dingell, Jr., Conservation, Management, and Recreation Act (Pub. L. 116–9) requires that the Secretary of Agriculture, acting through the Chief of the Forest Service, provide public notice and comment before permanently or temporarily closing any National Forest System lands to hunting, fishing, or recreational shooting. Section 4103 applies to the proposed forest order closing the Hyalite canyon area to recreational shooting, with the exception of hunting under Montana state law. The public notice and comment process in section 4103(b)(2) requires the Secretary to publish an advance notice of intent, in the **Federal Register**, of the proposed closure in advance of the public comment period for the closure. This notice meets the requirement to publish a notice of intent in the **Federal Register** in advance of the public comment period. Following the notice of intent, section 4103(b)(2) requires an opportunity for public comment. Because the proposed forest order would permanently close the Hyalite canyon area to recreational shooting, the public comment period must be not less than 60 days. Beginning on June 10, 2022, the Forest Service will accept public comments on the proposed order for 60 days. The notice of opportunity for public comment will be posted on the Custer Gallatin National Forest web page at *https://www.fs.usda.gov/alerts/custergallatin/alerts-notices* and at the Forest Service's website at *www.fs.usda.gov/about-agency/regulations-policies.*

Section 4103(b)(2) requires the Forest Service to respond to public comments received on the proposed order before issuing a final order, including an explanation of how any significant issues raised by the comments were resolved and, if applicable, how resolution of those issues affected the proposed order or the justification for the proposed order. The response to comments on the proposed order, justification for the final order, and the issuance of the final forest order will all be posted on the Custer Gallatin National Forest web page at *https://www.fs.usda.gov/alerts/custergallatin/alerts-notices* and at the Forest Service's website at *www.fs.usda.gov/about-agency/regulations-policies.*

II. Background and Need for Forest Order

This proposed permanent recreational shooting closure is needed to ensure public safety in the Hyalite watershed. This proposed, permanent recreational shooting closure will replace the existing, emergency shooting closure order implemented on April 21, 2022. This recent emergency closure order replaced the previous emergency shooting closure order that was issued on April 21, 2021 and expired on April 20, 2022. Both emergency orders followed direction in FSH 5309.11, Chapter 30, Section 34.21. The current emergency shooting closure order will be rescinded when the permanent closure is approved and fully implemented. This watershed is the most heavily used drainage on National Forest System lands in the state of Montana. The Hyalite watershed experiences exceptionally high numbers of recreational visitors. In 2016, the canyon received more than 40,000 visitors per month in the summer and over 20,000 visitors per month in the winter. Current visitor monitoring indicates use has increased over the last 5 years to more than 60,000 visitors per month in the summer and over 30,000 visitors per month in the winter. Within the 34,000-acre proposed closure area, there are 475 developed sites, 185 dispersed camping sites, about 70 miles of trail and 65 miles of roads. The narrow geography of this glaciated valley, the density of roads and trails, developed and undeveloped sites, and the volume of people who recreate in this area make it unsafe for unmanaged recreational target shooting.

The proposed forest order, map, and the justification for the forest order are available on the Custer Gallatin National Forest web page at *https://www.fs.usda.gov/alerts/custergallatin/alerts-notices* and at the Forest Service's

website at *www.fs.usda.gov/about-agency/regulations-policies.*

Dated: May 24, 2022.

Tina Johna Terrell,

Associate Deputy Chief, National Forest System.

[FR Doc. 2022–11904 Filed 6–2–22; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Wyoming 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 Wyoming Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via Webex at 1:00 p.m. MT on Monday, June 27, 2022, to discuss civil rights concerns in the state.

DATES: The meeting will take place on Monday, June 27, 2022, from 1:00 p.m.–2:30 p.m. MT.

Link to Join (Audio/Visual): *https://tinyurl.com/fv574jh5*

Telephone (Audio Only): Dial (800) 360–9505 USA Toll Free; Access Code: 2764 656 9370

FOR FURTHER INFORMATION CONTACT: Kayla Fajota, DFO, at *kfajota@usccr.gov* or (434) 515–2395.

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 (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 *kfajota@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 Office, 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, Wyoming 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. Discussion: Potential Topic Choice
III. Next Steps
IV. Public Comment
V. Adjournment

Dated: May 31, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–11986 Filed 6–2–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meetings.

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 Pennsylvania Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold series of web-based panel discussions on Tuesday June 28, 2022 from 11 a.m.–1:00 p.m. Eastern time, and Thursday July 14, 2022 from 11:00 a.m.–1:00 p.m. Eastern time. The purpose of these meetings is for the Committee to hear testimony regarding civil rights and fair housing in the state.

DATES:

- Panel 4: Tuesday June 28, 2022 from 11:00 a.m. –1:00 p.m. Eastern time.

Online Regisration (Audio/Visual): *https://bit.ly/3NKOW6l*

- Panel 5: Thursday July 14, 2022 from 10:00 a.m.–12:00 p.m. Eastern time.

Online Regisration (Audio/Visual): https://bit.ly/3lOBpym

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or (202) 618–4158.

SUPPLEMENTARY INFORMATION: Members of the public may listen to these discussions. Committee meetings are available to the public through the above listed online registration link. Telephone access will be provided upon registration for those who are unavailable to join the meeting online. An open comment period will be provided to allow members of the public to make a statement as time allows. 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. American Sign Language interpretation will be provided. Indivudals with disabilities requiring other accommodations may contact Corrine Sanders at *csanders@usccr.gov* 10 days prior to the meeting to make their request.

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 *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (202) 618–4158.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, 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, Pennsylvania 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 Unit at the above email address.

Agenda

Welcome and Roll Call
Panel Discussion: Civil Rights and Fair Housing in Pennsylvania
Public Comment
Adjournment

Dated: May 31, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–11982 Filed 6–2–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–42–2022]

Approval of Subzone Status, Sandvik Mining and Construction Logistics Limited, Clarks Summit, Pennsylvania

On March 28, 2022, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Eastern Distribution Center, Inc., grantee of FTZ 24, requesting subzone status subject to the existing activation limit of FTZ 24, on behalf of Sandvik Mining and Construction Logistics Limited, in Clarks Summit, Pennsylvania.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (87 FR 19474–19475, April 4, 2022). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR 400.36(f)), the application to establish Subzone 24G was approved on May 26, 2022, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 24's 2,000-acre activation limit.

Dated: May 26, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–11863 Filed 6–2–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–39–2022]

Approval of Subzone Status, GHSP Inc., Grand Haven, Hart and Holland, Michigan

On March 25, 2022, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the KOM Foreign Trade Zone Authority, grantee of FTZ 189, requesting subzone status subject to the existing activation limit of FTZ 189, on behalf of GHSP Inc., in Grand Haven, Hart and Holland, Michigan.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (87 FR 18765, March 31, 2022). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR 400.36(f)), the application to establish Subzone 189F was approved on May 26, 2022, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 189's 2,000-acre activation limit.

Dated: May 26, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–11865 Filed 6–2–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Simple Network Application Process and Multipurpose Application Form

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on March 25, 2022, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: Bureau of Industry and Security.

Title: Simple Network Application Process and Multipurpose Application Form.

OMB Control Number: 0694–0088.

Form Number(s): BIS–748P, BIS–748P–A, BIS–748P–B.

Type of Request: Regular submission, revision, and extension of a current information collection.

Number of Respondents: 70,023.

Average Hours per Response: 17 minutes to 2 hours.

Burden Hours: 34,077.

Needs and Uses: Section 1761(h) under the Export Control Reform Act (ECRA) of 2018, authorizes the President and the Secretary of Commerce to issue regulations to implement the ECRA including those provisions authorizing the control of exports of U.S. goods and technology to all foreign destinations, as necessary for the purpose of national security, foreign policy and short supply, and the provision prohibiting U.S. persons from participating in certain foreign boycotts. Export control authority has been assigned directly to the Secretary of Commerce by the ECRA and delegated by the President to the Secretary of Commerce. This authority is administered by the Bureau of Industry and Security through the Export Administration Regulations (EAR). BIS administers a system of export, re-export, and in-country transfer controls in accordance with the EAR. In doing so, BIS requires that parties wishing to engage in certain transactions apply for licenses, submit Encryption Review Requests, or submit notifications to BIS. BIS also reviews, upon request, specifications of various items and determines their proper classification under the EAR.

Affected Public: Business or other for-profit organizations.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

Legal Authority: Section 1761(h) of the Export Control Reform Act (ECRA).

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

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 and entering either the title of the collection or the OMB Control Number 0694–0088.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–11955 Filed 6–2–22; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List

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

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (Commerce) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 35 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, Commerce finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to: (a) Identify which companies subject to review previously were collapsed; and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[1] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial Section D responses.

Opportunity To Request a Review: Not later than the last day of June 2022,[2] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in June for the following periods:

	Period
Antidumping Duty Proceedings	
Germany: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel, A–428–845	6/1/21–5/31/22
India:	
Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel, A–533–873	6/1/21–5/31/22

[1] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[2] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when Commerce is closed.

	Period
Glycine, A–533–883	6/1/21–5/31/22
Quartz Surface Products, A–533–889	6/1/21–5/31/22
Indonesia: Prestressed Concrete Steel Wire Strand, A–560–837	11/19/20–5/31/22
Italy:	
Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel, A–475–838	6/1/21–5/31/22
Pressed Concrete Steel Wire Strand, A–475–843	11/19/20–5/31/22
Japan:	
Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (over 4½ inches), A–588–850	6/1/21–5/31/22
Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (under 4½ inches), A–588–851	6/1/21–5/31/22
Glycine, A–588–878	6/1/21–5/31/22
Malaysia: Prestressed Concrete Steel Wire Strand, A–557–819	11/19/20–5/31/22
Republic of Korea: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel, A–580–892	6/1/21–5/31/22
Socialist Republic of Vietnam:	
Certain Tool Chests and Cabinets, A–552–821	6/1/21–5/31/22
Laminated Woven Sacks, A–552–823	6/1/21–5/31/22
Spain:	
Chlorinated Isocyanurates, A–469–814	6/1/21–5/31/22
Finished Carbon Steel Flanges, A–469–815	6/1/21–5/31/22
Prestressed Concrete Steel Wire Strand, A–469–821	11/19/20–5/31/22
South Africa: Prestressed Concrete Steel Wire Strand, A–791–826	11/19/20–5/31/22
Switzerland: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel, A–441–801	6/1/21–5/31/22
Taiwan: Helical Spring Lock Washers, A–583–820	6/1/21–5/31/22
The People's Republic of China:	
Artist Canvas, A–570–899	6/1/21–5/31/22
Ceramic Tile, A–570–108	6/1/21–5/31/22
Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel, A–570–058	6/1/21–5/31/22
Certain Tool Chests and Cabinets, A–570–056	6/1/21–5/31/22
Chlorinated Isocyanurates, A–570–898	6/1/21–5/31/22
Furfuryl Alcohol, A–570–835	6/1/21–5/31/22
High Pressure Steel Cylinders, A–570–977	6/1/21–5/31/22
Polyester Staple Fiber, A–570–905	6/1/21–5/31/22
Prestressed Concrete Steel Wire Strand, A–570–945	6/1/21–5/31/22
Silicon Metal, A–570–806	6/1/21–5/31/22
Tapered Roller Bearings, A–570–601	6/1/21–5/31/22
Tunisia: Prestressed Concrete Steel Wire Strand, A–723–001	11/19/20–5/31/22
Turkey: Quartz Surface Products, A–489–837	6/1/21–5/31/22
Ukraine: Prestressed Concrete Steel Wire Strand, A–823–817	11/19/20–5/31/22
Countervailing Duty Proceedings	
India:	
Glycine, C–533–884	1/1/21–12/31/21
Quartz Surface Products, C–533–890	1/1/21–12/31/21
Socialist Republic of Vietnam: Laminated Woven Sacks, C–552–824	1/1/21–12/31/21
The People's Republic of China:	
Ceramic Tile, C–570–109	1/1/21–12/31/21
Glycine, C–570–081	1/1/21–12/31/21
High Pressure Steel Cylinders, C–570–978	1/1/21–12/31/21
Stainless Steel Flanges, C–570–065	1/1/21–12/31/21
Turkey: Quartz Surface Products, C–489–838	1/1/21–12/31/21

Suspension Agreements

None.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The

public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[3]

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative reviews.[4] Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.[5] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an antidumping administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at *https://access.trade.gov.*[6] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[7]

Commerce will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of June 2022. If Commerce does not receive, by the last day of June 2022, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

Establishment of and Updates to the Annual Inquiry Service List

On September 20, 2021, Commerce published the final rule titled ''*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*'' in the **Federal Register**.[8] On September 27, 2021, Commerce also published the notice entitled ''*Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*'' in the **Federal Register**.[9] The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the persons on the annual inquiry service list for that order, as well as any companion order covering the same merchandise from the same country of origin.[10]

In accordance with the *Procedural Guidance,* for orders published in the **Federal Register** before November 4, 2021, Commerce created an annual inquiry service list segment for each order and suspended investigation. Interested parties who wished to be added to the annual inquiry service list for an order submitted an entry of appearance to the annual inquiry service list segment for the order in ACCESS, and on November 4, 2021, Commerce finalized the initial annual inquiry service lists for each order and suspended investigation. Each annual inquiry service list has been saved as a public service list in ACCESS, under each case number, and under a specific segment type called ''AISL—Annual Inquiry Service List.''[11]

As mentioned in the *Procedural Guidance,* beginning in January 2022, Commerce will update these annual inquiry service lists on an annual basis when the *Opportunity Notice* for the anniversary month of the order or suspended investigation is published in the **Federal Register**.[12] Accordingly, Commerce will update the annual inquiry service lists for the above-listed antidumping and countervailing duty proceedings. All interested parties wishing to appear on the updated annual inquiry service list must take one of the two following actions: (1) New interested parties who did not previously submit an entry of appearance must submit a new entry of appearance at this time; (2) Interested parties who were included in the preceding annual inquiry service list must submit an amended entry of appearance to be included in the next year's annual inquiry service list. For these interested parties, Commerce will change the entry of appearance status from ''Active'' to ''Needs Amendment'' for the annual inquiry service lists corresponding to the above-listed proceedings. This will allow those interested parties to make any necessary amendments and resubmit their entries of appearance. If no amendments need

[3] *See* the Enforcement and Compliance website at *https://www.trade.gov/us-antidumping-and-countervailing-duties.*

[4] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[5] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[6] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[7] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 41363 (July 10, 2020).

[8] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300 (September 20, 2021) (*Final Rule*).

[9] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

[10] *Id.*

[11] This segment has been combined with the ACCESS Segment Specific Information (SSI) field which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register**, also known as the anniversary month. For example, for an order under case number A–000–000 that was published in the **Federal Register** in January, the relevant segment and SSI combination will appear in ACCESS as ''AISL—January Anniversary.'' Note that there will be only one annual inquiry service list segment per case number, and the anniversary month will be pre-populated in ACCESS.

[12] *See Procedural Guidance,* 86 FR at 53206.

to be made, the interested party should indicate in the area on the ACCESS form requesting an explanation for the amendment that it is resubmitting its entry of appearance for inclusion in the annual inquiry service list for the following year. As mentioned in the *Final Rule,*[13] once the petitioners and foreign governments have submitted an entry of appearance for the first time, they will automatically be added to the updated annual inquiry service list each year.

Interested parties have 30 days after the date of this notice to submit new or amended entries of appearance. Commerce will then finalize the annual inquiry service lists five business days thereafter. For ease of administration, please note that Commerce requests that law firms with more than one attorney representing interested parties in a proceeding designate a lead attorney to be included on the annual inquiry service list.

Commerce may update an annual inquiry service list at any time as needed based on interested parties' amendments to their entries of appearance to remove or otherwise modify their list of members and representatives, or to update contact information. Any changes or announcements pertaining to these procedures will be posted to the ACCESS website at *https://access.trade.gov.*

Special Instructions for Petitioners and Foreign Governments

In the *Final Rule,* Commerce stated that, ''after an initial request and placement on the annual inquiry service list, both petitioners and foreign governments will automatically be placed on the annual inquiry service list in the years that follow.''[14] Accordingly, as stated above and pursuant to 19 CFR 351.225(n)(3), the petitioners and foreign governments will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioners and foreign governments are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

This notice is not required by statute but is published as a service to the international trading community.

[13] *See Final Rule,* 86 FR at 52335.

[14] *Id.*

Dated: May 19, 2022.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2022–11856 Filed 6–2–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–503, A–122–503, A–570–502, C–351–504]

Certain Iron Construction Castings From Brazil, Canada, and the People's Republic of China: Continuation of Antidumping and Countervailing Duty Orders

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

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the International Trade Commission (ITC) that revocation of the antidumping duty (AD) and countervailing duty (CVD) orders on iron construction castings from Brazil, Canada, and the People's Republic of China would likely lead to continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD and CVD orders.

DATES: Applicable June 3, 2022.

FOR FURTHER INFORMATION CONTACT: Christopher Hargett, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4161.

SUPPLEMENTARY INFORMATION:

Background

On March 5, 1986, May 9, 1986, and May 15, 1986, Commerce published the AD and CVD orders on iron construction castings from Brazil, Canada, and the People's Republic of China (China).[1] On December 1, 2021, the ITC instituted,[2] and Commerce initiated,[3] the fifth five-year (sunset) reviews of these AD and CVD orders, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, Commerce determined that revocation of the *Orders* would be likely to lead to continuation or recurrence of dumping and countervailable subsidies and, therefore, notified the ITC of the magnitude of the margins and net subsidy rates likely to prevail should the *Orders* be revoked.[4] On May 18, 2022, the ITC published its determinations, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Orders* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Orders

Brazil

The merchandise covered by the *Brazil Order* consists of certain iron construction castings from Brazil, limited to manhole covers, rings, and frames, catch basin grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems, classifiable as heavy castings under Harmonized Tariff Schedule (HTS) item numbers 7325.10.0010 7325.10.0020, 7325.10.0025; and to valve, service, and meter boxes which are placed below ground to encase water, gas, or other valves, or water and gas meters, classifiable as light castings under HTS item numbers 7325.10.0030, 7325.10.0035, 7325.99.1000. The HTS item numbers are provided for convenience and customs purposes only. The written description remains dispositive.

[1] *See Antidumping Duty Order: Iron Construction Castings from Canada,* FR 51 7600 (March 5, 1986), amended by *Iron Construction Castings from Canada; Amendment to Final Determination of Sales at Less Than Fair Value and Amendment to Antidumping Duty Order,* 51 FR 34110 (September 25, 1986) (*Canada Order*); *Antidumping Duty Order: Iron Constructions Castings from Brazil,* 51 FR 17220 (May 9, 1986); *Antidumping Duty Order: Iron Constructions Castings from the People's Republic of China (the PRC),* 51 FR 17222 (May 9, 1986) (*China Order*); *Countervailing Duty Order; Certain Heavy Iron Construction Castings from Brazil,* 51 FR 17786 (May 15, 1986) (*Brazil Order*) (collectively, *Orders*).

[2] *See Iron Construction Castings from Brazil, Canada, and China; Institution of Five-Year Reviews,* 86 FR 68283 (December 1, 2021).

[3] *See Initiation of Five Year (Sunset) Reviews,* 86 FR 68220 (December 1, 2021).

[4] *See Certain Iron Construction Castings from Brazil, Canada and the People's Republic of China: Final Results of Expedited Fifth Sunset Review of Antidumping Duty Orders,* 87 FR 14821 (March 16, 2022), and accompanying Issues and Decision Memorandum (IDM); *Heavy Iron Construction Castings from Brazil: Final Results of the Expedited Fifth Sunset Review of the Countervailing Duty Order,* 87 FR 19484 (April 4, 2022), and accompanying IDM.

[5] *See Iron Construction Castings from Brazil, Canada, and China (Investigation Nos. 701–TA–249 and 731–TA–262–263 and 265 (Fifth Review)),* 87 FR 30264 (May 18, 2022).

Canada

The merchandise covered by the *Canada Order* consists of certain iron construction castings from Canada, limited to manhole covers, rings, and frames, catch basin grates and frames, clean-out covers, and frames used for drainage or access purposes for public utility, water and sanitary systems, classifiable as heavy castings under HTS item numbers 7325.10.0010, 7325.10.0020, 7325.10.0025, 7325.99.1000. The HTS item numbers are provided for convenience and customs purposes only. The written description remains dispositive.

China

The products covered by the *China Order* are certain iron construction castings, limited to manhole covers, rings and frames, catch basin grates and frames, cleanout covers and drains used for drainage or access purposes for public utilities, water and sanitary systems; and valve, service, and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters. These articles must be of cast iron, not alloyed, and not malleable. This merchandise is currently classifiable under the HTS item number 7325.10.0010 and 7325.10.0050. The HTS item numbers are provided for convenience and customs purposes. The written product description remains dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to a continuation or a recurrence of dumping and countervailable subsidies and of material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Orders.* U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the *Orders* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year review of the *Orders* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

Notification to Interested Parties

These five-year (sunset) reviews and this notice are in accordance with sections 751(c) of the Act, and published in accordance with section 777(i) of the Act and 19 CFR 351.218(f)(4).

Dated: May 26, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–11864 Filed 6–2–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–088]

Certain Steel Racks and Parts Thereof From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review, 2019–2020

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

SUMMARY: The Department of Commerce (Commerce) is amending the final results of the administrative review of the antidumping duty order on certain steel racks and parts thereof from the People's Republic of China to correct ministerial errors. The period of review is March 4, 2019, through August 31, 2020.

DATES: Applicable June 3, 2022.

FOR FURTHER INFORMATION CONTACT: Jonathan Hill, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3518.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2022, Commerce disclosed its margin calculations in the final results of the above-referenced review.[1] On April 11, 2022, Nanjing Kingmore Logistics Equipment Manufacturing Co., Ltd. (Nanjing Kingmore), a mandatory respondent, timely alleged that Commerce made ministerial errors in calculating the company's weighted-average dumping margin in the *Final Results.*[2]

Legal Framework

Commerce's regulations stipulate that it will disclose its calculations to parties to the proceeding and that those parties may submit comments concerning any alleged ministerial errors.[3] If appropriate, Commerce will correct any ministerial errors by amending its determination.[4] Ministerial errors are defined as ''errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which {Commerce} considers ministerial.''[5]

Ministerial Error

Commerce committed inadvertent, unintentional errors within the meaning of section 751(h) of the Act and 19 CFR 351.224(f) when it: (1) Used a surrogate value for U.S. inland freight rates that was in the wrong unit of measure, and; (2) failed to convert Nanjing Kingmore's reported distances for calculating U.S. inland freight costs from a character variable to a numeric variable.[6]

Accordingly, we are amending the *Final Results* to reflect the corrections of these ministerial errors in the calculation of the weighted-average dumping margin for Nanjing Kingmore.[7] Further, we are amending the review-specific rate assigned to the non-examined, separate rate companies based on the weighted-average dumping

[1] *See Certain Steel Racks and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2019–2020,* 87 FR 20817 (April 8, 2022) (*Final Results*), and accompanying Issues and Decision Memorandum; *see also* Memorandum, ''2019–2020 Antidumping Duty Administrative Review of Certain Steel Racks and Parts Thereof from the People's Republic of China: Final Results Analysis Memorandum for Nanjing Kingmore Logistics Equipment Manufacturing Co., Ltd.,'' dated April 1, 2022.

[2] *See* Nanjing Kingmore's Letter, ''Certain Steel Racks and Parts Thereof from the People's Republic of China, Case No. A–570–088: Ministerial Error Allegation,'' dated April 11, 2022.

[3] *See* 19 CFR 351.224(b) and (c)(l).

[4] *See* 19 CFR 351.224(e).

[5] *See* section 751(h) of the Tariff Act of 1930, as amended (the Act); *see also* 19 CFR 351.224(f).

[6] *See* Memorandum, ''Administrative Review of the Antidumping Duty Order on Certain Steel Racks and Parts Thereof from the People's Republic of China: Ministerial Error Allegation,'' dated concurrently with this notice.

[7] *See* Memorandum, ''2019–2020 Antidumping Duty Administrative Review of Certain Steel Racks and Parts Thereof from the People's Republic of China: Amended Final Results Analysis Memorandum for Nanjing Kingmore Logistics Equipment Manufacturing Co., Ltd.,'' dated concurrently with this memorandum.

margins calculated for the mandatory respondents.[8]

Amended Final Results

After correcting for the ministerial errors described above, we determine that the following weighted-average dumping margins exist for the period March 4, 2019, through August 31, 2020:

Exporter	Weighted-average dumping margin (percent)
Nanjing Kingmore Logistics Equipment Manufacturing Co., Ltd	15.04
Review-Specific Rate Applicable to the Following Non-Examined Companies:	
Jiangsu Nova Intelligent Logistics Equipment Co., Ltd	12.29
Nanjing Ironstone Storage Equipment Co., Ltd	12.29
Suzhou (China) Sunshine Hardware & Equipment Imp. & Exp. Co., Ltd	12.29
Xiamen Luckyroc Industry Co., Ltd	12.29

Disclosure

Pursuant to 19 CFR 351.224(b), within five days of the publication of this notice in the **Federal Register**, we will disclose to the parties to this proceeding, the calculations that we performed for these amended final results of review.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise covered by the amended final results of review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of these amended final results of review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Where the respondent's weighted-average dumping margin is zero or *de minimis,* or where an importer-specific *ad valorem* or per-unit rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[9] For U.S. entries that were not reported in the U.S. sales data submitted by an exporter individually examined during this review, but that entered under the case number of that exporter (*i.e.,* at the individually-examined exporter's cash deposit rate), Commerce will instruct CBP to liquidate such entries at the cash deposit rate for the China-wide entity (*i.e.,* 144.50 percent).

We calculated importer-specific per-unit assessment rates for Nanjing Kingmore by dividing the total amount of dumping for reviewed sales of subject merchandise imported by the importer, or for reviewed sales of subject merchandise to a customer, as appropriate, by the total sales quantity associated with those transactions.

For the companies not individually examined in this administrative review that qualified for a separate rate, the assessment rate will be equal to the weighted-average dumping margins calculated for those companies in these amended final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice of the amended final results of review in the **Federal Register**, as provided by section 751(a)(2)(C) of the Act: (1) For the exporters listed in the table above, the cash deposit rate will be equal to the weighted-average dumping margin determined in these amended final results of review; (2) for previously investigated or reviewed China and non-China exporters not under review in this segment of the proceeding that have separate rates, the cash deposit rate will continue to be the existing exporter-specific cash deposit rate published from the completed segment for the most recent period; (3) for all China exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the cash deposit rate previously established for the China-wide entity, which is 144.50 percent; and (4) for all non-China exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the cash deposit rate applicable to the China exporter that supplied that non-China exporter.

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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 Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

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 or 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 this notice in accordance with sections 751(h) and 777(i)(1) of the Act, and 19 CFR 351.224(e).

[8] *See* Memorandum, ''Antidumping Duty Administrative Review of Steel Racks and Parts Thereof from the People's Republic of China: Calculation of the Dumping Margin for Respondents Not Selected for Individual Examination for the Amended Final Results of Review,'' dated concurrently with this notice.

[9] *See* 19 CFR 351.106(c)(2).

Dated: May 25, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–11880 Filed 6–2–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–980]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Countervailing Duty Administrative Review and Notice of Amended Final Results

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

SUMMARY: On May 19, 2022, the U.S. Court of International Trade (the Court) entered judgment sustaining the final results of remand redetermination pursuant to court order by the U.S. Department of Commerce (Commerce) pertaining to the 2016 countervailing duty (CVD) administrative review of the order on crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells) from the People's Republic of China (China). Commerce is notifying the public that the final judgment in this case is not in harmony with Commerce's final results in the 2016 administrative review of solar cells from China and that Commerce is amending the final results.

DATES: Applicable May 29, 2022.

FOR FURTHER INFORMATION CONTACT: Gene H. Calvert, 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) 482–3586.

SUPPLEMTARY INFORMATION:

Background

On August 28, 2019, Commerce published its final results of the 2016 administrative review of solar cells from China.[1] Commerce reached affirmative determinations for mandatory respondents Canadian Solar Inc. and its cross-owned affiliates (collectively, Canadian Solar) and Jinko Solar Import and Export Co., Ltd. and its cross-owned affiliates (collectively, Jinko Solar), as well as for numerous other producers and exporters not selected for individual review.

On September 3, 2021, the Court remanded aspects of the *Final Results* to Commerce for further consideration.[2] The Court remanded Commerce's determinations regarding Commerce's calculation of the benchmark for aluminum extrusions; the determination of the benchmark for solar grade polysilicon; the use of adverse facts available (AFA) in its specificity finding for the provision of electricity for less than adequate remuneration (LTAR); the determination not to grant an entered value adjustment (EVA); and the determination regarding the Export Buyer's Credit Program.[3]

In its remand redetermination, issued in December 2021,[4] Commerce provided additional explanation and evidence for its determinations and revised certain determinations consistent with the Court's remand order, and the Court sustained Commerce's remand redetermination in full.[5] Specifically, the Court found that Commerce's determination to solely rely on data from IHS to establish a benchmark for aluminum extrusions, its determination that AFA was warranted regarding its specificity determination for the provision of electricity for LTAR because the Government of China (GOC) did not provide requested information, and that Commerce's explanation that China's solar-grade polysilicon market is distorted due to significant government participation by the GOC, all complied with the Court's order.[6] The Court also found that the granting of the EVA and removal of the subsidy rate for the Export Buyer's Credit Program satisfied the options as provided by the Court.[7]

Timken Notice

In its decision in *Timken,*[8] as clarified by *Diamon Sawblades,*[9] the U.S. Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The Court's May 19, 2020 judgment constitutes a final decision of the Court that is not in harmony with Commerce's *Final Results* and *Amended Final Results.* This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, Commerce will continue suspension of liquidation of subject merchandise pending expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Results

Because there is now a final court decision, Commerce is amending the *Amended Final Results* with respect to Canadian Solar, Jinko Solar, and for all other producers and exporters subject to this review. The revised total net countervailable subsidy rates for Canadian Solar and Jinko Solar for the period January 1, 2016, through December 31, 2016, are as follows:[10]

Producer/exporter	Subsidy rate (percent ad valorem)
Canadian Solar Inc. and Cross-Owned Affiliates[11]	3.65
Jinko Solar Import and Export Co., Ltd. and Cross-Owned Affiliates[12]	5.86

[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review and Recession of Review, in Part; 2016,* 84 FR 45125 (August 28, 2019) (*Final Results*), and accompanying Issues and Decision Memorandum, as amended by *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Amended Final Results of Countervailing Duty Administrative Review; 2016,* 84 FR 68102 (December 13, 2019) (*Amended Final Results*).

[2] *See Canadian Solar Inc.* v. *United States,* 537 F. Supp. 3d 1380 (CIT 2021).

[3] *Id.*

[4] *See Canadian Solar Inc.* v. *United States,* CIT Consolidated Court No. 19–00178, ''Final Results of Redetermination Pursuant to Court Remand,'' dated December 13, 2021 (Remand Redetermination).

[5] *See Canadian Solar Inc., et al.* v. *United States,* Slip Op. 22–49 (CIT May 19, 2022).

[6] *Id.*

[7] *Id.*

[8] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[9] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010).

[10] *See* Remand Redetermination at 56.

Review-Specific Rate Applicable to the Non-Selected Companies Subject to this Review:

Producer/exporter	Subsidy rate (percent ad valorem)
Baoding Jiasheng Photovoltaic Technology Co., Ltd	5.17
Baoding Tianwei Yingli New Energy Resources Co., Ltd	5.17
Beijing Tianneng Yingli New Energy Resources Co., Ltd	5.17
Canadian Solar (USA) Inc	5.17
Changzhou Trina Solar Energy Co., Ltd	5.17
Changzhou Trina Solar Yabang Energy Co., Ltd	5.17
Chint Solar (Zhejiang) Co., Ltd	5.17
Dongguan Sunworth Solar Energy Co., Ltd	5.17
ERA Solar Co. Limited	5.17
ET Solar Energy Limited	5.17
Hainan Yingli New Energy Resources Co., Ltd	5.17
Hangzhou Sunny Energy Science and Technology Co., Ltd	5.17
Hengdian Group DMEGC Magnetics Co., Ltd	5.17
Hengshui Yingli New Energy Resources Co., Ltd	5.17
JA Solar Technology Yangzhou Co., Ltd	5.17
JA Technology Yangzhou Co., Ltd	5.17
Jiangsu High Hope Int'l Group	5.17
Jiawei Solarchina (Shenzhen) Co., Ltd	5.17
Jiawei Solarchina Co., Ltd	5.17
JingAo Solar Co., Ltd	5.17
Jinko Solar (U.S.) Inc	5.17
Jinko Solar International Limited	5.17
Lightway Green New Energy Co., Ltd	5.17
Lixian Yingli New Energy Resources Co., Ltd	5.17
Luoyang Suntech Power Co., Ltd	5.17
Nice Sun PV Co., Ltd	5.17
Ningbo Qixin Solar Electrical Appliance Co., Ltd	5.17
Risen Energy Co., Ltd	5.17
Shanghai BYD Co., Ltd	5.17
Shanghai JA Solar Technology Co., Ltd	5.17
Shenzhen Glory Industries Co., Ltd	5.17
Shenzhen Topray Solar Co., Ltd	5.17
Sumec Hardware & Tools Co., Ltd	5.17
Systemes Versilis, Inc	5.17
Taizhou BD Trade Co., Ltd	5.17
tenKsolar (Shanghai) Co., Ltd	5.17
Tianjin Yingli New Energy Resources Co., Ltd	5.17
Toenergy Technology Hangzhou Co., Ltd	5.17
Trina Solar (Changzhou) Science & Technology Co., Ltd	5.17
Wuxi Suntech Power Co., Ltd	5.17
Yancheng Trina Solar Energy Technology Co., Ltd	5.17
Yingli Energy (China) Co., Ltd	5.17
Yingli Green Energy Holding Company Limited	5.17
Yingli Green Energy International Trading Company Limited	5.17
Zhejiang Era Solar Technology Co., Ltd	5.17
Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company	5.17

[11] Cross-owned affiliates are: Canadian Solar Inc.; Canadian Solar Manufacturing (Luoyang) Inc.; Canadian Solar Manufacturing (Changshu) Inc.; CSI Cells Co., Ltd.; CSI Solar Power (China) Inc. (name was changed to CSI Solar Power Group Co., Ltd. in December 2016); CSI Solartronics (Changshu) Co., Ltd.; CSI Solar Technologies Inc.; CSI New Energy Holding Co., Ltd. (name was CSI Solar Manufacture Inc. until July 2015); CSI–GCL Solar Manufacturing (Yancheng) Co., Ltd.; Changshu Tegu New Materials Technology Co., Ltd.; Changshu Tlian Co., Ltd.; and Suzhou Sanysolar Materials Technology Co., Ltd.

[12] Cross-owned affiliates are: Jinko Solar Import and Export Co., Ltd.; Jinko Solar Co., Ltd.; Zhejiang Jinko Solar Co., Ltd.; Jinko Solar (Shanghai) Management Co., Ltd.; Jiangxi Jinko Photovoltaic Materials Co., Ltd.; and Xinjiang Jinko Solar Co., Ltd.

Amended Cash Deposit Rates

Commerce will issue revised cash deposit instructions to U.S. Customs and Border Protection for all firms above that do not have a superseding cash deposit rate (*e.g.,* from a subsequent administrative review). For such firms, the revised cash deposit rates will be the rates indicated above, effective May 29, 2022.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1) and 777(i)(1) of the Act.

Dated: May 27, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–11938 Filed 6–2–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–898]

Large Diameter Welded Pipe From the Republic of Korea: Preliminary Results and Partial Rescission of the Countervailing Duty Administrative Review; 2020

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of large diameter welded pipe (welded pipe) from the Republic of Korea (Korea). The period of review (POR) is January 1, 2020, through December 31, 2020.

DATES: Applicable June 3, 2022.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Jonathan Schueler, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5973 or (202) 482–9175, respectively.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On May 28, and June 1 and 3, 2021, we received multiple requests for an administrative review [1] of the countervailing duty (CVD) order on welded pipe from Korea.[2] On July 6, 2021, Commerce published a notice of initiation of an administrative review of the *Order.*[3] On July 29, 2021, Commerce selected Hyundai RB Co., Ltd. (Hyundai RB) and SeAH Steel Corporation (SeAH Steel) as the mandatory respondents in this administrative review.[4] On January 4, 2022, Commerce extended the deadline for the preliminary results of this review to no later than May 31, 2022.[5]

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[6] A list of topics discussed in the Preliminary Decision Memorandum is included at the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The merchandise covered by the *Order* is welded pipe. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Final Rescission of Administrative Review

As noted in the Preliminary Decision Memorandum, the domestic interested party timely withdrew their requests for administrative review with respect to EM Solution Co., Ltd.; Hansol Metal Co., Ltd.; Hawin; Hyosung; and POSCO.[7] No other parties requested a review of these companies. On February 23, 2022, Commerce notified interested parties that we intended to rescind this administrative review of the companies named above and the following companies in the absence of suspended entries during the POR: (1) AJU Besteel Co., Ltd.; (2) Daiduck Piping Co., Ltd.; (3) Dongbu Incheon Steel Co., Ltd.; (4) EEW KHPC Co., Ltd.; (5) Husteel Co., Ltd.;[8] (6) Hyundai Steel; (7) Hyundai Steel Co., Ltd.; (8) Hyundai Steel Company;[9] (9) Kiduck Industries Co., Ltd.; (10) Kum Kang Kind. Co., Ltd.; (11) Kumsoo Connecting Co., Ltd.; (12) Nexteel Co., Ltd.; (13) Samkang M&T Co., Ltd.; (14) SeAH Steel, Co., Ltd.; (15) Seonghwa Industrial Co., Ltd.; (16) SIN–E B&P Co., Ltd.; (17) Steel Flower Co., Ltd.; and (18) WELTECH Co., Ltd.[10] No parties commented on the notification of intent to rescind the review of the 23 companies named above. Therefore, we determine that there were no entries of subject merchandise during the POR by these companies. As a result, we are rescinding this review, in part, pursuant to 19 CFR 351.213(d)(1) and 19 CFR 351.213(d)(3) with respect to the 23 companies listed above.

Methodology

Commerce is conducting this review in accordance with section 751(a)(l)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a government-provided financial contribution that confers a benefit to the recipient, and that the subsidy is specific.[11] For a full

[1] *See* Hyundai RB Co., Ltd.'s Letter, ''Request for Administrative Review,'' dated May 28, 2021; *see also* SeAH Steel Corporation's Letter, ''Request for Administrative Review,'' dated June 1, 2021; Hyundai Steel's Letter, ''Request for Administrative Review,'' dated June 1, 2021; Domestic Interested Party's Letter, ''Request for Administrative Review,'' dated June 1, 2021; and Hyundai Steel Company's and Husteel Co., Ltd.'s Letter, ''Request for Administrative Review,'' dated June 3, 2021. The domestic interested party is The American Line Pipe Producers Association Trade Committee.

[2] *See Large Diameter Welded Pipe from the Republic of Korea: Countervailing Duty Order,* 84 FR 18773 (May 2, 2019) (*Order*).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 35481 (July 6, 2021) (*Initiation Notice*).

[4] *See* Memorandum, ''Respondent Selection,'' dated July 29, 2021.

[5] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review; 2020,'' dated January 4, 2022.

[6] *See* Memorandum, ''Decision Memorandum for the Preliminary Results and Partial Rescission of the Countervailing Duty Administrative Review; 2020: Large Diameter Welded Pipe from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[7] *See* Domestic Interested Party's Letter, ''Partial Withdrawal of Request for Administrative Review,'' dated October 4, 2021.

[8] As stated in the *Initiation Notice,* subject merchandise both produced and exported by Husteel Co., Ltd. (Husteel) is excluded from the CVD order. Thus, Husteel's inclusion in this administrative review is limited to entries for which Husteel was the producer or exporter of the subject merchandise, but not both the producer and exporter.

[9] As stated in the *Initiation Notice,* subject merchandise both produced and exported by Hyundai Steel Company (Hyundai Steel) and subject merchandise produced by Hyundai Steel and exported by Hyundai Corporation are excluded from the CVD order. Thus, Hyundai Steel's inclusion in this administrative review is limited to entries for which Hyundai Steel was not the producer and exporter of the subject merchandise and for which Hyundai Steel was not the producer and Hyundai Corporation was not the exporter of subject merchandise.

[10] *See* Memorandum, ''Notice of Intent to Rescind Review, In Part,'' dated February 11, 2022.

[11] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E)

Continued

description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Companies Not Selected for Individual Review

The statute and Commerce's regulations do not directly address the CVD rates to be applied to companies not selected for individual examination where Commerce limited its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation. Section 777A(e)(2) of the Act provides that ''the individual countervailable subsidy rates determined under subparagraph (A) shall be used to determine the all-others rate under section 705(c)(5) {of the Act}.'' Section 705(c)(5)(A) of the Act states that for companies not investigated, in general, we will determine an all-others rate by weight-averaging the countervailable subsidy rates established for each of the companies individually investigated, excluding zero and *de minimis* rates or any rates based solely on the facts available.

In this review, we preliminarily determine that only Hyundai RB received countervailable subsidies at a rate above *de minimis.* Therefore, we are preliminarily applying the net subsidy rate calculated for Hyundai RB to the non-selected companies.

Preliminary Results of the Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual net countervailable subsidy rate for Hyundai RB and SeAH. Commerce preliminarily determines that, during the POR, the net countervailable subsidy rates for the producers/exporters under review are as follows:

Producer/exporter	Subsidy rate (percent ad valorem)
Hyundai RB Co., Ltd	1.66
SeAH Steel Corporation [12].	0.31 (de minimis)
Review-Specific Average Rate Applicable to the Following Companies [13]	
Chang Won Bending Co., Ltd.	1.66
Dong Yang Steel Pipe Co., Ltd.	1.66
EEW Korea Co., Ltd	1.66
Histeel Co., Ltd	1.66

Disclosure and Public Comment

We intend to disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of this notice.[14] Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results.[15] Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than seven days after the date for filing case briefs.[16] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance's ACCESS system within 30 days of publication of this notice.[17] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm the date and time of the hearing two days before the scheduled date.

Parties are reminded that all briefs and hearing requests must be filed electronically using ACCESS and received successfully in their entirety by 5:00 p.m. Eastern Time on the due date. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[18]

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in any written briefs, no later than 120 days after the date of publication of these preliminary results.

Assessment Rates

In accordance with 19 CFR 351.221(b)(4)(i), we preliminarily assigned subsidy rates in the amounts shown above for the producers/exporters shown above. Upon completion of the administrative review, consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, CVDs on all appropriate entries covered by this review. For the companies for which this review is rescinded, we will instruct CBP to assess CVDs on all appropriate entries at a rate equal to the cash deposit of estimated CVDs required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2020, through December 31, 2020, in accordance with 19 CFR 351.212(c)(l)(i). We intend to issue assessment instructions to CBP for these companies no earlier than 35 days after the date of publication of the preliminary results of this review in the **Federal Register**.

For the companies remaining in the review, we intend to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Rate

In accordance with section 751(a)(1) of the Act, Commerce intends, upon publication of the final results, to instruct CBP to collect cash deposits of estimated CVDs in the amounts calculated in the final results of this review for each of the reviewed companies listed above on shipments of subject merchandise entered, or

of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[12] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with SeAH Steel Corporation: SeAH Holdings Corporation and ESAB SeAH Corporation. The subsidy rates apply to all cross-owned companies.

[13] This rate is based on the rates for the respondents that were selected for individual review, excluding rates that are zero, *de minimis,* or based entirely on facts available. *See* section 735(c)(5)(A) of the Act.

[14] *See* 19 CFR 351.224(b).

[15] *See* 19 CFR 351.309(c)(1)(ii).

[16] *See* 19 CFR 351.309(d)(1); *see also See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[17] *See* 19 CFR 351.310(c).

[18] *See Temporary Rule.*

withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated CVDs at the all-others rate as established in the *Order* (*i.e.,* 9.29 percent) [19] or the most recent company-specific rate applicable to the company, as appropriate. These cash deposit instructions, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

These preliminary results of review are issued and published pursuant to sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213 and 351.221(b)(4).

Dated: May 27, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Period of Review
V. Partial Rescission of Administrative Review
VI. Diversification of Korea's Economy
VII. Subsidies Valuation Information
VIII. Benchmarks and Interest Rates
IX. Analysis of Programs
X. Recommendation

[FR Doc. 2022–11941 Filed 6–2–22; 8:45 am]

BILLING CODE 3510–DS–P

[19] *See Order at* 84 FR 18775.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–016]

Certain Passenger Vehicles and Light Truck Tires From the People's Republic of China: Notice of Court Decision Not in Harmony With the Results of Antidumping Administrative Review; Notice of Amended Final Results

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

SUMMARY: On May 19, 2022, the U.S. Court of International Trade (the Court) issued its final judgment in *Qingdao Sentury Tire Co., Ltd., et al.* v. *United States,* Consol. Court No. 18–00079, sustaining the U.S. Department of Commerce's (Commerce) third remand results pertaining to the administrative review of the antidumping duty (AD) order on certain passenger vehicles and light truck tires (passenger tires) from the People's Republic of China (China), covering the period January 27, 2015, through July 31, 2016. Commerce is notifying the public that the Court's final judgment is not in harmony with Commerce's final results of the administrative review, and that Commerce is amending the final results with respect to the dumping margin assigned to Qingdao Sentury Tire Co., Ltd. and certain separate rate respondents. In addition, Commerce is amending the final results for Pirelli Tyre Co., Ltd. (Pirelli Tyre Co.) for a portion of the period of review (POR) (*i.e.,* January 27, 2015, through October 19, 2015).

DATES: Applicable May 29, 2022.

FOR FURTHER INFORMATION CONTACT: Charles DeFilippo, 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) 482–3979.

SUPPLEMENTARY INFORMATION:

Background

On March 16, 2018, Commerce published its *Final Results* in the 2015–2016 AD administrative review of passenger tires from China. In the *Final Results,* Commerce determined that Pirelli Tyre Co. did not qualify for a separate rate because it failed to rebut the presumption of *de facto* or *de jure* Chinese government control of its operations during the POR.[1] In addition, Commerce also denied Pirelli Tyre Co. a separate rate for the portion of the administrative review before China National Chemical Corporation (Chem China) acquired majority indirect ownership in the company, January 2015 to October 2015.[2]

Pirelli [3] appealed Commerce's *Final Results.* On November 27, 2019, the Court remanded the *Final Results* to Commerce for a more fulsome discussion of the criteria for *de jure* and *de facto* government control regarding Commerce's finding that Pirelli does not qualify for a separate rate, stating that Commerce failed to adequately explain how the acquisition of Pirelli S.p.A. by Chem China *in Italy* altered the ownership of Pirelli entities *in China* such that the rebuttable presumption of government ownership applies or that if the presumption applies, that evidence on the record was not sufficient to rebut the presumption.[4]

In the *Passenger Tires First Remand Redetermination* issued in March 2020, Commerce continued to find that Pirelli Tyre Co. failed to rebut the presumption of *de facto* Chinese-government control during the POR.[5] On December 21, 2020, the Court sustained Commerce's finding on remand that Pirelli Tyre Co. failed to rebut the presumption of government control and Commerce's assignment of the China-wide entity rate to Pirelli Tyre Co. for the period October 20, 2015, through July 31, 2016. However, the Court remanded Commerce's irrecoverable value-added tax (VAT) determination, ordering Commerce to recalculate Qingdao Sentury's [6] export price without any adjustment for its irrecoverable VAT.[7]

In the *Passenger Tires Second Remand Redetermination* issued on March 1, 2021, Commerce removed the downward adjustment to Qingdao Sentury's export price accounting for its irrecoverable VAT from our final calculations, and accordingly, revised the weighted-average dumping margin for Qingdao Sentury as well as for certain separate rate respondents.[8] The

[1] *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015–2016,* 83 FR 11690 (March 16, 2018) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

[2] *Id.* at 28.

[3] Pirelli Tyre Co., Pirelli Tyre LLC. and Pirelli Tyre S.p.A. (collectively ''Pirelli'').

[4] *See Shandong Yongtai Grp. Co., Ltd.* v. *United States,* 415 F. Supp. 3d 1303, 1317 (CIT 2019).

[5] *See Final Results of Redetermination Pursuant to Court Remand, Shandong Yongtai Group Co., Ltd. et al.* v. *United States,* Court No. 18–00077, Slip Op. 19–150, dated November 27, 2019 (*Passenger Tires First Remand Redetermination*).

[6] Qingdao Sentury Tire Co., Ltd.; Sentury Tire USA Inc., and Sentury (Hong Kong) Trading Co., Limited (collectively, Qingdao Sentury).

[7] *See Shandong Yongtai Group Co., Ltd.* v. *United States,* 487 F. Supp. 3d 1335, 1346, 1348 (CIT 2020). The Court also sustained Commerce's successor-in-interest determination regarding Shandong Yongtai Group Co., Ltd., formerly known as Shandong Yongtai Chemical Co., Ltd. *Id.,* 487 F. Supp. 3d at 1348. The Court then severed the consolidated cases in *Shandong Yongtai Grp. Co.* v. *United States,* 493 F. Supp. 3d. 1342 (CIT 2021), entering a final judgment for *Shandong Yongtai Grp. Co.* v. *United States* and ordering that all further proceedings occur under *Qingdao Sentury Co., Ltd.* v. *United States,* Court No. 18–79. Commerce issued amended final results with respect to the antidumping duty margin assigned to Shandong Yongtai Chemical Co., Ltd. and its successor-in-interest Shandong Yongtai Group Co., Ltd. and ordered liquidation of those entries. *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Notice of Court Decision Not in Harmony with the Results of Antidumping Administrative Review; Notice of Amended Final Results,* 86 FR 20659 (April 21, 2021); CBP Message 1127401, dated May 7, 2021.

[8] *See Final Results of Redetermination Pursuant to Court Order, Pirelli Tyre Co., Ltd., Pirelli Tyre S.p.A., and Pirelli Tire LLC* v. *United States,* Court

Continued

Court sustained Commerce's recalculation of the weighted-average dumping margin for Qingdao Sentury and certain separate rate respondents, but remanded the issue of whether Pirelli Tyre Co. was eligible for separate rate status for the period prior to Chem China's acquisition, January 27, 2015, through October 19, 2015.[9]

In the *Passenger Tires Third Remand Redetermination,* issued on December 3, 2021, Commerce found that Pirelli Tyre Co. rebutted the presumption of *de jure* and *de facto* Chinese government control, and as a result, found that Pirelli Tyre Co. is eligible for a separate rate during the period January 27, 2015, through October 19, 2015.[10] On May 19, 2022, the Court sustained Commerce's final redetermination.[11]

Timken Notice

In its decision in *Timken,*[12] as clarified by *Diamond Sawblades,*[13] the U.S. Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The Court's May 19, 2022, judgment constitutes a final decision of the Court that is not in harmony with Commerce's *Final Results.* Thus, this notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Results

Because there is now a final court judgment, Commerce is amending its *Final Results* with respect to Qingdao Sentury Tire Co., Ltd., certain separate rate companies, and Pirelli Tyre Co., Ltd. as follows:

Producer/exporter	Final results: weighted-average dumping margin (percent)	Second final remand: weighted-average dumping margin (percent)
Qingdao Sentury Tire Co., Ltd./Sentury Tire USA Inc./Sentury (Hong Kong) Trading Co., Limited	4.41	[14] 1.27
Actyon Tyre Resources Co., Limited	2.96	1.45
Shandong Anchi Tyres Co., Ltd	2.96	1.45
Briway Tire Co., Ltd	2.96	1.45
Shandong Changfeng Tyres Co., Ltd	2.96	1.45
Qingdao Crown Chemical Co., Ltd	2.96	1.45
Crown International Corporation	2.96	1.45
Qingzhou Detai International Trading Co., Ltd	2.96	1.45
Shandong Duratti Rubber Corporation Co. Ltd	2.96	1.45
Shouguang Firemax Tyre Co., Ltd	2.96	1.45
Fleming Limited	2.96	1.45
Qingdao Fullrun Tyre Corp., Ltd	2.96	1.45
Qingdao Fullrun Tyre Tech Corp., Ltd	2.96	1.45
Guangrao Taihua International Trade Co., Ltd	2.96	1.45
Shandong Guofeng Rubber Plastics Co., Ltd	2.96	1.45
Hankook Tire China Co., Ltd	2.96	1.45
Haohua Orient International Trade Ltd	2.96	1.45
Shandong Hengyu Science & Technology Co., Ltd	2.96	1.45
Hongkong Tiancheng Investment & Trading Co., Limited	2.96	1.45
Hongtyre Group Co	2.96	1.45
Jiangsu Hankook Tire Co., Ltd	2.96	1.45
Jinyu International Holding Co., Limited	2.96	1.45
Qingdao Jinhaoyang International Co., Ltd	2.96	1.45
Jilin Jixing Tire Co., Ltd	2.96	1.45
Kenda Rubber (China) Co., Ltd	2.96	1.45
Qingdao Keter International Co., Limited	2.96	1.45
Koryo International Industrial Limited	2.96	1.45
Kumho Tire Co., Inc	2.96	1.45
Qingdao Lakesea Tyre Co., Ltd	2.96	1.45
Liaoning Permanent Tyre Co., Ltd	2.96	1.45
Shandong Longyue Rubber Co., Ltd	2.96	1.45
Macho Tire Corporation Limited	2.96	1.45
Maxon Int'l Co., Limited	2.96	1.45
Mayrun Tyre (Hong Kong) Limited	2.96	1.45
Qingdao Nama Industrial Co., Ltd	2.96	1.45
Nankang (Zhangjiagang Free Trade Zone) Rubber Industrial Co., Ltd	2.96	1.45
Shandong New Continent Tire Co., Ltd	2.96	1.45
Qingdao Odyking Tyre Co., Ltd	2.96	1.45
Prinx Chengshan (Shandong) Tire Co., Ltd	2.96	1.45
Riversun Industry Limited	2.96	1.45
Roadclaw Tyre (Hong Kong) Limited	2.96	1.45
Safe & Well (HK) International Trading Limited	2.96	1.45

No. 18–00079, Slip Op. 20–182, dated December 21, 2020 (*Passenger Tires Second Remand Redetermination*).

[9] *See Qingdao Sentury Tire Co., Ltd.* v. *United States,* 539 F. Supp. 3d 1278, 1285 (CIT 2021). (*Passenger Tires Third Remand Order*).

[10] *See Final Results of Redetermination Pursuant to Court Order, Pirelli Tire LLC* v. *United States,* Court No. 18–00079, Slip Op. 21–128, dated December 3, 2021 (*Passenger Tires Third Remand Redetermination*).

[11] *See Qingdao Sentury Tire Co., Ltd.* v. *United States,* Court No. 18–00079, Slip Op. 22–48, dated May 19, 2022.

[12] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[13] *See Diamond Sawblades Manufacturers Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

Producer/exporter	Final results: weighted-average dumping margin (percent)	Second final remand: weighted-average dumping margin (percent)
Sailun Jinyu Group Co., Ltd. [15]	2.96	1.45
Sailun Jinyu Group (Hong Kong) Co., Limited [16]	2.96	1.45
Shandong Jinyu Industrial Co., Ltd. [17]	2.96	1.45
Sailun Tire International Corp	2.96	1.45
Seatex International Inc	2.96	1.45
Dynamic Tire Corp	2.96	1.45
Husky Tire Corp	2.96	1.45
Shandong Province Sanli Tire Manufactured Co., Ltd	2.96	1.45
Shandong Linglong Tyre Co., Ltd	2.96	1.45
Shandong Yonking Rubber Co., Ltd	2.96	1.45
Shandong Shuangwang Rubber Co., Ltd	2.96	1.45
Shengtai Group Co., Ltd	2.96	1.45
Techking Tires Limited	2.96	1.45
Triangle Tyre Co., Ltd	2.96	1.45
Tyrechamp Group Co., Limited	2.96	1.45
Shandong Wanda Boto Tyre Co., Ltd	2.96	1.45
Windforce Tyre Co., Limited	2.96	1.45
Winrun Tyre Co., Ltd	2.96	1.45
Weihai Zhongwei Rubber Co., Ltd	2.96	1.45
Shandong Zhongyi Rubber Co., Ltd	2.96	1.45
Zhaoqing Junhong Co., Ltd	2.96	1.45

Producer/exporter	Final results: weighted-average dumping margin (percent)	Third final remand: weighted-average dumping margin (percent) (applicable to the period January 27, 2015 through October 19, 2015)
Pirelli Tyre Co., Ltd	76.46	1.45 [18]

[14] *See* Memorandum, ''Final Results of Redetermination Pursuant to Second Remand of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Amended Analysis Memorandum for Qingdao Sentury Tire Co., Ltd.,'' dated February 26, 2021.

[15] Sailun Group Co., Ltd. is the successor-in-interest to Sailun Jinyu Group Co. Ltd. for purposes of antidumping duty cash deposits and liabilities. *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Results of Changed Circumstances Reviews,* 85 FR 14638 (March 13, 2020) (*Sailun Changed Circumstances Final Results*).

[16] Sailun Group (Hong Kong) Co., Limited is the successor-in-interest to Sailun Jinyu Group (Hong Kong) Co., Limited for purposes of antidumping duty cash deposits and liabilities. *See Sailun Changed Circumstances Final Results.*

[17] Sailun (Dongying) Tire Co., Ltd. is the successor-in-interest to Shangong Jinyu Industrial Co., Ltd. for purposes of antidumping duty cash deposits and liabilities. *See Sailun Changed Circumstances Final Results.*

Cash Deposit Requirements

Because (1) Qingdao Sentury Tire Co., Ltd./Sentury Tire USA Inc./Sentury (Hong Kong) Trading Co., Limited;[19] (2) Shandong Anchi Tyres Co., Ltd.;[20] (3) Crown International Corporation;[21] (4) Shandong Duratti Rubber Corporation Co. Ltd.;[22] (5) Shouguang Firemax Tyre Co., Ltd.;[23] (6) Qingdao Fullrun Tyre Corp., Ltd.;[24] (7) Qingdao Fullrun Tyre Tech Corp., Ltd.;[25] (8) Hankook Tire China Co., Ltd.;[26] (9) Shandong Hengyu Science & Technology Co., Ltd.;[27] (10) Hongkong Tiancheng Investment & Trading Co., Limited;[28] (11) Jiangsu Hankook Tire Co., Ltd.;[29] (12) Kenda Rubber (China) Co., Ltd.;[30] (13) Shandong Longyue Rubber Co., Ltd.;[31] (14) Mayrun Tyre (Hong Kong) Limited;[32] (15) Shandong New Continent Tire Co., Ltd.;[33] (16) Qingdao Odyking Tyre Co., Ltd.;[34] (17) Shandong Province Sanli Tire Manufactured Co., Ltd.;[35] (18) Shandong Linglong Tyre Co., Ltd.;[36] (19) Shandong Shuangwang Rubber Co., Ltd.;[37] (20) Shandong Wanda Boto Tyre Co., Ltd.;[38] (21) Winrun Tyre Co., Ltd.;[39] (22) Zhaoqing Junhong Co., Ltd.;[40] and (23) Pirelli Tyre Co., Ltd.[41] each have a superseding cash deposit rate, *i.e.,* each company has been assigned a cash deposit rate in the published final results of a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rate for those exporters/producers. For all producers/exporters that do not have a superseding cash deposit rate, Commerce will issue revised cash deposit instructions to CBP.

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by Court order from liquidating entries that: Were exported by Qingdao Sentury Tire Co., Ltd. or Pirelli Tyre Co., Ltd., and were entered, or withdrawn from warehouse, for consumption during the period January 27, 2015, through July 31, 2016. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event the Court's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, in accordance with 19 CFR 351.212(b), Commerce intends to instruct CBP to assess antidumping duties on unliquidated entries of subject merchandise exported by: (1) Qingdao Sentury Tire Co., Ltd. at the rate noted above; and (2) Pirelli Tyre Co., Ltd. at 1.45 percent for the period January 27, 2015, through October 19, 2015 and at 76.46 percent for the period October 20, 2015, through July 31, 2016.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: May 27, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–11939 Filed 6–2–22; 8:45 am]

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[18] *See* Memorandum ''Final Results of Redetermination Pursuant to Second Remand of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Amended Final Calculation Memorandum for Separate Rate Coompanies,'' dated February 26, 2021.

[19] *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016–2017*, 84 FR 17781 (April 26, 2019) (*2016–2017 Final Results*).

[20] *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2017–2018*, 85 FR 22396 (April 22, 2020) (*2017–2018 Final Results*).

[21] *Id.*

[22] *Id.*

[23] *See 2016–2017 Final Results.*

[24] *See 2017–2018 Final Results.*

[25] *See 2016–2017 Final Results.*

[26] *See 2017–2018 Final Results.*

[27] *Id.*

[28] *See 2016–2017 Final Results.*

[29] *See 2017–2018 Final Results.*

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *See 2016–2017 Final Results.*

[37] *Id.*

[38] *Id.*

[39] *See 2017–2018 Final Results.*

[40] *Id.*

[41] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–888]

Certain Carbon and Alloy Steel Cut-to-Length Plate From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, and Intent To Rescind Review, in Part; 2020

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that certain producers and exporters of certain carbon and alloy steel cut-to-length plate (CTL plate) from the Republic of Korea (Korea) received *de minimis* net countervailable subsidies during the January 1, 2020, through December 31, 2020, period of review (POR). Interested parties are invited to comment on these preliminary results.

DATES: Applicable June 3, 2022.

FOR FURTHER INFORMATION CONTACT: Faris Montgomery, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1537.

SUPPLEMENTARY INFORMATION:

Background

On July 6, 2021, Commerce published a notice of initiation of an administrative review of the countervailing duty (CVD) order on CTL plate from Korea.[1] On August 13, 2021, Commerce selected POSCO as the sole mandatory respondent in this administrative review.[2]

On January 7, 2022, Commerce extended the deadline for the preliminary results of this review to no later than May 31, 2022.[3]

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[4] A list of topics discussed in the Preliminary Decision Memorandum is included at Appendix I. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

[1] *See Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Countervailing Duty Order,* 82 FR 24103 (May 25, 2017) (*Order*); *see also Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 35481 (July 6, 2021).

[2] *See* Memorandum, ''Respondent Selection,'' dated August 13, 2021.

[3] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review; 2020,'' dated January 7, 2022.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review; 2020: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Scope of the *Order*

The merchandise covered by the *Order* is CTL plate. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Final Rescission of Administrative Review, in Part

On February 17, 2022, Commerce notified interested parties that we intended to rescind this administrative review for 44 companies that had no suspended entries of subject merchandise during the POR.[5] No parties commented on the notification of the intent to rescind the review, in part. Therefore, we find that there were no entries of subject merchandise during the POR by the 44 companies listed in Appendix II. As a result of our finding, we are rescinding this review, in part, pursuant to 19 CFR 351.213(d)(3) with respect to these companies. For further information regarding this determination, *see* ''Rescission of Administrative Review, In Part'' section in the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this CVD administrative review in accordance with section 751(a)(l)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[6] For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual net countervailable subsidy rate for POSCO. Commerce preliminarily determines that, during the POR, the net countervailable subsidy rates for the producers/exporters under review are as follows:

Manufacturer/exporter	Net countervailable subsidy rate (percent *ad valorem*)
POSCO [7]	0.33 (*de minimis*)

[5] *See* Memorandum, ''Notice of Intent to Rescind Review, in Part,'' dated February 17, 2022.

[6] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

Disclosure

We intend to disclose to parties to this proceeding the calculations performed in reaching the preliminary results in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(3) of the Act, Commerce intends to verify the information relied upon for its final results of this review.

Public Comment

Interested parties will be notified of the timeline for the submission of case briefs at a later date.[8] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the date for filing case briefs.[9] Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[10]

Pursuant to 19 CFR 251.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance's ACCESS system within 30 days of publication of this notice.[11] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm the date and time of the hearing two days before the scheduled date.

Parties are reminded that all briefs and hearing requests must be filed electronically using ACCESS [12] and must be served on interested parties.[13] Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time on the due date. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[14]

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised by the parties in any written briefs, no later than 120 days after the date of publication of these preliminary results.

Assessment Rate

In accordance with 19 CFR 351.221(b)(4)(i), we preliminarily assigned subsidy rates in the amounts shown above for the producers/exporters shown above. Upon completion of the administrative review, consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), Commerce shall determine, and CBP shall assess, countervailing duties on all appropriate entries covered by this review. For the companies for which this review is rescinded, we will instruct CBP to assess countervailing duties on all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2020, through December 31, 2020, in accordance with 19 CFR 351.212(c)(l)(i). We intend to issue assessment instructions to CBP no earlier than 35 days after the date of publication of this notice in the **Federal Register**.

For the companies remaining in the review, we intend to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International

[7] As discussed in the Preliminary Decision Memorandum, Commerce preliminarily finds the following companies to be cross-owned with POSCO: Pohang Scrap Recycling Distribution Center Co. Ltd.; POSCO Chemical Co., Ltd.; POSCO M-Tech Co., Ltd.; POSCO Nippon Steel RHF Joint Venture Co., Ltd.; POSCO SPS; and POSCO Terminal Co., Ltd. The subsidy rate applies to all cross-owned companies. We note that POSCO has an affiliated trading company through which it exported certain subject merchandise during the POR, POSCO International (aka POSCO International Corporation). POSCO International was not selected as a mandatory respondent but was examined in the context of POSCO. Therefore, there is not an established CVD rate for POSCO International; POSCO International's subsidies are accounted for in POSCO's total subsidy rate. Instead, entries of subject merchandise exported by POSCO International will receive the rate of the producer listed on the U.S. Customs and Border Protection (CBP) entry form. Thus, the subsidy rate applied to POSCO and POSCO's cross-owned affiliated companies is also applied to POSCO International for entries of subject merchandise produced by POSCO.

[8] *See* 19 CFR 351.309(c)(1)(ii); *see also* 19 CFR 351.303 (for general filing requirements).

[9] *See* 19 CFR 351.309(d)(1); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006, 17007 (March 26, 2020).

[10] *See* 19 CFR 351.309(c)(2) and 351.309(d)(2).

[11] *See* 19 CFR 351.310(c).

[12] *See* 19 CFR 351.303.

[13] *See* 19 CFR 351.303(f).

[14] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

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).

Cash Deposit Rate

Pursuant to section 751(a)(2)(C) of the Act, Commerce intends, upon publication of the final results, to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts indicated above with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review, except, where the rate calculated in the final results is zero or *de minimis,* no cash deposit will be required. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit instructions, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

Dated: May 27, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Period of Review
V. Diversification of Korea's Economy
VI. Rescission of the Administrative Review, in Part
VII. Subsidies Valuation Information
VIII. Benchmarks and Interest Rates
IX. Analysis of Programs
X. Recommendation

Appendix II

Companies for Which Commerce Is Rescinding the Review

1. Ajin Industrial Co., Ltd.
2. BDP International
3. Blue Track Equipment
4. Boxco
5. Bukook Steel Co., Ltd.
6. Buma CE Co., Ltd.
7. China Chengdu International Techno-Economic Cooperation Co., Ltd.
8. Daehan I.M. Co., Ltd.
9. Daehan Tex Co., Ltd.
10. Daelim Industrial Co., Ltd.
11. Daesam Industrial Co., Ltd.
12. Daesin Lighting Co., Ltd.
13. Daewoo International Corp.
14. Dong Yang Steel Pipe
15. DK Dongshin Co., Ltd.
16. Dongbu Steel Co., Ltd.
17. Dongkuk Industries Co., Ltd.
18. Dongkuk Steel Mill Co., Ltd.
19. EAE Automotive Equipment
20. EEW KHPC Co., Ltd.
21. Eplus Expo Inc.
22. GS Global Corp.
23. Haem Co., Ltd.
24. Han Young Industries
25. Hyosung Corp.
26. Hyundai Steel Co.
27. Jinmyung Frictech Co., Ltd.
28. Khana Marine Ltd.
29. Kindus Inc.
30. Korean Iron and Steel Co., Ltd.
31. Kyoungil Precision Co., Ltd.
32. Menics
33. Qian'an Rentai Metal Products Co., Ltd
34. Samsun C&T Corp.
35. Samsung
36. Shinko
37. Shipping Imperial Co., Ltd.
38. Sinchang Eng Co., Ltd.
39. SK Networks Co., Ltd.
40. SNP Ltd.
41. Steel N People Ltd.
42. Summit Industry
43. Sungjin Co., Ltd.
44. Young Sun Steel

[FR Doc. 2022–11940 Filed 6–2–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–899]

Certain Artist Canvas From the People's Republic of China: Final Results of the Third Expedited Sunset Review of the Antidumping Duty Order

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

SUMMARY: As a result of this third expedited sunset review, the U.S. Department of Commerce (Commerce) finds that revoking the antidumping duty (AD) order on certain artist canvas (artist canvas) from the People's Republic of China (China) would likely lead to continuation or recurrence of dumping at the level indicated in the ''Final Results of Third Sunset Review'' section of this notice.

DATES: Applicable June 3, 2022.

FOR FURTHER INFORMATION CONTACT: Patrick Barton, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0012.

SUPPLEMENTARY INFORMATION:

Background

The second and previous sunset review of the *Order*[1] was initiated on October 3, 2016.[2] In the final results of the second expedited review, Commerce determined that revocation of the *Order* would likely lead to the continuation or recurrence of dumping.[3]

On February 1, 2022, Commerce published the notice of initiation of the third sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[4] Commerce received a notice of intent to participate from Ecker Textiles, LLC (Ecker Textiles), within the deadline specified in 19 CFR 351.218(d)(1)(i).[5] Ecker Textiles claimed interested party status under section 771(9)(C) of the Act, as a domestic manufacturer and producer of artist canvas in the United States.

Commerce received a substantive response from Ecker Textiles within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[6] We received no substantive response from any other interested parties in this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the *Order.*

Scope of the Order

The products covered by the order are artist canvases regardless of dimension and/or size, whether assembled or unassembled, that have been primed/coated, whether or not made from cotton, whether or not archival, whether bleached or unbleached, and whether or not containing an ink receptive top coat. Priming/coating includes the application of a solution, designed to promote the adherence of artist materials, such as paint or ink, to the fabric. Artist canvases (*i.e.,* pre-stretched canvases, canvas panels,

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[1] *See Notice of Antidumping Duty Order: Certain Artist Canvas from the People's Republic of China,* 71 FR 31154 (June 1, 2006) (*Order*).

[2] *See Initiation of Five-Year (''Sunset'') Review,* 81 FR 67967 (October 3, 2016).

[3] *See Certain Artist Canvas from the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order,* 82 FR 8724 (January 30, 2017), and accompanying IDM.

[4] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 5467 (February 1, 2022).

[5] *See* Ecker Textiles' Letter, ''Section 751(c) Five-Year Sunset Review of the Antidumping Duty Order Against Artist Canvas from the People's Republic Of China; Notice of Intent to Participate,'' dated February 9, 2022.

[6] *See* Ecker Textiles' Letter, ''Section 751(c) Five-Year Sunset Review of the Antidumping Duty Order Against Artist Canvas from the People's Republic of China; Substantive Response of Domestic Interested Party,'' dated March 2, 2022.

canvas pads, canvas rolls (including bulk rolls that have been primed), printable canvases, floor cloths, and placemats) are tightly woven prepared painting and/or printing surfaces. Artist canvas and stretcher strips (whether or not made of wood and whether or not assembled) included within a kit or set are covered by the order.

Artist canvases subject to the order are currently classifiable under subheadings 5901.90.20.00 and 5901.90.40.00, 5901.90.40.00, 5903.90.2500, 5903.90.2000, 5903.90.1000, 5907.00.8090, 5907.00.8010, and 5907.00.6000 of the Harmonized Tariff Schedule of the United States (HTSUS). Specifically excluded from the scope of the order are tracing cloths, ''paint-by-number'' or ''paint-it-yourself'' artist canvases with a copyrighted preprinted outline, pattern, or design, whether or not included in a painting set or kit. Also excluded are stretcher strips, whether or not made from wood, so long as they are not incorporated into artist canvases or sold as part of an artist canvas kit or set. While the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in this sunset review are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice.[7] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* A list of topics discussed in the Issues and Decision Memorandum is included as an appendix to this notice. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Final Results of Third Sunset Review

Pursuant to sections 751(c)(1) and 752(c) of the Act, Commerce determines that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping and that the magnitude of the margins of dumping likely to prevail is up to 264.09 percent.

[7] *See* Memorandum, ''Issues and Decision Memorandum for the Third Expedited Sunset Review of the Antidumping Duty Order on Certain Artist Canvas from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective 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 the final results and this notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.218(e)(1)(ii)(C)(2) and 19 CFR 351.221(c)(5)(ii).

Dated: May 27, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. History of the *Order*
V. Legal Framework
VI. Discussion of the Issues
  1. Likelihood of Continuation or Recurrence of Dumping
  2. Magnitude of the Margins Likely to Prevail
VII. Final Results of Third Sunset Review
VIII. Recommendation

[FR Doc. 2022–11942 Filed 6–2–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–897]

Large Diameter Welded Pipe From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission; 2020–2021

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that Hyundai RB Co., Ltd. (Hyundai RB) made sales of large diameter welded pipe (welded pipe) from the Republic of Korea (Korea) at prices below normal value (NV), while Hyundai Steel Company (Hyundai Steel) did not make sales of the subject merchandise at prices below NV during the period of review (POR), May 1, 2020, through April 30, 2021. Commerce further determines that sales by the non-examined companies were made at prices below NV. We invite interested parties to comment on these preliminary results.

DATES: Applicable June 3, 2022.

FOR FURTHER INFORMATION CONTACT: Katherine Johnson or Samantha Kinney, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4929 or (202) 482–2285, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 2019, Commerce published the antidumping duty order on welded pipe from Korea.[1] On July 6, 2021, in accordance with 19 CFR 351.221(c)(1)(i), Commerce initiated an administrative review of the *Order.*[2]

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), on December 29, 2021, Commerce determined that it was not practicable to complete the preliminary results of this review within 245 days and extended the deadline for the preliminary results of this review by 120 days, until May 31, 2022.[3]

For a detailed description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[4] The Preliminary Decision Memorandum is a public document and is available via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be found at *https://*

[1] *See Large Diameter Welded Pipe from the Republic of Korea: Amended Final Affirmative Antidumping Determination and Antidumping Duty Order,* 84 FR 18767 (May 2, 2019) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 35481 (July 6, 2021).

[3] *See* Memorandum, ''Extension of Deadline for Preliminary Results of 2020–2021 Antidumping Duty Administrative Review,'' dated December 29, 2021.

[4] *See* Memorandum, ''Large Diameter Welded Pipe from the Republic of Korea: Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review; 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

access.trade.gov/public/FRNotices ListLayout.aspx.

Scope of the Order

The product covered by the *Order* is welded pipe from Korea. For a full description of the scope, *see* the Preliminary Decision Memorandum.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party who requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. On October 4, 2021, the Domestic Interested Party [5] timely withdrew its request for reviews of EM Solution Co., Ltd.; Hansol Metal Co., Ltd.; Hawin; Hyosung; POSCO; and Samkang M&T Co., Ltd.[6] Because there was a timely withdrawal of all requests for review of these six companies, we are rescinding this review with respect to these companies, pursuant to 19 CFR 351.213(d)(1).

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Act. For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum. A list of topics included in the Preliminary Decision Memorandum is included as Appendix I to this notice.

Rate for Non-Selected Companies

The statute and Commerce's regulations do not address the establishment of a weighted-average dumping margin to be determined for companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when determining the weighted-average dumping margin for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

In this review, the preliminary weighted-average dumping margin for Hyundai RB is not zero, *de minimis,* or based entirely on facts otherwise available, whereas Hyundai Steel's preliminary weighted-average dumping margin is zero. Therefore, Commerce has preliminarily assigned a weighted-average dumping margin to the non-examined companies that is equal to the weighted-average dumping margin for Hyundai RB in accordance with its practice.[7]

Preliminary Results of the Review

We preliminarily determine that the following weighted-average dumping margins exist for the period May 1, 2020, through April 30, 2021:

Exporter or producer	Weighted-average dumping margin (percent)
Hyundai RB Co., Ltd	2.67
Hyundai Steel Company	0.00
Non-Examined Companies [8]	2.67

Disclosure and Public Comment

We intend to disclose the calculations performed for these preliminary results to interested parties with an Administrative Protective Order within five days after the date of public announcement of the preliminary results.[9]

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of this notice.[10] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.[11] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[12] Executive summaries should be limited to five pages total, including footnotes.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS, within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.

All briefs and hearing requests must be filed electronically using ACCESS [13] and must be served on interested parties.[14] An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[15]

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce intends to determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this administrative review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

For an individually examined respondent whose weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.50 percent), upon completion of the final results, Commerce intends to calculate importer-specific antidumping duty assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales to the total entered value of those sales. Where we do not have entered values for all U.S. sales to a particular importer, we will calculate an importer-

[5] The Domestic Interested Party is the American Line Pipe Producers Association Trade Committee.

[6] *See* Domestic Interested Party's Letter, ''Partial Withdrawal of Request for Administrative Review,'' dated October 4, 2021.

[7] *See, e.g., Certain Corrosion-Resistant Steel Products from Taiwan: Final Results of the Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018–1019,* 86 FR 28554, 28555 (May 27, 2021).

[8] *See* Appendix II.

[9] *See* 19 CFR 351.224(b).

[10] *See* 19 CFR 351.309(c)(1)(ii).

[11] *See* 19 CFR 351.309(d)(1) and (2); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[12] *See* 19 CFR 351.309(c)(2) and (d)(2).

[13] *See* 19 CFR 351.303.

[14] *See* 19 CFR 351.303(f).

[15] *See Temporary Rule.*

specific, per-unit assessment rate on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales to the total quantity of those sales.[16] To determine whether an importer-specific, per-unit assessment rate is *de minimis,* in accordance with 19 CFR 351.106(c)(2), we also will calculate an importer-specific *ad valorem* ratio based on estimated entered values. Where either a respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we intend to instruct CBP to liquidate appropriate entries without regard to antidumping duties.[17]

For entries of subject merchandise during the POR produced by each individually examined respondent for which it did not know its merchandise was destined for the United States, we intend to instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[18]

For the companies which were not selected for individual examination, we intend to assign an antidumping duty assessment rate equal to the weighted-average dumping margin determined for the non-examined companies in the final results of review.

For the companies for which we have rescinded this review, Commerce intends to instruct CBP to assess antidumping duties on all appropriate entries at a rate equal to the cash deposit rate of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period May 1, 2020, through April 30, 2021, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue assessment instructions to CBP for the rescinded companies no earlier than 35 days after the date of publication of the preliminary results of this administrative review in the **Federal Register**.

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future cash deposits of estimated antidumping duties, where applicable.[19]

[16] *See* 19 CFR 351.212(b)(1).

[17] *See* 19 CFR 351.106(c)(2); *see also Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[18] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[19] *See* section 751(a)(2)(C) of the Act.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the companies listed above will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not covered in this review, including the six companies for which Commerce is rescinding this review, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which the company was reviewed; (3) if the exporter is not a firm covered in this review, a prior completed review, or the less-than-fair value (LTFV) investigation, but the producer is, then the cash deposit rate will be the company-specific rate established for the most recently-completed segment of this proceeding for the producer of subject merchandise; and (4) the cash deposit rate for all other producers and exporters will continue to be 7.08 percent, the all-others rate established in the LTFV investigation.[20]

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Final Results of the Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of our analysis of issues raised by the parties in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

[20] *See Order.*

Notification to Interested Parties

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: May 27, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Partial Rescission of Review
V. Discussion of the Methodology
VI. Currency Conversion
VII. Recommendation

Appendix II

Review-Specific Average Rate Applicable to Companies Not Selected for Individual Review

1. AJU Besteel Co., Ltd.
2. Chang Won Bending Co., Ltd.
3. Daiduck Piping Co., Ltd.
4. Dong Yang Steel Pipe Co., Ltd.
5. Dongbu Incheon Steel Co., Ltd.
6. EEW KHPC Co., Ltd.
7. EEW Korea Co., Ltd.
8. Histeel Co., Ltd.
9. Husteel Co., Ltd.
10. Kiduck Industries Co., Ltd.
11. Kum Kang Kind. Co., Ltd.
12. Kumsoo Connecting Co., Ltd.
13. Nexteel Co., Ltd.
14. SeAH Steel Corporation
15. SeAH Steel, Co., Ltd.
16. Seonghwa Industrial Co., Ltd.
17. SIN–E B&P Co., Ltd.
18. Steel Flower Co., Ltd.
19. WELTECH Co., Ltd.

[FR Doc. 2022–11956 Filed 6–2–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Board of Overseers of the Malcolm Baldrige National Quality Award and Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Board of Overseers of the Malcolm Baldrige National Quality Award (Board of Overseers) and the Judges Panel of the Malcolm Baldrige National Quality Award (Judges Panel) will meet in open session on Thursday,

June 16, 2022, from 9:00 a.m. to 4:00 p.m. Eastern time. The Board of Overseers, appointed by the Secretary of Commerce, reports the results of the Malcolm Baldrige National Quality Award (Award) activities to the Director of the National Institute of Standards and Technology (NIST) each year, along with its recommendations for the improvement of the Award process. The Judges Panel, also appointed by the Secretary of Commerce, ensures the integrity of the Award selection process and recommends Award recipients to the Secretary of Commerce. The purpose of this meeting is to discuss and review information received from the National Institute of Standards and Technology and from the Chair of the Judges Panel. The agenda will include: Baldrige Program Update, Baldrige Foundation Update, Baldrige Judges Panel Update, Ethics Review, suspension of the 2022 Baldrige Award Process, and New Business/Public Comment.

DATES: The meeting will be held on Thursday, June 16, 2022 from 9:00 a.m. Eastern Time until 4:00 p.m. Eastern Time. The meeting will be open to the public.

ADDRESSES: The meeting will be held at Courtyard Gaithersburg Washingtonian Center, 204 Boardwalk Place, Gaithersburg, MD 20878 and there will be a virtual option. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Robert Fangmeyer, Director, Baldrige Performance Excellence Program, phone: 301–975–2361, email *robert.fangmeyer@nist.gov.*

SUPPLEMENTARY INFORMATION:

Authority: 15 U.S.C. 3711a(d)(1), 15 U.S.C. 3711a(d)(2)(B) and the Federal Advisory Committee Act, as amended, 5 U.S.C. app.

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. app., notice is hereby given that the Board of Overseers and the Judges Panel will meet in open session on Thursday, June 16, 2022 from 9:00 a.m. to 4:00 p.m. Eastern Time. The Board of Overseers (Board), composed of approximately twelve members preeminent in the field of organizational performance excellence and appointed by the Secretary of Commerce, makes an annual report on the results of Award activities to the Director of the National Institute of Standards and Technology (NIST), along with its recommendations for improvement of the Award process. The Judges Panel consists of no less than nine, and not more than twelve, members with balanced representation from U.S. service, manufacturing, small business, nonprofit, education, and health care industries. The Panel includes members who are familiar with the quality improvement operations and competitiveness issues of manufacturing companies, service companies, small businesses, nonprofits, health care providers, and educational institutions. The Judges Panel recommends Malcolm Baldrige National Quality Award recipients to the Secretary of Commerce.

The purpose of this meeting is to discuss and review information received from NIST and from the Chair of the Judges Panel of the Malcolm Baldrige National Quality Award. The agenda will include: Baldrige Program Update, Baldrige Foundation Update, Baldrige Judges Panel Update, Ethics Review, suspension of the 2022 Baldrige Award Process, and New Business/Public Comment. The agenda may change to accommodate the Judges Panel and Board of Overseers business. The final agenda will be posted on the NIST Baldrige Performance Excellence website at *http://www.nist.gov/baldrige/community/overseers.cfm.*

The meeting is open to the public.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Board's affairs and/or the Panel of Judges' general process are invited to request a place on the agenda. On June 16, 2022, approximately one-half hour will be reserved in the afternoon for public comments, and speaking times will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be about 3 minutes each. The exact time for public comments will be included in the final agenda that will be posted on the Baldrige Performance Excellence Program website at *http://www.nist.gov/baldrige/community/overseers.cfm.* Questions from the public will not be considered during this period. Requests must be submitted by email to Robyn Verner at *robyn.verner@nist.gov* and must be received by 4:00 p.m. Eastern Time, June 3, 2022 to be considered. Speakers who wish to expand upon their oral statements, those who had wished to speak, but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements by email to *robyn.verner@nist.gov.*

Admittance instructions: All participants will need to pre-register to be admitted. Please contact Ms. Verner by telephone at (301) 975–2361 or by email at *robyn.verner@nist.gov* and she will provide you with instructions for admittance.

All requests must be received by 4:00 p.m. Eastern Time, June 3, 2022.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2022–11945 Filed 6–2–22; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; iEdison System

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on October 25, 2021, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Institute of Standards and Technology (NIST), Commerce.

Title: iEdison System.

OMB Control Number: 0693–XXXX.

Form Number(s): None.

Type of Request: Regular, new collection.

Number of Respondents: 3,063.

Average Hours per Response:

Invention Records: 1.25 (approximately 5 times per year).

Patent Records: .75 hours (approximately 5 times per year).

Utilization Records: 15 minutes (approximately 22 times per year).

Burden Hours:

Invention Records: 19,144 hours.

Patent Records: 11,486 hours.

Utilization Records: 16,846 hours.

Needs and Uses: The Bayh-Dole Act (35 U.S.C. 18) and its implementing regulations (37 CFR 401) allow for recipients of federal research funding (Contractors) to retain ownership of inventions developed under federal funding agreements. In exchange, the government retains certain rights to the invention, including a world-wide right

to use by or on behalf of the U.S. government. The law also requires the Contractor to obtain permission for certain actions and fulfill reporting requirements including:

a. Initial reporting of invention;
b. Decision to retain title to invention;
c. Filing of patent protection;
d. Evidence of government support clause within patents;
e. Submission of a license confirming the government's rights;
f. Notice if the Contractor is going to discontinue the pursuit or continuance of patent protection;
g. Information related to the development and utilization of invention;
h. Permission to assign to a third party; and
i. Permission to waive domestic manufacturing requirements.

This information is used for a variety of reasons. It allows the government to identify technologies to which the government has rights to use without additional payment or licensing. This acts as a time and cost-saving mechanism to avoid unnecessary negotiating and payment. It also provides data for calculation of return on investment (ROI) from federal funding and identifies successful research programs. Thirdly, it allows the government the opportunity to timely protect inventions which the Contractor declines title or discontinues patent protection. Historically, the National Institutes of Health (NIH) has collected this information via their on-line portal, iEdison; however, the responsibility for this data collection will be taken over by NIST. Agencies that do not register with iEdison are required to collect this information independently.

Affected Public: Business or other for-profit organizations; Not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain benefits.

Legal Authority: The Bayh-Dole Act (35 U.S.C. 18) and its implementing regulations (37 CFR 401); 35 U.S.C. 200–212.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

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 and entering the title of the collection.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–11960 Filed 6–2–22; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB968]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

ACTION: Notice of issuance of letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that a Letter of Authorization (LOA) has been issued to LLOG Exploration Offshore, L.L.C. (LLOG) for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

DATES: The LOA is effective from August 1, 2022, through August 31, 2023.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in Federal waters of the U.S. Gulf of Mexico (GOM) over the course of 5 years (86 FR 5322; January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and

their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

Summary of Request and Analysis

LLOG plans to conduct one of the following vertical seismic profile (VSP) survey types: Zero Offset, Offset, Walkaway VSP, Salt Proximity Survey and/or Checkshots within Mississippi Canyon Block 814. See Section G of LLOG's application for a map. LLOG plans to use either a 12-element, 2,400 cubic inch (in^3) airgun array, or a 6-element, 1,500 in^3 airgun array. Please see LLOG's application for additional detail.

Consistent with the preamble to the final rule, the survey effort proposed by LLOG in its LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in the preamble (86 FR 5322, 5398; January 19, 2021). In order to generate the appropriate take number for authorization, the following information was considered: (1) Survey type; (2) location (by modeling zone [1]); (3) number of days; and (4) season.[2] The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled survey type in each zone and season.

No VSP surveys were included in the modeled survey types, and use of existing proxies (*i.e.,* 2D, 3D NAZ, 3D WAZ, Coil) is generally conservative for use in evaluation of these survey types. Summary descriptions of these modeled survey geometries are available in the preamble to the proposed rule (83 FR 29212, 29220; June 22, 2018). Coil was selected as the best available proxy survey type for LLOG's VSP survey because the spatial coverage of the planned surveys is most similar to the coil survey pattern. For the planned survey, the seismic source array will be deployed in one of the following forms: Zero Offset VSP—deployed from a drilling rig at or near the borehole, with the seismic receivers (*i.e.,* geophones) deployed in the borehole on wireline at specified depth intervals; Offset VSP—in a fixed position deployed from a supply vessel on an offset position; Walkaway VSP—attached to a line, or a series of lines, towed by a supply vessel; or 3D VSP—moving along a spiral or line swaths towed by a supply vessel or using a source vessel. All possible source assemblages except for 3D VSP will be stationary. If 3D VSP is used as the survey design, the area that would be covered would be up to three times the total depth of the well centered around the well head. The coil survey pattern in the model was assumed to cover approximately 144 kilometers squared (km^2) per day (compared with approximately 795 km^2, 199 km^2, and 845 km^2 per day for the 2D, 3D NAZ, and 3D WAZ survey patterns, respectively). Among the different parameters of the modeled survey patterns (*e.g.,* area covered, line spacing, number of sources, shot interval, total simulated pulses), NMFS considers area covered per day to be most influential on daily modeled exposures exceeding Level B harassment criteria. Because LLOG's planned survey is expected to cover no additional area as a stationary source, or up to three times the total depth of the well centered around the well head, the coil proxy is most representative of the effort planned by LLOG in terms of predicted Level B harassment.

In addition, all available acoustic exposure modeling results assume use of a 72-element, 8,000 in^3 array. Thus, estimated take numbers for this LOA are considered conservative due to the differences in both the airgun array (12 or 6 elements, 2,400 or 1,500 in^3), and in daily survey area planned by LLOG (as mentioned above), as compared to those modeled for the rule.

The survey is planned to occur for a maximum of 10 days in Zone 5. The survey may occur in either season. Therefore, the take estimates for each species are based on the season that has the greater value for the species (*i.e.,* winter or summer).

Additionally, for some species, take estimates based solely on the modeling yielded results that are not realistically likely to occur when considered in light of other relevant information available during the rulemaking process regarding marine mammal occurrence in the GOM. Thus, although the modeling conducted for the rule is a natural starting point for estimating take, our rule acknowledged that other information could be considered (see, *e.g.,* 86 FR 5322, 5442 (January 19, 2021), discussing the need to provide flexibility and make efficient use of previous public and agency review of other information and identifying that additional public review is not necessary unless the model or inputs used differ substantively from those that were previously reviewed by NMFS and the public). For this survey, NMFS has other relevant information reviewed during the rulemaking that indicates use of the acoustic exposure modeling to generate a take estimate for certain marine mammal species produces results inconsistent with what is known regarding their occurrence in the GOM. Accordingly, we have adjusted the calculated take estimates for that species as described below.

Rice's whales (formerly known as GOM Bryde's whales) [3] are generally found within a small area in the northeastern GOM in waters between 100–400 meters (m) depth along the continental shelf break (Rosel *et al.,* 2016). Whaling records suggest that Rice's whales historically had a broader distribution within similar habitat parameters throughout the GOM (Reeves *et al.,* 2011; Rosel and Wilcox, 2014), and a NOAA survey reported observation of a Rice's whale in the western GOM in 2017 (NMFS, 2018). Habitat-based density modeling identified similar habitat (*i.e.,* approximately 100–400 m water depths along the continental shelf break) as being potential Rice's whale habitat (Roberts *et al.,* 2016), although a ''core habitat area'' defined in the northeastern GOM (outside the scope of the rule) contained approximately 92 percent of the predicted abundance of Rice's whales. See discussion provided at, *e.g.,* 83 FR 29212, 29228, 29280 (June 22, 2018); 86 FR 5322, 5418 (January 19, 2021).

Although it is possible that Rice's whales may occur outside of their core habitat, NMFS expects that any such occurrence would be limited to the narrow band of suitable habitat described above (*i.e.,* 100–400 m). LLOG's planned activity will occur in water depths of approximately 1,220–1,585 m in the Northern GOM. NMFS does not expect there to be the reasonable potential for take of Rice's whale in association with this survey and, accordingly, does not authorize take of Rice's whale through this LOA.

Killer whales are the most rarely encountered species in the GOM, typically in deep waters of the central GOM (Roberts *et al.,* 2015; Maze-Foley and Mullin, 2006). The approach used

[1] For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

[2] For purposes of acoustic exposure modeling, seasons include Winter (December–March) and Summer (April–November).

[3] The final rule refers to the GOM Bryde's whale (*Balaenoptera edeni*). These whales were subsequently described as a new species, Rice's whale (*Balaenoptera ricei*) (Rosel *et al.,* 2021).

in the acoustic exposure modeling, in which seven modeling zones were defined over the U.S. GOM, necessarily averages fine-scale information about marine mammal distribution over the large area of each modeling zone. NMFS has determined that the approach can result in unrealistic projections regarding the likelihood of encountering killer whales.

As discussed in the final rule, the density models produced by Roberts *et al.* (2016) provide the best available scientific information regarding predicted density patterns of cetaceans in the U.S. GOM. The predictions represent the output of models derived from multi-year observations and associated environmental parameters that incorporate corrections for detection bias. However, in the case of killer whales, the model is informed by few data, as indicated by the coefficient of variation associated with the abundance predicted by the model (0.41, the second-highest of any GOM species model; Roberts *et al.,* 2016). The model's authors noted the expected non-uniform distribution of this rarely-encountered species (as discussed above) and expressed that, due to the limited data available to inform the model, it ''should be viewed cautiously'' (Roberts *et al.,* 2015).

NOAA surveys in the GOM from 1992–2009 reported only 16 sightings of killer whales, with an additional three encounters during more recent survey effort from 2017–18 (Waring *et al.,* 2013; *www.boem.gov/gommapps*). Two other species were also observed on less than 20 occasions during the 1992–2009 NOAA surveys (Fraser's dolphin and false killer whale [4]). However, observational data collected by protected species observers (PSOs) on industry geophysical survey vessels from 2002–2015 distinguish the killer whale in terms of rarity. During this period, killer whales were encountered on only 10 occasions, whereas the next most rarely encountered species (Fraser's dolphin) was recorded on 69 occasions (Barkaszi and Kelly, 2019). The false killer whale and pygmy killer whale were the next most rarely encountered species, with 110 records each. The killer whale was the species with the lowest detection frequency during each period over which PSO data were synthesized (2002–2008 and 2009–2015). This information qualitatively informed our rulemaking process, as discussed at 86 FR 5322, 5334 (January 19, 2021), and similarly informs our analysis here.

The rarity of encounter during seismic surveys is not likely to be the product of high bias on the probability of detection. Unlike certain cryptic species with high detection bias, such as *Kogia* spp. or beaked whales, or deep-diving species with high availability bias, such as beaked whales or sperm whales, killer whales are typically available for detection when present and are easily observed. Roberts *et al.* (2015) stated that availability is not a major factor affecting detectability of killer whales from shipboard surveys, as they are not a particularly long-diving species. Baird *et al.* (2005) reported that mean dive durations for 41 fish-eating killer whales for dives greater than or equal to 1 minute in duration was 2.3–2.4 minutes, and Hooker *et al.* (2012) reported that killer whales spent 78 percent of their time at depths between 0–10 m. Similarly, Kvadsheim *et al.* (2012) reported data from a study of four killer whales, noting that the whales performed 20 times as many dives to 1–30 m depth than to deeper waters, with an average depth during those most common dives of approximately 3 m.

In summary, killer whales are the most rarely encountered species in the GOM and typically occur only in particularly deep water. While this information is reflected through the density model informing the acoustic exposure modeling results, there is relatively high uncertainty associated with the model for this species, and the acoustic exposure modeling applies mean distribution data over areas where the species is in fact less likely to occur. NMFS' determination in reflection of the data discussed above, which informed the final rule, is that use of the generic acoustic exposure modeling results for killer whales would result in high estimated take numbers that are inconsistent with the assumptions made in the rule regarding expected killer whale take (86 FR 5322, 5403; January 19, 2021).

In past authorizations, NMFS has often addressed situations involving the low likelihood of encountering a rare species such as killer whales in the GOM through authorization of take of a single group of average size (*i.e.,* representing a single potential encounter). See 83 FR 63268, December 7, 2018. See also 86 FR 29090, May 28, 2021; 85 FR 55645, September 9, 2020. For LLOG's survey, use of the exposure modeling produces an estimate of four killer whale exposures. Given the foregoing discussion, it is unlikely that even one killer whale would be encountered during this 10 day survey, and accordingly, no take of killer whales is authorized through the LLOG LOA.

Based on the results of our analysis, NMFS has determined that the level of taking authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations. See Table 1 in this notice and Table 9 of the rule (86 FR 5322; January 19, 2021).

Small Numbers Determination

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed ''small numbers.'' In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small. For more information please see NMFS' discussion of the MMPA's small numbers requirement provided in the final rule (86 FR 5322, 5438; January 19, 2021).

The take numbers for authorization, which are determined as described above, are used by NMFS in making the necessary small numbers determinations, through comparison with the best available abundance estimates (see discussion at 86 FR 5322, 5391; January 19, 2021). For this comparison, NMFS' approach is to use the maximum theoretical population, determined through review of current stock assessment reports (SAR; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and model-predicted abundance information (*https://seamap.env.duke.edu/models/Duke/GOM/*). For the latter, for taxa where a density surface model could be produced, we use the maximum mean seasonal (*i.e.,* 3-month) abundance prediction for purposes of comparison as a precautionary smoothing of month-to-month fluctuations and in consideration of a corresponding lack of data in the literature regarding seasonal distribution of marine mammals in the GOM. Information supporting the small numbers determinations is provided in Table 1.

[4] However, note that these species have been observed over a greater range of water depths in the GOM than have killer whales.

TABLE 1—TAKE ANALYSIS

Species	Authorized take [1]	Abundance [2]	Percent abundance
Rice's whale	0	51	n/a
Sperm whale	263	2,207	11.9
Kogia spp.	[3] 99	4,373	2.3
Beaked whales	1,161	3,768	30.8
Rough-toothed dolphin	200	4,853	4.1
Bottlenose dolphin	946	176,108	0.5
Clymene dolphin	562	11,895	4.7
Atlantic spotted dolphin	378	74,785	0.5
Pantropical spotted dolphin	2,549	102,361	2.5
Spinner dolphin	683	25,114	2.7
Striped dolphin	219	5,229	4.2
Fraser's dolphin	63	1,665	3.9
Risso's dolphin	165	3,764	4.4
Melon-headed whale	369	7,003	5.3
Pygmy killer whale	87	2,126	4.1
False killer whale	138	3,204	4.3
Killer whale	0	267	n/a
Short-finned pilot whale	107	1,981	5.4

[1] Scalar ratios were not applied in this case due to brief survey duration.
[2] Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.,* 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For the killer whale, the larger estimated SAR abundance estimate is used.
[3] Includes 5 takes by Level A harassment and 94 takes by Level B harassment.

Based on the analysis contained herein of LLOG's proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the affected species or stock sizes and therefore is of no more than small numbers.

Authorization

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to LLOG authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: May 27, 2022.

Catherine Marzin,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC026]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Off of Coastal Virginia

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Virginia Electric and Power Company doing business as Dominion Energy Virginia (Dominion Energy) to incidentally harass marine mammals during marine site characterization surveys off of Virginia in support of the Coastal Virginia Offshore Wind Commercial (CVOW) Project.

DATES: This Authorization is effective from May 27, 2022 to May 26, 2023.

FOR FURTHER INFORMATION CONTACT: Leah Davis, 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/permit/incidental-take-authorizations-under-marine-mammal-protection-act*. 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.

Summary of Request

On September 30, 2021, NMFS received a request from Dominion Energy for an IHA to take marine mammals incidental to marine site characterization surveys off of Virginia. Dominion Energy submitted revised applications on December 3, 2021, January 21, 2022 and March 2, 2022 in response to comments from NMFS. The application was deemed adequate and complete on March 8, 2022. Dominion Energy's request is for take of a small number of 14 species of marine mammals by Level B harassment only. Neither Dominion Energy nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued IHAs to Dominion Energy for similar and related work in the same general area (85 FR 55415; September 8, 2020 (modified on December 17, 2020 (85 FR 81879) and April 22, 2021 (86 FR 21298)), 85 FR 30930; May 21, 2020, and 83 FR 39062; August 8, 2018). Dominion Energy complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHAs and information regarding their monitoring results may be found in the Estimated Take section.

Description of the Specified Activity

As part of its overall marine site characterization survey operations, Dominion Energy plans to conduct high-resolution geophysical (HRG) surveys in the Lease Area and along the Offshore Export Cable Corridor (OECC) off the coast of Virginia.

The purpose of the surveys is to locate and identify potential unexploded ordnance (UXO) in support of the Dominion Energy Coastal Virginia Offshore Wind Commercial Project. Underwater sound resulting from Dominion Energy's planned site characterization survey activities, specifically HRG surveys, has the potential to result in incidental take of marine mammals in the form of behavioral harassment.

Table 1 identifies the representative survey equipment with the expected potential to result in exposure of marine mammals and potentially result in take. The make and model of the listed geophysical equipment may vary depending on availability and the final equipment choices will vary depending on the final survey design, vessel availability, and survey contractor selection.

TABLE 1—SUMMARY OF REPRESENTATIVE HRG EQUIPMENT

System	Representative equipment [a]	Operating frequency (kHz)	RMS source level (dB re 1 μPA m)	Peak source level (dB re 1 μPA m)	Primary beam width (degrees)	Pulse duration (millisecond)
Multibeam Echosounder.	R2Sonics 2026	170–450	[b] 191	[b] 221	0.45 × 0.45–1 × 1	0.015–1.115
Medium Penetration Seismic.	Geo Marine Dual 400 Sparker 800J.	0.3–1.2	[c] 203	[c] 212	Omnidirectional	0.5–0.8
	Applied Acoustics S-Boom (Triple Plate Boomer 1000J).	0.5–3.5	[d] 203	[d] 213	[e] 60	10

[a] Make/model of equipment may vary depending on availability. Will be finalized as part of the survey preparations and contract negotiations with the survey contractor.
[b] Reported by manufacturer.
[c] Based on data from Crocker and Fratantonio (2016) for the Applied Acoustics Dura Spark.
[d] Based on data from Crocker and Fratantonio (2016) for the Applied Acoustics S-Boom with CS.
[e] The beam width was based on data from Crocker and Fratantonio (2016) for the Applied Acoustics S-Boom. dB re 1 μPa m—decibels referenced to 1 microPascal at 1 meter.

Required mitigation, monitoring, and reporting measures are described in detail later in this document (please see Mitigation and Monitoring and Reporting).

A detailed description of the planned survey is provided in the **Federal Register** notice for the proposed IHA (87 FR 19864; April 6, 2022). Since that time, no changes have been made to Dominion Energy's planned survey activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Responses

A notice of NMFS' proposal to issue an IHA to Dominion Energy was published in the **Federal Register** on April 6, 2022 (87 FR 19864). That proposed notice described, in detail, Dominion Energy's activities, the marine mammal species that may be affected by the activities, and the anticipated effects on marine mammals. In that notice, we requested public input on the request for authorization described therein, our analyses, the proposed authorization, and any other aspect of the notice of proposed IHA, and requested that interested persons submit relevant information, suggestions, and comments. This proposed notice was available for a 30-day public comment period.

NMFS received letters from Oceana and Southern Environmental Law Center (SELC) and one comment from a private citizen. Summaries of all substantive comments, and our responses to these comments, are provided here. Please see the comment letters, available online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-dominion-energy-marine-site-characterization-surveys-coastal,* for full detail regarding the comments received.

Comment 1: Oceana made comments objecting to NMFS' renewal process regarding the extension of any one-year IHA with a truncated 15-day public comment period, and suggested an additional 30-day public comment period is necessary for any renewal request.

Response: NMFS' IHA renewal process meets all statutory requirements. In prior responses to comments about IHA renewals (*e.g.,* 84 FR 52464; October 2, 2019 and 85 FR 53342, August 28, 2020), NMFS has

explained how the renewal process, as implemented, is consistent with the statutory requirements contained in section 101(a)(5)(D) of the MMPA, and further, promotes NMFS' goals of improving conservation of marine mammals and increasing efficiency in the MMPA compliance process. Therefore, we intend to continue implementing the renewal process.

In particular, we emphasize that any Renewal IHA does have a 30-day public comment period, and in fact, each Renewal IHA is made available for a 45-day public comment period. The notice of the proposed IHA published in the **Federal Register** on April 6, 2022 (87 FR 19864) made clear that NMFS was seeking comment on the proposed IHA and the potential issuance of a renewal for this survey. As detailed in the **Federal Register** notice for the proposed IHA and on the agency's website, any renewal is limited to another year of identical or nearly identical activities in the same location or the same activities that were not completed within the 1-year period of the initial IHA. NMFS' analysis of the anticipated impacts on marine mammals caused by the applicant's activities covers both the Initial IHA period and the possibility of a one-year Renewal. Therefore a member of the public considering commenting on a proposed Initial IHA also knows exactly what activities (or subset of activities) would be included in a proposed Renewal IHA, the potential impacts of those activities, the maximum amount and type of take that could be caused by those activities, the mitigation and monitoring measures that would be required, and the basis for the agency's negligible impact determinations, least practicable adverse impact findings, small numbers findings, and (if applicable) the no unmitigable adverse impact on subsistence use finding—all the information needed to provide complete and meaningful comments on a possible Renewal at the time of considering the proposed Initial IHA. Reviewers have the information needed to meaningfully comment on both the immediate proposed IHA and a possible 1-year renewal, should the IHA holder choose to request one.

While there would be additional documents submitted with a renewal request, for a qualifying renewal these would be limited to documentation that NMFS would make available and use to verify that the activities are identical to those in the initial IHA, are nearly identical such that the changes would have either no effect on impacts to marine mammals or decrease those impacts, or are a subset of activities already analyzed and authorized but not completed under the initial IHA. NMFS would also need to confirm, among other things, that the activities would occur in the same location; involve the same species and stocks; provide for continuation of the same mitigation, monitoring, and reporting requirements; and that no new information has been received that would alter the prior analysis. The renewal request would also contain a preliminary monitoring report, in order to verify that effects from the activities do not indicate impacts of a scale or nature not previously analyzed. The additional 15-day public comment period, which includes NMFS' direct notice to anyone who commented on the proposed Initial IHA, provides the public an opportunity to review these few documents, provide any additional pertinent information and comment on whether they think the criteria for a renewal have been met. Between the initial 30-day comment period on these same activities and the additional 15 days, the total comment period for a renewal is 45 days.

In addition to the IHA renewal process being consistent with all requirements under section 101(a)(5)(D), it is also consistent with Congress' intent for issuance of IHAs to the extent reflected in statements in the legislative history of the MMPA. Through the provision for renewals in the regulations, description of the process and express invitation to comment on specific potential renewals in the Request for Public Comments section of each proposed IHA, the description of the process on NMFS' website, further elaboration on the process through responses to comments such as these, posting of substantive documents on the agency's website, and provision of 30 or 45 days for public review and comment on all proposed initial IHAs and Renewals respectively, NMFS has ensured that the public is ''invited and encouraged to participate fully in the agency's decision-making process'', as Congress intended.

Comment 2: Oceana stated that NMFS must utilize the best available science, and suggested that NMFS has not done so, specifically referencing information regarding the North Atlantic right whale such as updated population estimates, habitat usage in the survey area, and seasonality information. Oceana specifically asserted that NMFS is not using the best available science with regards to the North Atlantic right whale population estimate and state that NMFS should be using the estimate of 336 individuals presented in the recent North Atlantic Right Whale Report Card (*https://www.narwc.org/report-cards.html*).

Response: While NMFS agrees that the best available science should be used for assessing North Atlantic right whale abundance estimates, we disagree that the North Atlantic Right Whale Report Card (*i.e.,* Pettis *et al.* (2022)) study represents the most recent and best available estimate for North Atlantic right whale abundance. Rather the revised abundance estimate (368; 95 percent with a confidence interval of 356–378) published by Pace (2021) (and subsequently included in the 2021 draft Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports*)), which was used in the proposed IHA, provides the most recent and best available estimate, and introduced improvements to NMFS' right whale abundance model. Specifically, Pace (2021) looked at a different way of characterizing annual estimates of age-specific survival. NMFS considered all relevant information regarding North Atlantic right whale, including the information cited by the commenters. However, NMFS relies on the SAR. Recently (after publication of the notice of proposed IHA), NMFS updated its species web page to recognize the population estimate for North Atlantic right whales is now below 350 animals (*https://www.fisheries.noaa.gov/species/north-atlantic-right-whale*). We anticipate that this information will be presented in the draft 2022 SAR. We note that this change in abundance estimate would not change the estimated take of North Atlantic right whales or authorized take numbers, nor affect our ability to make the required findings under the MMPA for Dominion Energy's survey activities.

NMFS further notes that the commenters seem to be conflating the phrase ''best available data'' with ''the most recent data.'' The MMPA specifies that the ''best available data'' must be used, which does not always mean the most recent. As is NMFS' prerogative, we referenced the best available NARW abundance estimate of 368 from the draft 2021 SARs as NMFS' determination of the best available data that we relied on in our analysis. The Pace (2021) results strengthened the case for a change in mean survival rates after 2010–2011, but did not significantly change other current estimates (population size, number of new animals, adult female survival) derived from the model. Furthermore, NMFS notes that the SARs are peer reviewed by other scientific review groups prior to being finalized and

published and that the North Atlantic Right Whale Report Card (Pettis *et al.,* 2022) does not undertake this process.

NMFS considered the best available science regarding both recent habitat usage patterns for the study area and up-to-date seasonality information in the notice of the proposed IHA, including consideration of existing BIAs and densities provided by Roberts *et al.* (2021). While the commenter has suggested that NMFS consider best available information for recent habitat usage patterns and seasonality, it has not offered any additional information which it suggests should be considered best available information in place of what NMFS considered in its notice of proposed IHA (87 FR 19864; April 6, 2022).

Lastly, as we stated in the notice of proposed IHA (87 FR 19864; April 6, 2022), any impacts to marine mammals are expected to be temporary and minor and, given the relative size of the survey area compared to the overall migratory route leading to foraging habitat (which is not affected by the specified activity). Comparatively, the survey area is extremely small (approximately 4,000 km^2) compared to the size of the NARW migratory BIA (269,448 km^2). Because of this, and in context of the minor, low-level nature of the impacts expected to result from the planned survey, such impacts are not expected to result in disruption to biologically important behaviors.

Comment 3: Oceana noted that chronic stressors are an emerging concern for NARW conservation and recovery, and stated that chronic stress may result in energetic effects for North Atlantic right whales. Oceana suggested that NMFS has not fully considered both the use of the area and the effects of both acute and chronic stressors on the health and fitness of North Atlantic right whales, as disturbance responses in North Atlantic right whales could lead to chronic stress or habitat displacement, leading to an overall decline in their health and fitness.

Response: NMFS agrees with Oceana that both acute and chronic stressors are of concern for North Atlantic right whale conservation and recovery. We recognize that acute stress from acoustic exposure is one potential impact of these surveys, and that chronic stress can have fitness, reproductive, *etc.* impacts at the population-level scale. NMFS has carefully reviewed the best available scientific information in assessing impacts to marine mammals, and recognizes that the surveys have the potential to impact marine mammals through behavioral effects, stress responses, and auditory masking. However, NMFS does not expect that the generally short-term, intermittent, and transitory marine site characterization survey activities planned by Dominion Energy will create conditions of acute or chronic acoustic exposure leading to long-term physiological stress responses in marine mammals. NMFS has also prescribed a robust suite of mitigation measures, including extended distance shutdowns for North Atlantic right whale, that are expected to further reduce the duration and intensity of acoustic exposure, while limiting the potential severity of any possible behavioral disruption. The potential for chronic stress was evaluated in making the determinations presented in NMFS' negligible impact analyses. Because North Atlantic right whales generally use this location in a transitory manner, specifically for migration, any potential impacts from these surveys are lessened for other behaviors due to the brief periods where exposure is possible. In context of these expected low-level impacts, which are not expected to meaningfully affect important behavior, we also refer again to the large size of the migratory corridor compared with the survey area (the overlap between the BIA and the proposed survey area will cover approximately 4,000 km^2 of the 269,448 km^2 BIA). Thus, the transitory nature of North Atlantic right whales at this location means it is unlikely for any exposure to cause chronic effects, as Dominion Energy's planned survey area and ensonified zones are much smaller than the overall migratory corridor. As such, NMFS does not expect acute or cumulative stress to be a detrimental factor to North Atlantic right whales from Dominion Energy's described survey activities.

Comment 4: Oceana asserted that NMFS must fully consider the discrete effects of each activity and the cumulative effects of the suite of approved, proposed and potential activities on marine mammals and North Atlantic right whales in particular and ensure that the cumulative effects are not excessive before issuing or renewing an IHA. In a related comment, the SELC stated that in proceeding with this IHA and all incidental take authorizations for future offshore wind energy development off the East Coast, NMFS should analyze the cumulative risk to North Atlantic right whales and other marine mammal species posed by these multiple projects and leasing phases, including as it relates to development of mitigation measures.

Response: Neither the MMPA nor NMFS' codified implementing regulations call for consideration of other unrelated activities and their impacts on populations. The preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989) states in response to comments that the impacts from other past and ongoing anthropogenic activities are to be incorporated into the negligible impact analysis via their impacts on the baseline. Consistent with that direction, NMFS has factored into its negligible impact analysis the impacts of other past and ongoing anthropogenic activities via their impacts on the baseline, *e.g.,* as reflected in the density/distribution and status of the species, population size and growth rate, and other relevant stressors. The 1989 final rule for the MMPA implementing regulations also addressed public comments regarding cumulative effects from future, unrelated activities. There NMFS stated that such effects are not considered in making findings under section 101(a)(5) concerning negligible impact. In this case, this IHA, as well as other IHAs currently in effect or proposed within the specified geographic region, are appropriately considered an unrelated activity relative to the others. The IHAs are unrelated in the sense that they are discrete actions under section 101(a)(5)(D), issued to discrete applicants.

Section 101(a)(5)(D) of the MMPA requires NMFS to make a determination that the take incidental to a ''specified activity'' will have a negligible impact on the affected species or stocks of marine mammals. NMFS' implementing regulations require applicants to include in their request a detailed description of the specified activity or class of activities that can be expected to result in incidental taking of marine mammals. 50 CFR 216.104(a)(1). Thus, the ''specified activity'' for which incidental take coverage is being sought under section 101(a)(5)(D) is generally defined and described by the applicant. Here, Dominion Energy was the applicant for the IHA, and we are responding to the specified activity as described in that application (and making the necessary findings on that basis).

Through the response to public comments in the 1989 implementing regulations, NMFS also indicated (1) that we would consider cumulative effects that are reasonably foreseeable when preparing a NEPA analysis, and (2) that reasonably foreseeable cumulative effects would also be considered under section 7 of the Endangered Species Act (ESA) for ESA-listed species, as appropriate. Accordingly, NMFS has written Environmental Assessments (EA) that addressed cumulative impacts related to

substantially similar activities, in similar locations, *e.g.,* the 2019 Avangrid EA for survey activities offshore North Carolina and Virginia; the 2017 Ocean Wind, LLC EA for site characterization surveys off New Jersey; and the 2018 Deepwater Wind EA for survey activities offshore Delaware, Massachusetts, and Rhode Island. Cumulative impacts regarding issuance of IHAs for site characterization survey activities such as those planned by Dominion Energy have been adequately addressed under NEPA in prior environmental analyses that support NMFS' determination that this action is appropriately categorically excluded from further NEPA analysis. NMFS independently evaluated the use of a categorical exclusion (CE) for issuance of Dominion Energy's IHA, which included consideration of extraordinary circumstances.

Separately, the cumulative effects of substantially similar activities in the northwest Atlantic Ocean have been analyzed in the past under section 7 of the ESA when NMFS has engaged in formal intra-agency consultation, such as the 2013 programmatic Biological Opinion for BOEM Lease and Site Assessment Rhode Island, Massachusetts, New York, and New Jersey Wind Energy Areas (*https://repository.library.noaa.gov/view/noaa/29291*). Analyzed activities include those for which NMFS issued previous IHAs (82 FR 31562; July 7, 2017, 85 FR 21198; April 16, 2020 and 86 FR 26465; May 10, 2021), which are similar to those planned by Dominion Energy under this current IHA request. This Biological Opinion determined that NMFS' issuance of IHAs for site characterization survey activities associated with leasing, individually *and* cumulatively, are not likely to adversely affect listed marine mammals. NMFS notes, that while issuance of this IHA is covered under a different consultation, this BiOp remains valid.

Comment 5: The SELC recommends that NMFS reinitiate its consultation under the ESA, stating that it relies on outdated scientific information about the North Atlantic right whale and fails to include mitigation measures that meet the ESA's requirements. It says that NMFS should instead require in the Final IHA the measures found in Attachment 5 of its comment letter.

Response: NMFS disagrees with SELC's assertion that reinitiation of its ESA section 7 consultation is warranted, as none of the reinitiation triggers listed in NMFS' 2021 programmatic consultation have been met. Regarding the mitigation measures included in the 2021 programmatic consultation, NMFS Greater Atlantic Regional Fisheries Office (GARFO) has determined that activities which were considered in its 2021 programmatic consultation are not likely to adversely affect ESA-listed marine mammals, provided that the required Project Design Criteria (PDC) are implemented. This IHA requires Dominion Energy to abide by the relevant PDCs. Please see the response to Comment 6 and other relevant comments regarding the appropriateness of the measures in Attachment 5 to SELC's comment letter.

Comment 6: The SELC recommends that NMFS require the mitigation measures described in Attachment 5 of its letter in the Final IHA. NMFS has summarized the remaining recommendations from Attachment 5 here. Please refer to Attachment 5 to SELC's letter for the full recommended measures. SELC recommends that NMFS: (1) Prohibit site assessment and site characterization activities during times of highest risk. (2) Require diel restrictions on site assessment and characterization activities. (3) Require the clearance zone and exclusion zone distances stated in Attachment 5 prior to activities known to injure or harass large whales. (4) Require shutdown of activities if a large whale is detected visually or acoustically. (5) Require robust monitoring protocols during pre-clearance and when site assessment and characterization activities are underway. (6) Require mandatory vessel speed restrictions. (7) Implement other vessel-related measures. (8) Require underwater noise reduction to the fullest extent feasible. (9) Require mandatory reporting of all North Atlantic right whale and other large whale detections.

Response: Responses below refer to the corresponding number in the comment.

(1) Given the very minor degree to which North Atlantic right whales are anticipated to be impacted by this activity (see the Estimated Take and Negligible Impact Analysis and Determination sections for additional detail), it is not appropriate to prohibit survey activities during certain times. However, as described in the Mitigation section of this notice, the IHA does include mitigation measures related to vessel transit that are required during certain times when North Atlantic right whales are anticipated to occur in the project area in higher numbers. Further, the IHA requires that members of the monitoring team consult NMFS North Atlantic right whale reporting system and Whale Alert, 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, vessels must abide by speed restrictions in the DMA. Please also see NMFS' response to Comment 14.

(2) Please see NMFS' response to Comment 8.

(3) Please see NMFS' response to Comment 16.

(4) Please see NMFS' response to Comment 18.

(5) Regarding the recommendation to conduct acoustic monitoring, please refer to Comment 17. Further, as also recommended by the commenter, PSOs stationed on a survey vessel must be able to view the entire exclusion or clearance zone, and monitoring must begin at least 30 minutes prior to the commencement or re-activation after a shutdown. NMFS requires that visual monitoring must continue until 30 minutes after use of the specified acoustic source ceases. However, NMFS disagrees with the commenter's recommendation to require at least 4 PSOs (rotating two on duty, two off duty). Rather, the IHA requires a minimum of one PSO on duty, per source vessel, during daylight hours and two PSOs must be on duty, per source vessel, during nighttime hours, and expects that these PSOs will be able to sufficiently monitor the zones. NMFS disagrees with the commenter that a 1,000 m clearance zone for North Atlantic right whales and other large whale species is appropriate. Please see NMFS' response to Comment 16 for additional explanation.

(6) Please see NMFS' response to Comment 10 that describes why it has not required a 10-knot speed restriction at all times. Further, Dominion Energy has not developed a peer-reviewed ''Adaptive Plan'' that is proven to be equally or more effective than a 10-knot speed restriction, nor does NMFS find such a plan to be warranted, given that the factors described in Comment 10 in support of the vessel speed restriction requirements included in the IHA.

(7) The IHA states that 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 mammals 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. While this requirement does not include ''all personnel working offshore'' as recommended by the commenter, it

includes all relevant personnel who may be responsible for vessel strike avoidance.

Regarding vessel separation zones, NMFS requires a 500 m separation distance for ESA-listed whales (North Atlantic right whale and fin whale), which aligns with the commenter's recommendation for North Atlantic right whale, and is more conservative than the commenter's recommendation (100 m) for fin whales. For all other large whales, the final IHA requires a vessel separation distance of 100 m, as also recommended by the commenter and as was included in the proposed IHA. As needed, vessels must take action to maintain these separation distances. During nighttime observations, PSOs will use thermal imaging devices. Regarding the recommendation for crew transport vessels to use thermal imaging devices, Dominion Energy's survey plans do not require additional vessels for crew transport, and therefore, this recommendation has not been included in the IHA.

(8) Please see NMFS' response to Comment 7.

(9) Please see NMFS' response to Comment 15.

Comment 7: Oceana states that NMFS must make an assessment of which activities, technologies and strategies are truly necessary to achieve site characterization to inform development of the offshore wind projects and which are not critical, asserting that NMFS should prescribe the appropriate survey techniques. In general, Oceana and the SELC stated that NMFS must require that all IHA applicants minimize the impacts of underwater noise to the fullest extent feasible, including through the use of best available technology and methods to minimize sound levels from geophysical surveys such as through the use of technically and commercially feasible and effective noise reduction and attenuation measures. SELC states that for example, project proponents should select and operate sub-bottom profiling systems at power settings that achieve the lowest practicable source level for the objective.

Response: The MMPA requires that an IHA include measures that will effect the least practicable adverse impact on the affected species and stocks and, in practice, NMFS agrees that the IHA should include conditions for the survey activities that will first avoid adverse effects on North Atlantic right whales in and around the survey site, where practicable, and then minimize the effects that cannot be avoided. NMFS has determined that the IHA meets this requirement to effect the least practicable adverse impact. As part of the analysis for all marine site characterization survey IHAs, NMFS evaluated the effects expected as a result of the specified activity, made the necessary findings, and prescribed mitigation requirements sufficient to achieve the least practicable adverse impact on the affected species and stocks of marine mammals. It is not within NMFS' purview to make judgments regarding what may be appropriate techniques or technologies for an operator's survey objectives.

Comment 8: SELC recommends that NMFS prohibit initiation of site characterization activities within 1.5 hours of civil sunset or in times of low visibility when the visual clearance and exclusion zones cannot be visually monitored.

Response: NMFS disagrees with the commenter that prohibiting initiation of site characterization activities within 1.5 hours of civil sunset or in times of low visibility when the visual clearance and exclusion zones cannot be visually monitored is warranted.

NMFS acknowledges the limitations inherent in detection of marine mammals at night and in times of low visibility. However, no injury is expected to result even in the absence of mitigation, given the characteristics of the sources planned for use (supported by the very small estimated Level A harassment zones; *i.e.,* <54 m for all impulsive sources). Regarding Level B harassment, any potential impacts will be limited to short-term behavioral responses, as described in the *Potential Effects of Specified Activities on Marine Mammals and Their Habitat* section of the notice of proposed IHA (87 FR 19864; April 6, 2022) and the Negligible Impact Analysis and Determination section of this notice. NMFS considers impacts from this category of survey operations to be near *de minimis,* with the potential for Level A harassment for any species to be discountable and the severity of Level B harassment (and, therefore, the impacts of the take event on the affected individual), if any, to be low. Commenters provide no evidence to the contrary. NMFS is also requiring Dominion Energy to employ two PSOs during nighttime hours and Dominion Energy must supply at least one thermal (infrared) imaging device suited for the marine environment. Given these factors, NMFS has determined that more restrictive mitigation requirements are not warranted.

Restricting surveys in the manner suggested by the commenters may reduce marine mammal exposures by some degree in the short term, but would not result in any significant reduction in either intensity or duration of noise exposure. Vessels would also potentially be on the water for an extended time introducing additional noise into the marine environment. The restrictions recommended by the commenters could result in the surveys spending increased time on the water, which may result in greater overall exposure to sound for marine mammals; thus the commenters have not demonstrated that such a requirement would result in a net benefit. Furthermore, restricting the ability of the applicant to begin surveys within 1.5 hours of civil sunset would have the potential to result in lengthy shutdowns of the survey equipment, which could result in the applicant failing to collect the data they have determined is necessary and, subsequently, the need to conduct additional surveys in the future. This would result in significantly increased costs incurred by the applicant. Thus, the restriction suggested by the commenters would not be practicable for the applicant to implement. In consideration of the likely effects of the activity on marine mammals absent mitigation, potential unintended consequences of the measures as proposed by the commenters, and practicability of the recommended measures for the applicant, NMFS has determined that restricting operations as recommended is not warranted or practicable in this case.

Comment 9: Oceana suggests that PSOs complement their survey efforts using additional technologies, such as infrared detection devices when in low-light conditions.

Response: NMFS agrees with Oceana regarding this suggestion and a requirement to utilize a thermal (infrared) device during low-light conditions was included in the proposed **Federal Register** Notice. That requirement is included as a requirement of the issued IHA.

Comment 10: Oceana and the SELC recommended that NMFS restrict all vessels of all sizes associated with the proposed survey activities to speeds less than 10 knots (kn) at all times due to the risk of vessel strikes to North Atlantic right whales and other large whales.

Response: While NMFS acknowledges that vessel strikes can result in injury or mortality, we have analyzed the potential for vessel strike resulting from Dominion Energy's activity and have determined that based on the nature of the activity and the required mitigation measures specific to vessel strike avoidance included in the IHA, potential for vessel strike is so low as to

be discountable. The required mitigation measures, all of which were included in the proposed IHA and are now required in the final IHA, include: A requirement that all vessel operators comply with 10 kn (18.5 km/hour) or less speed restrictions in any SMA, DMA or Slow Zone while underway, and check daily for information regarding the establishment of mandatory or voluntary vessel strike avoidance areas (SMAs, DMAs, Slow Zones) and information regarding NARW sighting locations; a requirement that all vessels greater than or equal to 19.8 m in overall length operating from November 1 through April 30 operate at speeds of 10 kn (18.5 km/hour) or less; a requirement that all vessel operators reduce vessel speed to 10 kn (18.5 km/hour) or less when any large whale, any mother/calf pairs, pods, or large assemblages of non-delphinid cetaceans are observed near the vessel; a requirement that all survey vessels maintain a separation distance of 500 m or greater from any ESA-listed whales or other unidentified large marine mammals visible at the surface while underway; a requirement that, if underway, vessels must steer a course away from any sighted ESA-listed whale at 10 kn or less until the 500 m minimum separation distance has been established; a requirement that, if an ESA-listed whale is sighted in a vessel's path, or within 500 m of an underway vessel, the underway vessel must reduce speed and shift the engine to neutral; a requirement that all vessels underway must maintain a minimum separation distance of 100 m from all non-ESA-listed baleen whales; and a requirement that all vessels underway must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel). We have determined that the vessel strike avoidance measures in the IHA are sufficient to ensure the least practicable adverse impact on species or stocks and their habitat. Furthermore, no documented vessel strikes have occurred for any marine site characterization surveys which were issued IHAs from NMFS during the survey activities themselves or while transiting to and from survey sites.

Comment 11: Oceana suggests that NMFS require vessels maintain a separation distance of at least 500 m from North Atlantic right whales at all times.

Response: NMFS agrees with Oceana regarding this suggestion and a requirement to maintain a separation distance of at least 500 m from North Atlantic right whales at all times was included in the proposed **Federal Register** Notice and was included as a requirement in the issued IHA.

Comment 12: Oceana recommended that the IHA should require all vessels supporting site characterization to be equipped with and using Class A Automatic Identification System (AIS) devices at all times while on the water. Oceana suggested this requirement should apply to all vessels, regardless of size, associated with the survey.

Response: NMFS is generally supportive of the idea that vessels involved with survey activities be equipped with and using Class A Automatic Identification System (devices) at all times while on the water. Indeed, there is a precedent for NMFS requiring such a stipulation for geophysical surveys in the Atlantic Ocean (38 FR 63268, December 7, 2018); however, these activities carried the potential for much more significant impacts than the marine site characterization surveys to be carried out by Dominion Energy, with the potential for both Level A and Level B harassment take. Given the small isopleths and small numbers of take authorized by this IHA, NMFS does not agree that the benefits of requiring AIS on all vessels associated with the survey activities outweighs and warrants the cost and practicability issues associated with this requirement.

Comment 13: Oceana asserts that the IHA must include requirements to hold all vessels associated with site characterization surveys accountable to the IHA requirements, including vessels owned by the developer, contractors, employees, and others regardless of ownership, operator, and contract. They state that exceptions and exemptions will create enforcement uncertainty and incentives to evade regulations through reclassification and redesignation. They recommend that NMFS simplify this by requiring all vessels to abide by the same requirements, regardless of size, ownership, function, contract or other specifics.

Response: NMFS agrees with Oceana and required these measures in the proposed IHA and final IHA. The IHA requires that a copy of the IHA must be in the possession of Dominion Energy, the vessel operators, the lead PSO, and any other relevant designees of Dominion Energy operating under the authority of this IHA. The IHA also states that Dominion Energy must ensure that the vessel operator and other relevant vessel personnel, including the Protected Species Observer (PSO) team, are briefed on all responsibilities, communication procedures, marine mammal monitoring protocols, operational procedures, and IHA requirements prior to the start of survey activity, and when relevant new personnel join the survey operations.

Comment 14: The SELC recommends that NMFS prohibit site characterization activities that have the potential to injure or harass North Atlantic right whales (defined in its letter as sources operating at frequencies between 7 and 35 kHz) from November 1 to April 30.

Response: NMFS appreciates the value of seasonal restrictions under certain circumstances. However, in this case, we have determined seasonal restrictions from April 1 to November 30 are not warranted, given the relatively low density of North Atlantic right whales in the area, the nature of the proposed activities, and the required mitigation measures. As described in response to Comment 16, Dominion Energy is required to implement clearance and exclusion zones of 500 m for North Atlantic right whales. This 500 m zone exceeds the modeled distance to the largest 160 dB Level B harassment isopleth (141 m during sparker use) by a substantial margin. Further, Level A harassment (auditory injury) is not expected to result even in the absence of mitigation, given the characteristics of the sources planned for use.

Comment 15: Oceana stated that the IHA must include a requirement for all phases of the site characterization to subscribe to the highest level of transparency, including frequent reporting to federal agencies. Oceana and SELC recommend requirements to report all visual and acoustic detections of North Atlantic right whales and any dead, injured, or entangled marine mammals to NMFS or the Coast Guard as soon as possible and no later than the end of the PSO shift. SELC also recommends the Marine Animal Response Team as a potential organization for reporting of entangled or dead North Atlantic right whales or other large whales. Oceana states that to foster stakeholder relationships and allow public engagement and oversight of the permitting, the IHA should require all reports and data to be accessible on a publicly available website. Related, SELC recommends that quarterly reports of PSO sighting data be made publicly available.

Response: NMFS agrees with the need for reporting and indeed, the MMPA calls for IHAs to incorporate reporting requirements. However, NMFS does not concur with the suggestion that Dominion Energy should submit quarterly PSO sightings data reports,

and that these reports be made publicly available. As included in the proposed IHA, the final IHA includes requirements for reporting that supports Oceana's recommendations. Dominion Energy is required to submit a monitoring report to NMFS within 90 days after completion of survey activities that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring. PSO datasheets or raw sightings data must also be provided with the draft and final monitoring report. SELC did not provide specific examples regarding how making PSO sightings data publicly available on a quarterly basis would inform marine mammal science and protection in any meaningful way on this timescale.

Further, the draft IHA and final IHA stipulate that if a North Atlantic right whale is observed at any time by any survey vessels, during surveys or during vessel transit, Dominion Energy must immediately report sighting information to the NMFS North Atlantic Right Whale Sighting Advisory System within two hours of occurrence, when practicable, or no later than 24 hours after occurrence. Dominion Energy may also report the sighting to the U.S. Coast Guard. Additionally, Dominion Energy must report any discoveries of injured or dead marine mammals to the Office of Protected Resources, NMFS, and to the New England/Mid-Atlantic Regional Stranding Coordinator as soon as feasible. This includes entangled animals. All reports and associated data submitted to NMFS are included on the website for public inspection.

Daily visual and acoustic detections of North Atlantic right whales and other large whale species along the Eastern Seaboard, as well as Slow Zone locations, are publicly available on WhaleMap (*https://whalemap.org/WhaleMap/*). Further, recent acoustic detections of North Atlantic right whales and other large whale species are available to the public on NOAA's Passive Acoustic Cetacean Map website *https://apps-nefsc.fisheries.noaa.gov/pacm/#/narw.* Given the open access to the resources described above, NMFS does not concur that public access to quarterly PSO reports is warranted and we have not included this measure in the authorization.

Comment 16: The SELC recommended that for site characterization activities that have the potential to injure or harass North Atlantic right whales, NMFS require a visual clearance and exclusion zone of at least 1,000 m for North Atlantic right whales and 500 m for all large whale species around each vessel conducting activities with noise levels that could result in injury to or harassment of large whales, and also require an acoustic clearance and exclusion zone of at least 1,000 m for North Atlantic right whales around each vessel conducting activities with noise levels that could harass North Atlantic right whales. SELC states that if a large whale is detected within the 1000 m clearance zone but the species cannot be identified, it must be assumed to be a North Atlantic right whale. Similarly, Oceana recommended increasing the Exclusion Zone to 1,000m for North Atlantic right whales.

Response: NMFS notes that the 500 m Exclusion Zone for North Atlantic right whales exceeds the modeled distance to the largest 160 dB Level B harassment isopleth (141 m during sparker use) by a substantial margin. Commenters do not provide a compelling rationale for why the Exclusion Zone should be even larger. Given that these surveys are relatively low impact and that, regardless, NMFS has prescribed a North Atlantic right whale Exclusion Zone that is significantly larger (500 m) than the conservatively estimated largest harassment zone (141 m), NMFS has determined that the Exclusion Zone is appropriate. Regarding the clearance zone, the SELC did not provide a compelling reason why the recommended clearance zones are warranted. The IHA already requires a clearance zone of 500 m for ESA-listed marine mammals (which includes all large whales, except humpback and minke whales), which like the Exclusion Zones, are much larger than the Level B harassment zone for all activities (the largest of which is 141 m, as noted above). For all other marine mammals, the 100 m clearance zone is significantly larger than the calculated Level A harassment zones, and it incorporates most or all of the Level B harassment zones, including the largest Level B harassment zone of 141 m. Further, Level A harassment is not expected to result even in the absence of mitigation, given the characteristics of the sources planned for use.

Regarding the use of acoustic monitoring to implement exclusion and clearance zones, NMFS does not anticipate that acoustic monitoring would be effective for a variety of reasons, as described in its response to Comment 17, and therefore has not required it in this IHA. Please refer to Comment 17 for additional information. As described in the Mitigation section, NMFS has determined that the prescribed mitigation requirements are sufficient to effect the least practicable adverse impact on all affected species or stocks.

Comment 17: Oceana recommended that NMFS should require Passive Acoustic Monitoring (PAM) at all times to maximize the probability of detection for North Atlantic right whales. It provided recommendations that NMFS should require PAM at all times, both day and night, to maximize the probability of detection for North Atlantic right whales, as well as other species and stocks. In a related comment, the SELC recommended that applicants use PAM to assist in implementing clearance and exclusion zones for North Atlantic right whales.

Response: The commenters do not explain why they expect that PAM would be effective in detecting vocalizing mysticetes, nor does NMFS agree that this measure is warranted, as it is not expected to be effective for use in detecting the species of concern. It is generally accepted that, even in the absence of additional acoustic sources, using a towed passive acoustic sensor to detect baleen whales (including North Atlantic right whales) is not typically effective because the noise from the vessel, the flow noise, and the cable noise are in the same frequency band and will mask the vast majority of baleen whale calls. Vessels produce low-frequency noise, primarily through propeller cavitation, with main energy in the 5–300 Hertz (Hz) frequency range. Source levels range from about 140 to 195 decibel (dB) re 1 μPa (micropascal) at 1 m (NRC, 2003; Hildebrand, 2009), depending on factors such as ship type, load, and speed, and ship hull and propeller design. Studies of vessel noise show that it appears to increase background noise levels in the 71–224 Hz range by 10–13 dB (Hatch *et al.* 2012; McKenna *et al.* 2012; Rolland *et al.* 2012). PAM systems employ hydrophones towed in streamer cables approximately 500 m behind a vessel. Noise from water flow around the cables and from strumming of the cables themselves is also low frequency and typically masks signals in the same range. Experienced PAM operators participating in a recent workshop (Thode *et al.* 2017) emphasized that a PAM operation could easily report no acoustic encounters, depending on species present, simply because background noise levels rendered any acoustic detection impossible. The same workshop report stated that a typical eight-element array towed 500 m behind a vessel could be expected to detect delphinids, sperm whales, and beaked whales at the required range, but not baleen whales, due to expected background noise levels (including

seismic noise, vessel noise, and flow noise).

There are several additional reasons why we do not agree that use of PAM is warranted for 24-hour HRG surveys. While NMFS agrees that PAM can be an important tool for augmenting detection capabilities in certain circumstances, its utility in further reducing impact during HRG survey activities is limited. First, for this activity, the area expected to be ensonified above the Level B harassment threshold is relatively small (a maximum of 141 m); this reflects the fact that, to start with, the source level is comparatively low and the intensity of any resulting impacts would be lower level and, further, it means that inasmuch as PAM will only detect a portion of any animals exposed within a zone, the overall probability of PAM detecting an animal in the harassment zone is low. Together these factors support the limited value of PAM for use in reducing take with smaller zones. PAM is only capable of detecting animals that are actively vocalizing, while many marine mammal species vocalize infrequently or during certain activities, which means that only a subset of the animals within the range of the PAM would be detected (and potentially have reduced impacts). Additionally, localization and range detection can be challenging under certain scenarios. For example, odontocetes are fast moving and often travel in large or dispersed groups which makes localization difficult.

Given that the effects to marine mammals from the types of surveys authorized in this IHA are expected to be limited to low level behavioral harassment even in the absence of mitigation, the limited additional benefit anticipated by adding this detection method (especially for North Atlantic right whales and other low frequency cetaceans, species for which PAM has limited efficacy), and the cost and impracticability of implementing a full-time PAM program, we have determined the current requirements for visual monitoring are sufficient to ensure the least practicable adverse impact on the affected species or stocks and their habitat. NMFS has previously provided discussions on why PAM isn't a required monitoring measure during HRG survey IHAs in past **Federal Register** notices (see 86 FR 21289, April 22, 2021 and 87 FR 13975, March 11, 2022 for examples).

Comment 18: Oceana recommends a shutdown requirement if a North Atlantic right whale or other ESA-listed species is detected in the clearance zone as well as a publicly available explanation of any exemptions as to why the applicant would not be able to shut down in these situations. In a related comment, the SELC recommends that if a North Atlantic right whale or other large whale species is visually or acoustically detected within the relevant clearance zone, site assessment and characterization activities with noise levels that could result in injury or harassment to large whales must not be initiated. SELC further recommends that site assessment and characterization activities with noise levels that could result in injury or harassment to large whales be halted if a North Atlantic right whale or other large whale species is visually detected within the visual exclusion zone or if a North Atlantic right whale is acoustically detected within the acoustic exclusion zone.

Response: NMFS reiterates that use of the planned sources is not expected to have any potential to cause injury of any species, including North Atlantic right whale, even in the absence of mitigation. Consideration of the anticipated effectiveness of the mitigation measures (*i.e.,* exclusion zones and shutdown measures) discussed below and in the Mitigation section of this notice further strengthens the conclusion that injury is not a reasonably anticipated outcome of the survey activity. Nevertheless, there are several shutdown requirements described in the **Federal Register** notice of the proposed IHA (87 FR 19864; April 6, 2022), and which are included in the final IHA, including the stipulation that geophysical survey equipment must be immediately shut down if any marine mammal is observed within or entering the relevant Exclusion Zone while geophysical survey equipment is operational. There is no exemption for the shutdown requirement for NARW and ESA-listed species.

Dominion Energy is required to implement a 30-minute pre-start clearance period prior to the initiation of ramp-up of specified HRG equipment. During this period, clearance zones 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 clearance zone. If a marine mammal is observed within an clearance zone during the pre-start 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 seals, and 30 minutes for all other species). If the acoustic source is shut down for reasons other than mitigation (*e.g.,* mechanical difficulty) for less than 30 minutes, it may be activated again without ramp-up if PSOs have maintained constant observation and no detections of any marine mammal have occurred within the respective exclusion zones.

NMFS does not require acoustic monitoring for the reasons stated in our response to Comment 17.

Comment 19: Oceana recommended that when HRG surveys are allowed to resume after a shutdown event, the surveys should be required to use a ramp-up procedure to encourage any nearby marine life to leave the area.

Response: NMFS agrees with this recommendation and included in the **Federal Register** notice of the proposed IHA (87 FR 19864; April 6, 2022) and this final IHA a stipulation that when technically feasible, survey equipment must be ramped up at the start or restart of survey activities. Ramp-up must begin with the power of the smallest acoustic equipment at its lowest practical power output appropriate for the survey. When technically feasible the power must then be gradually turned up and other acoustic sources added in a way such that the source level would increase gradually. NMFS notes that ramp-up is not required for short periods where acoustic sources were shut down (*i.e.,* less than 30 minutes) if PSOs have maintained constant visual observation and no detections of marine mammals occurred within the applicable Exclusion Zones.

Changes From the Proposed IHA to Final IHA

Since publication of the Notice of proposed IHA, NMFS has acknowledged that the population estimate of North Atlantic right whales is now under 350 animals (*https://www.fisheries.noaa.gov/species/north-atlantic-right-whale*). However, as discussed in our response to Comment 2 above, NMFS has determined that this change in abundance estimate would not change the estimated take of North Atlantic right whales or authorized take numbers, nor affect our ability to make the required findings under the MMPA for Dominion Energy's survey activities. The status and trends of the NARW population remain unchanged.

NMFS considered all public comments received and determined that no changes to the final IHA were necessary due to these recommendations. However, in section 6 of the IHA (*Reporting Requirements*) NMFS removed reference to an acoustic monitoring report which was inadvertently included in the proposed IHA, as an acoustic monitoring report is not required. Additionally, in the same

section, NMFS added a GARFO email address to which the draft and final reports must also be sent.

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' Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species or stocks for which take is expected and authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and 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' 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' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Atlantic and Gulf of Mexico SARS. All values presented in Table 2 are the most recent available at the time of publication and are available in the 2020 SARs (Hayes *et al.* 2021) and draft 2021 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 2—MARINE MAMMALS LIKELY TO OCCUR IN THE PROJECT AREA THAT MAY BE AFFECTED BY DOMINION ENERGY'S ACTIVITY

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)						
Family Balaenidae:						
North Atlantic right whale	*Eubalaena glacialis*	Western North Atlantic	E, D, Y	368 (0, 364, 2019)	0.7	7.7
Family Balaenopteridae (rorquals):						
Fin whale	Balaenoptera physalus	Western North Atlantic	E, D, Y	6,802 (0.24, 5,573, 2016)	11	1.8
Humpback whale	*Megaptera novaeangliae*	Gulf of Maine	-, -, Y	1,396 (0, 1,380, 2016)	22	12.15
Minke whale	*Balaenoptera acutorostrata*	Canadian East Coast	-, -, N	21,968 (0.31, 17,002, 2016)	170	10.6
Sei whale	*Balaenoptera borealis*	Nova Scotia	E, D, Y	6,292 (1.02, 3,098, 2016)	6.2	0.8
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Physeteridae:						
Sperm whale	*Physeter macrocephalus*	North Atlantic	E, D, Y	4,349 (0.28, 3,451, 2016)	3.9	0
Family Delphinidae:						
Atlantic white-sided dolphin.	*Lagenorhynchus acutus*	Western North Atlantic	-, -, N	93,233 (0.71, 54,443, 2016)	544	27
Bottlenose dolphin	*Tursiops spp*	Western North Atlantic Offshore.	-, -, N	62,851 [b] (0.23, 51,914 [b], 2016).	519	28
		Southern Migratory Coastal	-, -, Y	3,751 (0.6, 2,353, 2016)	23	0–18.3
Short-finned pilot whale	*Globicephala macrorhynchus*	Western North Atlantic	-, -, Y	28,924 (0.24, 23,637, 2016)	236	136
Long-finned pilot whale	*Globicephala melas*	Western North Atlantic	-, -, N	39,215 (0.3, 30,627, 2016)	306	29
Risso's dolphin	*Grampus griseus*	Western North Atlantic	-, -, N	35,215 (0.19, 30,051, 2016)	301	34
Common dolphin	*Delphinus delphis*	Western North Atlantic	-, -, N	172,974 (0.21, 145,216, 2016)	1452	390
Atlantic spotted dolphin	*Stenella frontalis*	Western North Atlantic	-, -, N	39,921 (0.27, 32,032, 2016)	320	0
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy	-, -, N	95,543 (0.31, 74,034, 2016)	851	164
Order Carnivora—Superfamily Pinnipedia						
Family Phocidae (earless seals):						
Gray seal [4]	*Halichoerus grypus*	Western North Atlantic	-, -, N	27,300 (0.22, 22,785, 2016)	1389	4453
Harbor seal	*Phoca vitulina*	Western North Atlantic	-, -, N	61,336 (0.08, 57,637, 2018)	1729	339

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). 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: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; Nmin 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, vessel 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 M/SI value given is for the total stock.

A detailed description of the of the species likely to be affected by Dominion Energy's activities, including information regarding population trends, threats, and local occurrence, was provided in the **Federal Register** notice for the proposed IHA (87 FR 19864; April 6, 2022); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

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 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.* 2006; Kastelein *et al.* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. 16 marine mammal species (14 cetacean and two phocid pinniped species) have the reasonable potential to co-occur with the planned survey activities. Please refer to Table 2. Of the cetacean species that may be present, five are classified as low-frequency cetaceans (*i.e.,* all mysticete species), eight are classified as mid-frequency cetaceans (*i.e.,* all delphinids and the sperm whale), and one is classified as high-frequency cetaceans (*i.e.,* harbor porpoise).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from the deployed acoustic sources have the potential to result in behavioral harassment of marine mammals in the vicinity of the study area. The **Federal Register** notice for the proposed IHA (87 FR 19864; April 6, 2022) included a discussion of the effects of anthropogenic noise on marine mammals and their habitat, therefore that information is not repeated here; please refer to the **Federal Register** notice (87 FR 19864; April 6, 2022) for that information.

Estimated Take

This section provides an estimate of the number of incidental takes authorized 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 are by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to HRG sources. Based primarily on the characteristics of the signals produced by the acoustic sources planned for use, Level A harassment is neither anticipated (even absent mitigation) nor authorized. Consideration of the anticipated effectiveness of the mitigation measures (*i.e.,* exclusion zones and shutdown measures) discussed in detail below in the Mitigation section, further strengthens the conclusion that Level A harassment is not a reasonably anticipated outcome of the survey activity. As described previously, no serious injury or mortality is anticipated 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 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 are likely to be behaviorally harassed in a manner we consider 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.,* boomers, sparkers) evaluated here for Dominion Energy's activity.

Level A Harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). For more information, see NMFS' 2018 Technical Guidance, which may be accessed at *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

Dominion Energy's planned survey includes the use of impulsive (*i.e.,* sparkers and boomers) sources. However, 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 planned for use here, and the potential for Level A harassment is not evaluated further in this document. Please see Dominion Energy's application for details of a quantitative exposure analysis exercise, *i.e.,* calculated Level A harassment isopleths and estimated Level A harassment exposures. Maximum estimated Level A harassment isopleths were less than 6 m for all sources and hearing groups with the exception of an estimated 54 m zone calculated for high-frequency cetaceans during use of the Applied Acoustics S-Boom Boomer, (see Table 1 for source characteristics). Dominion Energy did not request authorization of take by Level A harassment, and no take by Level A harassment is authorized here by NMFS.

Ensonified Area

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 1).

NMFS considers the data provided by Crocker and Fratantonio (2016) to represent the best available information on source levels associated with HRG 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 1 shows the HRG equipment types that may be used during the planned surveys and the source levels associated with those HRG equipment types.

Results of modeling using the methodology described above indicated that, of the HRG survey equipment planned for use by Dominion Energy that has the potential to result in Level B harassment of marine mammals, the Geo Marine Dual 400 Sparker 800J will produce the largest Level B harassment isopleth (141 m; see Table 6–3 of Dominion Energy's application). The Applied Acoustics S-Boom (Triple Plate Boomer 1000J) will produce a Level B harassment isopleth of 22 m. Although Dominion Energy does not expect to use the Geo Marine Dual 400 Sparker 800J source on all planned survey days, it assumes, for purposes of analysis, that the sparker will be used on all survey days. 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 the 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 1992–2019 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.* 2016, 2017, 2018, 2020, 2021).

The density data presented by Roberts *et al.* (2016b, 2017, 2018, 2020, 2021) 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.* 2016). 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.* 2016, 2017, 2018, 2020, 2021), with the exception of the North Atlantic right whale (discussed below). 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, the density data from Roberts *et al.* (2016, 2017, 2018, 2020, 2021) were mapped using a geographic information system (GIS). For the full survey area, Dominion Energy averaged the densities of each species as reported by Roberts *et al.* (2016, 2017, 2018, 2020, 2021) 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. The largest estimated seasonal densities (animals per km^2) of all marine mammal species that may be taken by the proposed survey, for all survey areas, is shown in Table 4, below. Below, we discuss how densities were assumed to apply to specific species for which the Roberts *et al.* (2016b, 2017, 2018, 2020, 2021) models provide results at the genus or guild level. Additional data regarding average group sizes from survey effort in the region was considered to ensure take estimates are adequate to account for anticipated real-world encounter rates.

For bottlenose dolphin densities, Roberts *et al.* (2016b, 2017, 2018) does not differentiate by stock. Given the southern coastal migratory stock's propensity to occur in waters shallower than the 25 m (82 ft) isobath north of Cape Hatteras (Reeves *et al.* 2002; Hayes *et al.* 2018), the project's offshore export cable route corridor segment was roughly divided along the 25 m (82 ft) isobath. Roughly 90 percent of the cable corridor is 25 m (82 ft) or less in depth. The Lease Area is mostly located within depths exceeding 25 m (82 ft), where the southern coastal migratory stock is unlikely to occur. Roughly 25 percent of the Lease Area survey segment is 25 m (82 ft) or less in depth. Therefore, to account for the potential for mixed stocks within the Project's offshore export cable route corridor, 90 percent of the estimated take calculation in that area is assumed to be of individuals in the southern coastal migratory stock and the remaining applied to the Western North Atlantic offshore stock within the Project's offshore export cable route corridor survey area. Within the Lease Area, 25 percent of the estimated take calculation is assumed to be of individuals from the southern coastal migratory stock and the remaining applied to the Western North Atlantic offshore stock.

The seasonality, feeding preferences, and habitat use by gray seals often overlaps with that of harbor seals in the survey areas. The density models produced by Roberts *et al.* (2016b, 2017, 2018) do not differentiate between gray seals and harbor seals. Rather, the model provides one density estimate for ''seals.'' Therefore, for the density values reported in the IHA application, Dominion Energy assumed that half of the seals were gray seals, and the other half harbor seals.

Dominion Energy used model Version 10 (Roberts *et al.* 2021) to estimate the density of North Atlantic right whales. While two more recent versions (Version 11 and Version 11.1) of the model are available, the updates in these versions do not affect the densities in the project area. The update in Version 11 pertains to Cape Cod Bay only, which is outside of the CVOW project area. Density surfaces in Version 11.1 did not change from Version 11; rather Version 11.1 includes uncertainty surfaces as well as density surfaces.

TABLE 4—MAXIMUM SEASONAL DENSITIES OF MARINE MAMMALS IN THE LEASE AREA AND OECC

[Animals per 100 km^2]

Species	Lease area/ OECC
North Atlantic right whale	0.111
Humpback whale	0.060
Fin whale	0.184
Sei whale	0.001
Minke whale	0.047
Sperm whale	0.003
Pilot whale	0.029
Bottlenose dolphin (Offshore)	10.614
Bottlenose dolphin (Southern Migratory Coastal).	
Common dolphin	2.163
Atlantic white-sided dolphin	0.600
Atlantic spotted dolphin	0.311
Risso's dolphin	0.008
Harbor porpoise	0.794
Gray seal	0.514
Harbor seal.	

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 harassment thresholds are calculated, as described above. Those distances are then used to calculate the area(s) around the HRG survey equipment predicted to be ensonified to sound levels that exceed harassment thresholds. The area estimated to be ensonified to relevant thresholds in a single day (zone of influence (ZOI)) is then calculated, based on areas predicted to be ensonified around the HRG survey equipment (*i.e.,* 141 m) and the estimated trackline distance traveled per day by the survey vessel (*i.e.,* 58 km). Based on the maximum estimated distance to the Level B harassment threshold of 141 m (Geo Marine Dual 400 Sparker 800J) and the maximum estimated daily track line distance of 58 km, the ZOI is estimated to be 16.4 km^2 during Dominion Energy's planned HRG surveys. As described above, this is a conservative estimate as it assumes the HRG source that results in the greatest distance to the Level B harassment isopleth will be operated at all times during all vessel days.

$ZOI = (Distance/day \times 2r) + \pi r^2$

Where r is the linear distance from the source to the harassment isopleth.

Potential daily Level B harassment takes are estimated by multiplying the average annual marine mammal densities (animals/km^2), as described above, by the ZOI. Estimated numbers of each species taken over the duration of the authorization are calculated by multiplying the potential daily Level B harassment takes by the total number of vessel days. 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:

Estimated Take = D × ZOI × vessel days

Where D = average species density (animals/km^2), ZOI = maximum daily ensonified area to relevant threshold, and vessel days = 244.

Table 5 shows the authorized take by Level B harassment.

TABLE 5—AUTHORIZED INCIDENTAL TAKE OF MARINE MAMMALS AND AUTHORIZED TAKES AS A PERCENTAGE OF POPULATION

Species	Estimated takes by Level B harassment	Authorized takes by Level B harassment [a]	Abundance	Authorized takes as a percent of stock
North Atlantic right whale	4.4	4	368	1.4
Humpback whale	2.4	2	1,396	<1
Fin whale	7.4	7	6,802	<1
Sei whale	0.04	0	6,292	0
Minke whale	1.9	2	21,968	<1
Sperm whale	0.0	0	4,349	0
Short-finned pilot whale	1.2	20	28,924	<1
Long-finned pilot whale			39,215	<1
Bottlenose dolphin (Western North Atlantic Offshore stock)	279.2	279	62,851	<1
Bottlenose dolphin (Southern Migratory Coastal stock)	147.1	147	3,751	3.9
Common dolphin	86.6	4,880	172,974	2.8
Atlantic white-sided dolphin	24.1	25	93,233	<1
Atlantic spotted dolphin	12.5	4,880	39,921	12.4
Risso's dolphin	0.3	25	35,215	<1
Harbor porpoise	31.8	32	95,543	<1
Gray seal	12	12	451,431	<1
Harbor seal	12	12	61,336	<1

The authorized take listed in Table 5 generally reflects the estimated take calculation described above (Estimated Take = D × ZOI × vessel days). Further, take estimates for pilot whale and Risso's dolphin have been modified to reflect group size estimates, and take estimates for Atlantic spotted dolphin and common dolphin have been modified to reflect previous monitoring in the CVOW project area, as described further below.

Roberts *et al.* (2017) provides a density for all pilot whales that does not differentiate between short-finned and long-finned pilot whales, both of which could be in the project area. However, the take estimate for pilot whales was further adjusted to account for group size. Dominion Energy estimates that a group of 20 pilot whales (Reeves *et al.* 2002) may be taken by Level B harassment during the surveys. While the take calculation described above estimates no takes of Risso's dolphin, Dominion Energy also conservatively estimates that a group of 25 Risso's dolphins (Reeves *et al.* 2002) may be taken by Level B harassment during the surveys. NMFS concurs with these estimates, and has authorized 20 takes by Level B harassment of pilot whales and 25 takes by Level B harassment of Risso's dolphin.

Previous monitoring in the CVOW project area (Dominion Energy, 2021; 86 FR 21298; April 22, 2021 and 85 FR 81879; December 17, 2020) indicates that the calculated take of Atlantic spotted dolphin and common dolphin is too low. Given previous monitoring, Dominion Energy conservatively estimated that two pods of common dolphins, each averaging 10 individuals, may be taken by Level B harassment on each vessel day (2 pods × 10 individuals × 244 vessel days = 4,880 takes by Level B harassment of common dolphin). Dominion Energy conservatively estimates that one pod of Atlantic spotted dolphins, averaging 20 individuals, may be taken by Level B harassment on each vessel day (1 pod × 20 individuals × 244 vessel days = 4,880 takes by Level B harassment of Atlantic spotted dolphin). While these estimates are likely conservative, NMFS concurs, and has authorized 4,880 takes by Level B harassment of both common dolphin and Atlantic spotted dolphin.

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.

Mitigation for Marine Mammals and Their Habitat

NMFS requires that the following mitigation measures be implemented during Dominion Energy's planned marine site characterization surveys. Pursuant to section 7 of the ESA, Dominion Energy is also required to adhere to relevant Project Design Criteria (PDC) of the NMFS' GARFO programmatic consultation (specifically PDCs 4, 5, and 7) regarding geophysical surveys along the U.S. Atlantic coast (*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 Harassment Zones

Marine mammal exclusion zones will be established around the HRG survey equipment and monitored by protected species observers (PSOs):

- 500 m exclusion zone for North Atlantic right whales during use of specified acoustic sources (sparkers, boomers, and non-parametric sub-bottom profilers).
- 100 m exclusion zone for all other marine mammals, with certain exceptions specified below, during operation of impulsive acoustic sources (boomer and/or sparker).

If a marine mammal is detected approaching or entering the exclusion zone during the HRG survey, the vessel operator will 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.

Pre-Start Clearance

Marine mammal clearance zones will be established around the HRG survey equipment and monitored by protected species observers (PSOs):

- 500 m for all ESA-listed marine mammals; and
- 100 m for all other marine mammals.

Dominion Energy will implement a 30-minute pre-start clearance period prior to the initiation of ramp-up of specified HRG equipment (see exception to this requirement in the *Shutdown Procedures* section below) During this period, clearance zones 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 clearance zone. If a marine mammal is observed within an clearance zone during the pre-start 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 seals, and 30 minutes for all other species).

Ramp-Up of Survey Equipment

A ramp-up procedure, involving a gradual increase in source level output, is required at all times as part of the activation of the acoustic source when technically feasible. The ramp-up procedure will be used at the beginning of HRG survey activities 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. Operators should ramp up sources to half power for 5 minutes and then proceed to full power.

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).

Ramp-up may occur at times of poor visibility, including nighttime, if appropriate visual monitoring has occurred with no detections of marine mammals in the 30 minutes prior to beginning ramp-up. Acoustic source activation may only occur at night where operational planning cannot reasonably avoid such circumstances.

Shutdown Procedures

An immediate shutdown of the impulsive HRG survey equipment is required if a marine mammal is sighted entering or within its respective exclusion zone. The vessel operator must comply immediately with any call for shutdown by the Lead PSO. Any disagreement between the Lead PSO and vessel operator should be discussed only after shutdown has occurred. Subsequent restart of the survey equipment can be initiated if the animal has been observed exiting its respective exclusion zone or until an additional time period has elapsed (*i.e.,* 15 minutes for harbor porpoise, 30 minutes for all other species).

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 Level B harassment zone, shutdown will occur.

If the acoustic source is shut down for reasons other than mitigation (*e.g.,* mechanical difficulty) for less than 30 minutes, it may be activated again without ramp-up if PSOs have maintained constant observation and no detections of any marine mammal have occurred within the respective exclusion zones. If the acoustic source is shut down for a period longer than 30 minutes, then pre-clearance and ramp-up procedures will be initiated as described in the previous section.

The shutdown requirement will be waived for pinnipeds and for small delphinids of the following genera: *Delphinus, Lagenorhynchus, Stenella,* and *Tursiops.* 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. Furthermore, if there is uncertainty regarding identification of a marine mammal species (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived), PSOs must use best professional judgement in making the decision to call for a shutdown. Additionally, shutdown is required if a delphinid or pinniped detected in the exclusion zone and belongs to a genus other than those specified.

Shutdown, pre-start clearance, and ramp-up procedures are not required during HRG survey operations using only non-impulsive sources (*e.g.,* echosounders).

Vessel Strike Avoidance

Dominion Energy must adhere to the following measures except in the 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.

• Vessel operators and crews must maintain a vigilant watch for all protected species and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any protected species. A visual observer aboard the vessel must monitor a vessel strike avoidance zone based on the appropriate separation distance around the vessel (distances stated 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 protected species 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 mammal;

• Members of the monitoring team will consult NMFS North Atlantic right whale reporting system and Whale Alert, 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;

• All survey vessels, regardless of size, must observe a 10-knot (18.5 km/hr) 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;

• All vessels greater than or equal to 19.8 m in overall length operating from November 1 through April 30 will operate at speeds of 10 knots (18.5 km/hr) or less at all times;

• All vessels must reduce their speed to 10 knots (18.5 km/hr) 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 from right whales and other ESA-listed large whales;

• If a whale is observed but cannot be confirmed as a species other than a right whale or other ESA-listed large whale, the vessel operator must assume that it is a right whale and take appropriate action;

• All vessels must maintain a minimum separation distance of 100 m from non-ESA listed whales;

• All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel); and

• When marine mammals 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). If marine mammals are sighted within the relevant separation distance, the vessel must reduce speed and shift the engine to neutral, not engaging the engines until animals are clear of the area. This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

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. 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 the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has determined that the required mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

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 survey area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

• Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).

• Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the 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.

Monitoring Measures

Visual monitoring will be performed by qualified, NMFS-approved PSOs, the resumes of whom will be provided to NMFS for review and approval prior to the start of survey activities. Dominion Energy will employ independent, dedicated, trained PSOs, meaning that the PSOs must (1) be employed by a third-party observer provider, (2) 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 mammals and mitigation requirements (including brief alerts regarding maritime hazards), and (3) have successfully completed an approved PSO training course appropriate for their designated task. On a case-by-case basis, non-independent observers may be approved by NMFS for limited, specific duties in support of approved, independent PSOs on smaller vessels with limited crew capacity operating in nearshore waters. Section 5 of the draft IHA contains further details regarding PSO approval.

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 Lead PSO 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.

During all HRG survey operations (*e.g.,* any day on which use of an HRG source is planned to occur), a minimum of 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). Two PSOs will be on watch during nighttime operations. The PSO(s) will ensure 360° visual coverage around the vessel from the most appropriate observation posts and will 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 4 consecutive hours followed by a break of at least 2 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 will 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 will be used. Position data will 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 will 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 will be relayed to the PSO team. Data on all PSO observations will be recorded based on standard PSO collection requirements. This will 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).

Reporting Measures

Within 90 days after completion of survey activities or expiration of this IHA, whichever comes sooner, a draft technical report will be provided to NMFS that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, summarizes the number of marine mammals observed during survey activities (by species, when known), summarizes the mitigation actions taken during surveys (including what type of mitigation and the species and number of animals that prompted the mitigation action, when known), and provides an interpretation of the results and effectiveness of all mitigation and monitoring. A final report must be submitted within 30 days following resolution of any comments on the draft report. All draft and final marine mammal monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov, ITP.Davis@noaa.gov,* and *nmfs.gar.incidental-take@noaa.gov.* The report must contain at minimum, the following:

- PSO names and affiliations;
- Dates of departures and returns to port with port name;
- Dates and times (Greenwich Mean Time) of survey effort and times corresponding with PSO effort;
- Vessel location (latitude/longitude) when survey effort begins and ends; vessel location at beginning and end of visual PSO duty shifts;
- Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any line change;
- Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions change significantly), including wind speed and direction, Beaufort sea state, Beaufort wind force, swell height, weather conditions, cloud cover, sun glare, and overall visibility to the horizon;
- Factors that may be contributing to impaired observations during each PSO shift change or as needed as environmental conditions change (*e.g.,* vessel traffic, equipment malfunctions); and
- Survey activity information, such as type of survey equipment in operation, acoustic source power output while in operation, and any other notes of significance (*i.e.,* pre-start clearance survey, ramp-up, shutdown, end of operations, *etc.*).

If a marine mammal is sighted, the following information should be recorded:

- Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);
- PSO who sighted the animal;
- Time of sighting;
- Vessel location at time of sighting;
- Water depth;
- Direction of vessel's travel (compass direction);
- Direction of animal's travel relative to the vessel;
- Pace of the animal;
- Estimated distance to the animal and its heading relative to vessel at initial sighting;
- 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;
- Estimated number of animals (high/low/best);
- Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, *etc.*);
- 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);
- Detailed behavior observations (*e.g.,* number of blows, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior);
- Animal's closest point of approach and/or closest distance from the center point of the acoustic source;
- Platform activity at time of sighting (*e.g.,* deploying, recovering, testing, data acquisition, other); and
- Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up, speed or course alteration, *etc.*) 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, Dominion Energy must immediately report sighting information to the NMFS North Atlantic Right Whale Sighting Advisory System: (866) 755–6622. North

Atlantic right whale sightings in any location may also be reported to the U.S. Coast Guard via channel 16.

In the event that Dominion Energy personnel discover an injured or dead marine mammal, Dominion Energy will report the incident to the NMFS Office of Protected Resources (OPR) and the NMFS New England/Mid-Atlantic Stranding Coordinator as soon as feasible. The report would 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 vessel strike of a marine mammal by any vessel involved in the activities covered by the IHA, Dominion Energy would report the incident to the NMFS OPR and the NMFS New England/Mid-Atlantic Stranding Coordinator as soon as feasible. The report would include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Species identification (if known) or description of the animal(s) involved;
- Vessel's speed during and leading up to the incident;
- Vessel's course/heading and what operations were being conducted (if applicable);
- Status of all sound sources in use;
- 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;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;
- Estimated size and length of animal that was struck;
- Description of the behavior of the marine mammal immediately preceding and following the strike;
- If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;
- 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
- 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' 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 2, given that NMFS expects the anticipated effects of the planned 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 authorized. As discussed in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section, non-auditory physical effects and vessel strike are not expected to occur. NMFS expects that all potential takes will 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 evaluated and authorized here, in reality, the Geo Marine Dual 400 Sparker will likely not be used across the entire 24-hour period and across all 244 vessel days. The other acoustic sources operating below 200 kHz that Dominion Energy has included in their application produce Level B harassment zones below 22 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 planned survey area and there are no feeding areas known to be biologically important to marine mammals within the planned survey area. There is no designated critical habitat for any ESA-listed marine mammals in the planned 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 planned survey area overlaps a migratory corridor BIA for North Atlantic right whales. Due to the fact that the impacts of the planned survey are expected to be of low severity (as described in the Potential Effects of Specified Activities on Marine Mammals and their Habitat), the survey activities are temporary, and the spatial extent of sound produced by the survey will be very small relative to the spatial extent of the available migratory habitat in the BIA (the overlap between the BIA and the survey area covers approximately 4,000 km² of the 269,448 km² BIA), right whale migration is not expected to be impacted by the 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 vessel strike during migration; no vessel strike is expected to occur during Dominion Energy's planned 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 planned for use. The authorization of take by Level B harassment of North Atlantic right whale is not expected to exacerbate or compound upon the ongoing UME. The limited authorized takes of North Atlantic right whale by Level B harassment 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 Dominion Energy's planned 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 may result from Dominion Energy's planned activities will impact annual rates of recruitment or survival of any individuals. Thus, any takes that occur will 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 Dominion Energy's planned 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 (vessel 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.

The required mitigation measures are expected to reduce the number and/or severity of authorized takes for all species listed in Table 2, 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 authorized. Implementation of required mitigation will further reduce this potential.

NMFS expects that takes will 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 will only be exposed briefly to a small ensonified area that might result in take. Additionally, required mitigation measures will further reduce exposure to sound that could result in more severe behavioral harassment.

In summary and as described above, the following factors primarily support our 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 authorized;
- No Level A harassment (PTS) is anticipated, even in the absence of mitigation measures, or authorized;
- 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 will occur in such a comparatively small area such that any avoidance of the survey area due to activities would not affect migration. In addition, mitigation measures require shutdown at 500 m (almost four times the size of the Level B harassment isopleth (141 m), which minimizes the effects of the take on the species; and
- The required 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 required monitoring and mitigation measures, NMFS finds that the total marine mammal take from the planned 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 fewer than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

NMFS has authorized incidental take (by Level B harassment only) of 14 marine mammal species (with 15 managed stocks). The total amount of authorized takes relative to the best available population abundance is less than 33 percent for all stocks (Table 5).

Based on the analysis contained herein of the planned activity (including the required mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS 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.

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 evaluate our proposed action (*i.e.,* the issuance of an IHA) and alternatives with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 of the Companion Manual for NAO 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 determined that this action qualifies to be categorically excluded from further NEPA review.

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 is authorizing take of North Atlantic right whale and fin whales, which are listed under the ESA. On June 29, 2021 (revised September 2021), GARFO completed an informal programmatic consultation on the effects of certain site assessment and site characterization activities to be carried out to support the siting of offshore wind energy development projects off the U.S. Atlantic coast. Part of the activities considered in the consultation are geophysical surveys such as those proposed by Dominion Energy and for which we have authorize take. GARFO concluded site assessment surveys are not likely to adversely affect endangered species or adversely modify or destroy critical habitat. NMFS has determined issuance of the IHA is covered under the programmatic consultation; therefore, ESA consultation has been satisfied.

Authorization

As a result of these determinations, NMFS has issued an IHA to Dominion Energy authorizing take, by Level B harassment, incidental to conducting marine site characterization surveys off of Virginia for a period of one year, that includes the previously explained mitigation, monitoring, and reporting requirements.

Dated: May 31, 2022.

Catherine Marzin,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–11987 Filed 6–2–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Marine Recreational Information Program, Access-Point Angler Intercept Survey

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on 2/7/2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration (NOAA), Commerce.

Title: Marine Recreational Information Program, Access-Point Angler Intercept Survey (APAIS).

OMB Control Number: 0648–0659.

Form Number(s): None.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 100,000.

Average Hours per Response: 0.083.

Total Annual Burden Hours: 8,333.

Needs and Uses: This request is for extension of a currently approved information collection.

Marine recreational anglers are surveyed to collect catch and effort data, fish biology data, and angler socioeconomic characteristics. These data are required to carry out provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), as amended, regarding conservation and management of fishery resources.

Marine recreational fishing catch and effort data are collected through a combination of mail surveys, telephone surveys and on-site intercept surveys with recreational anglers. Amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSA) require the development of an improved data collection program for recreational fisheries. To partially meet these requirements, NOAA Fisheries designed and implemented a new Access-Point Angler Intercept Survey (APAIS) in 2013 to ensure better coverage and representation of recreational fishing activity.

The APAIS intercepts marine recreational fishers at public-access sites in coastal counties from Maine to Mississippi, Hawaii, and Puerto Rico to obtain information about the just-completed day's fishing activity. Respondents are asked about the time and type of fishing, the angler's avidity and residence location, and details of any catch of finfish. Species

identification, number, and size are collected for any available landed catch. Data collected from the APAIS are used to estimate the catch per angler of recreational saltwater fishers. These APAIS estimates are combined with estimates derived from independent but complementary surveys of fishing effort, the Fishing Effort Survey and the For-Hire Survey, to estimate total, state-level fishing catch, by species, and participation. These estimates are used in the development, implementation, and monitoring of fishery management programs by the NMFS, regional fishery management councils, interstate marine fisheries commissions, and state fishery agencies.

Affected Public: Individuals or Households.

Frequency: One-time, in-person interview.

Respondent's Obligation: Voluntary.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*)

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

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 and entering either the title of the collection or the OMB Control Number 0648–0659.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–11968 Filed 6–2–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; North Atlantic Recreational Fishing Survey III

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on March 21, 2022, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration (NOAA), Commerce.

Title: Survey to Collect Economic Data from Recreational Anglers Along the Atlantic Coast.

OMB Control Number: 0648–0783.

Form Number(s): None.

Type of Request: Regular [revision of currently approved information collections].

Number of Respondents: 442.

Average Hours per Response: Eligible Anglers, 14 minutes; Ineligible Anglers, 4 minutes.

Total Annual Burden Hours: 58.

Needs and Uses: This request is for revision and extension of a currently approved information collection and is sponsored by NOAA's Northeast Fisheries Science Center (NEFSC). The original data collection effort in 2019 under OMB Control Number 0648–0783 was to assess how changes in saltwater recreational fishing regulations affect angler effort, angler welfare, fishing mortality, and future stock levels. That data collection effort focused on anglers who fished for Atlantic cod and haddock off the Atlantic coast from Maine to Massachusetts (North Atlantic Recreational Fishing Survey I). In 2020, the collection was revised to remove the cod and haddock survey and add a survey focused on anglers who fish for summer flounder and black sea bass along the Atlantic coast from Massachusetts to North Carolina (North Atlantic Recreational Fishing Survey II). This current revision will re-add the original cod and haddock survey to this control number (North Atlantic Recreational Fishing Survey III).

The objective of this survey will be to update our understanding of how anglers who fish for Atlantic cod and haddock, respond to changes in management options and fishing regulations (*e.g.,* bag limits, size limits, dates of open seasons, etc.) along the Atlantic coast from Maine to Massachusetts. The survey data will provide the information fisheries managers need to conduct updated and improved analysis of the socio-economic effects to recreational anglers and to coastal communities of proposed changes in fishing regulations. The recreational fishing community and regional fisheries management councils have requested more species-specific socio-economic studies of recreational fishing that can be used in the analysis of fisheries policies. This survey will address that stated need for more species-specific studies.

The survey population consists of those anglers who fish in saltwater along the North Atlantic coast from Maine to Massachusetts and who possess a license to fish. A sample of anglers will be drawn from state fishing license frames. The survey will be conducted using both mail and email to contact anglers and invite them to take the survey online. Anglers not responding to the online survey may receive a paper survey in the mail.

Affected Public: Individuals.

Frequency: The NARFS III will be a cross-sectional survey asking anglers to respond once to a single questionnaire.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

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 and entering either the title of the collection or the OMB Control Number 0648–0783.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–11969 Filed 6–2–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2021–0039]

Climate Change Mitigation Pilot Program

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice.

SUMMARY: As part of its ongoing efforts to incentivize more and inclusive

innovation, including in key technology areas such as climate change, and to maximize that innovation's widespread impact, including by reducing greenhouse gas emissions, the United States Patent and Trademark Office (USPTO) is implementing the Climate Change Mitigation Pilot Program, which is designed to positively impact the climate by accelerating the examination of patent applications for innovations that reduce greenhouse gas emissions. The program is intended to encourage research, development and innovation in the climate space and provide ready and equitable intellectual property protection to incentivize investment and bring those solutions to the country and world. The program aligns with and supports Executive Order 14008, dated January 27, 2021, and is part of the USPTO's efforts to secure an equitable economic future, reduce greenhouse gas emissions and mitigate climate change. Applications accepted into the pilot program will be advanced out of turn (accorded special status) for first action on the merits.

DATES: *Pilot Duration:* The Climate Change Mitigation Pilot Program will accept petitions to make special beginning June 3, 2022 until either June 5, 2023 or the date the USPTO accepts a total of 1,000 grantable petitions, whichever occurs first. The USPTO may, at its sole discretion, terminate the pilot program depending on factors such as workload and resources needed to administer the program, feedback from the public, and the effectiveness of the program. If the pilot program is terminated, the USPTO will notify the public. The USPTO will indicate on its website the total number of petitions filed and the number of applications accepted into the pilot program.

FOR FURTHER INFORMATION CONTACT: Kristie M. Kindred, Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patents, at *Kristie.Kindred@uspto.gov;* or Susy Tsang-Foster, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patents, at *Susy.Tsang-Foster@uspto.gov.* For questions on electronic filing, please contact the Electronic Business Center at: 866–217–9197 during their operating hours of 6 a.m. to midnight ET, Monday–Friday, or email at *ebc@uspto.gov.* For questions relating to a particular petition, please contact the Office of Petitions at 571–272–3282 during their operating hours of 8:30 a.m. to 5 p.m. ET, Monday–Friday.

SUPPLEMENTARY INFORMATION: New patent applications are normally taken up for examination in the order of their U.S. filing date or national stage entry date. *See* §§ 708 and 1893.03(b) of the Manual of Patent Examining Procedure (MPEP) (9th ed., rev. 10.2019, June 2020). The USPTO has procedures under which an application will be advanced out of turn (accorded special status) for examination if the applicant files (1) a petition to make special under 37 CFR 1.102(c) or (d) with the appropriate showing, or (2) a request for prioritized examination under 37 CFR 1.102(e). *See* 37 CFR 1.102(c)–(e) and MPEP §§ 708.02, 708.02(a), and 708.02(b). The USPTO revised its accelerated examination procedures effective August 25, 2006, requiring that all petitions to make special comply with the requirements of the revised accelerated examination (AE) program set forth in MPEP § 708.02(a), except those based on an inventor's health or age or the Patent Prosecution Highway (PPH) Pilot Program. *See Changes to Practice for Petitions in Patent Applications To Make Special and for Accelerated Examination,* 71 FR 36323 (June 26, 2006).

The USPTO is implementing a new Climate Change Mitigation Pilot Program. The program, which aligns with and supports Executive Order 14008, permits an application that claims certain products and/or processes that mitigate climate change by reducing greenhouse gas emissions to be advanced out of turn (accorded special status) for first action on the merits without meeting all of the requirements of the accelerated examination program set forth in MPEP § 708.02(a) (for example, examination support document) if the applicant files a petition to make special under 37 CFR 1.102(d) meeting all of the requirements set forth in this notice.

To qualify, applicants must file a petition to make special under the pilot program, and the application must claim an invention directed to certain technologies that are designed to reduce greenhouse gas emissions. Applicants must also certify that (1) they have a good faith belief that expediting examination of the application will likely have a positive impact on the climate, and (2) the inventor or any joint inventor has not been named as the inventor or a joint inventor on more than four other nonprovisional applications in which a petition to make special under this program has been filed. Applications accepted into the pilot program will be advanced out of turn (accorded special status) for first action on the merits without meeting all of the current requirements, including any extra fee payments, of the accelerated examination program (for example, the requirement for an examination support document) or the prioritized examination program (for example, the prioritized examination fee or processing fee).

All other requirements of the accelerated examination program that are not required by this notice, including the 37 CFR 1.17(h) fee for a petition to make special under 37 CFR 1.102(d), are hereby waived based upon the special procedure specified in this notice. The USPTO will periodically evaluate the pilot program to determine whether and to what extent its coverage should be expanded or limited.

No fees or requirements other than those discussed above are waived by this pilot program.

Part I. Requirements To Participate

In addition to filing a nonprovisional patent application that is ready for examination (including a specification, drawing(s) if necessary, at least one claim, and payment of all fees associated with the filing of an application), the patent application and the petition to participate in this pilot program must meet the requirements that follow.

(1) Types of Applications and Time for Filing Petition

The petition to make special under the pilot program must be filed:

(a) With the electronic filing of a noncontinuing original utility nonprovisional application or entry into the national stage under 35 U.S.C. 371, or within 30 days of the filing date or entry date of the application; or

(b) with the electronic filing of an original utility nonprovisional application claiming the benefit of an earlier filing date under 35 U.S.C. 120, 121, 365(c), or 386(c) of only one prior nonprovisional application or only one prior international application designating the United States or within 30 days of the filing date of such application.

Definition

Noncontinuing application: A noncontinuing application is an application that is not a continuation, divisional, or continuation-in-part application filed under the conditions specified in 35 U.S.C. 120, 121, 365(c), or 386(c) and 37 CFR 1.78. *See* section 201.02 of the MPEP.

The pilot program is reserved for the nonprovisional applications described above that have not received a first office action (including a written restriction requirement). Any application that claims the benefit of the

filing date of two or more prior filed applications that are nonprovisional U.S. applications and/or international applications designating the United States is not eligible for participation in the pilot program. Claiming the benefit under 35 U.S.C. 119(e) of one or more prior provisional applications or claiming a right of foreign priority under 35 U.S.C. 119(a)–(d) or (f) to one or more foreign applications will not affect eligibility for the pilot program.

(2) Office Form Required for Filing Petition

Form PTO/SB/457, titled ''CERTIFICATION AND PETITION TO MAKE SPECIAL UNDER THE CLIMATE CHANGE MITIGATION PILOT PROGRAM,'' is required to be used to make the petition under the pilot. It is available at *https://www.uspto.gov/patent/forms/forms-patent-applications-filed-or-after-september-16-2012.* Form PTO/SB/457 contains the necessary certifications for qualification to participate in the pilot. Use of the form will enable the USPTO to quickly identify and timely process the petition. In addition, use of the form will help applicants understand and comply with the petition requirements of the pilot program. Under 5 CFR 1320.3(h), form PTO/SB/457 does not collect ''information'' within the meaning of the Paperwork Reduction Act of 1995.

(3) Required Certification

The petition to make special must certify: (1) That the claimed invention covers a product or process that mitigates climate change; (2) that the product or process is designed to reduce greenhouse gas emissions; (3) that applicant has a good faith belief that expediting patent examination of the application will likely have a positive impact on the climate; and (4) that the inventor or any joint inventor has not been named as the inventor or a joint inventor on more than four other nonprovisional applications in which a petition to make special under this program has been filed. Form PTO/SB/457 contains these certifications.

(4) Publication Requirement for Applications

If applicant files the petition to make special on the date of filing of an application, the application may not be filed with a nonpublication request. If applicant previously filed a nonpublication request in the application, applicant must file a rescission of the nonpublication request no later than the time the petition to make special is filed. Applicant may use form PTO/SB/36 to rescind the nonpublication request.

(5) Application Data Sheet Requirement

Unless previously filed in the patent application, the petition must be accompanied by a properly signed application data sheet per 37 CFR 1.76 meeting the conditions specified in 37 CFR 1.53(f)(3)(i).

(6) Claim Limit and No Multiple Dependent Claims

When the petition is filed and throughout pendency, the application must contain no more than 3 independent claims and 20 total claims and no multiple dependent claims. The examiner may refuse entry of any amendment filed in reply to an office action that, if entered, would result in a set of pending claims that exceeds either of these claim limits or adds a multiple dependent claim. See Part IV of this notice.

(7) Electronic Filing of Application and Petition Required

The petition to make special may only be made by filing form PTO/SB/457, which must be filed electronically using the USPTO's Patent Center (at *https://patentcenter.uspto.gov/#!/*). Applicants must file the petition using the document description indicated on form PTO/SB/457. In addition, the application or national stage entry must be filed using Patent Center, and the specification, claims, and abstract must be submitted in DOCX format. Prior to submitting the application for filing, applicants will receive a feedback document. Applicants may find it beneficial to review the feedback document and make corrections to the application before filing the application. By making the necessary corrections before filing, applicants may avoid delays that can occur in the pre-examination process. For more information on DOCX filing in Patent Center, please see *https://www.uspto.gov/patents/docx.*

(8) Filing Limitations

An applicant may file a petition to participate in the pilot program if the inventor or any joint inventor has not been named as the inventor or a joint inventor on more than four other nonprovisional patent applications in which a petition to make special under this program has been filed. Therefore, if the inventor or any one of the joint inventors of the instant application has been named as the inventor or a joint inventor on more than four other nonprovisional applications in which petitions under this pilot program have been filed, then the petition for the instant application may not be appropriately filed.

Definition

Claimed invention covers a product or process that mitigates climate change: This phrase is only met when an application includes a claim that would correspond to one or more of the technical concepts within subclass Y02A, Y02B, Y02C, Y02D, Y02E, Y02P, Y02T or Y02W in the Cooperative Patent Classification (CPC) system. For example, a claim to a process to capture or dispose of methane would correspond to Y02C 20/20. The full schedule of Y02 class is available at: *https://www.uspto.gov/web/patents/classification/cpc/html/cpc-Y.html#Y02.*

Part II. Internal Processing of the Petition Under the Pilot Program

If applicant files a petition to make special under the pilot program, the USPTO will decide the petition once the application is in condition for examination. If the petition is granted, the application will be accorded special status under the pilot program. The application will be placed on an examiner's special docket until a first office action on the merits. After the first action on the merits, the application will no longer be treated as special during examination, for example, if an amendment is filed, it will be placed on the examiner's regular amended docket.

If the petition to make special under the pilot program does not comply with the requirements set forth in this notice, the USPTO may notify the applicant of the deficiency by issuing a notice. The notice will give applicant only *one opportunity* to correct the deficiency. If applicant still wishes to participate in the pilot program, applicant must file a reply via Patent Center that includes appropriate corrections and a properly signed petition form PTO/SB/457 within one month or thirty days, whichever is longer, from the mailing/notification date of the notice informing applicant of the deficiency. The time period for reply is *not* extendable under 37 CFR 1.136(a). If applicant fails to correct the deficiency indicated in the notice within the time period set forth therein, the application will not be accepted into the pilot program and will be taken up for examination in accordance with standard examination procedures. In addition, the petition will be dismissed without an opportunity for correction if it is deficient in any of the following ways: (1) The application does not contain a

claim that complies with the eligibility requirements of this notice (that is, the claim does not cover a product or process that mitigates climate change by reducing greenhouse gas emissions); (2) The application claims the benefit of the filing date of two or more prior filed applications that are nonprovisional U.S. applications and/or international applications designating the United States; and (3) The petition was not filed with the application or entry into the national stage under 35 U.S.C. 371 or within 30 days of the application's filing date or national stage entry date.

Part III. Requirement for Restriction

If the claims in the application are directed to multiple inventions, the examiner may make a requirement for restriction or unity of invention in accordance with current restriction practice. The examiner will attempt to contact the applicant following the procedure for the telephone restriction practice set forth in MPEP § 812.01. If a telephone restriction requirement is made, applicant must make an election without traverse to an invention that meets the eligibility requirements of this notice. If applicant refuses to make an election (for example, by failing to reply to a request for a telephonic interview within five business days of the examiner's request), the special status of the application will be terminated and the examiner may mail a written restriction requirement.

Part IV. Office Actions and Replies Under the Pilot Program

Applications that are accorded special status under the pilot program will be placed on an examiner's special docket until a first office action on the merits.

After the first office action on the merits, the application will be placed on the examiner's regular docket.

A reply to an office action must be fully responsive to the rejections, objections, and requirements made by the examiner. Any amendment filed in reply to an office action may be treated as not fully responsive if it attempts to: (1) Add claims that would result in more than three independent claims or more than 20 total claims pending in the application; (2) add any multiple dependent claim(s); or (3) cancel all claims that meet the requirements of the pilot program (that is, the application no longer contains any claims that cover a product or process that reduces greenhouse gas emissions and thereby mitigate climate change). If a reply to a nonfinal office action is not fully responsive because it does not comply with the pilot claim requirements but is a *bona fide* attempt to advance the application to final action, the examiner may, at their discretion, provide a shortened statutory period of two (2) months for the applicant to supply a fully responsive reply. Extensions of this time period under 37 CFR 1.136(a) to the notice of nonresponsive amendment will be permitted, but in no case can any extension carry the date for reply to this notice beyond the maximum period of SIX MONTHS set by statute (35 U.S.C. 133). However, any further nonresponsive amendment typically will not be treated as *bona fide,* and therefore, the time period set in the prior notice will continue to run.

Part V. After-Final and Appeal Procedures

Any amendment, affidavit, or other evidence after a final office action and prior to appeal must comply with 37 CFR 1.116. During the appeal process, the application will be treated in accordance with the normal appeal procedure (see MPEP Chapter 1200).

Part VI. Proceedings Outside the Normal Examination Process

If an application becomes involved in proceedings outside the normal examination process (for example, a secrecy order, derivation proceeding, or petitions under 37 CFR 1.181–1.183), the USPTO will place the application in special status under the pilot program before and after such proceedings. During those proceedings, however, the application will not be under special status. For example, while under a secrecy order, the application will be treated in accordance with the normal secrecy order procedures and will not be in special status under the pilot program. Once the proceeding outside the normal examination process is completed, the application will continue in special status as described above in this notice.

Part VII. Withdrawal From the Pilot Program

There is no provision for withdrawal from the pilot program. An applicant may abandon an application that has been granted special status under the pilot program in favor of a continuing application. However, a continuing application will not automatically be granted special status based on the petition filed in the parent application. Each application (including each continuing application) must, on its own, meet all requirements for special status under the pilot program, and be accompanied by its own petition as detailed in Part I (2) above.

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2022–11930 Filed 6–2–22; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletion from the Procurement List.

SUMMARY: The Committee is proposing to delete a service(s) from the Procurement List that was furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Comments must be received on or before:* July 3, 2022.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following service is proposed for deletion from the Procurement List:

Service(s)

Service Type: Janitorial/Custodial Service
Mandatory for: U.S. Army Reserve, New Kensington Memorial USARC/BMA 106, 2450 Leechburg Road, New Kensington, PA
Designated Source of Supply: Beaver County Association for the Blind, Beaver Falls, PA
Contracting Activity: DEPT OF THE ARMY, W6QK ACC–PICA

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2022–11937 Filed 6–2–22; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Global Markets Advisory Committee

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice; request for nominations and topic submissions.

SUMMARY: The Commodity Futures Trading Commission (CFTC or Commission) is requesting nominations for membership on the Global Markets Advisory Committee (GMAC or Committee) and also inviting expressions of interest in participation in potential subcommittees and the submission of potential topics for discussion at future Committee meetings. The GMAC is a discretionary advisory committee established by the Commission in accordance with the Federal Advisory Committee Act.

DATES: The deadline for the submission of nominations and topics is June 17, 2022.

ADDRESSES: Nominations and interest in participation in potential subcommittees should be emailed to *GMAC_Submissions@cftc.gov* or sent by hand delivery or courier to Keaghan Ames, GMAC Designated Federal Officer and Counselor & Senior Policy Advisor to Commissioner Caroline D. Pham, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Please use the title ''Global Markets Advisory Committee'' for any nominations or topics you submit.

FOR FURTHER INFORMATION CONTACT: Keaghan Ames, GMAC Designated Federal Officer and Counselor & Senior Policy Advisor to Commissioner Caroline D. Pham at (202) 418–5644 or email: *kames@cftc.gov.*

SUPPLEMENTARY INFORMATION: The GMAC was established to advise the Commission on issues that affect the integrity and competitiveness of U.S. markets and U.S. firms engaged in global business. To fulfill its mandate, the GMAC will conduct public meetings and submit reports and recommendations to the Commission on matters of public concern to financial market infrastructures, swap data repositories, intermediaries including swap dealers, market participants, service providers, public interest groups, and regulators regarding the regulatory challenges of a global marketplace that reflects the increasing interconnectedness of markets and the multinational nature of business. The duties of the GMAC are solely advisory and include advising the Commission with respect to preservation of core protections for customers and other market participants, while avoiding unnecessary regulatory or operational impediments to global business. The GMAC also makes recommendations to the Commission for appropriate international standards for regulating futures, swaps, options, and derivatives markets, as well as intermediaries. Determinations of actions to be taken and policy to be expressed with respect to the reports or recommendations of the GMAC are made solely by the Commission.

GMAC members generally serve as representatives and provide advice reflecting the views of organizations and entities with interests in the global derivatives and financial markets. The GMAC may also include regular government employees when doing so furthers purposes of the GMAC. Historically, the GMAC has had up to 40 members with the following types of entities with interests in the global markets and infrastructure being represented: (i) End-users, (ii) exchanges, (iii) swap execution facilities, (iv) swap data repositories, (v) clearinghouses, (vi) asset managers, (vii) intermediaries, (viii) swap dealers, (ix) service providers, (x) public interest groups, and (xi) regulators. The GMAC has held approximately 1–3 meetings per year. GMAC members serve at the pleasure of the Commission. In addition, GMAC members do not receive compensation or honoraria for their services, and they are not reimbursed for travel and per diem expenses.

The Commission seeks members who represent organizations or groups with an interest in the GMAC's mission and function and reflect a wide range of perspectives and interests related to the global derivatives and other financial markets. To advise the Commission effectively, GMAC members must have a high-level of expertise and experience in the global derivatives and financial markets and the Commission's regulation of such markets, including from a historical perspective. To the extent practicable, the Commission will strive to select members reflecting wide ethnic, racial, gender, and age representation. GMAC members should be open to participating in a public forum.

The Commission invites the submission of nominations for GMAC membership. Each nomination submission should include relevant information about the proposed member, such as the individual's name, title, and organizational affiliation as well as information that supports the individual's qualifications to serve on the GMAC. The submission should also include suggestions for topics for discussion at future GMAC meetings as well as the name and email or mailing address of the person nominating the proposed member. In addition, the Commission invites submissions from the public with expressions of interest in participation in possible subcommittees.

Submission of a nomination is not a guarantee of selection as a member of the GMAC. As noted in the GMAC's Membership Balance Plan, the CFTC identifies members for the GMAC through a variety of methods. Such methods may include public requests for nominations for membership; recommendations from existing advisory committee members; consultations with knowledgeable persons outside the CFTC (industry, consumer groups, other state or federal government agencies, academia, etc.); requests to be represented received from individuals and organizations; and Commissioners' and CFTC staff's professional knowledge of those experienced in the global markets. The office of the Commissioner primarily responsible for the GMAC plays a primary, but not exclusive, role in this process and makes recommendations regarding membership to the Commission. The Commission, by vote, authorizes members to serve on the GMAC.

(Authority: 5 U.S.C. app. II)

Dated: May 27, 2022.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2022–11890 Filed 6–2–22; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Market Risk Advisory Committee

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice; request for nominations and topic submissions.

SUMMARY: The Commodity Futures Trading Commission (CFTC or Commission) is requesting nominations for membership on the Market Risk Advisory Committee (MRAC or Committee) and also inviting the submission of potential topics for discussion at future Committee meetings. The MRAC is a discretionary advisory committee established by the Commission in accordance with the Federal Advisory Committee Act.

DATES: The deadline for the submission of nominations and topics is June 17, 2022.

ADDRESSES: Nominations and topics for discussion at future MRAC meetings should be emailed to *MRAC_Submissions@cftc.gov* or sent by hand delivery or courier to Natasha Coates, Senior Counsel to Commissioner Kristin N. Johnson, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Please use the title ''Market Risk Advisory Committee'' for any nominations or topics you submit.

FOR FURTHER INFORMATION CONTACT: Natasha Coates, Senior Counsel to Commissioner Kristin N. Johnson at (202) 418–6080 or email: *ncoates@cftc.gov.*

SUPPLEMENTARY INFORMATION: The MRAC was established to conduct public meetings, advise, and submit reports and recommendations to the Commission on matters of public concern to clearinghouses, exchanges, swap execution facilities, swap data repositories, intermediaries, market makers, service providers, end-users (*e.g.,* consumers) and the Commission regarding (1) systemic issues that threaten the stability of the derivatives markets and other related financial markets, and (2) the impact and implications of the evolving market structure of the derivatives markets and other related financial markets. The duties of the MRAC are solely advisory and include advising the Commission with respect to the effects that developments in the structure of the derivatives markets have on the systemic issues that impact the stability of the derivatives markets and other financial markets. The MRAC also makes recommendations to the Commission on how to improve market structure and mitigate risk to support the Commission's mission of ensuring the integrity of the derivatives markets and monitoring and managing systemic risk. Determinations of actions to be taken and policy to be expressed with respect to the reports or recommendations of the MRAC are made solely by the Commission.

MRAC members generally serve as representatives and provide advice reflecting the views of organizations and entities that constitute the structure of the derivatives and financial markets. The MRAC may also include regular government employees when doing so furthers purposes of the MRAC. Historically, the MRAC has had approximately 30 members with the following types of entities with interests in the derivatives markets and systemic risk being represented: (i) Exchanges, (ii) clearinghouses, (iii) swap execution facilities, (iv) swap data repositories, (v) intermediaries, (vi) market makers, (vii) service providers, (viii) end-users, (ix) academia, (x) public interest groups, (xi) regulators, and (xii) asset managers. The MRAC has held approximately 2–4 meetings per year. MRAC members serve at the pleasure of the Commission. In addition, MRAC members do not receive compensation or honoraria for their services, and they are not reimbursed for travel and per diem expenses.

The Commission seeks members who represent organizations or groups with an interest in the MRAC's mission and function and reflect a wide range of perspectives and interests related to the derivatives markets and other financial markets. To advise the Commission effectively, MRAC members must have a high-level of expertise and experience in the derivatives and financial markets and the Commission's regulation of such markets, including from a historical perspective. To the extent practicable, the Commission will strive to select members reflecting wide ethnic, racial, gender, and age representation. MRAC members should be open to participating in a public forum.

The Commission invites the submission of nominations for MRAC membership. Each nomination submission should include relevant information about the proposed member, such as the individual's name, title, and organizational affiliation as well as information that supports the individual's qualifications to serve on the MRAC. The submission should also include suggestions for topics for discussion at future MRAC meetings as well as the name and email or mailing address of the person nominating the proposed member.

Submission of a nomination is not a guarantee of selection as a member of the MRAC. As noted in the MRAC's Membership Balance Plan, the CFTC identifies members for the MRAC through a variety of methods. Such methods may include public requests for nominations for membership; recommendations from existing advisory committee members; consultations with knowledgeable persons outside the CFTC (industry, consumer groups, other state or federal government agencies, academia, etc.); requests to be represented received from individuals and organizations; and Commissioners' and CFTC staff's professional knowledge of those experienced in the global markets. The office of the Commissioner primarily responsible for the MRAC plays a primary, but not exclusive, role in this process and makes recommendations regarding membership to the Commission. The Commission, by vote, authorizes members to serve on the MRAC.

In addition, the Commission invites submissions from the public regarding the topics on which MRAC should focus. In other words, topics that:

(a) Reflect matters of public concern to clearinghouses, exchanges, swap execution facilities, swap data repositories, intermediaries, market makers, service providers, end-users and the Commission regarding systemic issues that impact the stability of the derivatives markets and other related financial markets; and/or

(b) Are important to otherwise assist the Commission in identifying and understanding the impact and implications of the evolving market structure of the derivatives markets and other related financial markets.

Each topic submission should include the commenter's name and email or mailing address.

(Authority: 5 U.S.C. app. II)

Dated: May 27, 2022.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2022–11889 Filed 6–2–22; 8:45 am]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2014–0018]

Notice of Availability and Request for Comment: Revision to the Voluntary Standard for Sling Carriers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of availability and request for comment.

SUMMARY: The U.S. Consumer Product Safety Commission's (Commission or CPSC) mandatory rule, Safety Standard for Sling Carriers, incorporates by reference ASTM F2907–19, Standard Consumer Safety Specification for Sling Carriers. The Commission has received notice of a revision to this incorporated voluntary standard. CPSC seeks comment on whether the revision improves the safety of the consumer product covered by the standard.

DATES: Comments must be received by June 17, 2022.

ADDRESSES: Submit comments, identified by Docket No. CPSC–2014–0018, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments. CPSC typically does not accept comments submitted by electronic mail (email), except as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal.

Mail/hand delivery/courier/confidential Written Submissions: Submit comments by mail, hand delivery, or courier to: Division of the Secretariat, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: *cpsc-os@cpsc.gov.*

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: *https://www.regulations.gov.* Do not submit through this website: Confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier/confidential written submissions.

Docket: For access to the docket to read background documents or comments received, go to: *https://www.regulations.gov,* and insert the docket number, CPSC–2014–0018, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Zachary Foster, Project Manager, Division of Human Factors, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: (301) 987–2034; email: *zfoster@cpsc.gov.*

SUPPLEMENTARY INFORMATION: Section 104(b) of the Consumer Product Safety Improvement Act of 2008 (CPSIA) requires the Commission to adopt mandatory standards for durable infant or toddler products. 15 U.S.C. 2056a(b)(1). Mandatory standards must be ''substantially the same as'' voluntary standards, or may be ''more stringent'' than voluntary standards, if the Commission determines that more stringent requirements would further reduce the risk of injury associated with the products. *Id.* Mandatory standards may be based, in whole or in part, on a voluntary standard.

Pursuant to section 104(b)(4)(B) of the CPSIA, if a voluntary standards organization revises a standard that has been adopted, in whole or in part, as a consumer product safety standard under CPSIA section 104, it must notify the Commission. The revised voluntary standard then shall be considered to be a consumer product safety standard issued by the Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the date on which the organization notifies the Commission (or a later date specified by the Commission in the **Federal Register**) unless, within 90 days after receiving that notice, the Commission responds to the organization that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard, and therefore, the Commission is retaining its existing mandatory consumer product safety standard. 15 U.S.C. 2056a(b)(4)(B).

Under this CPSIA authority, the Commission issued a mandatory safety rule for sling carriers. The rulemaking created 16 CFR part 1228, which incorporated by reference ASTM F2907–15, Standard Consumer Safety Specification for Sling Carriers. 82 FR 8671 (Jan. 30, 2017). The mandatory standard included performance requirements and test methods, as well as requirements for warning labels and instructional literature, to address hazards to children associated with sling carriers. On April 20, 2020, the CPSC published a revised standard for sling carriers, which incorporated by reference ASTM F2907–19, with modifications to the requirements for test methods, labeling, and instructional literature which improved the safety of sling carriers. 85 FR 21766.

In April 2022, ASTM published a further revised version of the incorporated voluntary standard. On May 23, 2022, ASTM notified the Commission that it had approved the revised version of the voluntary standard. This revised version includes revisions made to the standard in 2021 (ASTM F2907–21) and 2022 (ASTM F2907–22).

CPSC staff is assessing the revised voluntary standard to determine, consistent with section 104(b)(4)(B) of the CPSIA, its effect on the safety of the consumer product covered by the standard. The Commission invites public comment on that question to inform Staff's assessment and any subsequent Commission consideration of the revisions in ASTM F2907–21 and ASTM F2907–22.

The existing voluntary standard and the revised voluntary standard are available for review in several ways. ASTM has provided read-only copies, at no cost, of the red-lined versions of ASTM F2907–21 and ASTM F2907–22 that identify the changes made to the ASTM F2907–19 version, and the revised standard, on ASTM's website at: *https://www.astm.org/CPSC.htm.* Likewise, a read-only copy of the existing, incorporated standard is available for viewing, at no cost, on the ASTM website at: *https://www.astm.org/products-services/reading-room.html.* Interested parties can also download copies of the standards by purchasing them from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; phone: 610–832–9585; *www.astm.org.* Alternatively, interested parties can schedule an appointment to inspect copies of the standards at CPSC's Division of the Secretariat, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone: 301–504–7479; email: *cpsc-os@cpsc.gov.*

Comments must be received by June 17, 2022. Because of the short statutory time frame Congress established for the Commission to consider revised voluntary standards under section 104(b)(4) of the CPSIA, CPSC will not consider comments received past this date.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2022–11900 Filed 6–2–22; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Virtual Public and Tribal Meetings Regarding the Modernization of Army Civil Works Policy Priorities; Establishment of a Public Docket; Request for Input

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice; announcement of virtual public and Tribal meeting dates and solicitation of input.

SUMMARY: The Department of the Army, Civil Works, to include the U.S. Army Corps of Engineers (Corps) (together, ''Army''), are publishing this notice to announce an effort to modernize the

Civil Works program of the Corps through a number of related policy initiatives. This effort includes a series of public and Tribal virtual meetings, as well as a public docket, to gather oral and written input that will be used to inform future decision-making related to: Native American/Tribal Nation issues; potential rulemaking actions regarding the Corps' Regulatory Program's implementing regulations for the National Historic Preservation Act as well as Civil Works implementation of the Principles, Requirements, and Guidelines; and, environmental justice, including definitions of certain terms used in policy making.

DATES: Written recommendations must be received on or before August 2, 2022. The Army will hold a virtual overview of the policy initiatives on June 22, 2022. The Army will hold public virtual meetings on the following dates: July 11, 2022, July 14, 2022, July 18, 2022, July 20, 2022, and July 26, 2022. In addition, the Army will hold Tribal virtual meetings on the following dates: July 7, 2022, July 12, 2022, July 19, 2022, July 21, 2022, and July 27, 2022. Please refer to the **SUPPLEMENTARY INFORMATION** section below for additional information on these virtual meetings.

ADDRESSES: You may send written feedback, identified by Docket ID No. COE–2022–0006, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting written feedback.
- *Email: usarmy.pentagon.hqda-asa-cw.mbx.asa-cw-reporting@army.mil.* Include Docket ID No. COE–2022–0006 in the subject line of the message.
- *Mail:* Stacey M. Jensen, Office of the Assistant Secretary of the Army (Civil Works), 108 Army Pentagon, Washington, DC 20310–0108.
- *Hand Delivery/Courier:* Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: All submissions received must include Docket ID No. COE–2022–0006. Please group comments into the specific topic areas identified below in the headers of the **SUPPLEMENTARY INFORMATION** section, as applicable. Written feedback received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. Out of an abundance of caution for the health of members of the public and staff and to reduce the risk of transmitting COVID–19, the Army cannot currently accept hand delivery of comments. The Army encourages the public to submit written feedback via *https://www.regulations.gov/* or email, as there may be a delay in processing mail and faxes.

FOR FURTHER INFORMATION CONTACT: Stacey Jensen, in writing at the Office of the Assistant Secretary of the Army (Civil Works), 108 Army Pentagon, Washington, DC 20310–0108; by telephone at 703–697–4671; and by email at *usarmy.pentagon.hqda-asa-cw.mbx.asa-cw-reporting@army.mil;* or, Joseph Redican, in writing at Headquarters USACE, 441 G Street NW, Washington, DC 20314–1000; by telephone at 202–761–4523; and by email at *joseph.h.redican@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of the Army, Office of the Assistant Secretary of the Army for Civil Works, is seeking to modernize and advance the U.S. Army Corps of Engineers (Corps) Civil Works program through policy actions consistent with Administration priorities and statutory authorities. A primary focus for the modernization effort is to identify ways to better serve the needs of Tribal Nations [1] and other disadvantaged and underserved communities. The priority policy actions include: (1) Tribal issues, to include updating the Corps' Tribal consultation policy and implementation of the Tribal Partnership Program; (2) Rulemaking actions, to include revisions to the Regulatory Program's implementation of Section 106 of the National Historic Preservation Act found at 33 CFR 325, Appendix C, as well as a rulemaking action for implementation of the Principles, Requirements, and Guidelines; and (3) Environmental justice, to include identifying ways to further advance the Corps' Civil Works commitment to environmental justice, including compliance with relevant provisions of the Water Resources Development Act (WRDA) of 2020. Each of these priority policy actions is described in more detail below, including how they align with the advancement of the Administration's priorities. The policy priority actions have overlapping content and work together to provide a comprehensive modernization strategy for the Civil Works program.

Before deciding on specific future actions regarding the priority policy initiatives, the Army wants to gather public and Tribal input to help shape future decision-making related to these priority policy initiatives. Details for virtual meetings to receive input from all stakeholders and Tribes are below in the Public Meetings and Outreach section. The Army encourages comments on all aspects of these priority policy initiatives, to include consideration of what a modernized Corps Civil Works program entails.

For example, one action the Army has already initiated under this modernization effort is a review of Nationwide Permit (NWP) 12 for Oil or Natural Gas Pipeline Activities (87 FR 17281). The review of NWP 12 is being undertaken to gather input on potential changes to the NWP which may be warranted in light of concerns raised and the Administration's policies under E.O. 13990 (*Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,* Executive Order 13990, 86 FR 7037). Previous uses of NWP 12 have raised concerns identified in Executive Order 13990, such as environmental justice, climate change impacts, drinking water impacts, and notice to impacted communities. These concerns were raised in the context of the Corps' implementation of its own authorities under Section 404 of the Clean Water Act (33 U.S.C. 1344) as well as in the context of other authorities that the Corps must comply with when issuing the NWPs, such as the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). The Army sought input on those aspects as well as any others related to NWP 12 through a series of virtual meetings and written docket via a separate **Federal Register** notice (87 FR 17281; Docket ID No. COE–2022–0003–0001).

II. Tribal

A. Tribal Consultation Policy

On January 26, 2021, President Biden issued the Presidential Memorandum, *Tribal Consultation and Strengthening Nation-to-Nation Relationships* (86 FR 7491). In the Memorandum, he called on each federal agency to engage in regular, meaningful, and robust consultation and to implement the policies directed in Executive Order 13175 of November 6, 2000, *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249). In addition, President Biden issued Executive Order 13990, *Protecting Public Health and the Environment and Restoring Science to*

[1] Tribal Nations and Tribes as used in this **Federal Register** notice refers to ''Indian tribe'' as defined in Executive Order 13175 (*https://www.govinfo.gov/content/pkg/FR-2000-11-09/pdf/00-29003.pdf,* accessed May 5, 2022), and Native Hawaiian Organizations where applicable.

Tackle the Climate Crisis (86 FR 7037), directing agencies to consider environmental and social justice in their mission areas.

The Corps issued its current Tribal Consultation Policy in November 2012, which provides details regarding Tribal consultation specific to the Corps' authorities and responsibilities.[2] The Army recognizes the important intent of the Presidential Memorandum (86 FR 7491) and Executive Order 13175 (65 FR 67249), and as such, is committed to ensuring the Corps' Policy is reviewed and updated to promote early, regular, meaningful, and robust consultation consistent with its missions and authorities. As such, the Army is undertaking a review and update of the Corps' Tribal Consultation Policy.

The Army has completed an initial review of the Corps' existing Tribal Consultation Policy and has preliminarily identified several areas which may be included in an update. For example, consistent with the Consolidated Appropriations Act of 2004, as amended, the Army intends to update the Tribal Consultation Policy to provide that the Corps will consult with Alaska Native Corporations on the same basis as Indian Tribes under Executive Order 13175.[3] In addition, the Army intends to address provisions on culturally-sensitive information consistent with DoD Instruction 4710.02, dated September 24, 2018.[4]

The Army also intends to address the areas below in an update to the Corps' Tribal Consultation Policy and solicits public and Tribal input on how the areas below should be incorporated into the Policy.

In March 2019, the Government Accountability Office (GAO) issued a Report, ''Tribal Consultation: Additional Federal Actions Needed for Infrastructure Projects'',[5] which included a recommendation to document in the agency's Tribal Consultation Policy how agencies will communicate with Tribes regarding how tribal input from consultation was considered in agency decisions on infrastructure projects. The Army intends to address this GAO recommendation by updating the Corps' Tribal Consultation Policy to include a requirement to provide a written response to Tribes on how Tribal input was considered in the decision-making process.

One other area the Army seeks to include in an update to the Corps' Tribal Consultation Policy is to better address how Tribal consultation should be specifically incorporated into the processes associated with the Corps' Regulatory Program. Currently, the Corps' Regulatory Program relies on regulations primarily from 1986 (33 CFR 320–330; 51 FR 41206) and 1990 (33 CFR 325, Appendix C at 55 FR 27003), which provide very limited references to Tribal consultation. In addition, there is no consolidated comprehensive guidance specific to the Regulatory Program for Tribal consultation. These multiple references can lead to inconsistency and lack of clarity for the Corps' staff, Tribes, and the regulated public as to how Tribal consultation is conducted in the Corps' Regulatory Program. In addition, Tribes have indicated that the lack of regulations or specific policy suggests that the Corps' Regulatory Program is not committed to consulting with Tribes. Therefore, the Army wants to ensure it is clear that the Corps' Tribal Consultation Policy applies to the Regulatory Program. The Army is also considering how to address topics specific to the Regulatory Program in the Corps' updated Tribal Consultation Policy.

For example, the Army intends to address Tribal consultation requirements for approved jurisdictional determinations issued by the Corps' Regulatory Program in the update to the Corps' Tribal Consultation Policy. An approved jurisdictional determination means the Corps has documented the presence or absence of waters of the United States on a parcel of land or a written statement and map identifying the limits of waters of the United States on a parcel of land (see 33 CFR 331.2). Some Tribes have questioned previous issuances of approved jurisdictional determinations, which are final agency actions under the Administrative Procedure Act, without pre-decisional government-to-government consultation. Tribes may be impacted by an approved jurisdictional determination in terms of which waters may or may not be jurisdictional under the Clean Water Act and as a result any permit requirements that may be required. In addition, Tribes may have information, including Indigenous Traditional Ecological Knowledge (ITEK), that may assist in making such a determination but is unknown to the Corps and may only be provided in consultation with Tribes. The Biden-Harris Administration recently issued a memorandum providing that ITEK can and should inform Federal Government decision making where appropriate.[6] The Army solicits input on conducting Tribal consultations on approved jurisdictional determinations as a policy matter.

In addition to the above, the Army welcomes feedback related to other key issues, such as identification of ways in which existing policy has or has not worked, and specific procedures that should/could be identified to ensure that consultation is regular, meaningful, and robust. The Army recognizes the vast experience of Tribal Nations in engagements with the Corps, including perspectives on how consultation has occurred in the past and how it could occur in the future, and as such wants to ensure tribal voices are heard during the process to update to the Corps' Tribal Consultation Policy. In addition to the written input and listening sessions, Tribal Nations may also request an initiation of government-to-government consultation on the policy review and update. The virtual listening sessions for input are described in the Public Meetings and Outreach section below. Written comments on this priority policy initiative are also strongly encouraged and instructions are found in the **ADDRESSES** section above.

B. Tribal Partnership Program

Section 203 of the WRDA of 2000, as amended (33 U.S.C. 2269), authorizes the Secretary of Army, in cooperation with Indian Tribes and the heads of other federal agencies, to carry out water-related planning activities, and activities related to the study, design, and construction of water resources development projects with federally-recognized Tribes that are located primarily within Indian Country or in proximity to Alaska Native Villages. The Army has been implementing this authority as the Tribal Partnership Program (TPP). The TPP includes projects for flood damage reduction, aquatic environmental restoration and protection, and preservation of cultural and natural resources; watershed assessments; and other projects determined appropriate.

Feasibility studies, including water-related planning activities are cost

[2] *https://usace.contentdm.oclc.org/utils/getfile/collection/p16021coll11/id/4241* (accessed April 1, 2022).

[3] Consolidated Appropriations Act, 2004, Public Law 108–199, Div. II. Sec. 161, 118 Stat. 3, 452 (2004) as amended by Consolidated Appropriations Act, 2005, Public Law 108–447, Div. H., Title V. Sec. 518, 118 Stat. 2809, 3267 (2004).

[4] *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/471002p.pdf?ver=2018-11-28-143903-320* (accessed April 1, 2022).

[5] GAO–19–22, *https://www.gao.gov/assets/700/698104.pdf* (accessed April 1, 2022).

[6] Presidential Memorandum on Indigenous Traditional Ecological Knowledge and Federal Decision Making, November 15, 2021, *https://www.whitehouse.gov/wp-content/uploads/2021/11/111521-OSTP-CEQ-ITEK-Memo.pdf* (accessed on April 1, 2022).

shared at 50 percent federal and 50 percent non-federal expense. The Tribal partner may request a study to be scoped at the outset to either result in a report recommending a project plan for design and construction, or in a more limited report describing an array of alternatives that are determined to be technically feasible and economically and environmentally justified. Watershed assessments are cost shared at 75 percent federal and 25 percent non-federal expense. Design and construction of projects or separable elements are cost shared in accordance with the percentages in Sections 101 of the WRDA of 1986, as amended (33 U.S.C. 2211), for navigation projects, and in Section 103 of the WRDA of 1986 (33 U.S.C. 2213) for other types of projects. For projects or separable elements where the federal share is not greater than $18.5 million, Congress authorized the Corps to perform design and construction as funding allows (33 U.S.C. 2269(b)(4)(A)), without further Congressional authorization. Congress must provide separate authorization and appropriations for activities where the federal share is greater than $18.5 million.

A cost share waiver under Section 1156 of WRDA 1986, as amended (33 U.S.C. 2310), applies to federally recognized Tribes for TPP. Section 135 of the WRDA of 2020 amended this provision to include an annual inflation adjustment (Division AA of Pub. L. 116–260). Tribes are also subject to the ability to pay, as determined by the Secretary, which applies to design and construction agreements as well as to studies, watershed assessments, and planning activities conducted under the TPP. Implementation Guidance for Section 1031(a) of Water Resources, Reform Development Act of 2014 (Pub. L. 113–121) and Section 1121 of WRDA 2016 (Pub. L. 114–322), outlines the procedures for applying the ability-to-pay factor.[7]

The Army has directed development of updated comprehensive implementation guidance for the TPP. The guidance will cover the TPP statute, Section 203 of Public Law 106–541, as amended by Section 2011 of Public Law 110–114, Section 1031(a) of Public Law 113–121, Section 1121 of Public Law 114–322, Section 1157(i) of Public Law 115–270, and Section 303 of Division AA of Public Law 116–260 and any subsequent legislation enacted before its issuance. The Army seeks input on any specific topics, challenges, or best practices to include or address in the comprehensive TPP implementation guidance. For example, the Army seeks input as to whether additional clarity is needed regarding the application of the cost share wavier and/or ability to pay provisions, and if so, recommendations for such clarifications. Input is requested on ways in which the Corps can improve communication and increase awareness with Tribes regarding TPP, as well as identification of any limitations or barriers for Tribes to participate in TPP. The virtual listening sessions for input are described in the Public Meetings and Outreach section below. Written comments on this priority policy initiative are also strongly encouraged and instructions are found in the **ADDRESSES** section above.

III. Potential Rulemaking Actions

A. Corps' Regulatory Program Procedures for the Protection of Historic Properties at 33 CFR 325, Appendix C

Section 106 of the National Historic Preservation Act (NHPA) (Pub. L. 89–665 and amendments thereto; 54 U.S.C. 306108) requires ''the head of any Federal department . . . having authority to license any undertaking, . . . prior to the issuance of any license, shall take into account the effect of the undertaking on any historic property.'' The Advisory Council on Historic Preservation (ACHP) oversees agencies' compliance and issues regulations governing Section 106 of the NHPA (36 CFR 800), which define how Federal agencies meet their statutory responsibilities under NHPA. The Army's Civil Works programs, other than the Regulatory Program, use the regulations promulgated by ACHP for federal agency compliance with Section 106 of the NHPA.

The Corps' regulations governing Section 106 of the NHPA procedures specific to its Regulatory Program were promulgated in 1990 (55 FR 27003; 33 CFR 325, Appendix C). Since then, there have been amendments to the NHPA. For example, the 1992 amendments to the NHPA recognized and expanded the role of Indian Tribes and Native Hawaiian organizations (NHOs) in the national preservation program. In response to these changes, the ACHP revised the Section 106 implementing regulations to clarify the role of Tribes and NHOs in the Section 106 process (65 FR 77698). ACHP made further amendments to the implementing regulations in 2004 (69 FR 40544). In response to the NHPA amendments and regulations promulgated by ACHP to govern federal agency implementation of Section 106, the Corps' Regulatory Program issued interim guidance in 2005[8] and 2007.[9] The Corps' Regulatory Program issued an Advanced Notice of Proposed Rulemaking (ANPRM) in 2004 (69 FR 57662) to gather input on an update to its implementing regulations, but the Corps has never finalized an update.

The Army acknowledges there has been longstanding disagreement between the Corps and ACHP regarding differences between the Corps' Regulatory Program Appendix C and the regulations promulgated by ACHP governing the Section 106 process. For example, the scope of the undertaking subject to review and the Corps' use of ''permit area'' versus ACHP's use of ''area of potential effect''. In addition, under the regulations promulgated by ACHP the resolution of adverse effects can be accomplished via a Memorandum of Agreement or, for certain complex projects or programs, a Programmatic Agreement, while the Corps' regulations allow for resolution through a Memorandum of Agreement or permit conditioning. There are also timeline differences between the sets of regulations.

The Corps' Regulatory Program's reliance on Appendix C and multiple guidance documents can result in inconsistency and confusion among the regulated public, State and Tribal Historic Preservation Offices, Tribes, and others. In addition, the longstanding disagreement between Regulatory and ACHP regarding differences between the Corps' implementing regulations and those promulgated by ACHP concerning the Regulatory scope for permit area has resulted in lengthy and challenging consultations. Tribes have also stated that the lack of updated and consistent implementing regulations reflecting the current NHPA language for the Corps' Regulatory Program indicates that the Corps is not meeting their statutory and Tribal trust responsibilities.

As a result, the Army has made clear that rulemaking on Appendix C is a priority policy initiative which will serve to modernize the Regulatory Program.[10] The Army is soliciting input on the best approach to modernize Appendix C, including consideration for

[7] *https://usace.contentdm.oclc.org/utils/getfile/collection/p16021coll5/id/1300* (accessed April 13, 2022).

[8] *https://usace.contentdm.oclc.org/utils/getfile/collection/p16021coll11/id/2478* (accessed April 3, 2022).

[9] *https://usace.contentdm.oclc.org/utils/getfile/collection/p16021coll11/id/4042* (accessed April 3, 2022).

[10] See Fall 2021 Unified Agenda at RIN–0710–AB46; *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202110&RIN=0710-AB46* (accessed April 3, 2022).

options provided in the ANPRM from 2004 (69 FR 57662). Due to the passage of time since the ANPRM, comments submitted in response to the ANPRM should be resubmitted for consideration related to this current initiative. The Army wants to best ensure compliance with the regulation promulgated by ACHP to govern federal agency implementation of Section 106 at 36 CFR 800, as well as to best reflect the policy priorities of the Administration. In particular, the Army seeks input on whether the Corps should rely on the NHPA regulations at 36 CFR 800 promulgated by ACHP and rescind Appendix C, and if so, whether any clarifying guidance is needed on the scope of the area of potential effects for the Corps' Regulatory Program, and whether development of a Program Alternative (36 CFR 800.14) would allow for clear and consistent implementation procedures, as well as improved Tribal consultation. The virtual listening sessions for input are described in the Public Meetings and Outreach section below. Written comments on this priority policy initiative are also strongly encouraged and instructions are found in the **ADDRESSES** section above.

B. Principles, Requirements, and Guidelines (PR&G)

1. Background

Section 2031 of the WRDA of 2007 (Pub. L. 110–114) directed the Secretary of the Army, in consultation with the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, the National Academy of Sciences, and the Council on Environmental Quality, to revise the March 10, 1983, Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies [11] (P&G) for Corps use and to address the following considerations: Advancements in economic and analytic techniques; public safety; low-income communities; nonstructural solutions; and integrated, adaptive, and watershed approaches.

Since 1983, the P&G has guided the evaluation and formulation of water resources projects proposed by the Corps and three other Federal water resources agencies. The 1983 P&G required the agencies to undertake a broad analysis of all significant effects of a proposed Federal water resources project and its alternatives. The P&G also directed these agencies to recommend the alternative with the greatest net economic benefit consistent with protecting the Nation's environment, unless the agency head grants an exception to this rule. The Corps uses the P&G primarily in its commercial navigation and its flood and storm damage reduction studies.

During the Obama Administration, the Council of Environmental Quality (CEQ) led an interagency effort to modernize the P&G. That process began in 2009 and concluded in 2013 and 2014, when the Water Resources Council issued the Principles, Requirements and Guidelines (PR&G).[12] The PR&G emphasizes that water resources projects should maximize economic development, avoid the unwise use of floodplains, and protect and restore natural ecosystems. The PR&G is designed to support water infrastructure projects with the greatest public benefits (economic, environmental and social benefits).

During the development of the PR&G, which involved an interagency process, CEQ provided an opportunity for input from the public and stakeholders, including several workshops on topics such as climate change, ecosystem services, and Tribal engagement. In addition, input from a review by the National Academy of Sciences was incorporated into the final product.

CEQ also directed and coordinated the development of Agency Specific Procedures (ASPs) by each affected water resources agency in 2014. Those ASPs were completed by all water resources agencies and approved by CEQ, with the exception of the Corps. For several years, beginning in 2015, the Congress included direction in the Joint Explanatory Statement for the annual Corps appropriation that prohibited the Corps from developing the ASPs to implement the PR&G. However, Congress has since then directed the Secretary to issue ASPs in Section 110 of WRDA 2020 (Division AA of Pub. L. 116–260).

An Army memorandum dated January 5, 2021, provided interim direction to the Corps project planning process.[13] The memorandum directed the Corps to give equal consideration in its project studies to all of the benefits of a proposed project and its alternatives, and equal consideration of economic, environmental and social categories.

2. Overview of PR&G

The PR&G includes a number of notable features, which govern its implementation. These include: (1) The concept of public benefits, with a focus on striving to maximize public benefits (economic, social and environmental) relative to costs, with no hierarchy among the interrelated economic, social, and environmental goals when evaluating alternatives for investments; (2) elevating the Locally Preferred Plan (LPP), where an LPP exists it should be included in the final array, promoting transparency from the initial stages and reducing conflict in cases where a local sponsor has a ''plan'' to solve a problem; (3) elevating the nonstructural plan, where a nonstructural plan exists, it must be included in the final array regardless of whether an agency can implement it; (4) facilitating choices for the recommended project(s), where the public benefits approach involves tradeoffs among plans and outputs (economic, social, environmental) resulting in the decision maker likely having more projects that may be worthy of an investment, that there may be more than one ''best'' way to solve some of the nation's increasingly complex water resources challenges, and that professional judgment in determining which project(s) is best will be facilitated by appropriate consideration of tradeoff of monetized and non-monetized effects, resulting in an elevation of the role of qualitative data and the need for professional judgment in making recommendations; (5) facilitating collaboration, where a broad application across a wider array of federal water programs is expected to facilitate collaboration in terms of data sharing, model development and agency-to-agency consultations; (6) elevating ecosystem, sustainable economic development, floodplain, environmental justice, public safety and watershed considerations in terms of alternatives that are developed and considered, increasing transparency; (7) level of analysis, where the PR&G identifies the kinds of activities to analyze and provides for varying levels of detail, as well as a means to certify equivalent processes as meeting the intent of PR&G, and the full analysis is provided for major investments whereas scaled analyses are provided for smaller investments, where the process is streamlined and procedures reflect the scope and complexity of the problem being assessed; and, (8) fiscal resources,

[11] *https://planning.erdc.dren.mil/toolbox/library/Guidance/Principles_Guidelines.pdf* (accessed May 4, 2022).

[12] *https://obamawhitehouse.archives.gov/administration/eop/ceq/initiatives/PandG* (accessed April 4, 2022).

[13] *https://planning.erdc.dren.mil/toolbox/library/MemosandLetters/ComprehensiveDocumentationofBenefitsinDecisionDocument_5January2021.pdf* (accessed April 4, 2022).

recognizing limited fiscal resources more directly, potentially resulting in smaller projects that may not maximize the return on investment like that of an National Economic Development plan, but solving a water resources problem at a smaller or different scale.

In general, the PR&G also includes a focus on some of the policy priorities discussed in this **Federal Register** notice, as PR&G discusses climate resiliency and environmental justice in the public benefits context and they are both also included in the Guiding Principles for implementing PR&G.[14]

3. Path Forward Regarding PR&G Implementation

The Army plans to undertake a rulemaking that will propose how specifically the Army would implement the PR&G.[15] The Army seeks input on the appropriate content of this PR&G rulemaking to ensure consistency with the intent and purpose of PR&G. The Army expects the rulemaking to cover a range of basic project planning issues. The Army does not seek to codify the contents of the January 2021 memorandum in the PR&G rulemaking effort. However, the Army invites comments on which aspects of this memorandum may be beneficial to carry forward in the forthcoming PR&G rulemaking effort.

The virtual listening sessions for input are described in the Public Meetings and Outreach section below. Written comments on this priority policy initiative are also strongly encouraged and instructions are found in the **ADDRESSES** section above.

III. Environmental Justice

A. Interim Guidance Overview

On March 15, 2022, the Assistant Secretary of the Army for Civil Works issued a memorandum to the Corps providing interim guidance on environmental justice titled, *Implementation of Environmental Justice and the Justice40 Initiative* (Interim Guidance).[16] The memorandum outlines the environmental justice policy for the Army and outlines three key areas of focus: (1) Improving outreach and access to Army Civil Works information and resources; (2) improving access to Army Civil Works technical service programs (*e.g.,* Planning Assistance to States and Floodplain Management Services programs) and maximizing the reach of Civil Works projects to benefit the disadvantaged communities, in particular as it relates to climate resiliency; and (3) ensuring any updates to Army Civil Works policies and guidance will not result in a disproportionate impact on disadvantaged communities.

The Interim Guidance focuses on priority action areas for environmental justice, including the Justice40 Initiative, in Civil Works. The priority action areas for Civil Works include the Tribal Partnership Program, Planning Assistance to States program, and Floodplain Management Services program, as well as more broadly to study, design, construction, and operation phases of projects primarily for flood risk management, coastal storm risk management, and aquatic ecosystem restoration. It also includes the Continuing Authorities Program and Environmental Infrastructure, where applicable under the relevant authorities. The memorandum also provides the initial strategy for the Corps to implement the Justice40 Initiative as envisioned by the Administration,[17] pending further Administration guidance. The Interim Guidance covers areas such as significant but incidental benefits and strategic outreach. The Interim Guidance details how the Corps should consider environmental justice until such time as final guidance is issued and provides a strategy for implementation to achieve the broader goals of the Administration regarding environmental justice.

The Army seeks input on whether there are additional measures that the Army should include related to environmental justice, as well as specific to the Justice40 Initiative. In particular, the Army seeks input as to whether there are areas to be updated in the Interim Guidance for consideration in a final environmental justice guidance. In addition, we seek input as to whether there are specific considerations regarding the Planning Assistance to States program, the Floodplain Management Services program, and the Continuing Authorities Program which could better achieve environmental justice and equity. Input is requested on ways to improve how these Corps programs advance environmental justice and equity, and on any current barriers to achieving these objectives. Input also is requested on recommendations for how the Army can best ensure that the assistance that it provides under these programs will directly benefit and advance environmental justice and equity.

One area not addressed in the Interim Guidance is the Corps' Regulatory Program. The Army intends to issue guidance specific to the Regulatory Program but seeks input on how best to incorporate consideration of environmental justice in the Regulatory Program. The Army requests recommendations as to how to accomplish such incorporation. The virtual listening sessions for input are described in the Public Meetings and Outreach section below. Written comments on this priority policy initiative are also strongly encouraged and instructions are found in the **ADDRESSES** section above.

B. Outreach and Tools

To achieve the goals outlined in the Interim Guidance, there will be an evolution as to how the Army engages and builds relationships with communities. This **Federal Register** notice provides the national-level engagement effort for environmental justice outreach for the Army. The virtual sessions on environmental justice will highlight the services and programs that the Corps provides and then provide an opportunity for stakeholder input on how the Army can best leverage its capabilities and authorities, as well as leveraging those of other partners and federal agencies, to meet the needs of disadvantaged and underserved communities. Following this national-level engagement, the Army will have a more targeted focus of outreach at the local level. The Army will engage Tribal, state, and local governments, and local communities to discuss these matters and to raise public awareness of the available programs and their benefits. The Army must strive to align its missions and authorities with the disadvantaged and underserved community's vision of the future to address the community's needs and enable community resilience to the maximum extent practicable. The Army seeks input on what forms of outreach are best to engage disadvantaged and underserved communities for Army programs.

As required by Executive Order 14008 on Tackling the Climate Crisis at Home

[14] *https://obamawhitehouse.archives.gov/sites/default/files/docs/prg_interagency_guidelines_12_2014.pdf* (last accessed May 4, 2022).

[15] See the Fall 2021 Unified Agenda, RIN 0710–AB418 at *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202110&RIN=0710-AB41* (accessed April 4, 2022).

[16] *https://www.army.mil/article/254935/assistant_secretary_of_the_army_for_civil_works_issues_environmental_justice_guidance_to_the_army_corps_of_engineers* (accessed April 3, 2022).

[17] See M–21–28, *https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf* (accessed April 4, 2022).

and Abroad,[18] CEQ recently released a beta version of the Climate and Economic Justice Screening Tool [19] to provide a consistent government-wide identification of disadvantaged communities that are marginalized, underserved, and overburdened by pollution. The Army will use this Tool for purposes of implementing the Interim Guidance, focusing on the climate change and the critical clean water and waste infrastructure (*e.g.,* as implemented through the Corps' Environmental Infrastructure program) categories and their associated definitions. However, there are additional tools, such as the Environmental Protection Agency's EJScreen tool,[20] which are available for use to provide further support and description of these communities for purposes such as the National Environmental Compliance Act compliance and outreach to disadvantaged and underserved communities for our technical services programs. The Army seeks input on recommendations regarding the assessment of benefits directed towards those communities specific to the Civil Works program.

C. Water Resources Development Act

Section 160 of the WRDA of 2020 (Pub. L. 116–260) (Act) directs the Secretary of the Army to issue guidance defining the term ''economically disadvantaged community'' for the purposes of that Act and the amendments made by that Act, and provides that to the maximum extent practicable, the Secretary shall utilize the criteria under section 301(a)(1) and (2) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3161) to the extent that such criteria are applicable in relation to the development of a water resources development project.

The Biden-Harris Administration released Interim Implementation Guidance for the Justice40 Initiative on July 20, 2021,[21] which included an interim definition of ''disadvantaged community'':

Community—Agencies should define community as ''either a group of individuals living in geographic proximity to one another, or a geographically dispersed set of individuals (such as migrant workers or Native Americans), where either type of group experiences common conditions.''

Disadvantaged—Agencies should consider appropriate data, indices, and screening tools to determine whether a specific community is disadvantaged based on a combination of variables that may include, but are not limited to, the following:

- Low income, high and/or persistent poverty
- High unemployment and underemployment
- Racial and ethnic residential segregation, particularly where the segregation stems from discrimination by government entities
- Linguistic isolation
- High housing cost burden and substandard housing
- Distressed neighborhoods
- High transportation cost burden and/or low transportation access
- Disproportionate environmental stressor burden and high cumulative impacts
- Limited water and sanitation access and affordability
- Disproportionate impacts from climate change
- High energy cost burden and low energy access
- Jobs lost through the energy transition
- Access to healthcare.

The Army has drafted a proposed definition of ''economically disadvantaged community,'' consistent with the WRDA provision, to include: For purposes of the Army Civil Works program implementation of WRDA 2020 an economically disadvantaged community is defined as meeting one or more of the following:

(1) Low per capita income—The area has a per capita income of 80 percent or less of the national average; (2) Unemployment rate above national average—The area has an unemployment rate that is, for the most recent 24-month period for which data are available, at least 1 percent greater than the national average unemployment rate; (3) Indian country as defined in 18 U.S.C. 1151; (4) U.S. Territories.[22]

The Army seeks input and recommendations on the proposed definition of economically disadvantaged community. The Army also seeks input on readily available data sources for the proposed definition. The virtual listening sessions for input are described in the Public Meetings and Outreach section below. Written comments on this priority policy initiative are also strongly encouraged and instructions are found in the **ADDRESSES** section above.

IV. Public Meetings and Outreach

The Army will hold a series of virtual public meetings intended to solicit input to inform their review of potential future actions regarding the policy priority initiatives related to Tribal issues, potential rulemaking actions to include Appendix C and PR&G, and environmental justice. The Army will hold 11 virtual meetings in total, including one virtual meeting to provide an overview for the public and Tribes of all of the policy priority initiatives to help inform their comments, followed by a series of 10 virtual meetings to gather comments. There will be one virtual meeting on the Tribal issues open to all stakeholders, one virtual meeting on each of the rulemaking actions open to all stakeholders, and two virtual meetings on the environmental justice policy priority initiative open to all stakeholders. In addition, there will be two virtual meetings on the Tribal issues with leaders of Tribal Nations or their designated staff, one virtual meeting each on the potential rulemaking actions for the Regulatory Program's Appendix C as well as PR&G specific with leaders of Tribal Nations or their designated staff, and one virtual meeting for the environmental justice policy priority initiative with leaders of Tribal Nations or their designated staff. Registration information for the virtual public and Tribal meetings is below. Separate notification to Tribal leaders is also being provided initiating Tribal consultation where applicable, with additional outreach to Tribal staff occurring at the local District level. In addition, more community-level engagement will occur at the local District level on these policy priority initiatives to encourage participation and input on this notice.

Registration is required for all meetings. Spots are limited and those unable to attend are encouraged to provide written comments to the docket which will be given equal consideration. Additional meetings may be added if needed based on number of registrations. Attendees will be asked to provide their name and email address to register.

Registration links are provided below and instructions with additional

[18] *https://www.govinfo.gov/content/pkg/FR-2021-02-01/pdf/2021-02177.pdf* (accessed May 5, 2022).

[19] *https://screeningtool.geoplatform.gov/en* (accessed April 1, 2022). CEQ notes on the web page that the beta version is ''an early, in-progress version of the tool with limited datasets that will be regularly updated.'' The Army is not soliciting input on the CEJST as that effort is being led by CEQ in a separate action.

[20] *https://www.epa.gov/ejscreen* (last accessed May 5, 2022).

[21] *https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf.*

[22] This can also be found at: *https://www.usace.army.mil/Missions/Civil-Works/Project-Planning/Legislative-Links/wrda_2020/* (accessed May 4, 2022) with other information regarding WRDA 2020 implementation.

background information can also be found at the following website: *https://www.army.mil/asacw.* Persons or organizations wishing to provide verbal input during the virtual meetings will be selected on a first-come, first-served basis. Due to the expected number of participants, individuals will be asked to limit their spoken presentation to three minutes. Once the speaking slots are filled, participants may be placed on a standby list to speak or continue to register to listen to the input. Supporting materials and written feedback from those who do not have an opportunity to speak can be submitted to the docket as described above. The schedule for the virtual meetings is as follows:

—*Overview virtual meeting:* June 22, 2022, 1 p.m. to 3 p.m. Eastern.
Registration link: https://www.zoomgov.com/meeting/register/vJItdeGvqDoqHLDhqGkGCo2XDqvJPTrrQ1E

—*Public virtual meeting on Tribal issues:* July 11, 2022, 1 p.m. to 3 p.m. Eastern.
Registration link: https://www.zoomgov.com/meeting/register/vJItdu2hqDMqHahppbA2q3HVKm31LbxqMqU

—*Public virtual meeting on Appendix C:* July 14, 2022, 2 p.m. to 4 p.m. Eastern.
Registration link: https://www.zoomgov.com/meeting/register/vJIscOqtqT4jHopjlJy1l5JnRlnt5OOxkic

—*Public virtual meeting on PR&G:* July 18, 2022, 1 p.m. to 3 p.m. Eastern.
Registration link: https://www.zoomgov.com/meeting/register/vJItdu6upjguG5LbfOXUWkUAEz7m3-NZ5V0

—*Public virtual meetings on Environmental Justice:* July 20, 2022, 1 p.m. to 3 p.m. Eastern.
Registration link: https://www.zoomgov.com/meeting/register/vJIsceqgpjgpH0DUKHEotfCGnZWEs10jtqI
July 26, 2022, 2 p.m. to 4 p.m. Eastern.
Registration link: https://www.zoomgov.com/meeting/register/vJIsfuiuqzwoG4F4fnSJmInSQZY4vZwEVGE

—*Tribal virtual meetings on Tribal Issues:* July 7, 2022, 1 p.m. to 3 p.m. Eastern.
Registration link: https://www.zoomgov.com/meeting/register/vJIscO-upzIsGQaR8o8fvQb23U8CBjScxBA
July 12, 2022, 2 p.m. to 4 p.m. Eastern.
Registration link: https://www.zoomgov.com/meeting/register/vJItce-vqjwvG8Kjy6JX2ohci3WsBGSVLis

—*Tribal virtual meeting on Appendix C:* July 19, 2022, 2 p.m. to 4 p.m. Eastern.
Registration link: https://www.zoomgov.com/meeting/register/vJItdemoqjkuE29OGf1xq1vB9cJrAGyoX1g

—*Tribal virtual meeting on PR&G:* July 21, 2022, 1 p.m. to 3 p.m. Eastern.
Registration link: https://www.zoomgov.com/meeting/register/vJItd-6rqzMpHO_oqn8OTcV30Fe7Af5hW9E

—*Tribal virtual meeting on Environmental Justice:* July 27, 2022, 1 p.m. to 3 p.m. Eastern.
Registration link: https://www.zoomgov.com/meeting/register/vJIsdeutpjspEp7MCdx6i2KfGISuML0S83o

Michael L. Connor,
Assistant Secretary of the Army (Civil Works).

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DEPARTMENT OF EDUCATION

Applications for New Awards; Indian Education Discretionary Grants Programs—Native American Language Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education is issuing a notice inviting applications for fiscal year (FY) 2022 for Indian Education Discretionary Grants Programs—Native American Language (NAL@ED) program, Assistance Listing Number (ALN) 84.415B. This notice relates to the approved information collection under OMB control number 1810–0731.

DATES: *Applications available:* June 3, 2022.

Deadline for notice of intent to apply: July 5, 2022.

Date of pre-application meeting: June 21, 2022.

Deadline for transmittal of applications: August 2, 2022.

Deadline for intergovernmental review: October 3, 2022.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264) and available at *www.federalregister.gov/d/2021-27979.* Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a Data Universal Numbering System (DUNS) number to the implementation of the Unique Entity Identifier (UEI). More information on the phase-out of DUNS numbers is available at *www2.ed.gov/about/offices/list/ofo/docs/unique-entity-identifier-transition-fact-sheet.pdf.*

FOR FURTHER INFORMATION CONTACT: Angela Hernandez, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W234, Washington, DC 20202–6335. Telephone: (202) 205–1909. Email: *NAL@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of this program are to (1) support schools that use Native American and Alaska Native languages as the primary language of instruction; (2) maintain, protect, and promote the rights and freedom of Native Americans and Alaska Natives to use, practice, maintain, and revitalize their languages, as envisioned in the Native American Languages Act of 1990 (25 U.S.C. 2901, *et seq.*); and (3) support the Nation's First Peoples' efforts to maintain and revitalize their languages and cultures, and to improve educational opportunities and student outcomes within Native American and Alaska Native communities.

Background: The Department encourages applicants to propose a broad range of activities to achieve these purposes, including activities that are aligned with the Administration's policy focus areas and with the needs described by Tribal leaders and the education field during the March 17, 2022 Department-sponsored listening session, ''Advancing the Interagency Memorandum of Agreement on Native Languages: Promising Practices and Persistent Barriers.'' Specifically, we encourage promoting education equity and adequacy in resources and opportunity for underserved students, including rigorous, engaging, and well-rounded approaches to learning that are inclusive regarding culture and language and prepare students for

college, career, and civic life. Activities that support Native American or Alaska Native language education and development include implementing inclusive pedagogical practices in professional development programs; using technology to support evidence-based approaches to personalized student learning in the classroom; and increasing the number and diversity of experienced and effective educators, including those from the community that they serve.

In addition, the Department intends for the NAL@ED program to have a broad impact. The Department plans to accomplish this in three ways. First, the Department will fund only one high-quality project per Native language under this competition, provided there are enough high-quality applications. This is consistent with both the statutory requirement that the Department ensure a diversity of languages are represented to the maximum extent feasible, and the congressional emphasis in the Explanatory Statement accompanying the Department of Education Appropriations Act, 2022, on supporting language diversity. Second, in addition to soliciting applications from existing Native language instructional programs (Absolute Priority 2), the Department is soliciting applications supporting new Native language instructional programs via Absolute Priority 1. Third, the Department will not exclusively fund applicants from a single State, provided there is a sufficient number of high-quality applications (Program Requirement 3). This is consistent with the congressional emphasis in the Explanatory Statement accompanying the Department of Education Appropriations Act, 2022 on the importance of geographical diversity in grantees under this program. Together, these approaches will help ensure the program has a broad impact by funding projects supporting a variety of Native languages.

Priorities: This competition includes two absolute priorities and two competitive preference priorities. These priorities are from the notice of final priorities, requirements, definitions, and selection criteria for this program published in the **Federal Register** on July 14, 2020 (85 FR 42305) (NFP).

Absolute Priorities: For FY 2022 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet either Absolute Priority 1 or 2.

Note: The Department may create two funding slates—one for applications that meet Absolute Priority 1 and a separate slate for applications that meet Absolute Priority 2. As a result, the Secretary may fund applications out of the overall rank order, but the Department is not bound to do so. Applicants must clearly identify the specific absolute priority that the proposed project addresses in the project abstract section of the application.

These priorities are:

Absolute Priority 1: Develop and Maintain New Native American Language Programs.

To meet this priority, an applicant must propose to develop and maintain a Native American language instructional program that—

(a) Will support Native American language education and development for Native American students, as well as provide professional development for teachers and, as appropriate, staff and administrators, to strengthen the overall language and academic goals of the school or schools that will be served by the project;

(b) Will take place in a school; and

(c) Does not augment or replace a program of identical scope that was active within the last three years at the school(s) to be served.

Absolute Priority 2: Expand and Improve Existing Native American Language Programs.

To meet this priority, an applicant must propose to improve and expand a Native American language instructional program that—

(a) Will improve and expand Native American language education and development for Native American students, as well as provide professional development for teachers and, as appropriate, staff and administrators, to strengthen the overall language and academic goals of the school or schools that will be served by the project;

(b) Will continue to take place in a school; and

(c) Within the past three years has been offered at the school(s) to be served.

Competitive Preference Priorities: For FY 2022 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 7 points to an application, depending on how well an application meets Competitive Preference Priority 1, and we award an additional 5 points to an application that meets Competitive Preference Priority 2. The maximum number of competitive preference priority points is 12.

These priorities are:

Competitive Preference Priority 1: Support Project Sustainability With Title VI Indian Education Formula Grant Funds. (up to 7 points)

To meet this priority, an applicant or a partner must receive, or be eligible to receive, a formula grant under title VI of the Elementary and Secondary Education Act of 1965, as amended (ESEA), and must commit to use all or part of that formula grant to help sustain this project after the conclusion of the grant period. To meet this priority, an applicant must include in its application—

(a) A statement that indicates the school year in which the entity will begin using title VI formula grant funds to help support this project;

(b) The percentage of the title VI grant that will be used for the project, which must be at least—

(i) 20 percent of the applicant's title VI formula grant (3 points);

(ii) 40 percent of the applicant's title VI formula grant (4 points);

(iii) 60 percent of the applicant's title VI formula grant (5 points);

(iv) 80 percent of the applicant's title VI formula grant (6 points); or

(v) 100 percent of the applicant's title VI formula grant (7 points); and

(c) The timeline for obtaining parent committee input and approval of this action, if necessary.

Competitive Preference Priority 2: Preference for Indian Applicants. (0 or 5 points)

To meet this priority, an application must be submitted by an Indian Tribe, Indian organization, Bureau of Indian Education (BIE)-funded school, or Tribal College or University (TCU) that is eligible to participate in the NAL@ED program. A consortium of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 and includes an Indian Tribe, Indian organization, BIE-funded school, or TCU will also be considered eligible to meet this priority. In order to be considered a consortium application, the application must include the consortium agreement signed by all parties.

Note: The consortium agreement must state that the members designate one member of the group to apply for the grant, detail the activities that each member of the group plans to perform, and bind each member of the group to every statement and assurance made by the applicant in the application (34 CFR 75.128(a) and (b)).

Application Requirements: These application requirements are from

section 6133(c) of the ESEA (20 U.S.C. 7453) and from the NFP. For FY 2022 and any subsequent year in which we make awards from the list of unfunded applications from this competition, applicants must meet the following application requirements.

(1) *General Requirements.* An applicant must include the following information in its application—

(a) A completed information form that includes:

(i) Instructional language. The name of the Native American or Alaska Native language to be used for instruction at the school(s) supported by the eligible entity.

(ii) Students to be served. The number of students to be served by the project and the grade level(s) of targeted students in the proposed project.

(iii) Instructional hours. The number of hours of instruction per week in and through one or more Native American or Alaska Native languages currently being provided to targeted students at such school(s), if any.

(iv) Pre- and post-assessments. Whether a pre- and post-assessment of Native American language proficiency is available and, if not, the percentage of grant funds that will be used for developing such assessment.

(v) Program description. A description of how the eligible entity will support Native American language education and development, and provide professional development for staff, in order to strengthen the overall language and academic goals of the school(s) that will be served by the project; ensure the implementation of rigorous academic content that prepares all students for college and career; and ensure that students progress toward meeting high-level fluency goals in the Native American language.

(vi) Organizational information. For each school included in the project, information regarding the school's organizational governance or affiliations, specifically information about the school's governing entity (such as a local educational agency (LEA), Tribal educational agency or department, charter organization, private organization, or other governing entity); the school's accreditation status; any partnerships with institutions of higher education (IHEs); and any indigenous language schooling and research cooperatives.

(b) An assurance that for each school to be included in the project—

(i) The school is engaged in meeting State or Tribally designated long-term goals for students, as may be required by applicable Federal, State, or Tribal law;

(ii) The school provides assessments of students using the Native American or Alaska Native language of instruction, where possible;

(iii) The qualifications of all instructional and leadership personnel at such school are sufficient to deliver high-quality education through the Native American or Alaska Native language used in the school; and

(iv) The school will collect and report to the public data relative to student achievement and, if appropriate, rates of high school graduation, career readiness, and enrollment in postsecondary education or workforce development programs, of students who are enrolled in the school's programs.

(2) *Memorandum of Agreement.* Any applicant that proposes to work with a partner to carry out the proposed project must include a signed and dated memorandum of agreement that describes the roles and responsibilities of each partner to participate in the grant, including—

(i) A description of how each partner will implement the project according to the timelines described in the grant application;

(ii) The roles and responsibilities of each partner related to ensuring the data necessary to report on the Government Performance and Results Act (GPRA) indicators; [1] and

(iii) The roles and responsibilities of each partner related to ensuring that Native American language instructors can be recruited, retained, and trained, as appropriate, in a timely manner.

This memorandum of agreement must be signed no more than four months prior to the application deadline (*i.e.,* the agreement must be signed within the four months prior to the application deadline).

(3) *Applicant Engagement with Indian Tribes and Tribal Organizations.* All non-Tribal applicants must engage with appropriate officials from Tribe(s) located in the area served by the project, or with a local Tribal organization, prior to submission of an application. The engagement must provide for the opportunity for officials from Tribes or Tribal organizations to meaningfully and substantively contribute to the application. Non-Tribal applicants must submit evidence of either Tribal engagement or a letter of support from one or more Tribes or Tribal organizations. This evidence can be part of the memorandum of agreement required by Application Requirement 2 or can be uploaded as a separate attachment.

Note: If an applicant is an affected LEA that is subject to ESEA section 8538, then the LEA is required to consult with appropriate officials from Tribe(s) or Tribal organizations approved by the Tribes located in the area served by the LEA prior to its submission of an application, on the contents of the application as required under ESEA section 8538. Affected LEAs are those that have 50 percent or more of their student enrollment made up of Native American students or received an Indian education formula grant under title VI of the ESEA in the previous fiscal year that exceeds $40,000. (ESEA sec. 8538)

(4) *Certification.* An applicant that is an LEA (including a public charter school that is an LEA under State law), a school operated by the BIE, or a nontribal for-profit or nonprofit organization must submit a certification from an entity described in application requirement (4)(a), containing the assurances described in application requirement (4)(b).

(a) The certification must be from one of the following entities, on whose land the school or program is located, or that is an entity served by the school, or whose members (as defined by that entity) are served by the school:

(i) A federally recognized Indian Tribe or Tribal organization.

(ii) A TCU.

(iii) An Alaska Native Regional Corporation or an Alaska Native nonprofit organization.

(iv) A Native Hawaiian organization.

(b) The certification must state that—

(i) The school or applicant organization has the capacity to provide education primarily through a Native American or an Alaska Native language; and

(ii) There are sufficient speakers of the target language at the school or available to be hired by the school or applicant organization.

Program Requirements: For FY 2022 and any subsequent year in which we make awards from the list of unfunded applications from this competition, grantees must adhere to the following program requirements:

(1) *Native American Language Proficiency Assessment.* Grantees must administer pre- and post-assessments of Native American language proficiency to participating students. This Native American language assessment may be any relevant tool that measures student Native American language proficiency, such as oral, written, or project-based

[1] The Department notes that such reporting will be required in connection with the performance measurement requirements under 34 CFR 75.110, rather than indicators under GPRA. For further information, see section 4 (Performance Measures) under VI. Award Administration Information.

assessments, and formative or summative assessments.

(2) *Diversity of Languages.* To ensure a diversity of languages as required by statute, the Department will not fund more than one project in any competition year that proposes to use the same Native American language, assuming there are enough high-quality applications. In the event of a lack of high-quality applications in one competition year, the Department may choose to fund more than one project with the same Native American language.

(3) *Geographic Distribution.* To ensure geographic diversity, assuming there are enough high-quality applications, the Department will not exclusively fund projects that all propose to serve students in the same State in any competition year. In the event of a lack of high-quality applications in one competition year, the Department may choose to fund only applications that propose to provide services in one State.

(4) *ISDEAA Statutory Hiring Preference:*

(a) Awards that are primarily for the benefit of Indians are subject to the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638). That section requires that, to the greatest extent feasible, a grantee—

(1) Give to Indians preferences and opportunities for training and employment in connection with the administration of the grant; and

(2) Give to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452(e)), preference in the award of contracts in connection with the administration of the grant.

(b) For purposes of this section, an Indian is a member of any federally recognized Indian Tribe.

Definitions: The definitions of ''Indian organization (or Tribal organization)'' and ''Tribe'' are from the NFP. The definitions of ''Native American,'' ''Native American language,'' and ''Tribal college or university'' are from the ESEA.

Indian organization (or Tribal organization) means an organization that—

(1) Is legally established—

(i) By Tribal or inter-Tribal charter or in accordance with State or Tribal law; and

(ii) With appropriate constitution, bylaws, or articles of incorporation;

(2) Includes in its purposes the promotion of the education of Indians;

(3) Is controlled by a governing board, the majority of which is Indian;

(4) If located on an Indian reservation, operates with the sanction of or by charter from the governing body of that reservation;

(5) Is neither an organization or subdivision of, nor under the direct control of, any IHE or TCU; and

(6) Is not an agency of State or local government.

Native American means:

(1) ''Indian'' as defined in section 6151(3) of the ESEA (20 U.S.C. 7491(3)), which includes individuals who are Alaska Natives and members of federally recognized or State recognized Tribes;

(2) Native Hawaiian; or

(3) Native American Pacific Islander. (ESEA secs. 6151(3) and 8101(34))

Native American language means the historical, traditional languages spoken by Native Americans. (ESEA sec. 8101(34))

Tribal college or university means an institution that—

(1) Qualifies for funding under the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801, *et seq.*) or the Navajo Community College Act (25 U.S.C. 640a note); or

(2) Is cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note). (ESEA sec. 6133 and section 316 of the Higher Education Act of 1965, as amended)

Tribe means either a federally recognized Tribe or a State-recognized Tribe.

Program Authority: 20 U.S.C. 7453.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The NFP.

Note: The open licensing requirement in 2 CFR 3474.20 does not apply to this program.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $1,054,537.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2023 and subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $300,000–$400,000.

Estimated Average Size of Awards: $350,000.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* The following entities, either alone or in a consortium, that have a plan to develop and maintain, or to improve and expand, programs that support the entity's use of a Native American or Alaska Native language as the primary language of instruction in one or more elementary or secondary schools (or both) are eligible under this program:

(a) An Indian Tribe.

(b) A Tribal College or University (TCU).

(c) A Tribal education agency.

(d) An LEA, including a public charter school that is an LEA under State law.

(e) A school operated by the Bureau of Indian Education (BIE).

(f) An Alaska Native Regional Corporation (as described in section 3(g) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(g))).

(g) A private, Tribal, or Alaska Native nonprofit organization.

(h) A non-Tribal for-profit organization.

2.a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

c. *Administrative Cost Limitation:* Under ESEA section 6133(g), no more than five percent of funds awarded for a grant under this program may be used for administrative purposes, and for grants made using FY 2022 funds this administrative cost cap applies only to direct administrative costs, not indirect costs.

3. *Other:* Projects funded under this competition should budget for a 2-day Project Directors' meeting in Washington, DC, during each year of the project period.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264) and available at *www.federalregister.gov/d/2021-27979*, which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a DUNS number to the implementation of the UEI. More information on the phase-out of DUNS numbers is available at *www2.ed.gov/about/offices/list/ofo/docs/unique-entity-identifier-transition-fact-sheet.pdf.*

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for this competition, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public by posting them on our website, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 30 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the letter(s) of support, or the signed consortium agreement. However, the recommended page limit does apply to all of the application narrative. An application will not be disqualified if it exceeds the recommended page limit.

5. *Notice of Intent To Apply:* The Department will be able to review grant applications more efficiently if we know the approximate number of applicants that intend to apply. Therefore, we strongly encourage each potential applicant to notify us of their intent to submit an application. To do so, please email the program contact person listed under **FOR FURTHER INFORMATION CONTACT** with the subject line ''Intent To Apply,'' and include the applicant's name and a contact person's name and email address. Applicants that do not submit a notice of intent to apply may still apply for funding; applicants that do submit a notice of intent to apply are not bound to apply or bound by the information provided.

V. Application Review Information

1. *Selection Criteria.* The selection criteria are from the NFP and 34 CFR 75.210. The source of each selection criterion, and the maximum possible score for addressing each criterion and subcriterion, is included in parentheses. The maximum possible score for addressing all of the criteria in this section is 100 points.

In evaluating an application, the Secretary considers the following criteria:

(a) *Quality of the project design (32 points).*

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (9 points) (34 CFR 75.210(c)(2)(i))

(2) The extent to which the project design will ensure that students' progress toward grade-level and developmentally appropriate fluency in the Native American language. (6 points) (NFP)

(3) The extent to which the proposed project will incorporate parent engagement and participation in Native American language instruction. (6 points) (NFP)

(4) The quality of the approach to developing and administering pre- and post-assessments of student Native American language proficiency, including consultation with individuals with assessment expertise, as needed. (6 points) (NFP)

(5) The extent to which the performance feedback and continuous improvement are integral to the design of the proposed project. (5 points) (34 CFR 75.210 (c)(2)(xxi)

(b) *Quality of project services (29 points).* The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the following factors:

(1) The quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (1 point) (34 CFR 75.210(d)(2))

(2) The quality of the plan for supporting grade-level and developmentally appropriate instruction in a Native American language by providing instruction of or through the Native American language. (11 points) (NFP)

(3) The extent to which the project will provide professional development for teachers and, as appropriate, staff and administrators to strengthen the overall language proficiency and academic goals of the school(s) that will be served by the project, including cultural competence training for all staff in the school(s). (10 points) (NFP)

(4) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services. (4 points) (34 CFR 75.210(d)(3)(ix))

(5) The extent to which the percentage of the school day that instruction will be provided in the Native American language is ambitious and is reasonable for the grade level and population served. (3 points) (NFP)

(c) *Quality of project personnel (16 points).*

The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers:

(1) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (1 point) (NFP)

(2) The extent to which teachers of the Native American language who are identified as staff for this project have teaching experience and are fluent in the Native American language. (9 points) (NFP)

(3) The qualifications, including relevant training and experience, of key project personnel. (6 points) (34 CFR 75.210(e)(3)(ii))

(d) *Adequacy of resources (10 points).*

The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers:

(1) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project. (6 points) (34 CFR 75.210(f)(2)(iv))

(2) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support. (4 points) (34 CFR 75.210(f)(2)(vi))

(e) *Quality of the management plan (13 points).* The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (8 points) (34 CFR 75.210(g)(2)(i))

(2) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project. (5 points) (34 CFR 75.210(g)(2)(iv))

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:*

Consistent with 2 CFR 200.206, before awarding grants under this program, the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management (SAM). You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we will notify you.

2. *Administrative and National Policy Requirements:*

We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the

necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

4. *Performance Measures:* For the purpose of Department reporting under 34 CFR 75.110, we have established the following performance measures for the NAL@ED program:

(a) The number and percentage of students who attain proficiency in a Native language as determined by each grantee through pre- and post-assessments of Native language proficiency;

(b) The number and percentage of participating students who make progress in learning a Native language, as determined by each grantee, through pre- and post-assessments of Native language proficiency;

(c) The number and percentage of participating students who show an improvement in academic outcomes, as measured by academic assessments or other indicators; and

(d) The difference between the average daily attendance of participating students and the average daily attendance of all students in the comparison group (*e.g.,* school, LEA, Tribe, or other).

These measures constitute the Department's indicators of success for this program. Consequently, we advise an applicant for a grant under this program to carefully consider these measures in conceptualizing the approach to, and evaluation for, its proposed project. Each grantee will be required to provide, in its annual performance and final reports, data about its progress in meeting these measures.

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Ruth E. Ryder,

Deputy Assistant Secretary for Policy and Programs Office of Elementary and Secondary Education.

[FR Doc. 2022–12016 Filed 6–2–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years, an information collection request with the Office of Management and Budget (OMB).

DATES: Comments regarding this proposed information collection must be received on or before August 2, 2022. If you anticipate difficulty in submitting comments within that period, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

ADDRESSES: Written comments may be sent to Maria Vargas, EE–5A/Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, by fax at (202) 586–8177, or by email at *maria.vargas@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Maria Vargas, EE–5A/Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, by fax at (202) 586–8177, or by email at *maria.vargas@ee.doe.gov* or by telephone (202) 586–7899.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

This information collection request contains:

(1) *OMB No.:* 1910–5141;

(2) *Information Collection Request Title:* Department of Energy Better Buildings Initiative Voluntary Pledge Program;

(3) *Type of Review:* Extension with Revision of a Currently Approved Collection;

(4) *Purpose:* This Information Collection Request applies to four Department of Energy (DOE) voluntary leadership initiatives that fall under DOE's Better Buildings Initiative: (1) The Better Buildings Challenge; (2) the Better Buildings, Better Plants Program (Better Plants); (3) the Better Buildings Alliance; and (4) the Better Climate Challenge. Five new information collection instruments are proposed so that Better Climate Challenge partners can share details about their projects and submit annual portfolio-wide emissions reductions data, and additionally so that the program may collect updates regarding partner's waste reduction progress. Other pre-existing collection forms are being amended for clarity and to reduce burden on respondents. Also, the total number of respondents and response time for individual program areas is being adjusted to align with practical experience and to account for changes to the program growth over time. For example, because many Better Buildings and Better Plants partners have joined the Better Climate Challenge, we anticipate a reduction in the amount time spent on Better Buildings and Better Plants documents as these organizations focus their efforts on the Better Climate Challenge.

The leadership initiatives in the Better Buildings Initiative covered under this Information Collection Request are intended to drive greater energy, water efficiency, and emissions reduction in the commercial, public, residential, data center, and industrial marketplace to reduce pollution, cut costs, and create jobs. This is accomplished by highlighting the ways participants overcome market barriers to greater efficiency and decarbonization with replicable solutions. The program showcases real solutions and partners with industry leaders to better understand policy and technical opportunities. There are three types of information to be collected from primary participants, also referred to as ''Partners:'' (1) Background data, including contact information, a partnership agreement form, logo(s), information needed to support public announcements, updates on participants' showcase projects, and an energy savings/emissions reductions goals; (2) Portfolio-wide energy performance information; and (3) Information on market innovations participants are including in their energy efficiency and decarbonization processes. Background data is primarily used to develop website content that is publically available. Portfolio-wide facility-level energy performance and emissions reduction information is used by DOE to measure the participants' progress in meeting the goals of the program, as well as to aggregate the change in energy and decarbonization performance and related metrics for the entire program. Information on market innovation is used to highlight successful strategies participants use to overcome challenges, and is made publicly available. Additional background information is being collected from ''Allies,'' which are financial organizations that make a public commitment to support energy efficiency and decarbonization. Background information including name, dollars committed to the market, and a company logo is also used to develop publically available website content. Responses to the DOE's Information Collection Request are voluntary.

(5) *Annual Estimated Number of Respondents:* 841.

(6) *Annual Estimated Number of Total Responses:* 841.

(7) *Annual Estimated Number of Burden Hours:* 1,854.25.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $84,869.

Statutory Authority: Section 421 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17081); Section 911 of the Energy Policy Act of 2005, as amended (42 U.S.C. 16191).

Signing Authority

This document of the Department of Energy was signed on May 12, 2022, by Maria Vargas, Director of Better Buildings, Office of Energy Efficiency & Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on May 31, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–11950 Filed 6–2–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL22–60–000.
Applicants: Coalition of MISO Transmission Customers v. Midcontinent Independent System Operator, Inc.
Description: Complaint of Coalition of MISO Transmission Customers.
Filed Date: 5/26/22.
Accession Number: 20220526–5257.
Comment Date: 5 p.m. ET 6/15/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3050–009; ER10–3053–009.
Applicants: Whitewater Hill Wind Partners, LLC, Cabazon Wind Partners, LLC.
Description: Supplement to March 3, 2022 Notice of Non-Material Change in Status of Cabazon Wind Partners, LLC, et al.
Filed Date: 5/26/22.
Accession Number: 20220526–5192.
Comment Date: 5 p.m. ET 6/16/22.

Docket Numbers: ER20–2051–003.
Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.
Description: Compliance filing: New York Independent System Operator, Inc. submits tariff filing per 35: Niagara Mohawk Order No. 864 Compliance Filing in Response to March 31 Order to be effective 1/27/2020.
Filed Date: 5/27/22.
Accession Number: 20220527–5055.
Comment Date: 5 p.m. ET 6/17/22.

Docket Numbers: ER21–1223–002.
Applicants: Tucson Electric Power Company.
Description: Compliance filing: TEP Order 864 Compliance Filing to be effective 1/27/2020.
Filed Date: 5/27/22.
Accession Number: 20220527–5121.
Comment Date: 5 p.m. ET 6/17/22.

Docket Numbers: ER22–1955–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2022–05–27_Errata to Att FF Upgrades related to Competitive Transmission Process to be effective 7/25/2022.
Filed Date: 5/27/22.
Accession Number: 20220527–5221.
Comment Date: 5 p.m. ET 6/17/22.

Docket Numbers: ER22–1966–000.

Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Amendment to Rate Schedule Nos. 221 and 222 to be effective 7/26/2022.
Filed Date: 5/26/22.
Accession Number: 20220526–5230.
Comment Date: 5 p.m. ET 6/16/22.

Docket Numbers: ER22–1967–000.
Applicants: Duke Energy Carolinas, LLC.
Description: Tariff Amendment: DEC–WCU RS 545 Cancellation to be effective 7/26/2022.
Filed Date: 5/26/22.
Accession Number: 20220526–5233.
Comment Date: 5 p.m. ET 6/16/22.

Docket Numbers: ER22–1968–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2022–05–27_SA 2465 Rock Aetna Power-Northern States Power 3rd Revised GIA (G621) to be effective 5/20/2022.
Filed Date: 5/27/22.
Accession Number: 20220527–5022.
Comment Date: 5 p.m. ET 6/17/22.

Docket Numbers: ER22–1969–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3211R4 North Iowa Municipal Electric Cooperative Association NITSA and NOA to be effective 5/1/2022.
Filed Date: 5/27/22.
Accession Number: 20220527–5047.
Comment Date: 5 p.m. ET 6/17/22.

Docket Numbers: ER22–1970–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original NSA, Service Agreement No. 6482; Queue No. AD1–119 to be effective 4/27/2022.
Filed Date: 5/27/22.
Accession Number: 20220527–5054.
Comment Date: 5 p.m. ET 6/17/22.

Docket Numbers: ER22–1971–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Notice of Cancellation Re: SA No. 5420 and 5421 NITSAs among PJM and NRG to be effective 6/1/2022.
Filed Date: 5/27/22.
Accession Number: 20220527–5125.
Comment Date: 5 p.m. ET 6/17/22.

Docket Numbers: ER22–1972–000.
Applicants: Duke Energy Carolinas, LLC.
Description: § 205(d) Rate Filing: DEC–NCEMC SA 210 NITSA to be effective 5/1/2022.
Filed Date: 5/27/22.
Accession Number: 20220527–5132.
Comment Date: 5 p.m. ET 6/17/22.

Docket Numbers: ER22–1973–000.
Applicants: FirstEnergy Service Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: FirstEnergy Service Company submits tariff filing per 35.13(a)(2)(iii: ATSI Submits Revised IA No. 3993 to be effective 7/27/2022.
Filed Date: 5/27/22.
Accession Number: 20220527–5145.
Comment Date: 5 p.m. ET 6/17/22.

Docket Numbers: ER22–1974–000.
Applicants: Evergy Kansas Central, Inc.
Description: § 205(d) Rate Filing: Revision, Formula Rate Agreements, Common Stock to be effective 8/1/2022.
Filed Date: 5/27/22.
Accession Number: 20220527–5149.
Comment Date: 5 p.m. ET 6/17/22.

Docket Numbers: ER22–1975–000.
Applicants: Evergy Kansas Central, Inc.
Description: § 205(d) Rate Filing: Update Common Stock Section to be effective 8/1/2022.
Filed Date: 5/27/22.
Accession Number: 20220527–5154.
Comment Date: 5 p.m. ET 6/17/22.

Docket Numbers: ER22–1976–000.
Applicants: Evergy Generating, Inc.
Description: § 205(d) Rate Filing: Revision, Appendix A, Purchase Power Agreement to be effective 8/1/2022.
Filed Date: 5/27/22.
Accession Number: 20220527–5159.
Comment Date: 5 p.m. ET 6/17/22.

Docket Numbers: ER22–1977–000.
Applicants: Otter Tail Power Company.
Description: Tariff Amendment: Notice of Cancellation of Operating Services Agreement No. 57 with DLPU to be effective 3/4/2022.
Filed Date: 5/27/22.
Accession Number: 20220527–5163.
Comment Date: 5 p.m. ET 6/17/22.

Docket Numbers: ER22–1978–000.
Applicants: American Electric Power Service Corporation, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: American Electric Power Service Corporation submits tariff filing per 35.13(a)(2)(iii: AEP Submits IA No. 6385 to be effective 5/1/2022.
Filed Date: 5/27/22.
Accession Number: 20220527–5164.
Comment Date: 5 p.m. ET 6/17/22.

Docket Numbers: ER22–1979–000.
Applicants: El Paso Electric Company.
Description: § 205(d) Rate Filing: Depreciation Rate Update Associated with Rate Schedule No. 18 to be effective 8/1/2022.
Filed Date: 5/27/22.
Accession Number: 20220527–5182.
Comment Date: 5 p.m. ET 6/17/22.

Docket Numbers: ER22–1980–000.
Applicants: Deuel Harvest Wind Energy LLC.
Description: Initial rate filing: Deuel Harvest Wind Reactive Service Tariff Filing to be effective 8/1/2022.
Filed Date: 5/27/22.
Accession Number: 20220527–5185.
Comment Date: 5 p.m. ET 6/17/22.

Docket Numbers: ER22–1981–000.
Applicants: Southwestern Public Service Company.
Description: § 205(d) Rate Filing: SPS–GSEC–RBEC–IA Hartmoore 728—0.0.0 to be effective 7/26/2022.
Filed Date: 5/27/22.
Accession Number: 20220527–5194,
Comment Date: 5 p.m. ET 6/17/22.

Docket Numbers: ER22–1982–000.
Applicants: Great Prairie Wind, LLC.
Description: Baseline eTariff Filing: Great Prairie Wind, LLC Application for Market-Based Rate Authority to be effective 7/27/2022.
Filed Date: 5/27/22.
Accession Number: 20220527–5204.
Comment Date: 5 p.m. ET 6/17/22.

Docket Numbers: ER22–1983–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2022–05–27_Distribution of ZDB funds for excess auction revenue in PRA to be effective 6/1/2022.
Filed Date: 5/27/22.
Accession Number: 20220527–5215.
Comment Date: 5 p.m. ET 6/17/22.

Docket Numbers: ER22–1984–000.
Applicants: Northern States Power Company, a Minnesota corporation.
Description: § 205(d) Rate Filing: 2022–05–27 NSP–GRE–CIAC-Lena Tap-698–0.0.0 to be effective 5/28/2022.
Filed Date: 5/27/22.
Accession Number: 20220527–5238.
Comment Date: 5 p.m. ET 6/17/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/*

docs-filing/efiling/filing-req.pdf. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 27, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–11931 Filed 6–2–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1927–140]

PacifiCorp; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Capacity Amendment of License.

b. *Project No:* P–1927–140.

c. *Date Filed:* February 25, 2022.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* North Umpqua Hydroelectric Project.

f. *Location:* The project is located on the North Umpqua River and two of its tributaries, the Clearwater River and Fish Creek, in Douglas County, about 60 miles east of Roseburg in southwestern Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Steve Albertelli, PacifiCorp, 925 South Grape Street, Building 5, Medford, OR 97501, (541) 776–6676.

i. *FERC Contacts:* Zeena Aljibury, (202) 502–6065, *zeena.aljibury@ferc.gov,* or Brian Bartos, (202) 502–6679, *brian.bartos@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance date of this notice by the Commission.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). 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. The first page of any filing should include the docket number P–1927–140. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* PacifiCorp proposes to amend the project license to construct, operate, and maintain new pumped storage facilities connecting the existing Toketee and Fish Creek developments. The new infrastructure will include a pump with an approximately 969-foot-long, 48-inch conduit connecting the Toketee and Fish Creek penstocks and spanning the North Umpqua River. PacifiCorp states that the new infrastructure will create a pump storage system utilizing the Toketee Reservoir as the source of water and the existing Fish Creek forebay as the upper storage reservoir. PacifiCorp states the upgrade is not expected to increase the total installed capacity of the Project. It will use the existing 11-megawatt Fish Creek Powerhouse for pumped storage generation.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *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. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 385.2010.

Dated: May 27, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–11966 Filed 6–2–22; 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: PR22–45–000.

Applicants: Targa SouthTex Mustang Transmission Ltd.

Description: § 284.123 Rate Filing: 311 Statement of Operating Conditions to be effective 5/26/2022.

Filed Date: 5/26/22.

Accession Number: 20220526–5121.
Comments/Protests Due: 5 p.m. ET 6/16/22.

Docket Numbers: PR22–46–000.
Applicants: Targa SouthTex Transmission LP.
Description: § 284.123 Rate Filing: 311 Statement of Operating Conditions to be effective 5/26/2022.
Filed Date: 5/26/22.
Accession Number: 20220526–5123.
Comments/Protests Due: 5 p.m. ET 6/16/22.

Docket Numbers: RP22–933–000.
Applicants: TransColorado Gas Transmission Company LLC.
Description: § 4(d) Rate Filing: Qtrly FL&U Update to be effective 7/1/2022.
Filed Date: 5/26/22.
Accession Number: 20220526–5023.
Comment Date: 5 p.m. ET 6/7/22.

Docket Numbers: RP22–934–000.
Applicants: Gulfstream Natural Gas System, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate—Amended Central Fl Gas 9000107 to be effective 6/1/2022.
Filed Date: 5/26/22.
Accession Number: 20220526–5027.
Comment Date: 5 p.m. ET 6/7/22.

Docket Numbers: RP22–935–000.
Applicants: Colorado Interstate Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Fuel and Lost Unaccounted For to be effective 7/1/2022.
Filed Date: 5/26/22.
Accession Number: 20220526–5045.
Comment Date: 5 p.m. ET 6/7/22.

Docket Numbers: RP22–936–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (SoCal Jun–Aug 2022) to be effective 6/1/2022.
Filed Date: 5/26/22.
Accession Number: 20220526–5112.
Comment Date: 5 p.m. ET 6/7/22.

Docket Numbers: RP22–937–000.
Applicants: Wyoming Interstate Company, L.L.C.
Description: § 4(d) Rate Filing: Transportation Agreement Filing (Continental Replacment TSA) to be effective 6/1/2022.
Filed Date: 5/26/22.
Accession Number: 20220526–5120.
Comment Date: 5 p.m. ET 6/7/22.

Docket Numbers: RP22–938–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Non-Conforming Agreements Update (SRP) to be effective 6/1/2022.
Filed Date: 5/26/22.
Accession Number: 20220526–5193.
Comment Date: 5 p.m. ET 6/7/22.

Docket Numbers: RP22–939–000.
Applicants: Caledonia Energy Partners, L.L.C.
Description: Compliance filing: Caledonia Energy Notice of Change in Circumstances to be effective N/A.
Filed Date: 5/26/22.
Accession Number: 20220526–5235.
Comment Date: 5 p.m. ET 6/7/22.

Docket Numbers: RP22–940–000.
Applicants: Freebird Gas Storage, L.L.C.
Description: Compliance filing: Freebird Gas Storage Notice of Change in Circumstances to be effective N/A.
Filed Date: 5/26/22.
Accession Number: 20220526–5239.
Comment Date: 5 p.m. ET 6/7/22.

Docket Numbers: RP22–941–000.
Applicants: Mississippi Hub, LLC.
Description: Compliance filing: Mississippi Hub Notice of Change in Circumstances to be effective N/A.
Filed Date: 5/26/22.
Accession Number: 20220526–5240.
Comment Date: 5 p.m. ET 6/7/22.

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: May 27, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–11932 Filed 6–2–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2336–094]

Georgia Power Company; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.
b. *Project No.:* 2336–094.
c. *Date filed:* January 3, 2022.
d. *Applicant:* Georgia Power Company.
e. *Name of Project:* Lloyd Shoals Hydroelectric Project (Lloyd Shoals Project or project).
f. *Location:* On the Ocmulgee River, in Butts, Henry, Jasper, and Newton Counties, Georgia. The project does not occupy Federal lands.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).
h. *Applicant Contact:* Ms. Courtenay R. O'Mara, P.E., Hydro Licensing and Compliance Supervisor, Southern Company Generation, 241 Ralph McGill Boulevard NE, BIN 10193, Atlanta, Georgia 30308–3374; 404–506–7219 or *cromara@southernco.com.*
i. *FERC Contact:* Navreet Deo at (202) 502–6304, or *navreet.deo@ferc.gov.*
j. *Deadline for filing motions to intervene and protest, comments, recommendations, preliminary terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866)

208–3676 (toll free), or (202) 502–8659 (TTY).

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. The first page of any filing should include docket number P–2336–094.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The existing Lloyd Shoals Project consists of: (1) A 4,750-acre impoundment, known as Lake Jackson, with a gross storage capacity of 107,000 acre-feet at a normal maximum pool elevation of 530 feet Plant Datum (PD); [1] (2) a 1,600-foot-long, 105-foot-high concrete gravity dam that consists of: (a) A 143-foot-long non-overflow section; (b) a 198-foot-long powerhouse intake section with six, 12-foot-high by 12-foot-wide octagonal water passages used to supply the turbine-generating units; (c) a 728.5-foot-long spillway section that includes: (i) A 30-foot-wide section containing a 19-foot-high, 12-foot-wide trash gate structure; (ii) a 420-foot-wide section with 5-foot-high Obermeyer gates; [2] and (iii) a 180-foot-wide section with 2-foot-high Obermeyer gates; and (d) a 530-foot-long earth embankment tie-in; (3) a concrete and brick powerhouse that contains six, horizontal Francis turbine-generator units, each rated at 3.0-megawatts (MW), for a total authorized installed capacity of 18–MW; (4) a 2,100-foot-long saddle dike located approximately 3,000 feet upstream of the east end of the main dam; (5) a 500-foot-long auxiliary spillway, topped with 10-foot-high flashboards, located 900 feet southwest of the main dam, that includes a 560-foot-long, 6-foot-high sacrificial earth embankment; (6) two, 2.3-kilovolt generator leads that connect the powerhouse to a substation located at the west dam abutment; and (7) appurtenant facilities. Georgia Power does not propose any modifications to the existing project facilities.

The Lloyd Shoals Project operates in a modified run-of-river mode to generate power during periods of peak demand. The reservoir elevation is maintained between 530 feet PD and 527 feet PD year-round, excluding planned drawdowns and drought. The project provides a continuous minimum flow of 400 cubic feet per second, or inflow, whichever is less, to the Ocmulgee River for the protection and enhancement of fish and wildlife resources. Georgia Power does not propose any changes to existing project operations.

Georgia Power proposes environmental measures to improve and enhance water quality, aquatic habitat, and recreation facilities. Georgia Power also proposes plans for the protection of shoreline resources and historic properties.

m. A copy of the application may be viewed on the Commission's website at *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. For assistance, contact FERC Online Support.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Prescriptions Due	April 2022.
Reply Comments Due	June 2022.
Commission Issues Environmental Document	October 2022.
Comments on Environmental Document Due	November 2022.

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

q. *The applicant must file no later than 60 days following the date of*

[1] Plant Datum equals mean sea level elevation (North American Vertical Datum of 1988; NAVD88) plus 0.45 feet.

[2] The Obermeyer gate system consists of a row of steel gate panels supported on their downstream side by inflatable air bladders. By controlling pressure in the air bladders (*i.e.* fully inflate or deflate), the reservoir elevation maintained by the gate system can be adjusted.

issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification. Please note that the certification request must comply with 40 CFR 121.5(b), including documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request. Please also note that the certification request must be sent to the certifying authority and to the Commission concurrently.

Dated: May 26, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–11867 Filed 6–2–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD10–12–013]

Increasing Market and Planning Efficiency Through Improved Software; Supplemental Notice of Technical Conference on Increasing Real-Time and Day-Ahead Market and Planning Efficiency Through Improved Software

As first announced in the Notice of Technical Conference issued in this proceeding on February 24, 2022, Commission staff will convene a technical conference on June 21, 22, and 23, 2022 to discuss opportunities for increasing real-time and day-ahead market and planning efficiency of the bulk power system through improved software. Attached to this Supplemental Notice is a final agenda for the technical conference and speakers' summaries of their presentations.

While the intent of the technical conference is not to focus on any specific matters before the Commission, some conference discussions might include topics at issue in proceedings that are currently pending before the Commission, including topics related to capacity valuation methodologies for renewable, hybrid, or storage resources. These proceedings include, but are not limited to:

PJM Interconnection, L.L.C. Docket No. EL21–83–000

California Independent System Operator Corp. Docket No. ER21–2455–000

New York Independent System Operator, Inc. Docket No. ER21–2460–000

ISO New England, Inc. Docket No. ER22–983–000

PJM Interconnection, L.L.C. Docket No. ER22–962–000

Southwest Power Pool, Inc. Docket No. ER22–1697–000

Midcontinent Independent System Operator, Inc. Docket No. ER22–1640–000

ISO New England, Inc. Docket No. EL22–42–000

Southwest Power Pool, Inc. Docket No. ER22–379–000

PJM Interconnection, L.L.C. Docket No. ER22–1200–000

The conference will take place virtually via WebEx, with remote participation from both presenters and attendees. Further details on remote attendance and participation will be released prior to the conference. Attendees must register through the Commission's website on or before June 10, 2022.[1] WebEx connections may not be available to those who do not register.

The Commission will accept comments following the conference, with a deadline of July 29, 2022.

There is an ''eSubscription'' link on the Commission's website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For further information about these conferences, please contact:

Sarah McKinley (Logistical Information), Office of External Affairs, (202) 502–8004, *Sarah.McKinley@ferc.gov*.

Alexander Smith (Technical Information), Office of Energy Policy and Innovation, (202) 502–6601, *Alexander.Smith@ferc.gov*.

[1] The attendee registration form is located at *https://www.surveymonkey.com/r/SHFLFKV*.

Dated: May 27, 2022.

Kimberly D. Bose,

Secretary.

Technical Conference: Increasing Real-Time and Day-Ahead Market Efficiency Through Improved Software

Agenda

AD10–12–013

June 21–23, 2022

Tuesday, June 21, 2022

10:45 a.m. Introduction

Thomas Dautel, Federal Energy Regulatory Commission (*Washington, DC*)

Tuesday, June 21, 2022

11:00 a.m. Session T1

Enhancing Energy Assessment for ISO New England

Jinye Zhao, Principal Analyst, ISO New England (*Holyoke, MA*)

Tongxin Zheng, Director, ISO New England (*Holyoke, MA*)

Mingguo Hong, Principal Analyst, ISO New England (*Holyoke, MA*)

Song Zhang, Lead Analyst, ISO New England (*Holyoke, MA*)

Thomas Knowland, Manager, ISO New England (*Holyoke, MA*)

Mallory Waldrip, Lead Energy Security Analyst, ISO New England (*Holyoke, MA*)

Cascading analysis for bulk power system operations

Slava Maslennikov, Technical Manager, ISO New England (*Holyoke, MA*)

Xiaochuan Luo, Manager, ISO New England (*Holyoke, MA*)

Mingguo Hong, Principal Analyst, ISO New England (*Holyoke, MA*)

Tongxin Zheng, Director, ISO New England (*Holyoke, MA*)

Transmission Outage Predictions to Improve Operational Resilience and Situation Awareness

Mingguo Hong, Principal Analyst, ISO New England (*Holyoke, MA*)

Xiaochuan Luo, Manager, ISO New England (*Holyoke, MA*)

Slava Maslennikov, Technical

Manager, ISO New England (*Holyoke, MA*)
Tongxin Zheng, Director, ISO New England (*Holyoke, MA*)

12:30 p.m. Lunch

1:30 p.m. Session T2

Improving uncertainty management through ancillary service products
Yonghong Chen, Consulting Advisor, MISO (*Carmel, IN*)
Benefit Evaluation of Multi-period Market Clearing
Jinye Zhao, Principal Analyst, ISO New England (*Holyoke, MA*)
Tongxin Zheng, Director of Advanced Technology Solutions, ISO New England (*Holyoke, MA*)
Jiachun Guo, Principal Analyst, ISO New England (*Holyoke, MA*)
Dane Schiro, Lead Analyst, ISO New England (*Holyoke, MA*)
Flexible Ramping Product Enhancements
Guillermo Bautista Alderete, Director of Market Analysis and Forecasting, California ISO (*Folsom, CA*)
Co-optimization of Reserve Requirements and Scheduling with Energy and Transmission Security
Matthew Musto, Technical Specialist, New York ISO and Hitachi Energy (*Rensselaer, NY*)
Edward O. Lo, Consultant, Hitachi Energy (*Rensselaer, NY*)

Tuesday, June 21, 2022

3:30 p.m. Break

4:00 p.m. Session T3

Jointly-Owned Unit Modeling
Tomas Tinoco De Rubira, Sr Power Systems Engineer—Development, California ISO (*Folsom, CA*)
Yannick Degeilh, Senior Power Systems Engineer, California ISO (*Folsom, CA*)
Better Operating Reserves Modeling to Accommodate Duct Burner-Equipped Combined Cycle Generators
John Meyer, Senior Energy Market Engineer, New York ISO (*Rensselaer, NY*)
Iiro Harjunkoski, Researcher, Hitachi Energy (*Mannheim, Germany*)
Energy Storage Resource Modeling Enhancements in CAISO Markets
Khaled Abdul-Rahman, Vice President of Power Systems and Market Technology, California ISO (*Folsom, CA*)
Tomas Tinoco De Rubira, Sr Power Systems Engineer—Development, California ISO (*Folsom, CA*)
Gabe Murtaugh, storage Sector Manager, California ISO (*Folsom, CA*)
Maintain Grid Reliability from Operations Planning to Real-time
Pengwei Du, Supervisor—Resource Forecasting and Analysis, ERCOT (*Taylor, TX*)

6:00 p.m. Adjourn

Wednesday, June 22, 2022

9:45 a.m. Introduction

10:00 a.m. Session W1

Practical challenges with the large penetration of Energy Storage Resources including SOC optimization, Pricing, Ancillary Services and Hybrid modeling within Production Costing software
Brian Thomas, Principal Engineer, PowerGEM LLC (*Clifton Park, NY*)
Boris Gisin, President, PowerGEM LLC (*Clifton Park, NY*)
Impact of Market Bidding and Dispatch Model over Energy Storage Utilization
Bolun Xu, Assistant Professor, Columbia University (*New York, NY*)
Ningkun Zheng, Research Assistant, Columbia University (New York, NY)
Joshua Jaworski, Research Assistant, Columbia University (New York, NY)
Gabe Murtaugh, Storage Sector Manager, California ISO (Folsom, CA)
Market design and cost recovery in a simple 100% RES system: Analytical insights
Guillaume Tarel, Engineer, Hydro Québec (*Montréal, Canada*)
Audun Botterud, Principal Research Scientist, Massachusetts Institute of Technology (*Cambridge, MA*)
Magnus Korpås, Professor, Norwegian University of Science and Technology (*Trondheim, Norway*)

11:30 p.m. Lunch

12:30 p.m. Session W2

Key concepts to promote operational flexibility: Comparison of approaches and recommendations
Erik Ela, Program Manager, Electric Power Research Institute (*Denver, CO*)
Phil de Mello, Senior Technical Leader, Electric Power Research Institute (*Davis, CA*)
Nikita Singhal, Technical Leade, Electric Power Research Institute (*Palo Alto, CA*)
Ben Hobbs, Pofessor, Johns Hopkins University (*Baltimore, MD*)
Mahdi Mehrtash, Assistant Research Professor, Johns Hopkins University (*Baltimore, MD*)
James Kim, Energy Policy Project Scientist, Lawrence Berkeley National Laboratory (*Berkeley, CA*)
Miguel Heleno, Research Scientist, Lawrence Berkeley National Laboratory (*Berkeley, CA*)
Price Formation in Zero-Carbon Electricity Markets: A Review of Challenges and Solutions
Zhi Zhou, Principal Computational Scientist, Argonne National Laboratory (*Lemont, IL*)
Audun Botterud, Principal Energy System Engineer, Argonne National Laboratory (*Lemont, IL*)
Todd Lovin, Team Lead, Argonne National Laboratory (*Lemont, IL*)
Risk-Aware Wind Bids with Distributed Optimization and Central Dispatch
Daniel Shen, Graduate Student, Massachusets Institute of Technology (*Cambridge MA*)
Marija Ilic, Senior Research Scientist, Massachusets Institute of Technology (*Cambridge, MA*)
Impacts of Multi-Interval Real-Time Dispatch on Generator Investment Incentives in PJM
Sushant Varghese, Graduate Research Assistant, Pennsylvania State University (*State College, PA*)
Anthony Giacomoni, Lead Market Strategist, PJM Interconnection LLC (*Audubon, PA*)
Aravind Retna Kumar, Graduate Research Assistant, Pennsylvania State University (*University Park, PA*)
Shailesh Wasti, Graduate Research Assistant, Pennsylvania State University (*University Park, PA*)
Mort Webster, Professor, Pennsylvania State University (*University Park, PA*)
Transitioning to Linked Swing-Contract Markets for Net-Zero 2050
Leigh Tesfatsion, Research Professor of Economics, Courtesy Research Professor of Electrical & Computer Engineering, Iowa State University (*Ames, IA*)

3:00 p.m. Break

3:30 p.m. Session W3

Assessing energy adequacy through scenario development for extreme events
Aidan Tuohy, Program Manager, Electric Power Research Institute (*Chicago, IL*)
Eamonn Lannoye, Program Manager, EPRI Europe (*Dublin, Ireland*)
Juan Carlos Martin, Senior Engineer, EPRI Europe, (*Madrid, Spain*)
Erik Smith, Engineer/Scientist III, Electric Power Research Institute (*Palo Alto, CA*)
Improving grid planning by modeling correlated generator failures
Dr. Sinnott Murphy, Research Engineer, National Renewable

Energy Laboratory (*Golden, CO*)
Integrated Modeling Framework For Multi-energy Systems' Planning
Violette Berge, Vice President, Artelys Canda Inc. (*Montréal, Canada*)
Tobias Bossmann, Project Director, Artelys Canada Inc. (*Montréal, Canada*)

5:00 p.m. Adjourn

Thursday, June 23, 2022

9:45 a.m. Introduction

10:00 a.m. Session H1

Real-Time Demand Response Market Co-Optimized with Conventional Energy Market
Bala Venkatesh, Professor and Director, Ryerson University (*Toronto, Ontario*)
Jessie Ma, Research Fellow, Centre for Urban Energy, Ryerson University (*Toronto, Ontario*)
Electricity retail rate design in a decarbonizing power system: an analysis of time-of-use pricing
Tim Schittekatte, Postdoctoral Associate, Massachusetts Institute of Technology (*Cambridge, MA*)
Dharik Mallapragada, Research Scientist, Massachusetts Institute of Technology (*Cambridge, MA*)
Richard Schmalensee, Professor of Economics, Emeritus, Massachusetts Institute of Technology (*Cambridge, MA*)
Paul Joskow, Professor of Economics, Emeritus, Massachusetts Institute of Technology (*Cambridge, MA*)
Improving Software to Allow End-users to Drive Impactful Procurement Decisions
Bryn Baker, Senior Director, Policy Innovation, Clean Energy Buyers Association (*Washington, DC*)
Latent distribution system flexibility offers bulk power system opportunities
Philip Court, Product and Company Strategist, Ecogy Energy (*Brooklyn, NY*)

12:00 p.m. Lunch

1:00 p.m. Session H2

Using E3's RESERVE Machine Learning Model to Advance the Calculation of Subhourly Ancillary Services Needs in Deeply Renewable Grids
Arne Olson, Senior Partner, Energy and Environmental Economics, Inc. (*San Francisco, CA*)
John Stevens, Senior Managing Consultant, Energy and Environmental Economics, Inc. (*San Francisco, CA*)
Jimmy Nelson, Associate Director, Energy and Environmental Economics, Inc. (*San Francisco, CA*)
Yuchi Sun, Senior Consultant, Energy and Environmental Economics, Inc. (*San Francisco, CA*)
Synergistic Integration of Machine Learning and Mathematical Optimization for Unit Commitment
Jianghua Wu, PhD student, University of Connecticut (*Storrs, CT*)
Peter B. Luh, Professor, University of Connecticut (*Storrs, CT*)
Yonghong Chen, Senior Engineer, Midcontinent ISO (*Carmel, IN*)
Bing Yan, Assistant Professor, Rochester Institute of Technology (*Rochester, NY*)
Mikhail A. Bragin, Research Assistant Professor, University of Connecticut (*Storrs, CT*)
Congestion and Overload Mitigation using Optimal Transmission Reconfigurations—Experience in MISO and SPP
Pablo A. Ruiz, CEO and CTO, NewGrid, Inc. (*Somerville, MA*)
Paola Caro, Principal Engineer, NewGrid, Inc. (*Somerville, MA*)
Mitchell Myhre, Manager—Transmission Planning and Regulatory Relations, Alliant Energy (*Madison, WI*)
Rodica Donaldson, Senior Director—Transmission Strategy & Analytics, EDF Renewables (*San Diego, CA*)
Xiaoguang Li, Director of Product, NewGrid, Inc. (*Somerville, MA*)
Demonstration of Potential Data/Calculation Workflows Under FERC Order No. 881's Ambient-Adjusted Rating (AAR) Requirements
Lisa Sosna, Economist, FERC *(Washington, DC)*
Tom Dautel, Deputy Director, Division of Economic and Technical Analysis, FERC *(Washington, DC)*
Ken Fenton, Physical Scientist, Global Systems Laboratory, National Oceanic and Atmospheric Administration *(Boulder, CO)*

3:00 p.m. Break

3:30 p.m. Session H3

GO Competition Challenge 2: Analysis and Lessons Learned
Brent Eldridge, Electrical Engineer, Pacific Northwest National Laboratory' (*Baltimore, MD*)
Stephen Elbert, Computational Scientist, Pacific Northwest National Laboratory (*Richland, WA*)
Arun Veeramany, Data Scientist, Pacific Northwest National Laboratory (*Richland, WA*)
Hans Mittelmann, Professor, Arizona State University (*Tempe, AZ*)
Jesse Holzer, Mathematician, Pacific Northwest National Laboratory (*Richland, WA*)
GO Competition Challenge 3: Goals and Formulation
Jesse Holzer, Mathematician, Pacific Northwest National Laboratory (*Richland, WA*)
Brent Eldridge, Electrical Engineer, Pacific Northwest National Laboratory (*Baltimore, MD*)
Stephen Elbert, Advisor, Pacific Northwest National Laboratory (*Richland, WA*)
Solving GO competition ACOPF problems
Daniel Bienstock, Professor, Columbia University (*New York, NY*)
Richard Waltz, Senior Scientist, Artelys, Inc. (*Chicago, IL*)
A Profit Maximizing Security-Constrained IV–AC Optimal Power Flow & Global Solution
Amro M. Farid, Visiting Associate Professor, MIT Mechanical Engineering (*Cambridge, MA*)
ABSCoRES, managing risk and uncertainty on electricity systems using Banking Scoring and Rating methodologies
Alberto J. Lamadrid L., Associate Professor, Lehigh University (*Bethlehem, PA)*

5:30 p.m. Adjourn

Conference Abstracts

Session T1 (Tuesday, June 21, 11:00 a.m., WebEx)

Enhancing Energy Assessment for ISO New England

Dr. Jinye Zhao, Principal Analyst, ISO New England (Holyoke, MA)
Dr. Tongxin Zheng, Director, ISO New England (Holyoke, MA)
Dr. Mingguo Hong, Principal Analyst, ISO New England (Holyoke, MA)
Dr. Song Zhang, Lead Analyst, ISO New England (Holyoke, MA)
Mr. Thomas Knowland, Manager, ISO New England (Holyoke, MA)
Mrs. Mallory Waldrip, Lead Energy Security Analyst, ISO New England (Holyoke, MA)

ISO New England performs a 21-day energy assessment providing an energy supply outlook given anticipated power system conditions of the region. The assessment takes into consideration major risk factors such as fuel supply and inventory, weather forecast and electricity demand. It was developed to improve situational awareness for the ISO and New England's market participants about regional energy adequacy. This presentation focuses on improvements to the modeling, process, and software of the 21-day energy assessment, enhancing solution efficiency and performance. Future improvements will also be discussed.

Cascading Analysis for Bulk Power System Operations

Dr. Slava Maslennikov, Technical Manager, ISO New England (Holyoke, MA)
Dr. Xiaochuan Luo, Manager, ISO New England (Holyoke, MA)
Dr. Mingguo Hong, Principal Analyst, ISO New England (Holyoke, MA)
Dr. Tongxin Zheng, Director, ISO New England (Holyoke, MA)

Clean energy transition is shifting the bulk power system operating paradigm from reliability-centered deterministic approaches to risk-based methods. Cascading analysis is one of the practical ways to facilitate such transition as it tries to assess the potential load and generation losses caused by an initiating contingency. Such a system impact measure is more informative than the traditional thermal and voltage violations estimated from conventional contingency analysis and could be more efficiently used for situational awareness and system risk mitigation. ISO New England has developed both the online and offline cascading analysis process for real-time system operation and planning. The online application runs every few minutes and evaluates system impact of higher order contingencies to supplement Real-Time Contingency Analysis. The offline application assesses the operational risk under different scenarios representing the variability and uncertainty of renewables as well as extreme weather conditions. Cascading analysis has also a potential to greatly increase the efficiency of outage coordination. This presentation discusses details and use cases of the cascading analysis under the operational time frame.

Transmission Outage Predictions to Improve Operational Resilience and Situation Awareness

Dr. Mingguo Hong, Principal Analyst, ISO New England (Holyoke, MA)
Dr. Xiaochuan Luo, Manager, ISO New England (Holyoke, MA)
Dr. Slava Maslennikov, Technical Manager, ISO New England (Holyoke, MA)
Dr. Tongxin Zheng, Director, ISO New England (Holyoke, MA)

The northeastern U.S. has been frequently visited by harsh wintry and tropical storms that result in transmission outages due to precipitation, high winds, lighting and icing. In collaboration with the University of Connecticut Eversource Energy Center, ISO New England has been conducting real-time transmission outage prediction studies using the machine learning (ML) techniques to support situation awareness in real-time operation. Historic weather, transmission facility and topography, and transmission outage data are used to train the jointly-developed ML model. Outcome of the ML algorithms is further combined with mechanistic simulation results (fragility curves) that reflect extreme and rare conditions. Our early studies have produced promising results that will further improve with the availability of more collected data. The developed algorithms are being implemented in our Online Weather Look-ahead Study (OWLS) tool. OWLS performs look-ahead weather monitoring and transmission risk assessment to assist operational decision against extreme weather events.

Session T2 (Tuesday, June 21, 1:30 p.m., WebEx)

Improving Uncertainty Management Through Ancillary Service Products

Dr. Yonghong Chen, Consulting Advisor, MISO (Carmel, IN)

This presentation discusses recent work at MISO to improve ancillary service product design based on quantified uncertainties under different timeframe. Up ramp capability product requirement and demand curve are derived based on risks under normal and contingency conditions. The seasonal and hourly short term reserve requirements are derived with machine learning clustering algorithm based on aggregated real time uncertainties and real time commitment distributions. Similar approach is applied to derive seasonal and hourly sub-regional uncertainty events. It'll also give a brief introduction of on-going and future work on quantifying and predicting risks across operational timeframe with existing and upcoming resource mixes.

Benefit Evaluation of Multi-period Market Clearing

Dr. Jinye Zhao, Principal Analyst, ISO New England (Holyoke, MA)
Dr. Tongxin Zheng, Director of Advanced Technology Solutions, ISO New England (Holyoke, MA)
Dr. Jiachun Guo, Principal Analyst, ISO New England (Holyoke, MA)
Dr. Dane Schiro, Lead Analyst, ISO New England (Holyoke, MA)

Intertemporal constraints are inherent to almost all the resources participating in electricity markets. Currently, many electricity markets employ a sequential single-period market clearing process which does not fully recognize the intertemporal linkages among different market intervals. An efficient multi-period market clearing approach has been drawing attention recently due to its capability of simultaneously scheduling and pricing a market with multiple time intervals while respecting market coupling. This presentation discusses the differences between the two market clearing methods and presents a quantitative analysis of the multi-period approach on the ISO New England markets. An in-house market simulator was used to perform such analysis by using 2019 market data. The results demonstrate the benefits of the multi-period approach in terms of system reliability improvement, social surplus gain and uplift payment reduction.

Flexible Ramping Product Enhancements

Dr. Guillermo Bautista Alderete, Director of Market Analysis and Forecasting, California ISO (Folsom, CA)

The integration of renewable resources in the CAISO system requires market mechanisms to deal with the inherent uncertainty arising from the variability of load as well as wind and solar resources. The flexible ramping product is a market product that procures the ramp capability to address this uncertainty. This requires the CAISO to estimate uncertainty in both the upward and downward directions. Currently, CAISO utilizes a statistical methodology with historical uncertainty to assess procurement requirements. In this presentation, CAISO introduces an enhanced methodology, using a quantile calculation, to estimate uncertainty based on both historical uncertainty and forecasts of load as well as wind and solar output.

Co-Optimization of Reserve Requirements and Scheduling With Energy and Transmission Security

Mr. Matthew Musto, Technical Specialist, NYISO and Hitachi Energy (Rensselaer, NY)
Mr. Edward O. Lo, Consultant, Hitachi Energy (Rensselaer, NY)

With increasing variable resources in the generation mix, the need for more economic responsiveness and flexibility is growing. The NYISO and Hitachi Energy have been working on advanced design and optimization techniques for dynamically calculating reserve requirements based upon generation and transmission contingencies; as part of the overall system production minimization cost objective. This presentation will discuss initial design criteria as well as forward looking design and prototype efforts to ensure

grid reliability. Topics include, use cases in the New York grid where dynamic reserves procurement can be applied as well as highlighting the complexities in formulation required to efficiently co-optimize reserve requirements with load/gen and transmission security.

Session T3 (Tuesday, June 21, 4:00 p.m., WebEx)

Jointly-Owned Unit Modeling

Dr. Tomas Tinoco De Rubira, Sr Power Systems Engineer—Development, California ISO (Folsom, CA)
Dr. Yannick Degeilh, Senior Power Systems Engineer, California ISO (Folsom, CA)

Efficient electricity markets require mathematical models that capture the physical and economic characteristics of resources. One important type of resource is a jointly-owned unit. It represents a physical generator that is owned and shared between multiple parties. At CAISO, as part of a pilot project, we have developed a mathematical model for representing such units and implemented the necessary market extensions for integrating and utilizing these effectively in the Energy Imbalance Market. This market software enhancement allows the scheduling coordinators that manage the different ownership shares to participate in the real-time financial markets independently, while automatically ensuring the physical capabilities of the underlying unit are not only respected but fully utilized. In this presentation, we describe the model implemented and highlight the challenges, lessons learned, and results of the pilot project.

Better Operating Reserves Modeling To Accommodate Duct Burner-Equipped Combined Cycle Generators

Mr. John Meyer, Senior Energy Market Engineer, NYISO (Rensselaer, NY) Dr. Iiro Harjunkoski, Researcher, Hitachi Energy (Mannheim, Germany)

The New York Independent System Operator (NYISO), in conjunction with Hitachi Energy, have been working on improvements to the scheduling and conversion of Operating Reserves products as applied to combined cycle generators equipped with Heat Recovery Steam Generator (HRSG) supplemental firing systems. These generator configurations have unique operating characteristics to consider in Energy and Operating Reserves optimization that present some modeling challenges. This presentation will discuss the challenges, review the approach to better model the true physical capabilities of these units, and elaborate on potential operational benefits identified during the concept development.

Energy Storage Resource Modeling Enhancements in CAISO Markets

Dr. Khaled Abdul-Rahman, Vice President of Power Systems and Market Technology, California ISO (Folsom, CA)
Dr. Tomas Tinoco De Rubira, Sr Power Systems Engineer—Development, California ISO (Folsom, CA)
Mr. Gabe Murtaugh, Storage Sector Manager, California ISO (Folsom, CA)

Organized electricity markets allow resource schedulers to bid a price that varies over the operating range of the resource. These operating ranges span from the minimum amount of power (MW) to the maximum amount of power that the resource is physically able or rated to generate at any point in time. Today, storage resources are becoming more prevalent within organized electricity markets and have additional physical constraints for operation compared to traditional resources. Notably, storage has limitations on the amount of energy (MWh) that it may store or discharge at any point in time. The California ISO is developing a framework for a new storage model that will allow bidding a price that varies over the operating range for energy—or state of charge—rather than power. This will allow storage resources to more closely convey true marginal costs of operation to the CAISO through bids, which in turn will allow for a more optimal dispatch and better resource performance.

Maintain Grid Reliability From Operations Planning to Real-Time

Dr. Pengwei Du, Supervisor—Resource Forecasting and Analysis, ERCOT (Taylor, TX)

This talk will present the operational reliability challenges at ERCOT and recent developments to improve the grid reliability from operations planning to real-time operaions.

Session W1 (Wednesday, June 22, 10:00 a.m., WebEx)

Practical Challenges With the Large Penetration of Energy Storage Resources Including SOC Optimization, Pricing, Ancillary Services and Hybrid Modeling Within Production Costing Software

Mr. Brian Thomas, Principal Engineer, PowerGEM LLC (Clifton Park, NY) Dr. Boris Gisin, President, PowerGEM LLC (Clifton Park, NY)

With rapid growth of Renewable and Battery Energy Storage System (BESS) resources it becomes more important to study BESS resources including hybrids in mid to long range Production Cost Modeling (PCM) Studies. BESS state of charge (SOC) optimization models vary between ISOs and PCM studies due to differences in SOC Management and how it is currently implemented. This presentation describes the challenges with modeling BESS in PCM environment including full SOC management model, enforcements of SOC targets, SOC limits and pricing run challenges. BESS resource can provide Ancillary services which makes it more important to manage SOC for Energy and Ancillary services in an optimal fashion and avoid infeasible operating conditions. Here we describe our experience implementing the BESS SOC model for Energy and different Ancillary products. BESS resources are essential to meet ramping requirements in severely ramp constrained regions. However, this requires pre-ramping algorithms in market clearing products to better manage ramps. This presentation describes our experience with pre-ramping modeling and possible solutions. This presentation also describes the challenges and approaches to model Hybrid Plants (within PCM studies) which is rapidly increasing in interconnection queues of many regions.

Impact of Market Bidding and Dispatch Model Over Energy Storage Utilization

Dr. Bolun Xu, Assistant Professor, Columbia University (New York, NY)
Mr. Ningkun Zheng, Research Assistant, Columbia University (New York, NY)
Mr. Joshua Jaworski, Research Assistant, Columbia University (New York, NY)
Mr. Gabe Murtaugh, Storage Sector Manager, California ISO (Folsom, CA)

This talk analyzes how different dispatch models and bidding strategies would affect the utilization of storage with various durations in deregulated power systems. We use a dynamic programming model to calculate the operation opportunity value of storage from price predictions, and use the opportunity value result as a base for designing market bids. We compare two market bidding and dispatch models in single-period economic dispatch: a power bidding model and a State of Charge-segment bidding model. We test the two storage dispatch models, combined with different price predictions and storage durations, using historical real-time price data from New York Independent System Operator. We compare the utilization rate with respect to results from perfect price forecast cases. Our result shows that modeling storage bids as dependent on State of Charge in single-period real-time

dispatch will provide around 5–10% of improvement in storage utilization over all duration cases and bidding strategies, and higher renewable share will likely improve storage utilization rate due to higher occurrence of negative prices.

Market Design and Cost Recovery in a Simple 100% RES System: Analytical Insights

Dr. Guillaume Tarel, Engineer, Hydro Québec (Montréal, QC)
Dr. Audun Botterud, Principal Research Scientist, Massachusetts Institute of Technology (*Cambridge, MA*)
Dr. Magnus Korpås, Professor, Norwegian University of Science and Technology (*Trondheim, Norway*)

Modern power systems should meet the three criteria of affordability, security and sustainability. This largely explains why renewable energy sources (RES), whose costs and performance have improved dramatically during the last decades, are rapidly expanding. However, RES generation remains dictated by weather condition because of their very nature, and systems with very high shares of RES will have to rely on various sources of flexibility such as demand-response, interconnections, peakers and storage to balance supply and demand. Moreover, most RES technologies have zero marginal cost, impacting price formation in the electricity market. During this presentation, we will show an analysis of a simplified 100% RES systems based on wind generation and energy storage only. Using an analytical formulation based on net load duration curves, we analyze the equilibrium conditions for RES and storage. This leads to a discussion on how short-term market prices could be shaped to allow cost minimization for the system as a whole and cost recovery for market players.

Session W2 (Wednesday, June 22, 12:30 p.m., WebEx)

Key Concepts To Promote Operational Flexibility: Comparison of Approaches and Recommendations

Dr. Erik Ela, Program Manager, Electric Power Research Institute (Palo Alto, CA)
Dr. Phil de Mello, Senior Technical Leader, Electric Power Research Institute (Davis, CA)
Dr. Nikita Singhal, Technical Leader, Electric Power Research Institute (Palo Alto, CA)
Dr. Ben Hobbs, Professor, Johns Hopkins University (Baltimore, MD)
Dr. Mahdi Mehrtash, Assistant Research Professor, Johns Hopkins University (Baltimore, MD)
Mr. James Kim, Energy Policy Project Scientist, Lawrence Berkeley National Laboratory (Berkeley, CA)
Mr. Miguel Heleno, Research Scientist, Lawrence Berkeley National Laboratory (Berkeley, CA)

A variety of mechanisms are being proposed for promoting operational flexibility for bulk power systems. These include dynamic reserve requirements, flexibility products, extended sloped operating reserve demand curves, market clearing tool enhancements, and advanced participation models. The presentation will discuss key concepts for promoting flexibility to improve reliability and economic efficiency while aligning price signals with necessary operational decisions. It will also describe some case studies that compare flexibility products and operating reserve demand curves to describe their similarities and how they can be effectively integrated in electricity market design.

Price Formation in Zero-Carbon Electricity Markets: A Review of Challenges and Solutions

Dr. Zhi Zhou, Principal Computational Scientist, Argonne National Laboratory (Lemont, IL)
Dr. Audun Botterud, Principal Energy System Engineer, Argonne National Laboratory (Lemont, IL)
Dr. Todd Lovin, Team Lead, Argonne National Laboratory (Lemont, IL)

Future power systems dominated by zero-carbon generation resources may require significant revisions to electricity market designs to ensure capacity adequacy and market efficiency. In this presentation, we first conceptually outline key fundamentals underlying electricity market design and price formation and briefly review current operational practices in U.S. electricity markets. We then discuss a set of potential market design challenges in a grid dominated by zero-carbon resources with marginal cost profiles that differ compared to traditional thermal resources. Next, we review electricity market design solutions that have been proposed in the literature to ensure market efficiency in zero-carbon systems, along with policies and incentive schemes proposed or implemented to accelerate the transition. We also briefly discuss ongoing revisions to the seven regional electricity markets in the United States and review the intended goals and potential challenges of different market design options. Finally, taking hydropower resources as an example, we discuss the specific implications for flexible resources in a future zero-carbon system. In particular, we summarize the potential advantages and challenges that hydropower resources may face when participating in a competitive market framework dominated by resources with zero marginal costs or zero fuel costs. We conclude by summarizing key observations and establishing a set of research questions that should be addressed to improve our understanding of market design, price formation, and market efficiency in zero-carbon power systems.

Risk-Aware Wind Bids With Distributed Optimization and Central Dispatch

Mr. Daniel Shen, Graduate Student, Massachusetts Institute of Technology (Cambridge MA)
Dr. Marija Ilic, Senior Research Scientist, Massachusetts Institute of Technology (Cambridge MA)

Grid operators must integrate ever increasing amounts of stochastic, distributed generation in the form of wind and solar power. On the consumer side, demand response will also become an important component of grid operation. Unlike conventional fossil generation, these assets have time- and state- varying capacities, ramp constraints, and cost curves that add additional computation complexity to centralized dispatch algorithms. We propose a distributed optimization approach for dispatch that reduces the computation burden of the ISO's centralized dispatch algorithm and opens the possibility of running ACOPF for day-ahead and real-time dispatch. Key to our approach is that assets bid in a manner that internalizes their own operating constraints, instead of these constraints being part of the central optimization problem. We demonstrate this distributed dispatch on a NYISO 1576-bus system with risk-aware wind bids.

Impacts of Multi-Interval Real-Time Dispatch on Generator Investment Incentives in PJM

Mr. Sushant Varghese, Graduate Research Assistant, Pennsylvania State University (State College, PA)
Dr. Anthony Giacomoni, Lead Market Strategist, PJM Interconnection (Audubon, PA)
Mr. Aravind Retna Kumar, Graduate Research Assistant, Pennsylvania State University (University Park, PA)
Mr. Shailesh Wasti, Graduate Research Assistant, Pennsylvania State University (State College, PA)

Over the last several years, the PJM generation mix has shifted with some traditional fossil fuel generators being

displaced by renewable resources. Given current state policy goals within the PJM region, this shift is expected to accelerate over the next several years. Most new renewable resources being built are wind and solar generators, which are inherently intermittent in nature. Absent large-scale deployments of new energy storage resources, one of the current challenges of integrating large amounts of intermittent renewable resources into the system is the provision of adequate intra-hour ramp capability from controllable resources to account for unexpected changes in their output. Ideally, the real-time market clearing should both provide sufficient flexibility in its energy and reserve schedules and revenues should reward the more flexible units that provide the needed flexibility, thereby guiding future investment decisions. Currently, PJM uses a single interval optimization that looks ahead 8–10 minutes to the target time in its real-time security constrained economic dispatch (RT–SCED). Given the short look-ahead period, RT–SCED is not able to anticipate potential changes in generation and load that may occur over subsequent intervals. One potential solution that has been implemented in other Independent System Operators (ISOs) is the use of a multi-interval real-time dispatch with a longer look-ahead period. A multi-interval real-time dispatch reduces system costs by optimally scheduling ramp capability on the system by prepositioning controllable generators to handle forecasted load and generation uncertainties. However, to date, all ISOs that have implemented a multi-interval real-time dispatch use single settlement procedures, in which prices are only set for the first interval from the RT–SCED's time horizon. The prices in later intervals from each model solution are advisory only. A question remains about whether the revenues from this approach are biased towards more or less flexible units. An alternative is a multi-settlement approach, in which every cleared quantity and price for the same demand interval from repeated model solutions are saved and all are used in determining the final settlement. This presentation will provide an overview of PJM's current dispatch practices in its Real-Time Energy Market and will compare them to a multi-interval real-time dispatch using both single- and multi-settlement approaches. Simulation results using a real-time model of the PJM system with a rolling window horizon will be presented. Results will compare the relative differences in net revenues for each generation technology class, as one indication of relative incentives for investment in more flexible resources.

Transitioning to Linked Swing-Contract Markets for Net-Zero 2050

Dr. Leigh Tesfatsion, Research Professor of Economics, Courtesy Research Professor of Electrical & Computer Engineering, Iowa State University (Ames, IA)

The need for flexible dependable reserve provision in electric power systems has dramatically increased in recent years. Growing reliance on volatile renewable power resources and greater encouragement of more active demand-side participation has led to greater uncertainty and volatility of net load. Consequently, system operators are finding it harder to secure reserve with sufficient dependability and flexibility to permit the continual balancing of net load, a basic requirement for power system reliability. In this presentation I reconsider the design of U.S. RTO/ISO-managed wholesale power markets in light of these concerns. Four design principles are stressed: (i) U.S. RTO/ISO-managed wholesale power markets must necessarily be forward markets due to the speed of real-time operations; (ii) Only one type of product can effectively be transacted in U.S. RTO/ISO-managed wholesale power markets: Namely, reserve, an insurance product offering availability of net-load balancing services for future real-time operations; (iii) Net-load balancing services offered into U.S. RTO/ISO-managed wholesale power markets primarily take the form of RTO/ISO-dispatchable power-paths available for possible dispatched delivery at designated grid locations during designated future operating periods; (iv) All dispatchable power resources should be permitted to compete for the provision of power-paths in U.S. RTO/ISO-managed wholesale power markets without regard for irrelevant underlying technological differences. If these four principles are accepted, current trade and settlement arrangements for U.S. RTO/ISO-managed wholesale power markets need to be fundamentally altered. In this presentation I propose the transition to a new linked swing-contract market design, consistent with principles (i)–(iv), that could meet the future needs of U.S. RTO/ISO-managed wholesale power markets better than currently implemented designs.

Session W3 (Wednesday, June 22, 3:30 p.m., WebEx)

Assessing Energy Adequacy Through Scenario Development for Extreme Events

Dr. Aidan Tuohy, Program Manager, Electric Power Research Institute (Chicago, IL)

Dr. Eamonn Lannoye, Program Manager, EPRI Europe (Dublin, Ireland)

Mr. Juan Carlos Martin, Senior Engineer, EPRI Europe (Madrid, Spain)

Dr. Erik Smith, Engineer/Scientist III, Electric Power Research Institute (Palo Alto, CA)

While power system adequacy studies have traditionally focused on ensuring sufficient capacity is available to meet demand, recent events and projected changes to the system have shown that having sufficient energy as well as capacity is likely to become increasingly relevant. This can come in the form of gas availability during extreme cold, the likelihood of long periods of low wind and solar output, or energy storage availability in batteries and other forms of limited duration storage. As part of its ''Resource Adequacy for a Decarbonized Future'' initiative, EPRI has been examining how best to include energy adequacy considerations into the larger set of probabilistic resource adequacy metrics, such as loss of load expectation or expected unserved energy. While extreme events are important to consider, they may occur in the tails of the distribution and as such do not get attention in metrics that average outage likelihood over long periods of time. EPRI is currently working with its utility and ISO members on case studies related to these issues and initial results will be presented here. In this presentation, we will focus on a new tool, intended to be publicly available once validated, that is used to develop scenarios for adequacy studies. We will provide an overview of the modeling approaches, including how vulnerability models are being developed for each type of asset on the system, based on expert knowledge and historical performance. This results in a set of asset risk models, showing risk under different types of weather conditions. Such information can then be combined with historical and projected weather data to understand the periods when the system is most likely to be energy limited. The outputs of the tool are thus scenarios related to extreme events, that can then be studied using existing or under development adequacy assessment tools.

Improving Grid Planning by Modeling Correlated Generator Failures

Dr. Sinnott Murphy, Research Engineer, National Renewable Energy Laboratory (Golden, CO)

Recent academic research has identified correlated generator failures in the United States bulk power system, violating key assumptions made in system planning. Subsequent work demonstrated strong statistical relationships between generator outages and extreme temperatures, with particularly large outages observed during winter events. These temperature dependencies were then shown to be consequential for both planning reserve margins and the procurement of operating reserves. Unfortunately, standard resource adequacy modeling software tools used by grid planners are incapable of representing temperature-dependent outage rates and instead assume each generator's average reliability over a historical period (*e.g.,* five years) reflects its risk during peak load conditions, when temperatures are often at their most extreme. As a result, resource adequacy modeling generally understates the capacity levels needed to achieve a desired system reliability target. At the National Renewable Energy Laboratory, grid modelers employ the open-source Probabilistic Resource Adequacy Suite (PRAS) to perform resource adequacy assessments. Unlike most tools, PRAS allows users to define time-varying asset outage and recovery rates for all assets, including generators, storage resources, and transmission lines. Researchers can thus use PRAS to conduct adequacy assessments that are significantly more realistic than current industry practice. This enables more accurate identification of today's system capacity requirements as well as improved ability to assess and mitigate reliability risks of future systems. This talk will: 1. Present the empirical evidence of correlated failures in the U.S.; 2. Introduce the PRAS model and some of the studies it has supported; 3. Describe ongoing work to model temperature-outage relationships in the U.S.; and 4. Describe novel resource adequacy workflows enabled by PRAS.

Integrated Modeling Framework for Multi-Energy Systems' Planning

Mrs. Violette Berge, Vice President, Artelys Canada Inc. (Montréal, Canada)

Dr. Tobias Bossmann, Project Director, Artelys Canada Inc. (Montréal, Canada)

For the past 7 years, Artelys has been developing the METIS model on behalf of the European Commission's Directorate-General for Energy. METIS is the European model that allows to develop scenarios for the future of energy systems (electricity, gas, heat, etc). It enables to address questions like impact assessment of European Union energy policy proposals, cost benefit assessment of infrastructure projects, assessment of the potential role for a technology. While the first phase of the project consisted in developing the power and gas system/market model, the second phase of the project focused on better integrating distribution and transmission grids. Artelys developed a similar integrated modeling framework for the American Northeastern power grid, including Eastern Canadian provinces, New-York and New-England grids for strategic studies. In this talk, Artelys will present the METIS project and the American Northeastern model and discuss the benefits of using such a modeling framework for energy and climate policymaking.

Session H1 (Thursday, June 23, 10:00 a.m., WebEx)

Real-Time Demand Response Market Co-Optimized With Conventional Energy Market

Dr. Bala Venkatesh, Professor and Director, Ryerson University (Toronto, Ontario) Ms. Jessie Ma, Research Fellow, Centre for Urban Energy, Ryerson University (Toronto, Ontario)

In addition to procuring energy, consumers in electricity markets procure demand response (DR) services. Demand and supply of energy in the electricity market drives the demand for DR services. Through the Net Benefits Test (NBT), economic procurement of DR is limited to an amount that ensures that consumers benefit with the procurement of DR services. However, the NBT neither (a) recognizes the co-existence of the DR market with the energy market; nor (b) optimizes social welfare in the DR market in concert with that of the energy market. This lack of accounting for DR market surplus results in economic inefficiency. To address this shortcoming, we advance past works by: (a) Proposing a real-time DR market where the DR demand curve is a function of opportunity in the energy market; and (b) co-optimizing energy and DR markets such that the total social welfare derived from both markets is maximized simultaneously. We also present an optimal power flow formulation and process to implement our ideas in real-time electricity markets. The formulation is tested on a simple test case and a system based on actual PJM data. For the PJM case, total social welfare is increased by 1.41% to 3.05% over existing DR procurement strategies, resulting in $14.5M to $30.9M additional benefits per hour.

Electricity Retail Rate Design in a Decarbonizing Power System: An Analysis of Time-of-Use Pricing

Dr. Tim Schittekatte, Postdoctoral Associate, Massachusetts Institute of Technology (Cambridge, MA)

Dr. Dharik Mallapragada, Research Scientist, Massachusetts Institute of Technology (Cambridge, MA)

Dr. Richard Schmalensee, Professor of Economics, Emeritus, Massachusetts Institute of Technology (Cambridge, MA)

Dr. Paul Joskow, Professor of Economics, Emeritus, Massachusetts Institute of Technology (Cambridge, MA)

Increased electrification of heating and transport on the demand-side and high rates of intermittent renewable uptake on the supply-side increase the importance of retail electricity rates. Due to acceptability issues with the first-best solution, *i.e.,* retail rates passing-through wholesale prices, alternatives are being proposed. An important alternative is a time-of-use (TOU) tariff, possibly reinforced by critical peak pricing (CPP). Trabish (2022) reports that there were over 150 rate design policy initiatives in 2021 addressing new time-of-use (TOU) or time-varying rate (TVR) structures in the United States. TOU rates are predefined, *e.g.,* a year ahead, and vary according to fixed time blocks calibrated on historical data—see *e.g.,* Faruqui and Sergici (2013). Typically, time blocks are differentiated based on seasons, months, type of day (workdays or weekends), and/or time of the day (so-called peak, shoulder, or off-peak hours). The idea behind TOU rates is that consumers are to a certain extent exposed to the time-varying conditions in wholesale electricity markets while keeping rates predictable and protecting consumers from unexpected price shocks. Most academics investigating the TOU tariffs emphasize that such rates only capture a small fraction of welfare benefits when compared with prices passing through the wholesale price (Hogan, 2014; Borenstein, 2015; Jacobson et al., 2020). The metric of interest in these studies in the correlation between TOU prices and realized wholesale prices and/or they make the crucial assumption that demand is modelled as having a constant, rather low, elasticity in each (independent) hour. In our paper, we use data from different power systems in the US (ERCOT, CAISO and ISO–NE)

for a period between 2010–2019 and we find indeed that the out-of-sample correlations between TOU prices and the realized wholesale prices are low. However, these correlations significantly improve when leaving out the unpredictable scarcity prices in the train and test data. More importantly, we argue that a very large fraction of demand response in the future will come in the form of ''load shifting'' rather than changes in load in independent hours. The major relevant technologies in that regard are electric vehicles (EVs), heat pumps (HPs) and air conditioning (ACs). The potential of TOU to induce (beneficial) load shifting is not well captured by looking at correlations. To estimate how effective TOU would be to shift load from one time block to another ''in the right direction'', with the realized wholesale price as a baseline, we propose to use the rank correlation metric. We simulate demand shifting and demand reduction under realized wholesale prices and under TOU prices. We show that show that rank correlations are an appropriate predictor of beneficial load shifting under TOU pricing. Conditional upon power system characteristics, TOU tariffs can lead to a high proportion of the potentially ideal load shifting volumes. We end the paper by discussing under what power system conditions TOU tariffs can be a reasonable second best to passing through wholesale prices and under what conditions this statement does not hold anymore.

Improving Software to Allow End-Users To Drive Impactful Procurement Decisions

Ms. Bryn Baker, Senior Director, Policy Innovation, Clean Energy Buyers Association (Washington, DC)

Energy customers, like corporates, government agencies, cities and universities, are becoming increasingly sophisticated and bidirectional in their interaction with the electricity grid (shifting loads, providing demand response, making consumption and siting decisions based on the grid profile) and they interested in driving greater emissions impact through their procurement and operational decisions. But these actions are hampered by lack of access to standardized, transparent and reliable grid and greenhouse gas emission data. One of the benefits of improving software for increased efficiency and reliability of the bulk power system is that it can help to collect, standardize and make available critical information to electricity customers, among others, including about emissions and delivered electricity profile. More granular, timely, and accurate grid and emissions data are needed. Electricity customers utilize data to perform carbon-optimized load shifting and accurately measure the decarbonization performance of renewable energy projects and help site those in the most impactful areas. Additionally, standardization across regions would make information more widely accessible and comparable. By improving software to increase market and planning efficiencies, it will improve critical datasets for a range of end-users seeking accessible, standardized, and accurate data from the grid.

Latent Distribution System Flexibility Offers Bulk Power System Opportunities

Mr. Philip Court, Product and Company Stratigest, Ecogy Energy (Brooklyn, NY)

Mr. John Gorman, Asset Manager, Ecogy Energy (Brooklyn, NY)

Ms. Twiggy Hamilton, Policy Research Analyst, Ecogy Energy (Brooklyn, NY)

Mr. Joel Santisteban, Director of Platform, Ecogy Energy (Brooklyn, NY)

The bulk power system exists to serve distribution systems. But distribution systems are both consumers and service providers to the bulk power system. It is flexibility in these distribution systems which lets them behave as service providers. At a high level this presentation is all about unused technical capability and associated commercial desires in the distribution system and the opportunities that these could unlock if they are unleashed and then leveraged. At a lower level we will look at resources, either existing or proposed, that are not being fully leveraged. There is opportunity here to unleash flexibility that will be useful both within distribution systems and ultimately for the bulk power system. If we can expose this to date untapped flexibility and present it as a service to the bulk power system, we can use this service to deliver additional reliability and economic efficiencies. In this presentation we will define the nature of the opportunity, roughly quantify the size of it, explore what technology options can allow this to be achieved and finally what policy changes may be needed to accelerate this opportunity.

Session H2 (Thursday, June 23, 1:00 p.m., WebEx)

Using E3's RESERVE Machine Learning Model To Advance the Calculation of Subhourly Ancillary Services Needs in Deeply Renewable Grids

Mr. Arne Olson, Senior Partner, Energy and Environmental Economics, Inc. (San Francisco, CA)

Dr. John Stevens, Senior Managing Consultant, Energy and Environmental Economics, Inc. (San Francisco, CA)

Dr. Jimmy Nelson, Associate Director, Energy and Environmental Economics, Inc. (San Francisco, CA)

Dr. Yuchi Sun, Senior Consultant, Energy and Environmental Economics, Inc. (San Francisco, CA)

Accurately forecasting wind and solar power output poses challenges for deeply decarbonized electricity systems. Grid operators must commit resources to provide reserves to ensure reliable operations in the face of forecast errors, a process which can increase fuel consumption and emissions. To help address these issues, E3 worked with the California Independent System Operator (CAISO) under a grant from the ARPA–E PERFORM program to develop E3's open-source RESERVE machine learning model. This model expands the usefulness of median 15- and 5-minute market point forecast data currently used by the CAISO to execute the Western Energy Imbalance Market (EIM) by creating probabilistic distributions of short-term uncertainty in demand, wind, and solar forecasts that adapt to prevailing grid conditions. Machine learning-derived estimates of forecast errors are found to compare favorably to estimates based on incumbent methods. Reserves derived from machine learning are usually smaller than values derived using incumbent methods, which enables fuel savings during most hours. Machine learning reserves are generally larger than incumbent reserves during times of higher forecast error, potentially improving system reliability during extreme events. E3 tested RESERVE's performance using multi-stage production simulation modeling of the CAISO system. Machine learning reserves provide production cost and greenhouse gas (GHG) emission reductions of approximately 0.3% relative to historical 2019 requirements. Savings in the 2030 timeframe are highly dependent on battery storage capacity. At lower levels of battery capacity, savings of 0.4% from machine learning reserves are shown. Significant quantities of battery storage are expected to be added to meet

California's resource adequacy needs and GHG reduction targets. Addition of these batteries saturates reserve needs and results in minimal within-hour balancing costs in 2030.

Synergistic Integration of Machine Learning and Mathematical Optimization for Unit Commitment

Mr. Jianghua Wu, Ph.D. student, University of Connecticut (Storrs, CT)
Dr. Peter B. Luh, Professor, University of Connecticut (Storrs, CT)
Dr. Yonghong Chen, Senior Engineer, Midcontinent ISO (Carmel, IN)
Dr. Bing Yan, Assistant Professor, Rochester Institute of Technology (Rochester, NY)
Dr. Mikhail A. Bragin, Research Assistant Professor, University of Connecticut (Storrs, CT)

Unit Commitment (UC) is important for power system operations. With increasing challenges, *e.g.,* growing intermittent renewables and intra-hour net load variability, traditional mathematical optimization such as branch-and-cut (B&C) could be time-consuming. Machine learning (ML) is a promising alternative. Recently, multiple ''indirect'' ML methods for UC problems have been presented, *e.g.,* learning effective branching strategies for B&C or removing inactive transmission constraints. ''Direct'' methods have also been explored, *e.g.,* using graph neural networks and reinforcement learning. In view of the combinatorial nature of UC with an exponentially growing number of possible solutions, these ML methods have difficulties for large problems in terms of training data preparation and time required for training. To this end, synergistic integration of ML and mathematical optimization is explored by learning subproblems within our recent decomposition and coordination framework of Surrogate Lagrangian Relaxation (SLR) for deterministic UC problems. Compared to the original problem, a subproblem is much easier to learn, and it only requires solutions to be ''good enough'', *i.e.,* feasible to unit-level constraints and satisfying a convergence condition. Nevertheless, in view of many types of constraints, finding ''good enough'' subproblem solutions is still challenging. For simplicity, only system demand and unit initial statuses are assumed changing across days. The set of units, unit characteristics, and capacities of transmission lines are assumed constant across days. Under these simplifying assumptions, a deep neural network (DNN) of multilayer perceptron is adopted. For effective learning, dimensionality reduction is accomplished by aggregating Lagrangian multipliers and removing unnecessary variables. Moreover, an innovative specification of multiplier distributions is explored for effective training in the presence of binary decision variables. Furthermore, a loss function considering target values and constraint violations is designed for offline supervised training. After offline training, DNNs are used to help solve subproblems in daily operations. When facing patterns not yet learned, ML may not perform well, but graceful degradation of these cases is achievable by using B&C as a backup. Finally, to effectively exploit subproblem solutions available from daily operations, online self-learning is considered as supplementary learning. For ''positive'' cases which have good-enough solutions from DNNs as targets, the learning process is similar to that of offline learning. For ''negative'' cases which have no good-enough targets, a loss function that considers the satisfaction of SLR's convergence condition is innovatively developed, and this allows to obtain gradient to update DNN weights. Offline supervised learning and online self-learning are unified at the switching of the loss function. Since ML is used for the first time to learn subproblem solutions, the focus is to demonstrate the ability of ML to predict good-enough subproblem solutions, as opposed to demonstrating the ability of SLR+ML to solve large and practical UC problems. At this early stage, our goal is not for our method to outperform B&C in terms of solution quality or computation efficiency on low to medium-complexity problems. Nevertheless, we are confident that for very complex UC problems, *e.g.,* MISO's problem where B&C suffers from poor performance, the advantages of SLR will be apparent, and the speed advantage of applying ML for subproblem solving will be prominent. Although testing is limited to the IEEE 118-bus system, results demonstrate that ML speeds up the subproblem solving process of SLR while maintaining near-optimality of the overall solutions. This speedup can be improved through continual online self-learning. Our method thus opens a direction for integrating ML and mathematical optimization to solve large and complicated UC and beyond.

Congestion and Overload Mitigation Using Optimal Transmission Reconfigurations—Experience in MISO and SPP

Dr. Pablo A. Ruiz, CEO and CTO, NewGrid, Inc. (Somerville, MA)
Ms. Paola Caro, Principal Engineer, NewGrid, Inc. (Somerville, MA)
Mr. Mitchell Myhre, Manager—Transmission Planning and Regulatory Relations, Alliant Energy (Madison, WI)
Ms. Rodica Donaldson, Senior Director, Transmission Strategy & Analytics, EDF Renewables (San Diego, CA)
Mr. Xiaoguang Li, Director of Product, NewGrid, Inc. (Somerville, MA)

While the transmission grid configuration is continuously changing due to planned and unplanned outages, the transmission flexibility afforded by the existing circuit breakers is typically not used to purposely adapt the grid configuration to best meet changing system needs to mitigate overloads and congestion costs. At the same time, transmission needs are becoming more variable and are increasing rapidly to support the power system transition to integrate increasing levels of variable renewable resources. Topology optimization software is a grid-enhancing technology that identifies reconfiguration options to re-route power flow around transmission bottlenecks employing less utilized facilities and satisfying reliability criteria. These reconfigurations provide cost savings to power customers and increases the value of the existing transmission network as well as new transmission projects, from both reliability and market efficiency perspectives. This presentation will illustrate the flow relief, transfer capability and cost saving impacts of using reconfigurations to mitigate heavily congested constraints in MISO and SPP. A practical path for the adoption of topology optimization technology will be discussed.

Demonstration of Potential Data/Calculation Workflows Under FERC Order No. 881's Ambient-Adjusted Rating (AAR) Requirements

Ms. Lisa Sosna, Economist, Federal Energy Regulatory Commission (Washington, DC)
Mr. Tom Dautel, Deputy Director—Division of Economic and Technical Analysis, Federal Energy Regulatory Commission (Washington, DC)
Mr. Ken Fenton, Physical Scientist, Global Systems Laboratory, National Oceanic and Atmospheric Administration (Boulder, CO)

FERC Order No. 881, Managing Transmission Line Ratings, requires (among other things) that transmission providers use ambient-adjusted transmission line ratings (AARs) that are updated hourly to reflect ambient air temperature forecasts and the impact of solar heating during daytime periods. In this presentation, Commission staff will

demonstrate one potential data/calculation workflow for implementing the AAR requirements of Order No. 881. In the demonstrated approach, NOAA weather forecasts from the National Blend of Models (NBM) and calculated daytime solar intensity are used to calculate AAR line ratings on the RTS–GMLC test system. Hourly ratings are inserted into a ratings database to comply with the data retention requirements of Order No. 881.

Session H3 (Thursday, June 23, 11:00 a.m., WebEx)

GO Competition Challenge 2: Analysis and Lessons Learned

Dr. Brent Eldridge, Electrical Engineer, Pacific Northwest National Laboratory (Baltimore, MD)
Dr. Stephen Elbert, Computational Scientist, Pacific Northwest National Laboratory (Richland, WA)
Dr. Arun Veeramany, Data Scientist, Pacific Northwest National Laboratory (Richland, WA)
Dr. Hans Mittelmann, Professor, Arizona State University (Tempe, AZ)
Dr. Jesse Holzer, Mathematician, Pacific Northwest National Laboratory (Richland, WA)

The Grid Optimization (GO) Competition Challenge 2 is nearly finished. This competition focused on a security constrained AC optimal power flow problem with fast start unit commitment, transmission switching, and a detailed post-contingency model. The Final Event trial finished in September 2021, and the Monarch of the Mountain ongoing trial will finish in October 2022. This talk reviews the results so far and presents some lessons learned regarding the impact of solver time limits, the value and computational difficulty of model features like transmission switching and flexible load, the challenges of working with confidential industry data, and other outcomes of the competition.

GO Competition Challenge 3: Goals and Formulation

Dr. Jesse Holzer, Mathematician, Pacific Northwest National Laboratory (Richland, WA)
Dr. Brent Eldridge, Electrical Engineer, Pacific Northwest National Laboratory (Baltimore, MD)
Dr. Stephen Elbert, Advisor, Pacific Northwest National Laboratory (Richland, WA)

The Grid Optimization (GO) Competition Challenge 3 has launched. This talk gives an overview of the model formulation and the questions we are aiming to address with it. The model includes multi-period unit commitment; AC bus/branch modeling; scheduling of energy and reserves; flexible loads; storage; and combined cycle generators. The model can be configured for use in an ISO/RTO context for applications of real-time (RT) look ahead, day ahead (DA) market clearing, and week ahead (WA) advisory. The model combines features that are considered in isolation in a sequence of models in current electricity industry practice, for example solving a DA unit commitment model with little regard for AC considerations, then solving an ACOPF with fixed commitments closer to RT. With this combined model and the solvers that competition entrants will develop, we want to ask and answer: Can the combined model be solved to high accuracy in a reasonable amount of time on practical instances? What are the incremental benefits to society of the combined solution, relative to the sequential approach? How will various industry trends, including increasing capacity of variable and uncertain generation resources, distributed energy resources, price sensitive load, and storage, affect the value of advanced computational tools for grid optimization?

Solving GO Competition ACOPF Problems

Dr. Daniel Bienstock, Professor, Columbia University (New York, NY)
Dr. Richard Waltz, Senior Scientist, Artelys, Inc. (Chicago, IL)

We describe the approach we deployed in the recent GO competition, in which we placed #2 overall. The GO competition addressed security-constrained Alternating Current Optimal Power Flow (ACOPF) problems in a modern formulation. This formulation included a number of integer variables used to model switching and transformer and shunt control. Many of the instances were quite large and involved many scenarios; additionally a strict time limit was involved. Our approach relied on the Knitro solver and deployed a number of domain-reduction techniques based on power engineering perspectives. We will describe our approach and document some of our experimental outcomes.

A Profit Maximizing Security-Constrained IV–AC Optimal Power Flow & Global Solution

Dr. Amro M. Farid, Visiting Associate Professor, Massachusetts Institute of Technology (Cambridge, MA)

Since its first formulation in 1962, the Alternating Current Optimal Power Flow (ACOPF) problem has been one of the most important optimization problems in electric power systems. Its most common interpretation is a minimization of generation costs subject to network flows, generator capacity constraints, line capacity constraints, and bus voltage constraints. The main theoretical barrier to its solution is that the ACOPF is a non-convex optimization problem that consequently falls into the as-yet-unsolved space of NP-hard problems. To overcome this challenge, the literature has offered numerous relaxations and approximations of the ACOPF that result in computationally suboptimal solutions with potentially degraded reliability. While the impact on reliability can be addressed with active control algorithms, energy regulators have estimated that the sub-optimality costs the United States ~$6–19B per year. Furthermore, and beyond its many applications to electric power system markets and operation, the sustainable energy transition necessitates renewed attention towards the ACOPF. This paper contributes a profit-maximizing security-constrained current-voltage AC optimal power flow (IV–ACOPF) model and globally optimal solution algorithm. More specifically, it features a convex separable objective function that reflects a two-sided electricity market. The constraints are also separable with the exception of a set of linear network flow constraints. Collectively, the constraints enforce generator capacities, thermal line flow limits, voltage magnitudes, power factor limits, and voltage stability. The optimization program is solved using a Newton-Raphson algorithm and numerically demonstrated on the data from a transient stability test case.

ABSCoRES, Managing Risk and Uncertainty on Electricity Systems Using Banking Scoring and Rating Methdologies

Dr. Alberto J. Lamadrid L., Associate Professor, Lehigh University (Bethlehem, PA)

In this presentation we will discuss the advancements done over the past year for a project funded by the Advanced Research Projects Agency-Energy, ARPA–E, under the PERFORM program. We are developing an Electric Assets Risk Bureau. Our framework allows to include asset and system risk management strategies into the current electricity system operations to improve economic efficiency, and include environmental considerations. Our approach is based on three main tenets: (1) We measure risk based on mathematical norms to calculate

Application of Banking Scoring and Rating for Coherent Risk Measures in Electric Systems (ABSCoRES) ratings and scores; (2) we developed novel data driven dispatch algorithms that integrate the ABSCoRES; (3) we establish a strategy for the application of the scores, and open the development of new products to mitigate incurred risks. We leverage scoring and ratings from banking and financial institutions alongside current optimization methods in dispatching power systems to help system operators and electricity markets schedule resources. Our approach is motivated by the observation that there are major differences between the power scheduled by a system operator and the actual power generated/consumed in real time. Moreover, the methodology can be used to develop scores that provide signals in high impact-low probability (HILP) events. Our framework counteracts two failures in existing electricity system: (i) Frictions in knowledge of assets (imperfect or asymmetric information regarding the risk they may induce in the system) and (ii) missing mechanisms (or markets) for products to mitigate risk incurred in the system. Generally having large differences from the expected operating conditions, sometimes augmented with unplanned contingencies, obeys to different reasons. We consider these reasons as potential risk sources. There are various sources, including: Increased participation of renewable energy generators and the associated integration schemes across balancing areas, different financial, environmental and risk preferences of power producers, consumers, and aggregators (*e.g.,* FERC Order Nos. 841 and 2222), loss of inertia, distributed energy resources, inter-dependencies with other systems and cybersecurity, and generally a more active demand side. Our proposed methodologies will improve economic efficiency of assets in the electricity system while recognizing limitations in assessing the distribution of information uncertainties affecting agents participating in these systems. A particularly attractive feature of our approach is its connection to economic theory of decision making under uncertainty. The trading of contingent claims in different states of the world in an Arrow-Debreu Economy with complete markets allows for full insurance coverage leading to a competitive equilibrium output. While this is a theoretical benchmark, the score calculation reduces the information asymmetries and can provide a way to better coordinate different agents and stakeholders.

[FR Doc. 2022–11965 Filed 6–2–22; 8:45 am]

BILLING CODE 6717–01–P

EXECUTIVE OFFICE OF THE PRESIDENT

Request for Information to Make Access to the Innovation Ecosystem More Inclusive and Equitable

AGENCY: White House Office of Science and Technology Policy (OSTP).

ACTION: Notice of Request for Information (RFI).

SUMMARY: The White House Office of Science and Technology Policy (OSTP), on behalf of the National Science and Technology Council (NSTC) Lab-to-Market (L2M) Subcommittee, seeks information to improve inclusive and equitable access to Federal programs and resources by broadly engaging stakeholders in the U.S. innovation ecosystem. The public input provided in response to this RFI will inform OSTP and NSTC on work with Federal agencies and other stakeholders to improve existing programs and/or develop new programs to improve inclusive and equitable access in the Federally-funded research and development-driven sector.

DATES: Interested persons and organizations are invited to submit responses on or before 5:00 p.m. ET on July 5, 2022.

ADDRESSES: Responses should be submitted electronically to *LabtoMarketRFI@ostp.eop.gov* and include ''L2M RFI Response'' in the subject line of the email. Due to time constraints, mailed paper submissions will not be accepted, and electronic submissions received after the deadline cannot be ensured to be incorporated or taken into consideration.

Instructions: Response to this RFI is voluntary. Each responding entity (individual or organization) is requested to submit only one response. Respondents need not reply to all questions listed. Responses must not exceed 6 pages in 12 point or larger font, with a page number provided on each page. Responses should include the name of the person(s) or organization(s) filing the comment, as well as the respondent type (*e.g.,* academic institution, advocacy group, professional society, community-based organization, industry, trainee/student, member of the public, government, other). Respondent's role in the organization may also be provided (*e.g.,* researcher, faculty, student, administrator, program manager, journalist) on a voluntary basis. Comments containing references, studies, research, and other empirical data that are not widely published should include copies or electronic links of the referenced materials. Please be aware that comments submitted in response to this RFI, including the submitter's identification (as noted above), may be posted on OSTP's website or otherwise released publicly. OSTP, therefore, requests that no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this RFI.

In accordance with FAR 15.202(3), responses to this notice are not offers and cannot be accepted by the Federal Government to form a binding contract. Additionally, those submitting responses are solely responsible for all expenses associated with response preparation.

FOR FURTHER INFORMATION CONTACT: For additional information, please direct questions to Kylie Gaskins at *LabtoMarketRFI@ostp.eop.gov* or 202–456–4444.

SUPPLEMENTARY INFORMATION: Our nation's people are rich with diverse experiences. However, there is tremendous untapped science, technology, engineering, and mathematics (STEM) innovative potential throughout the nation. Demographic and socioeconomic groups in every geographic region of the country are full of talent that should have access to Federal programs and resources that afford them opportunities to contribute to the nation's innovation enterprise. There is ample evidence that our nation's potential in the arenas of innovation and entrepreneurship can be enhanced by engagement with the untapped talent of people who belong to groups that have historically been and are currently underrepresented.

Through this RFI, the L2M Subcommittee seeks input from the public to identify and better understand: (1) Barriers that prevent innovators from underrepresented groups or underserved communities from participating in the innovation ecosystem; (2) Recommendations of methods to include and meet the specific needs of innovators from underrepresented backgrounds and communities to increase their participation in the innovation ecosystem; and (3) Examples of government programs or initiatives which have seen success in supporting

innovators from underrepresented backgrounds.

For this RFI, examples of Federal programs and resources to support the innovation ecosystem include STEM education programs, Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) program participation, entrepreneurial training for researchers (*e.g.,* the Innovation Corps I-Corps™ program), collaboration with Federal laboratories, commercialization funding, and other phases of the research, development, demonstration, and deployment (RDD&D) continuum.

Background: The NSTC L2M Subcommittee was established to strengthen the nation's ability to transition Federally-funded innovations from the laboratory to the marketplace. One strategy to accomplish this aim is to enhance participation in the innovation ecosystem. Innovation ecosystem describes the complex community of participants and resources needed to develop and commercialize technology. This ecosystem includes the people (*e.g.,* students, faculty, industry researchers, investors) that make up the institutional entities (*e.g.,* universities, businesses, funding agencies, venture capital firms, state and local economic development organizations, entrepreneur support organizations), material resources (*e.g.,* funding, equipment, facilities), and the relationships among these interconnected actors. Innovation ecosystems may operate at different geographic levels (*e.g.,* city, regional, national) and within multiple sectors (*e.g.,* health, energy, agriculture).

Entrepreneurs may lack knowledge about these resources and have difficulty navigating them, which poses significant barriers to participation. Ensuring that access to resources and capital are available to all Americans as well as ensuring the benefits of entrepreneurship are accessible across the nation are critical in creating a robust and dynamic workforce with inclusive growth.

Information Requested

OSTP seeks responses to the following questions to improve inclusive and equitable access for our nation's diverse pool of innovators and emerging entrepreneurs in Federal science and technology programs. Respondents may provide information for one or as many topics below as they choose. In your response, please indicate your role in the innovation ecosystem (*e.g.,* entrepreneur, investor, ecosystem connector, researcher in academia, state economic development representative).

Executive Order 13985 defines underserved communities as populations sharing a particular characteristic that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life.

1. a. In your experience, what are barriers to participation in the innovation ecosystem?

b. Do barriers exist that are unique to innovators from specific underrepresented backgrounds or underserved communities? If so, what are those barriers?

c. How can the Federal government identify the specific barriers, problems, or issues faced by innovators and emerging entrepreneurs from underrepresented backgrounds or underserved communities as they seek to engage with Federal programs and services?

2. How can the Federal government increase participation in the innovation ecosystem by innovators from backgrounds and communities underrepresented in the current ecosystem? In your response, please provide your definition of ''underrepresented'' or ''underserved''.

3. How can the Federal government meet the specific needs (e.g., training, support, other) of innovators and emerging entrepreneurs from backgrounds and communities underrepresented in the innovation ecosystem by either improving existing government programs or initiatives, or by offering new government programs or initiatives?

4. Are there examples of programs that have seen success in supporting innovators from underrepresented backgrounds and underserved communities in the innovation ecosystem? What are the critical success factors of these programs?

Dated: May 27, 2022.

Stacy Murphy,

Operations Manager.

[FR Doc. 2022–11844 Filed 6–2–22; 8:45 am]

BILLING CODE 3270–F1–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2022–N–7]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 30-Day notice of submission of information collection for approval from Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Housing Finance Agency (FHFA or the Agency) is seeking public comments concerning a previously approved information collection known as ''Advances to Housing Associates,'' which has been assigned control number 2590–0001 by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three-year extension of the control number, which is due to expire on June 30, 2022.

DATES: Interested persons may submit comments on or before July 5, 2022.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the Federal Housing Finance Agency, Washington, DC 20503, Fax: (202) 395–3047, email: *OIRA_submission@omb.eop.gov.* Please also submit comments to FHFA, identified by ''Proposed Collection; Comment Request: 'Advances to Housing Associates, (No. 2022–N–7)' '' by any of the following methods:

- *Agency Website: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by *email* to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, Office of General Counsel, 400 Seventh Street SW, Washington, DC 20219, ATTENTION: Proposed Collection; Comment Request: ''Advances to Housing Associates, (No. 2022–N–7)''.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, email address, and telephone number, on the FHFA website at *http://www.fhfa.gov.*

Copies of all comments received will be available for examination by the public through the electronic comment docket for this PRA Notice also located on the FHFA website.

FOR FURTHER INFORMATION CONTACT: James Hedrick, Senior Financial Analyst, by email at *James.Hedrick@FHFA.gov,* by telephone at (202) 649–3319, or Angela Supervielle, Counsel,

Angela.Supervielle@fhfa.gov, (202) 649–3973 (these are not toll-free numbers); Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of the Information Collection

Section 10b of the Federal Home Loan Bank Act (Bank Act) establishes the requirements for making Federal Home Loan Bank (Bank) advances (secured loans) to nonmember mortgagees, which are referred to as ''Housing Associates'' in FHFA's regulations.[1] Section 10b also establishes the eligibility requirements an applicant must meet in order to be certified as a Housing Associate.

Part 1264 of FHFA's regulations implements the statutory eligibility requirements and establishes uniform review criteria the Banks must use in evaluating applications from entities that wish to be certified as a Housing Associate. Specifically, § 1264.4 implements the statutory eligibility requirements and provides guidance to an applicant on how it may satisfy those requirements.[2] Section 1264.5 authorizes the Banks to approve or deny all applications for certification as a Housing Associate, subject to the statutory and regulatory requirements.[3] Section 1264.6 permits an applicant that has been denied certification by a Bank to appeal that decision to FHFA.[4]

In part 1266 of FHFA's regulations, subpart B governs Bank advances to Housing Associates that have been approved under part 1264. Section 1266.17 establishes the terms and conditions under which a Bank may make advances to Housing Associates.[5] Specifically, § 1266.17(e) imposes a continuing obligation on each certified Housing Associate to provide information necessary for the Bank to determine if it remains in compliance with applicable statutory and regulatory requirements, as set forth in part 1264.

The OMB control number for the information collection, which expires on June 30, 2022, is 2590–0001. The likely respondents include entities applying to be certified as a Housing Associate and current Housing Associates.

[1] *See* 12 U.S.C. 1430b; 12 CFR 1264.3.

[2] *See* 12 CFR 1264.4.

[3] *See* 12 CFR 1264.5.

[4] *See* 12 CFR 1264.6.

[5] *See* 12 CFR 1266.17.

B. Burden Estimates

FHFA estimates the total annualized hour burden imposed upon respondents by this information collection to be 314 hours (14 hours for applicants + 300 hours for current Housing Associates), based on the following calculations:

I. Applicants

FHFA estimates that the total annual average number of entities applying to be certified as a Housing Associate over the next three years will be one, with one response per applicant. The estimate for the average hours per application is 14 hours. Therefore, the estimate for the total annual hour burden for all applicants is 14 hours (1 applicant × 1 response per applicant × 14 hours = 14 hours).

II. Current Housing Associates

FHFA estimates that the total annual average number of existing Housing Associates over the next three years will be 75, with one response per Housing Associate required to comply with the regulatory reporting requirements. The estimate for the average hours per response is 4 hours. Therefore, the estimate for the total annual hour burden for current Housing Associates is 300 hours (75 certified Housing Associates × 1 response per associate × 4 hours = 300 hours).

C. Comments Request

In accordance with the requirements of 5 CFR 1320.8(d), FHFA published an initial notice and request for public comments regarding this information collection in the **Federal Register** on March 3, 2022.[6] The 60-day comment period closed on May 2, 2022. FHFA received no comments.

FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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.

Shawn Bucholtz,

Chief Data Officer, Federal Housing Finance Agency.

[FR Doc. 2022–11894 Filed 6–2–22; 8:45 am]

BILLING CODE 8070–01–P

[6] *See* 87 FR 12168 (March 3, 2022).

FEDERAL MEDIATION AND CONCILIATION SERVICE

Notice of Stakeholder Survey for Qualitative Feedback on Agency Service Delivery

AGENCY: Federal Mediation and Conciliation Service (FMCS).

ACTION: 30-Day notice and request for comments.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection request, Stakeholder Survey for Qualitative Feedback on Agency Service Delivery. This information collection request was previously approved by the Office of Management Budget (OMB) and FMCS is requesting a revision of a currently approved collection. This collection was developed as part of a Federal Government-wide effort to streamline the process for seeking feedback from the public on service delivery.

DATES: Comments must be submitted on or before July 5, 2022.

ADDRESSES: You may submit comments, identified by Stakeholder Survey for Qualitative Feedback on Agency Service Delivery, through one of the following methods:

- *Email: register@fmcs.gov;*
- *Mail:* Office of the General Counsel, One Independence Square, 250 E Street SW, Washington, DC 20427. Please note that at this time, mail is sometimes delayed. Therefore, we encourage emailed comments.

FOR FURTHER INFORMATION CONTACT: Joshua Flax, 202–606–5476, *jflax@fmcs.gov.*

SUPPLEMENTARY INFORMATION: Copies of the agency questions are available here.

I. Information Collection Request

Agency: Federal Mediation and Conciliation Service.

Form Number: OMB No. 3076–0017.

Type of Request: Revision of a currently approved collection.

Affected Entities: Federal government and private sector.

Frequency: This survey is completed once.

Abstract: This information collection provides a means to garner qualitative client and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. This feedback will provide insights into client or stakeholder perceptions, experiences, and expectations. The

surveys will provide notice of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. The surveys are not statistical surveys that yield quantitative results that can be generalized to the population of study. These collections will allow for ongoing, collaborative, and actionable communications between the Agency and its clients and stakeholders. It will also allow feedback to contribute directly to improve program management. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. Collecting this information is critical for ensuring quality service offered to the public.

Burden: FMCS receives approximately 7,100 responses per year and the time required is approximately one minute.

II. Request for Comments

FMCS solicits comments to:

i. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

ii. Enhance the accuracy of the agency's estimates of the burden of the proposed collection of information.

iii. Enhance the quality, utility, and clarity of the information to be collected.

iv. Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic collection technologies or other forms of information technology.

III. 60-Day Comment Period

This information was previously published in the **Federal Register** on March 30, 2022, allowing for a 60-day public comment period under Document 2022–06658 at 87 FR 18370. FMCS received no comments.

IV. The Official Record

The official records are electronic records.

List of Subjects

Labor-Management Relations.

Dated: May 31, 2022.

Anna Davis,

Acting General Counsel.

[FR Doc. 2022–11952 Filed 6–2–22; 8:45 am]

BILLING CODE 6732–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Semiannual Report of Derivatives Activity (FR 2436; OMB No. 7100–0286).

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, Without Revision, of the Following Information Collection

Collection title: Semiannual Report of Derivatives Activity.

Collection identifier: FR 2436.

OMB control number: 7100–0286.

Frequency: Semiannually.

Respondents: U.S. dealers of over-the-counter (OTC) derivatives.

Estimated number of respondents: 8.

Estimated average hours per response: 236.

Estimated annual burden hours: 3,776.

General description of report: The FR 2436 collects derivatives market statistics from the eight largest U.S. dealers of OTC derivatives. Data are collected on the notional amounts and gross fair values of the volumes outstanding of broad categories of foreign exchange, interest rate, equity, commodity-linked, and credit default swap OTC derivatives contracts across a range of underlying currencies, interest rates, and equity markets.

The FR 2436 is the U.S. portion of a global data collection conducted by central banks. The Bank for International Settlements (BIS), of which the Board is a member, compiles aggregate national data from each central bank to produce and publish global market statistics. The BIS survey has two parts: A Derivatives Outstanding survey and a Turnover (volume of transactions) survey. The FR 2436 fulfills the Derivatives Outstanding portion and complements the triennial Central Bank Survey of Foreign Exchange and Derivatives Market Activity (FR 3036; OMB No. 7100–0285), which collects data on derivatives turnover for the Turnover portion of the survey.

Legal authorization and confidentiality: The FR 2436 is authorized pursuant to sections 2A and 12A of the Federal Reserve Act (FRA). Section 2A of the FRA requires that the Board and the Federal Open Market Committee (FOMC) 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.[1] Under section 12A of the FRA, the FOMC is required to implement regulations relating to the open market operations conducted by Federal Reserve Banks. Those transactions must be governed with a view to accommodating commerce and business and with regard to their bearing upon the general credit situation of the country.[2] The Board and the FOMC use the information obtained from the FR 2436 to help fulfill these obligations. The FR 2436 is voluntary.

Aggregated FR 2436 data is compiled and forwarded to the BIS, which publishes global market statistics that are aggregates of national data from the Federal Reserve and other central banks. To the extent individual firm information collected on the FR 2436

[1] 12 U.S.C. 225a.

[2] 12 U.S.C. 263.

constitutes nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent, it may be kept confidential under exemption 4 of the Freedom of Information Act, which exempts ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.'' [3] If it should be determined that any information collected on the FR 2436 must be released, other than in the aggregate in ways that will not reveal the amounts reported by any one institution, respondents will be notified.

Current actions: On November 23, 2021, the Board published a notice in the **Federal Register** (86 FR 66555) requesting public comment for 60 days on the extension, without revision, of the Semiannual Report of Derivatives Activity. The comment period for this notice expired on January 24, 2022. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, May 31, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–11985 Filed 6–2–22; 8:45 am]

BILLING CODE 6210–01–P

[3] 5 U.S.C. 552(b)(4).

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is seeking public comment on its proposal to extend for an additional three years the current Paperwork Reduction Act (''PRA'') clearance for information collection requirements in its ''Used Motor Vehicle Trade Regulation Rule'' (''Used Car Rule'' or ''Rule''), which applies to used vehicle dealers. That clearance expires on January 31, 2023.

DATES: Comments must be filed by August 2, 2022.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Used Car Rule, PRA Comment, FTC File No. [P137606]'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Elizabeth Scott, (312) 960–5609, Attorney, Midwest Region, Federal Trade Commission, 230 South Dearborn Street, Suite 3030, Chicago, IL 60604.

SUPPLEMENTARY INFORMATION:

Title of Collection: The Used Car Rule, 16 CFR part 455.

OMB Control Number: 3084–0108.

Type of Review: Extension without change of currently approved collection.

Affected Public: Private Sector: Businesses and other for-profit entities.

Estimated Annual Burden Hours: 3,338,568.

Estimated Annual Labor Costs: $60,628,394.

Non-Labor Costs: $12,242,100.

Abstract

Under the PRA, 44 U.S.C. 3501–3521, Federal agencies must obtain OMB approval for each collection of information they conduct or sponsor. ''Collection of information'' includes agency requests or requirements to submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the Used Car Rule, 16 CFR part 455 (OMB Control Number 3084–0108).

The Used Car Rule promotes informed purchasing decisions by requiring that used car dealers display a form called a ''Buyers Guide'' on each used car offered for sale that, among other things, discloses information about warranty coverage and other information to assist purchasers. The Rule has no recordkeeping or reporting requirements. The FTC seeks clearance for the Rule's disclosure requirements and the estimated PRA burden for those requirements.

Burden Statement

Estimated total annual hours burden: 3,338,568.

As explained in more detail below, this total is based on estimates of the number of new car and used car dealers that sell used cars (46,525 [1]), the number of used cars sold by dealers annually (approximately 40,807,000 [2]), and the time needed to fulfill the information collection tasks required by the Rule.[3]

The Rule requires that used car dealers display a one-page, double-sided Buyers Guide on each used car that they offer for sale. The component tasks associated with the Rule's required display of Buyers Guides include: (1) Ordering and stocking Buyers Guides; (2) entering data on Buyers Guides; (3) displaying the Buyers Guides on vehicles; (4) revising Buyers Guides as necessary; and (5) complying with the Rule's requirements for sales conducted in Spanish.

1. *Ordering and Stocking Buyers Guides:* Dealers should need no more than an average of two hours per year to obtain Buyers Guides, which are readily available from many commercial printers or can be produced by an office word-processing or desktop publishing system.[4] Based on an estimated population of 46,525 dealers, the annual hours burden for producing or obtaining and stocking Buyers Guides is 93,050 hours (46,525 dealers × 2 minutes).

2. *Entering Data on Buyers Guides:* The amount of time required to enter applicable data on Buyers Guides may vary substantially, depending on whether a dealer has automated the process. For used cars sold ''as is,'' copying vehicle-specific data from dealer inventories to Buyers Guides and checking the ''No Warranty'' box may take two to three minutes per vehicle if done by hand, and only seconds for those dealers who have automated the

[1] *See* U.S. Census Bureau, All Sectors: County Business Patterns, including ZIP Code Business Patterns, by Legal Form of Organization and Employment Size Class for the U.S., States, and Selected Geographies: 2019, *available at https://data.census.gov/cedsci/table?q=CBP2019.CB1900CBP&n=44111%3A44112&tid=CBP2019.CB1900CBP&hidePreview=true&nkd=EMPSZES~001,LFO~001* (listing 21,427 establishments for ''new car dealers,'' NAICS code 44111, and 25,098 establishments for ''used car dealers,'' NAICS code 44112).

[2] U.S. Dept. of Trans., Bureau of Trans. Stat., *New and Used Passenger Car and Light Truck Sales and Leases, https://www.bts.gov/content/new-and-used-passenger-car-sales-and-leases-thousands-vehicles* (last visited Oct. 8, 2021) (listing 40,807,000 used vehicle sales in 2019).

[3] Some dealers opt to contract with outside contractors to perform the various tasks associated with complying with the Rule. Staff assumes that outside contractors would require about the same amount of time and incur similar costs as dealers to perform these tasks. Accordingly, the hour and cost burden totals shown, while referring to ''dealers,'' incorporate the time and cost borne by outside companies in performing the tasks associated with the Rule.

[4] Buyers Guides are also available online from the FTC's website, *www.ftc.gov,* at *http://business.ftc.gov/selected-industries/automobiles.*

process or use pre-printed forms. Staff estimates that dealers will require an average of two minutes per Buyers Guide to complete this task. Similarly, for used cars sold under warranty, the time required to check the ''Warranty'' box and to add warranty information, such as the additional information required in the Percentage of Labor/Parts and the Systems Covered/Duration sections of the Buyers Guide, will depend on whether the dealer uses a manual or automated process or Buyers Guides that are pre-printed with the dealer's standard warranty terms. Staff estimates that these tasks will take an average of one additional minute, *i.e.,* cumulatively, an average total time of three minutes for each used car sold under warranty.

Staff estimates that dealers sell approximately fifty percent of used cars ''as is'' and the other half under warranty. Therefore, staff estimates that the overall time required to enter data on Buyers Guides consists of 680,117 hours for used cars sold without a warranty (40,807,000 vehicles × 50% × 2 minutes per vehicle) and 1,020,175 hours for used cars sold under warranty (40,807,000 vehicles × 50% × 3 minutes per vehicle) for a cumulative estimated total of 1,700,292 hours.

3. *Displaying Buyers Guides on Vehicles:* Although the time required to display the Buyers Guides on each used car may vary, FTC staff estimates that dealers will spend an average of 1.75 minutes per vehicle to match the correct Buyers Guide to the vehicle and to display it on the vehicle. The estimated burden associated with this task is approximately 1,190,204 hours (40,807,000 vehicles × 1.75 minutes per vehicle).

4. *Revising Buyers Guides as Necessary:* If negotiations between the buyer and seller over warranty coverage produce a sale on terms other than those originally entered on the Buyers Guide, the dealer must revise the Buyers Guide to reflect the actual terms of sale. According to the original rulemaking record, bargaining over warranty coverage rarely occurs. Staff notes that consumers often do not need to negotiate over warranty coverage because they can find vehicles that are offered with the desired warranty coverage online or in other ways before ever contacting a dealer. Accordingly, staff assumes that dealers will revise the Buyers Guide in no more than two percent of sales, with an average time of two minutes per revision. Therefore, staff estimates that dealers annually will spend approximately 27,205 hours revising Buyers Guides (40,807,000 vehicles × 2% × 2 minutes per vehicle).

5. *Spanish Language Sales:* The Rule requires dealers to make contract disclosures in Spanish if the dealer conducts a sale in Spanish.[5] The Rule permits displaying both an English and a Spanish language Buyers Guide to comply with this requirement.[6] Many dealers with large numbers of Spanish-speaking customers likely will post both English and Spanish Buyers Guides to avoid potential compliance violations.

Calculations from United States Census Bureau surveys indicate that approximately 13.4 percent of the United States population speaks Spanish at home, and 8.4 percent of the population speak English less than very well.[7] Staff therefore estimate that dealers will conduct approximately 8.4 percent of used car sales in Spanish. Accordingly, dealers will incur the additional burden of completing and displaying a second Buyers Guide in approximately 3,427,788 sales assuming that dealers choose to comply with the Rule by posting both English and Spanish Buyers Guides. Moreover, as noted above, FTC staff estimates that approximately 50% of used cars are sold as-is without a warranty, while the remainder are sold with a warranty. As a result, staff estimates that the annual hours burden associated with entering data on Buyers Guides for sales in Spanish of cars without a warranty is 57,130 hours (1,713,894 sales × 2 minutes). The estimated annual hours burden associated with completing Spanish language buyers guides for vehicles with a warranty is 85,695 hours (1,713,894 sales × 3 minutes). In addition, staff estimates that the additional burden caused by the Rule's requirement that dealers display Spanish language Buyers Guides when conducting sales in Spanish is 99,977 hours (3,427,788 sales × 1.75 minutes).

6. *Optional Disclosures of Non-Dealer Warranties:* The Rule does not require dealers to disclose information about non-dealer warranties, but provides dealers with the options to disclose such warranties on Buyers Guides. FTC staff has estimated that dealers will make the optional disclosures on 25% of used cars offered for sale. Staff believes that checking the optional boxes to disclose a non-dealer warranty should require dealers no more than 30 seconds per vehicle. Accordingly, based on 40,807,000 used cars sold, staff estimates that making the optional disclosures entails a burden of 85,015 hours (25% × 40,807,000 vehicles sold × 1/120 hour per vehicle).

Estimated Annual Cost Burden

1. *Labor costs:* Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. Staff has determined that all of the tasks associated with ordering forms, entering data on Buyers Guides, posting Buyers Guides on vehicles, and revising them as needed, including the corresponding tasks associated with Spanish Buyers Guides and providing optional disclosures about non-dealer warranties, are typically done by clerical or low-level administrative personnel. Using a clerical cost rate of $18.16 per hour[8] and an estimated annual burden of 3,338,568 hours for disclosure requirements, the total labor cost burden is $60,628,394 ($18.16 per hour × 3,338,568 hours).

2. *Capital or other non-labor costs:* Although the cost of Buyers Guides may vary, staff estimates that the average cost of each Buyers Guide is thirty cents based on industry input. Therefore, the estimated cost of Buyers Guides for the estimated 40,807,000 used cars sold by dealers is approximately $12,242,100 (40,807,000 vehicles sold × 30 cents). In making this estimate, staff assumes that all dealers will purchase pre-printed forms instead of producing them internally, although dealers may produce them at lower expense using their own office automation technology. Capital and start-up costs associated with the Rule are minimal.

Request for Comment: Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) Whether the disclosure, recordkeeping, and reporting requirements are necessary, including whether the resulting information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) how to improve the quality, utility, and clarity of the disclosure requirements; and (4) how to minimize the burden of providing the required information to consumers.

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before August 2, 2022. Write ''Used Car Rule, PRA Comment, FTC File No. [P137606]'' on your comment. Your comment, including your name and your state—will be placed on the public

[5] 16 CFR 455.5.

[6] *Id.*

[7] U.S. Census Bureau, *https://www.census.gov/acs/www/about/why-we-ask-each-question/language/* (last visited March 7, 2022).

[8] The hourly rate is based on the Bureau of Labor Statistics estimate of the mean hourly wage for office clerks, general. *Occupational Employment and Wages, May 2020, 43–9061 Office Clerks, General,* available at: *https://www.bls.gov/oes/current/oes439061.htm#nat.*

record of this proceeding, including the *https://www.regulations.gov* website.

Due to the public health emergency in response to the COVID–19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''Used Car Rule, PRA Comment, FTC File No. [P137606]'' on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at *www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else'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.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov,* we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before August 2, 2022. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2022–11944 Filed 6–2–22; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project ''Child Hospital Consumer Assessment of Healthcare Providers and Systems (Child HCAHPS) Survey Database.''

DATES: Comments on this notice must be received by August 2, 2022.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by emails at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Child Hospital Consumer Assessment of Healthcare Providers and Systems (Child HCAHPS) Survey Database

The Child Hospital CAHPS Survey (Child HCAHPS) assesses the experiences of pediatric patients (less than 18 years old) and their parents or guardians with inpatient care. It complements the Adult Hospital CAHPS Survey (Adult HCAHPS), which asks adult inpatients about their experiences. The Child HCAHPS Database is a voluntary database available to all Child HCAHPS users to support both quality improvement and research to enhance the patient-centeredness of care delivered to pediatric hospital patients.

Rationale for the information collection. Like the survey instrument itself and related toolkit materials to support survey implementation, aggregated Child HCAHPS Database results are made publicly available on AHRQ's CAHPS website. Technical assistance is provided by AHRQ through its contractor at no charge to hospitals to facilitate the access and use of these materials for quality improvement and research. Technical assistance is also provided to support Child HCAHPS data submission.

The Child HCAHPS Database supports AHRQ's goals of promoting improvements in the quality and patient-centeredness of health care in pediatric hospital settings. This research has the following goals:

1. Improve care provided by individual hospitals and hospital systems.
2. Offer several products and services, including providing survey results presented through an Online Reporting System, summary chartbooks, custom analyses, private reports and data for research purposes.
3. Provides information to help identify strengths and areas with potential for improvement in patient care.

Survey data from the Child HCAHPS Database will be used to produce three types of reporting products:

- Hospital Feedback Reports. Hospitals that submit data will have access to a customized report that presents findings for their individual submission along with results from the database overall. These ''private'' hospital feedback reports will display sortable results for each of the Child HCAHPS core composite measures and

for each individual survey item that forms the composite measure.

• Child HCAHPS Chartbook. A summary-level Chartbook will be compiled to display top box and other proportional scores for the Child HCAHPS items and composite measures broken out by selected hospital characteristics (*e.g.,* region, hospital size, ownership and affiliation, etc.).

• AHRQ Data Tools website. Aggregate results also will be made publicly available through an interactive, web-based system that allows users to view survey items and composite results in a variety of formats.

The OMB Control Number for the Child HCAHPS Survey Database is 0935–0243, which was last approved by OMB on July 24, 2019, and will expire on July 30, 2022.

This study is being conducted by AHRQ through its contractor, Westat, pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to: the quality, effectiveness, efficiency, appropriateness and value of healthcare services; quality measurement and improvement; and health surveys and database development. 42 U.S.C. 299a(a)(1), (2), and (8).

Method of Collection

To achieve the goals of this project, the following activities and data collections that constitute information collection under the Paperwork Reduction Act will be implemented:

• Registration with the submission website to obtain an account with a secure username and password. The point-of-contact (POC), often the hospital, completes a number of data submission steps and forms, beginning with the completion of the online registration form. The purpose of this form is to collect basic contact information about the organization and initiate the registration process;

• Submission of signed Data Use Agreements (DUAs) and survey questionnaires. The purpose of the data use agreement, completed by the participating hospital, is to state how data submitted by or on behalf of hospitals will be used and provides confidentiality assurances;

• Submission of hospital information form. The purpose of this form completed by the participating organization, is to collect background characteristics of the hospital; and

• Follow-up with submitters in the event of a rejected file, to assist in making corrections and resubmitting the file.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated burden hours for the respondent to participate in the database. The 302 POCs in Exhibit 1 are a combination of an estimated 300 hospitals that currently administer the Child HCAHPS survey and the two survey vendors assisting them.

Each hospital will register online for submission. The online Registration form will require about 5 minutes to complete. Each submitter will also complete a hospital information form. The online hospital information form takes on average 5 minutes to complete. The DUA will be completed by each of the 300 participating hospitals. Survey vendors do not sign or submit DUAs. The DUA requires about 3 minutes to sign and upload to the online submission system. Each submitter, which in most cases will be the survey vendor performing the data collection, will provide a copy of their questionnaire and the survey data file in the required file format. Survey data files must conform to the data file layout specifications provided by the Child HCAHPS Database. Since the unit of analysis is at the hospital level, submitters will upload one data file per hospital. Once a data file is uploaded, the file will be automatically checked to ensure it conforms to the specifications and a data file status report will be produced and made available to the submitter. Submitters will review each report and will be expected to correct any errors in their data file and resubmit if necessary. It will take about one hour to submit the data for each hospital. The total burden is estimated to be 365 hours annually.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents/ POCs	Number of responses per POC	Hours per response	Total burden hours
Registration Form	300	1	5/60	25
Hospital Information Form	300	1	5/60	25
Data Use Agreement	300	1	3/60	15
Data Files Submission	2	150	1	300
Total	NA	NA	NA	365

Exhibit 2 shows the estimated annualized cost burden based on the respondents' time to complete one submission process. The cost burden is estimated to be $18,076 annually.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
Registration Form	300	25	57.12 [a]	$1,428
Hospital Information Form	300	25	57.12 [a]	1,428
Data Use Agreement	300	15	95.12 [b]	1,426
Data Files Submission	2	300	45.98 [c]	13,794
Total	302 **	365	NA	18,076

* National Compensation Survey: Occupational wages in the United States May 2020, "U.S. Department of Labor, Bureau of Labor Statistics."

(a) Based on the mean hourly wage for Medical and Health Services Managers (11–9111).
(b) Based on the mean hourly wage for Chief Executives (11–1011).
(c) Based on the mean hourly wages for Computer Programmer (15–1131).
** The 300 POC listed for the registration form, hospital information form and the data use agreement are the estimated POC's from the estimated participating hospitals.

Request for Comments

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: May 27, 2022.

Marquita Cullom,

Associate Director.

[FR Doc. 2022–11883 Filed 6–2–22; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting for Software Developers on the Common Formats for Patient Safety Data Collection

AGENCY: Agency for Healthcare Research and Quality (AHRQ), Department of Health and Human Services (HHS).

ACTION: Notice of public meeting.

SUMMARY: AHRQ coordinates the development of sets of standardized definitions and formats (Common Formats) that make it possible to collect, aggregate, and analyze uniformly structured information about health care quality and patient safety for local, regional, and national learning. The Common Formats include technical specifications to facilitate the collection of electronically comparable data by Patient Safety Organizations (PSOs) and other entities. Additional information about the Common Formats can be obtained through AHRQ's PSO website at *https://pso.ahrq.gov/common-formats* and the PSO Privacy Protection Center's website at *https://www.psoppc.org/psoppc_web/publicpages/commonFormatsOverview.* The purpose of this notice is to announce a meeting to discuss implementation of the Common Formats with software developers and other interested parties. This meeting is designed as an interactive forum where software developers can provide input on use of the formats. AHRQ especially requests participation by and input from those entities which have used AHRQ's technical specifications and implemented, or plan to implement, the Common Formats electronically.

DATES: The meeting will be held from 2:00 to 3:00 p.m. Eastern on Thursday, June 30th, 2022.

ADDRESSES: The meeting will be held virtually.

FOR FURTHER INFORMATION CONTACT: Dr. Hamid Jalal, Medical Officer, Center for Quality Improvement and Patient Safety, AHRQ, 5600 Fishers Lane, Rockville, MD 20857; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: *pso@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety and Quality Improvement Act of 2005, 42 U.S.C. 299b–21 to 299b–26 (Patient Safety Act), and the related Patient Safety and Quality Improvement Final Rule, 42 CFR part 3 (Patient Safety Rule), published in the **Federal Register** on November 21, 2008, 73 FR 70731–70814, provide for the Federal listing of Patient Safety Organizations (PSOs), which collect, aggregate, and analyze confidential information (patient safety work product) regarding the quality and safety of health care delivery.

The Patient Safety Act requires PSOs, to the extent practical and appropriate, to collect patient safety work product from providers in a standardized manner that permits valid comparisons of similar cases among similar providers. (42 U.S.C. 299b–24(b)(1)(F)). The Patient Safety Act also authorizes the development of data standards, known as the Common Formats, to facilitate the aggregation and analysis of non-identifiable patient safety data collected by PSOs and reported to the network of patient safety databases (NPSD). (42 U.S.C. 299b–23(b)). The Patient Safety Act and Patient Safety Rule can be accessed at: *http://www.pso.ahrq.gov/legislation/.*

AHRQ has issued Common Formats for Event Reporting (CFER) for three settings of care—hospitals, nursing homes, and community pharmacies. As part of the agency's efforts to improve diagnostic safety and quality in healthcare, AHRQ is in the process of developing Common Formats for Event Reporting—Diagnostic Safety (CFER–DS).

Federally listed PSOs can meet the requirement to collect patient safety work product in a standardized manner to the extent practical and appropriate by using AHRQ's Common Formats. The Common Formats are also available in the public domain to encourage their widespread adoption. An entity does not need to be listed as a PSO or working with one to use the Common Formats. However, the Federal privilege and confidentiality protections only apply to information developed as patient safety work product by providers and PSOs working under the Patient Safety Act.

Agenda, Registration, and Other Information About the Meeting

AHRQ will be hosting this fully virtual meeting to discuss implementation of the Common Formats with members of the public, including software developers and other interested parties. Agenda topics will include a presentation by the PSO Privacy Protection Center on ways to submit data, an update on the CFER–DS, and discussion of the data element for location/setting of patient safety events, including use of the Centers for Disease Control and Prevention's National Healthcare Safety Network location codes. Active participation and discussion by meeting participants is encouraged. Time will be allocated to engage meeting participants and foster active discussion.

AHRQ requests that interested persons send an email to *SDMeetings@infinityconferences.com* for registration information. Before the meeting, an agenda and logistical information will be provided to registrants.

Dated: May 27, 2022.

Marquita Cullom,

Associate Director.

[FR Doc. 2022–11943 Filed 6–2–22; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''*Hospital Survey on Patient Safety Culture Comparative Database.*''

DATES: Comments on this notice must be received by August 2, 2022.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

''*Hospital Survey on Patient Safety Culture Comparative Database*''

The Hospital Survey on Patient Safety Culture (Hospital SOPS) is designed to enable hospitals to assess provider and staff perspectives about patient safety issues, medical error, and error reporting. The Hospital SOPS includes 42 items that measure 12 composites of patient safety culture. AHRQ first made the Hospital SOPS publicly available, along with a Survey User's Guide and other toolkit materials, in November, 2004, on the AHRQ website.

The Hospital SOPS Database consists of data from the AHRQ Hospital Survey on Patient Safety Culture and may include reportable, non-required supplemental items. Hospitals in the U.S. can voluntarily submit data from the survey to AHRQ, through its contractor, Westat. The Hospital SOPS Database (OMB NO. 0935–0162, last approved on August 21, 2019) was developed by AHRQ in 2006 in response to requests from hospitals interested in tracking their own survey results. Those organizations submitting data receive a feedback report, as well as a report of the aggregated de-identified findings of the other hospitals submitting data. These reports are used to assist hospital staff in their efforts to improve patient safety culture in their organizations.

Rationale for the information collection. The Hospital SOPS and the Hospital SOPS Database support AHRQ's goals of promoting improvements in the quality and safety of health care in hospital settings. The survey, toolkit materials, and database results are all made publicly available on AHRQ's website. Technical assistance is provided by AHRQ through its contractor at no charge to hospitals, to facilitate the use of these materials for hospital patient safety and quality improvement. This database will:

(1) present results from hospitals that voluntarily submit their data,

(2) provide data to hospitals to facilitate internal assessment and learning in the patient safety improvement process, and

(3) provide supplemental information to help hospitals identify their strengths and areas with potential for improvement in patient safety culture.

This study is being conducted by AHRQ through its contractor, Westat, pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services and with respect to surveys and database development. 42 U.S.C. 299a(a)(1) and (8).

Method of Collection

(1) *Eligibility and Registration Form*—The hospital point-of-contact (POC) completes a number of data submission steps and forms, beginning with the completion of an online Eligibility and Registration Form. The purpose of this form is to collect basic demographic information about the hospital and initiate the registration process.

(2) *Data Use Agreement*—The purpose of the data use agreement, completed by the hospital POC, is to state how data submitted by hospitals will be used and provide privacy assurances.

(3) *Hospital Site Information Form*—The purpose of the site information form, also completed by the hospital POC, is to collect background characteristics of the hospital. This information will be used to analyze data collected with the Hospital SOPS survey.

(4) *Data Files Submission*—POCs upload their data file(s), using hospital data file specifications, to ensure that users submit standardized and consistent data in the way variables are named, coded, and formatted. The number of submissions to the database is likely to vary each year because hospitals do not administer the survey and submit data every year. Data submission is typically handled by one POC who is either a patient safety manager in the hospital or a survey vendor who contracts with a hospital to collect and submit their data. POCs submit data on behalf of 3 hospitals, on average, because many hospitals are part of a health system that includes many hospitals, or the POC is a vendor that is submitting data for multiple hospitals.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in the database. An estimated 340 POCs, representing an average of 3 individual hospitals each, will complete the database submission steps and forms annually. Each POC will submit the following:

- Eligibility and registration form (completion is estimated to take about 3 minutes).
- Data Use Agreement (completion is estimated to take about 3 minutes).
- Hospital Information Form (completion is estimated to take about 5 minutes).
- Survey data submission will take an average of one hour.

The total annual burden hours are estimated to be 459 hours.

Exhibit 2 shows the estimated annualized cost burden based on the respondents' time to submit their data. The cost burden is estimated to be $28,044.90 annually.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents/ POCs	Number of responses per POC	Hours per response	Total burden hours
Eligibility/Registration Form	340	1	3/60	17
Data Use Agreement	340	1	3/60	17
Hospital Information Form	340	3	5/60	85
Data Files Submission	340	1	1	340
Total	N/A	N/A	N/A	459

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents/ POCs	Total burden hours	Average hourly wage rate *	Total cost burden
Eligibility/Registration Form	340	17	$61.10	$1,038.70
Data Use Agreement	340	17	61.10	1,038.70
Hospital Information Form	340	85	61.10	5,193.50
Data Files Submission	340	340	61.10	20,744.00
Total	N/A	N/A	N/A	28,044.90

* Mean hourly wage of $61.10 for Medical and Health Services Managers (SOC code 11–9111) was obtained from the May 2020 National Industry-Specific Occupational Employment and Wage Estimates NAICS 622000—Hospitals, located at *http://www.bls.gov/oes/current/naics3_622000.htm.*

Request for Comments

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: May 27, 2022.

Marquita Cullom,

Associate Director.

[FR Doc. 2022–11882 Filed 6–2–22; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Office of Community Services Data Collection for the Low Income Home Energy Assistance Program Quarterly Performance and Management Reports (0970–0589)

AGENCY: Office of Community Services, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Community Services (OCS), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is requesting an extension of approval for an information request to collect data from Low Income Home Energy Assistance Program (LIHEAP) grant recipients. This information collection was originally approved for 6 months as an emergency approval.

DATES: *Comments due within 30 days of publication.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The proposed LIHEAP Quarterly Performance and Management Report will provide OCS information necessary to oversee recipients' performance in administering historic levels of LIHEAP funding and reaching the most vulnerable households. The report solicits data on total households assisted (and the total households assisted during the same quarter of the previous FY for comparison); the number of occurrences that LIHEAP prevented the loss of home energy/the number of occurrences that LIHEAP restored home energy; estimated use of LIHEAP funds by LIHEAP funding source; LIHEAP information (*e.g.,* training and technical assistance needs, changes to program policies, collaboration with other federal utility assistance programs, etc.); and any explanation needed regarding the reliability and/or validity of the responses in prior sections. The quarterly report is not an abbreviated version of the LIHEAP Annual Report or

Performance Data Form, it is a different form that was designed to focus on how states are leveraging LIHEAP to mitigate rising energy costs this winter and to track the spend down of LIHEAP supplemental funding. The currently approved versions of the LIHEAP Quarterly Performance and Management Reports can be found here *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202202-0970-003.* This extension request includes minor revisions to the instructions regarding submission details and reporting deadlines in future fiscal years.

Respondents: LIHEAP grant recipients.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total annual burden hours
Quarterly Performance and Management Report	206	3	12	7,416

Estimated Total Annual Burden Hours: 7,416.

Authority: 42 U.S.C. 8621.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–11948 Filed 6–2–22; 8:45 am]

BILLING CODE 4184–80–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0955–0019]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before August 2, 2022.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 795–7714.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990–New–60D and project title for reference, to Sherrette A. Funn, email: *Sherrette.Funn@hhs.gov,* or call (202) 795–7714 the Reports Clearance Officer.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: National Survey of Health Information Exchange Organizations (HIO).

Type of Collection: Reinstatement with Change.

OMB No.: 0955–0019.

Abstract: Electronic health information exchange (HIE) was one of three goals specified by Congress in the 2009 Health Information Technology for Economic and Clinical Health (HITECH) Act to ensure that the $30 billion federal investment in certified electronic health records (CEHRTs) resulted in higher-quality, lower-cost care. In subsequent rulemaking and regulations, ensuring that providers can share data electronically across EHRs and other health information systems has been a top priority.

Beginning prior to HITECH, there has been substantial ongoing assessment of trends in the capabilities of health information organizations to support clinical exchange. These surveys have collected data on organizational structure, financial viability, geographic coverage, scope of services, scope of participants, perceptions of information blocking, and participation in national networks and TEFCA. While past surveys assessed HIOs' capacity to support HIE in a variety of ways, they did not closely examine how HIOs support public health exchange. Each of these areas of data collection will be useful to constructing a current and more comprehensive picture of HIOs' role in addressing public health emergencies.

Given the evolving nature of the pandemic, assessing HIOs' current capabilities is critical as there are ongoing needs to share varied types of information that HIOs may be supporting. The survey will collect data from HIOs across the nation. These organizations facilitate electronic exchange of health information across disparate providers, labs, pharmacies, public health departments, and beyond. Little information exists on how HIOs can address information gaps related to public health. Thus, a first step to addressing these gaps, we need to better characterize existing capabilities of HIOs. The success of managing the current pandemic, and future public health emergencies, relies on the ability to efficiently share key data regarding health system capacity, contact tracing, testing, detecting new outbreaks, vaccine updates, and patient demographics to help address disparities in our response efforts.

In addition to measuring the capabilities to support public health, it is also necessary to understand the broader picture of HIO capabilities to support electronic health information exchange, their maturity and challenges they face. There are four key areas that require this broader assessment: (1) Adoption of technical standards; (2) perceptions related to information blocking; (3) HIE coordination at the federal level; and (4) organizational demographics, including technical capabilities offered by HIOs and the challenges they face in supporting electronic health information exchange.

The ultimate goal of our project is to administer a survey instrument to HIOs in order to generate the most current national statistics and associated actionable insights to inform policy efforts. The timely collection of national data from our survey will assess current capabilities to support effective electronic information sharing within our healthcare system related to COVID–19 and other public health relevant data.

This is a 3-year request for OMB approval.

Likely respondents: U.S. based public and private HIOs.

ANNUALIZED BURDEN HOUR TABLE

Forms (if necessary)	Respondents (if necessary)	Number of respondents	Number of responses per respondents	Average burden per response	Total burden hours
HIO Survey	Health Information Organizations	105	1	45/60	79
Total					79

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2022–11888 Filed 6–2–22; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before August 2, 2022.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 795–7714.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990–New–60D and project title for reference, to Sherrette A. Funn, email: *Sherrette.Funn@hhs.gov,* or call (202) 795–7714 the Reports Clearance Officer.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Evaluation of the Extension of the Certified Community Behavioral Health Clinic (CCBHC) Demonstration Program.

Type of Collection: New.

OMB No.: OS–0990–New.

Abstract: The Office of the Assistant Secretary for Planning and Evaluation (ASPE) at the U.S. Department of Health and Human Services (HHS) is requesting Office of Management and Budget (OMB) approval for new data collection activities to support its evaluation of the extension of the Certified Community Behavioral Health Clinic (CCBHC) demonstration program.

Section 223 of the Protecting Access to Medicare Act (Pub. L. 113–93; PAMA) authorized the CCBHC demonstration to allow states to test a new strategy for delivering and reimbursing a comprehensive array of services provided in community behavioral health clinics. The demonstration aims to improve the availability, quality, and outcomes of outpatient services provided in these clinics by establishing a standard definition for CCBHCs and develops a new Medicaid prospective payment system (PPS) in each state that accounts for the total cost of providing nine types of services to all people who seek care. The PPS in each state is designed to provide CCBHCs with the financial support and stability necessary to deliver these required services. The demonstration also aims to incentivize quality through quality bonus payments to clinics and requires CCBHCs to report quality measures and costs.

Need and Proposed Use of the Information: PAMA mandates that HHS submit reports to Congress about the Section 223 demonstration that assess (1) access to community-based mental health services under Medicaid in the area or areas of a state targeted by a demonstration program as compared to other areas of the state, (2) the quality and scope of services provided by certified community behavioral health clinics as compared to community-based mental health services provided in states not participating in a demonstration program and in areas of a demonstration state that are not participating in the demonstration, and (3) the impact of the demonstration on the federal and state costs of a full range of mental health services (including inpatient, emergency, and ambulatory services). The ability of ASPE to provide this information to Congress requires a rigorously designed and independent evaluation of the CCBHC demonstration. The data collected under this submission will help ASPE address research questions for the evaluation and inform required reports to Congress.

The total annual burden hours estimated for this information collection request are summarized in the table below.

ANNUALIZED BURDEN HOUR TABLE

Forms (if necessary)	Respondents (if necessary)	Number of respondents	Number of responses per respondents	Average burden per response	Total burden hours
State official interviews	State officials	27	3	1	81
CCBHC leadership interviews	CCBHC Leadership	30	1	1	30
CCBHC client focus groups	CCBHC clients	40	1	1	40
CCBHC survey	CCBHC Leadership and/or Staff	74	2	3	444
Total		171			595

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2022–11886 Filed 6–2–22; 8:45 am]

BILLING CODE 4150–05–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; URGenT: Translational Efforts to Advance Gene-based Therapies for Ultra-Rare Neurological and Neuromuscular Disorders.

Date: June 24, 2022.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Mirela Milescu, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Boulevard, Suite 3208, MSC 9529, Rockville, MD 20852, 301–496–5720, *mirela.milescu@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; SPAN.

Date: June 28, 2022.

Time: 9:00 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: DeAnna Lynn Adkins, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Boulevard, Rockville, MD 20852, 301–496–9223, *deanna.adkins@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NINDS Special Emphasis Panel.

Date: June 29, 2022.

Time: 1:00 p.m. to 4:00 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: Marilyn Moore-Hoon, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Boulevard, Rockville, MD 20852, 301–827–9087, *mooremar@mail.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; BRAIN K99 Application Review Meeting.

Date: June 29, 2022.

Time: 12:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Lataisia Cherie Jones, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Boulevard, Suite 3208, Rockville, MD 20852, 301–496–9223, *lataisia.jones@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Discovery and Functional Evaluation of Human Pain-associated Genes and Cells (U19).

Date: June 30, 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: Eric S. Tucker, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Boulevard, Suite 3208, MSC 9529, Rockville, MD 20852, 301–827–0799, *eric.tucker@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; K01 & MOSAIC K99 Application Review Meeting.

Date: June 30, 2022.

Time: 12:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Lataisia Cherie Jones, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Boulevard, Suite 3208, Rockville, MD 20852, 301–496–9223, *lataisia.jones@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: May 27, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–11871 Filed 6–2–22; 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; Small Business: Health Informatics.

Date: June 29, 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: Michael J. McQuestion, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, Bethesda, MD 20892, 301–480–1276, *mike.mcquestion@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Hypersensitivity, Allergies and Mucosal Immunology (HAMI).

Date: June 30-July 1, 2022.

Time: 10:00 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: Kaushiki Mazumdar, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–1427, *kaushiki.mazumdar@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Renal/Urological Activities.

Date: July 7, 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: Santanu Banerjee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2106, Bethesda, MD 20892, (301) 435–5947, *banerjees5@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biological Chemistry, Biophysics, and Assay Development.

Date: July 7, 2022.

Time: 9:30 a.m. to 9:00 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: John Harold Laity, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–8254, *john.laity@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: May 27, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–11873 Filed 6–2–22; 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; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Allergy and Infectious Diseases Special Emphasis Panel, May 25, 2022, 12:00 p.m. to 02:00 p.m., National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F52, Rockville, MD 20892, which was published in the **Federal Register** on April 15, 2022, FR Doc 2022–08087, 87 FR 22541.

This notice is being amended to change to the date from May 25, 2022, to June 27, 2022, due to changes in reviewer availability. The meeting is closed to the public.

Dated: May 27, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–11872 Filed 6–2–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the 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.

Proposed Project: Rural Emergency Medical Services Training Monitoring

SAMHSA will monitor program performance of its Rural Emergency Medical Services Training (EMS Training) grant program. The EMS Training grantees will recruit and train EMS personnel in rural areas with a particular focus on addressing mental and substance use disorders. To accomplish this, the EMS Training grantees conduct courses that qualify graduates to serve in an EMS agency, train EMS personnel as appropriate to maintain licenses and certifications and ensure EMS personnel are trained on mental and substance use disorders and care for people with such disorders in emergency situations relevant to serve in an EMS agency.

The EMS Training grantees hold a variety of trainings. A training event is defined as a Rural EMS Training sponsored or co-sponsored event that focuses on teaching of a skill, knowledge, or experience for personal or professional development. Higher education classes must be included in this definition. Each course is considered as one training event. SAMHSA intends to use one (1) instrument for program monitoring of REMS Training grantees activities as well as ongoing quality improvement, which is described below.

1. *Rural EMS Training Program Monitoring Report:* This form collects aggregated event information. This instrument asks eight (8) questions of EMS Training grant staff relating to the number of participants they recruited and trained. It allows the grantees and SAMHSA to track the number of EMS personnel recruited, trained and number of certifications accomplished (See Attachment 1).

SAMHSA recognizes the need for emergency services in rural areas and the critical role EMS personnel serve across the country. The information collected is crucial to support SAMHSA in complying with Government Performance and Results Act (GPRA) Center reporting requirements and will inform future development of knowledge dissemination activities.

The chart below summarizes the annualized burden for this project.

Type of respondent	Number of respondents	Responses per respondent	Total responses	Hours per response	Total annual burden hours	Hourly wage cost	Total hour cost
Rural EMS Staff							
Rural EMS Training Program Monitoring Report	27	2	54	.17	9.18	$19.92	$182.87

Type of respondent	Number of respondents	Responses per respondent	Total responses	Hours per response	Total annual burden hours	Hourly wage cost	Total hour cost
Total	27	2	54	.17	9.18	19.92	182.87

Summary Table

Instrument	Number respondents	Responses per respondents	Burden hours
Rural EMS Training Program Monitoring Report	27	2	9.18
Total	27	2	9.18

Send comments to Carlos D. Graham, SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E57–A, Rockville, Maryland 20857, *OR* email a copy to *Carlos.Graham@samhsa.hhs.gov.* Written comments should be received by August 2, 2022.

Carlos Graham,

Reports Clearance Officer.

[FR Doc. 2022–11963 Filed 6–2–22; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2022 Notice of Supplemental Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of Intent to award supplemental funding to the National Anti-Drug Coalitions Training and Workforce Development Grant Funding Opportunity Announcement SP–19–002 grant recipient funded in FY 2019.

This notice is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA) is supporting an administrative supplement (in scope of the parent award) up to $175,000 (total costs) for one-year to the National Anti-Drug Coalitions Training and Workforce Development award recipient.

The purpose of the National Anti-Drug Coalitions Training and Workforce Development grant program, funding announcement SP–19002, is to provide education, training, and technical assistance for coalition leaders and community teams, with an emphasis on the development of coalitions serving economically disadvantaged areas. The program disseminates evaluation tools, mechanisms, and measures to better assess and document coalition performance measures and outcomes and bridge the gap between research and practice by translating knowledge from research into practical application. To achieve these programmatic goals, SAMHSA issued a single source award to the Community Anti-Drug Coalitions of America (CADCA) in Fiscal Year (FY) 2019.

The supplemental funding provides timely resources to CADCA, the only grant recipient under the National Anti-Drug Coalitions Training and Workforce Development grant program, for implementation of the Voices of Youth Training Initiative. The Voices of Youth Training Initiative supports youth-led strategic planning for the prevention field and develops leadership skills for the future workforce.

This supplement will connect the Health Occupations Students of American—Future Health Professionals (HOSA) national student organization with CADCA to support youth-led strategic planning for the prevention field and develop leadership skills for the future workforce. This supplement will also allow CADCA to provide HOSA students an opportunity to both learn about and provide valuable input into strategic initiatives for prevention. At a minimum the funds awarded will be used to conduct the following activities:

- In collaboration with HOSA, identify a group of 20 students at minimum to participate in strategic planning related to prevention. This should be a mix of HOSA students and CADCA-involved youth and should have representation from each of SAMHSA's 10 Regions.
- Engage the youth to identify 1–2 specific needs that have been presented to them from CSAP and complete facilitated exercises, such as a consumer journey mapping-visual representation of how youth experience the prevention activities they are being asked about. These exercises will help to capture the student's points of view in a way that is structured and useful to ongoing strategic initiatives and is an engaging growth activity for participants.
- Provide learning opportunities to these students, including engaging with community coalitions, prevention training, leadership training, and other opportunities that the recipient may suggest with the goal of preparing these students for a future career in substance abuse prevention/community coalition leadership.

This is not a formal request for application. Assistance will only be provided to the National Anti-Drug Coalitions Training and Workforce Development Grant recipient, CADCA, based on the receipt of a satisfactory application and associated budget that is approved by a review group.

Funding Opportunity Title: FY 2019 National Anti-Drug Coalitions Training and Workforce Development Grant SP–19–002.

Assistance Listing Number: 93.243.

Authority: Section 516 of the Public Health Services Act, as amended.

Justification: Eligibility for this supplemental funding is limited to CADCA which was funded in FY 2019 under the National Anti-Drug Coalitions Training and Workforce Development Grant. CADCA has special expertise providing training and workforce development for thousands of members of community coalitions dedicated to preventing substance use. This organization is uniquely positioned to train youth in community-focused prevention activities being funded through this supplement.

Contact: David Wilson, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, MD 20857, telephone (240)

276–2558; email: *david.wilson@samhsa.hhs.gov*.

Carlos Graham,

Reports Clearance Officer.

[FR Doc. 2022–11891 Filed 6–2–22; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4496–DR; Docket ID FEMA–2022–0001]

Massachusetts; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Massachusetts (FEMA–4496–DR), dated March 27, 2020, and related determinations.

DATES: This change occurred on May 17, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Lori A. Ehrlich, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Paul F. Ford as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–11906 Filed 6–2–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4650–DR; Docket ID FEMA–2022–0001]

Washington; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Washington (FEMA–4650–DR), dated March 29, 2022, and related determinations.

DATES: The amendment was issued May 17, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident for this declared disaster has been changed to severe winter storms, snowstorms, straight-line winds, flooding, landslides, and mudslides.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–11921 Filed 6–2–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4532–DR; Docket ID FEMA–2022–0001]

Vermont; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Vermont (FEMA–4532–DR), dated April 8, 2020, and related determinations.

DATES: This change occurred on May 17, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Lori A. Ehrlich, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Paul F. Ford as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–11911 Filed 6–2–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3576–EM; Docket ID FEMA–2022–0001]

Tennessee; Amendment No. 3 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Tennessee (FEMA–3576–EM), dated December 13, 2021, and related determinations.

DATES: This change occurred on May 16, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Leda M. Khoury, of FEMA is appointed to act as the Federal Coordinating Officer for this emergency.

This action terminates the appointment of Robert A. Haywood as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–11905 Filed 6–2–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4500–DR; Docket ID FEMA–2022–0001]

Connecticut; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Connecticut (FEMA–4500–DR), dated March 28, 2020, and related determinations.

DATES: This change occurred on May 17, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Lori A. Ehrlich, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Paul F. Ford as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–11907 Filed 6–2–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4652–DR; Docket ID FEMA–2022–0001]

New Mexico; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Mexico (FEMA–4652–DR), dated May 4, 2022, and related determinations.

DATES: This amendment was issued May 20, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New Mexico is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 4, 2022.

Colfax, Mora, and San Miguel Counties for debris removal [Category A] under the Public Assistance program (already designated for Individual Assistance and assistance for emergency protective measures [Category B], including direct federal assistance.)

Lincoln County for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program (already designated for Individual Assistance and assistance for emergency protective measures [Category B], limited to direct federal assistance and reimbursement for mass care including evacuation and shelter support.)

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–11898 Filed 6–2–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4637–DR; Docket ID FEMA–2022–0001]

Tennessee; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–4637–DR), dated January 14, 2022, and related May 16, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Leda M. Khoury, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Robert A. Haywood as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–11918 Filed 6–2–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4609–DR; Docket ID FEMA–2022–0001]

Tennessee; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–4609–DR), dated August 23, 2021, and related determinations.

DATES: This change occurred on May 16, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Leda M. Khoury, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Robert A. Haywood as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–11905 Filed 6–2–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4618–DR; Docket ID FEMA–2022–0001]

Pennsylvania; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Pennsylvania (FEMA–4618–DR), dated September 10, 2021, and related determinations.

DATES: This change occurred on April 28, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Charles Monroe Maltbie III, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of E. Craig Levy Sr. as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–11916 Filed 6–2–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4516–DR; Docket ID FEMA–2022–0001]

New Hampshire; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Hampshire (FEMA–4516–DR), dated April 3, 2020, and related determinations.

DATES: This change occurred on May 17, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Lori A. Ehrlich, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Paul F. Ford as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–11909 Filed 6–2–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4505–DR; Docket ID FEMA–2022–0001]

Rhode Island; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Rhode Island (FEMA–4505–DR), dated March 30, 2020, and related determinations.

DATES: This change occurred on May 17, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Lori A. Ehrlich, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Paul F. Ford as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–11908 Filed 6–2–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4522–DR; Docket ID FEMA–2022–0001]

Maine; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Maine (FEMA–4522–DR), dated April 4, 2020, and related determinations.

DATES: This change occurred on May 17, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Lori A. Ehrlich, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Paul F. Ford as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–11910 Filed 6–2–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4601–DR; Docket ID FEMA–2022–0001]

Tennessee; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–4601–DR), dated May 8, 2021, and related determinations.

DATES: This change occurred on May 16, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Leda M. Khoury, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Robert A. Haywood as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–11913 Filed 6–2–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4645–DR; Docket ID FEMA–2022–0001]

Tennessee; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–4645–DR), dated March 11, 2022, and related determinations.

DATES: This change occurred on May 16, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Leda M. Khoury, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Robert A. Haywood as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–11919 Filed 6–2–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4650–DR; Docket ID FEMA–2022–0001]

Washington; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Washington (FEMA–4650–DR), dated March 29, 2022, and related determinations.

DATES: This amendment was issued May 17, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Pursuant to the H.R. 2471, Consolidated Appropriations Act, 2022, notwithstanding sections 403(b), 403(c)(4), 404(a), 406(b), 407(d), 408(g)(2), 428(e)(2)(B), and 503(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), for any emergency or major disaster declared by the President under such Act with a declaration occurring or an incident period beginning between January 1, 2020, and December 31, 2021, the Federal share of assistance, including direct Federal assistance, provided under such sections shall be not less than 90 percent of the total eligible cost of such assistance. The declaration is amended as follows:

Federal funds for Public Assistance, including direct Federal assistance, Hazard Mitigation, and Other Needs Assistance under the Individuals and Households Program, if such programs are authorized, shall be not less than 90 percent of total eligible costs.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036,

Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–11923 Filed 6–2–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4594–DR; Docket ID FEMA–2022–0001]

Tennessee; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–4594–DR), dated April 21, 2021, and related determinations.

DATES: This change occurred on May 16, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Leda M. Khoury, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Robert A. Haywood as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–11912 Filed 6–2–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4607–DR; Docket ID FEMA–2022–0001]

Michigan; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Michigan (FEMA–4607–DR), dated July 15, 2021, and related determinations.

DATES: This change occurred on May 20, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Andrew D. Friend, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Scott A. Burgess as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–11914 Filed 6–2–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4629–DR; Docket ID FEMA–2021–0001]

Connecticut; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Connecticut (FEMA–4629–DR), dated October 30, 2021, and related determinations.

DATES: This amendment was issued May 10, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Connecticut is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 30, 2021.

Middlesex County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–11917 Filed 6–2–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4652–DR; Docket ID FEMA–2022–0001]

New Mexico; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Mexico (FEMA–4652–DR), dated May 4, 2022, and related determinations.

DATES: The declaration was issued May 4, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 4, 2022, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of New Mexico resulting from wildfires and straight-line winds beginning on April 5, 2022, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of New Mexico.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support, under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs).

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Sandra L. Eslinger, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New Mexico have been designated as adversely affected by this major disaster:

Colfax, Lincoln, Mora, San Miguel, and Valencia Counties for Individual Assistance.

Colfax, Lincoln, Mora, San Miguel, and Valencia Counties for emergency protective measures (Category B), limited to direct federal assistance and reimbursement for mass care including evacuation and shelter support.

All areas within the State of New Mexico are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–11924 Filed 6–2–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4650–DR; Docket ID FEMA–2022–0001]

Washington; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Washington (FEMA–4650–DR), dated March 29, 2022, and related determinations.

DATES: This amendment was issued May 17, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Washington is hereby amended to include the following areas among the areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 29, 2022.

Chelan, Clallam, and Okanogan Counties for Public Assistance.

Chelan County for snow assistance under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–11922 Filed 6–2–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4652–DR; Docket ID FEMA–2022–0001]

New Mexico; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the

State of New Mexico (FEMA–4652–DR), dated May 4, 2022, and related determinations.

DATES: This amendment was issued May 17, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New Mexico is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 4, 2022.

Colfax, Mora, and San Miguel Counties for emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program (already designated for Individual Assistance and assistance for emergency protective measures [Category B], limited to direct federal assistance and reimbursement for mass care including evacuation and shelter support.)

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–11925 Filed 6–2–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4650–DR; Docket ID FEMA–2022–0001]

Washington; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Washington (FEMA–4650–DR), dated March 29, 2022, and related determinations.

DATES: The amendment was issued May 17, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this declared disaster is now December 26, 2021, through and including January 15, 2022.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–11920 Filed 6–2–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6332–N–01]

Announcement of Tenant Protection Voucher Funding Awards for Fiscal Year 2021 for the Housing Choice Voucher Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of fiscal year 2021 awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of Tenant Protection Voucher (TPV) funding awards for Fiscal Year (FY) 2021 to public housing agencies (PHAs) under the Section 8 Housing Choice Voucher Program (HCVP). The purpose of this notice is to publish the names, addresses of awardees, and the amount of their non-competitive funding awards for assisting households affected by housing conversion actions, public housing relocations and replacements, and moderate rehabilitation replacements.

FOR FURTHER INFORMATION CONTACT: Danielle L. Bastarache, Deputy Assistant Secretary, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4204, Washington, DC 20410–5000, telephone (202) 402–1380. Hearing- or speech-impaired individuals may call HUD's TTY number at (800) 927–7589. (Only the ''800'' telephone number is toll-free.)

SUPPLEMENTARY INFORMATION: The regulations governing the HCVP are published at 24 CFR part 982. The purpose of the rental assistance program is to assist eligible families to pay their rent for decent, safe, and sanitary housing in the private rental market.

The FY 2021 awardees announced in this notice were provided HCVP tenant protection vouchers (TPVs) funds on an as-needed, non-competitive basis. TPV awards made to PHAs for program actions that displace families living in public housing were made on a first-come, first-served basis in accordance with PIH Notice 2018–04, Voucher Funding in Connection with the Demolition or Disposition of Occupied Public Housing Units, and PIH Notice 2021–10, ''Implementation of the Federal Fiscal Year (FFY) 2021 Funding Provisions for the Housing Choice Voucher Program . . .'' Awards for the Rental Assistance Demonstration (RAD) provided for Rental Supplement and Rental Assistance Payment Projects (RAD Second Component) consistent with PIH Notice H–2020–09 PIH–2020–23(HA), REV–4, ''Rental Assistance Demonstration-Final Implementation, Revision 4.''

Awards published under this notice were provided (1) to assist families living in HUD-owned properties that are being sold; (2) to assist families affected by the expiration or termination of their Project-based Section 8 and Moderate Rehabilitation contracts; (3) to assist families in properties where the owner has prepaid the HUD mortgage; (4) to assist families in projects where the Rental Supplement and Rental Assistance Payments contracts are expiring (RAD—Second Component); (5) to provide relocation housing assistance in connection with the demolition of public housing; (6) to provide replacement housing assistance for single room occupancy (SRO) units that fail housing quality standards (HQS); (7) to assist families in public housing developments that are

scheduled for demolition in connection with a HUD-approved HOPE VI revitalization or demolition grant, and (8) to assist families consistent with PIH Notice 2019–01, ''Funding Availability for Set-Aside Tenant Protection Vouchers.''

A special administrative fee of $200 per occupied unit was provided to PHAs to compensate for any extraordinary HCVP administrative costs associated with the Multifamily Housing conversion actions.

The Department awarded total new budget authority of $142,145,005 to recipients under all the above-mentioned categories for 14,423 housing choice vouchers.

In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses of awardees, and their award amounts in Appendix A. The awardees are listed alphabetically by State for each type of TPV award.

Dominique G. Blom,

General Deputy Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–67–P

Section 8 Rental Assistance Programs Announcement of Awards for Fiscal Year 2021

Housing Agency	Address	Units	HAP Award	Fee Award
	Public Housing Tenant Protection Actions			
	Choice Neighborhood Relocation		**HAP**	**Not Applicable**
MD: HOUSING AUTHORITY OF BALTIMORE CITY	417 EAST FAYETTE STREET, BALTIMORE, MD 21201	50	$ 535,866	
CO: HOUSING AUTHORITY OF THE CITY AND COUNTY OF DENVER	777 GRANT STREET, DENVER, CO 80203	10	$ 132,865	
	Total for Choice Neighborhood Relocation	**60**	**$ 668,731**	
	Choice Neighborhood Replacement			
CT: NORWALK HOUSING AUTHORITY	24 1/2 MONROE STREET, NORWALK, CT 06856	26	$ 448,518	
NE: OMAHA HOUSING AUTHORITY	1823 HARNEY STREET, OMAHA, NE 68102	88	$ 667,159	
OK: TULSA HOUSING AUTHORITY	P O BOX 6369, TULSA, OK 74148	173	$ 1,107,400	
VA: NEWPORT NEWS REDEVELOPMENT & HA	PO BOX 797, NEWPORT NEWS, VA 23607	30	$ 246,121	
VA: NORFOLK REDEVELOPMENT & H/A	555 E. MAIN STREET, 17TH FLOOR P.O. BOX 968, NORFOLK, VA 23501	60	$ 596,238	
MO: ST. LOUIS HOUSING AUTHORITY	3520 PAGE BOULEVARD, ST. LOUIS, MO 63106	45	$ 332,467	
	Total for Choice Neighborhood Replacement	**422**	**$ 3,397,903**	

	MTW Relocation/Replacement			
MN: MINNEAPOLIS PHA	1001 WASHINGTON AVE NORTH, MINNEAPOLIS, MN 55401	3	$ 50,723	
	Total for MTW Relocation/Replacement	**3**	**$ 50,723**	
	Relocation-Sunset			
VA: CHARLOTTESVILLE REDEVELOPMENT & H/A	605 EAST MAIN STREET,ROOM A040 P.O. BOX 1405, CHARLOTTESVILLE, VA 22902	53	$ 499,680	
	Total for Relocation-Sunset	**53**	**$ 499,680**	
	Replacement			
AL: HA ANNISTON	P O BOX 2225, ANNISTON, AL 36202	89	$ 542,437	
AL: HA HUNTSVILLE	P O BOX 486, HUNTSVILLE, AL 35804	131	$ 823,053	
AL: HSG AUTH OF BIRMINGHAM DISTRICT	1826 3RD AVE. SOUTH, BIRMINGHAM, AL 35233	356	$ 2,939,862	
AZ: CITY OF PHOENIX	NEIGHBORHOOD IMPROVEMENT HSG D 251 W. WASHINGTON ST., 4TH FL, PHOENIX, AZ 85003	42	$ 407,550	
CA: COUNTY OF SACRAMENTO HOUSING AUTHORITY	801 12TH STREET, SACRAMENTO, CA 95814	149	$ 1,483,611	
CA: SAN FRANCISCO HSG AUTH	1815 EGBERT AVE., SAN FRANCISCO, CA 94124	125	$ 3,003,991	
FL: MIAMI DADE HOUSING AUTHORITY	701 NW 1ST COURT, 16TH FLOOR, MIAMI, FL 33136	124	$ 1,625,234	
GA: HA COLUMBUS GA GEN FUND ACCT CONSL	P O BOX 630, COLUMBUS, GA 31902	6	$ 41,937	
IN: GARY HA	578 BROADWAY, GARY, IN 46402	312	$ 2,264,446	

LA: SHREVEPORT HSG AUTHORITY	2500 LINE AVENUE, SHREVEPORT, LA 71104	249	$ 1,484,617	
MA: LOWELL HOUSING AUTHORITY	350 MOODY STREET, LOWELL, MA 01853	17	$ 202,861	
MD: MONTGOMERY CO HOUSING AUTHORITY	10400 DETRICK AVENUE, KENSINGTON, MD 20895	26	$ 360,744	
ME: PORTLAND HSG AUTHORITY	14 BAXTER BOULEVARD, PORTLAND, ME 04101	102	$ 1,142,431	
MI: MICHIGAN STATE HSG. DEV. AUTH.	P.O. BOX 30044, LANSING, MI 48909	100	$ 681,816	
MN: CLAY COUNTY HRA	P.O. BOX 99, DILWORTH, MN 56529	30	$ 198,446	
MN: MINNEAPOLIS PHA	1001 WASHINGTON AVE NORTH, MINNEAPOLIS, MN 55401		$ 2,582,639	
MT: MISSOULA HOUSING AUTHORITY	1235 34TH STREET, MISSOULA, MT 59801	178	$ 1,191,290	
ND: FARGO HOUSING AND REDEVELOPMENT AUTHORITY	PO BOX 430, FARGO, ND 58107	92	$ 474,732	
NE: OMAHA HOUSING AUTHORITY	1823 HARNEY STREET, OMAHA, NE 68102	13	$ 107,229	
NJ: NEWARK HOUSING AUTHORITY	500 BROAD STREET, NEWARK, NJ 07102	151	$ 1,794,168	
NJ: VINELAND HOUSING AUTHORITY	191 CHESTNUT AVENUE, VINELAND, NJ 08360	22	$ 161,817	
NY: HA OF BEACON	1 FORRESTAL HEIGHTS, BEACON, NY 12508	244	$ 2,684,596	
NY: HA OF GLENS FALLS	STICHMAN TOWERS JAY STREET, GLENS FALLS, NY 12801	114	$ 632,467	
NY: NEW YORK CITY HOUSING AUTHORITY	90 CHURCH STREET, 9TH FLOOR LEASED HOUSING, NEW YORK, NY 10007	853	$ 11,406,282	
OK: TULSA HOUSING AUTHORITY	P O BOX 6369, TULSA, OK 74148	91	$ 584,537	
OR: HOME FORWARD (PORTLAND HOUSING AUTHORITY)	135 SW ASH STREET, PORTLAND, OR 97204	150	$ 1,433,010	
OR: KLAMATH HOUSING AUTHORITY	PO BOX 5110, KLAMATH FALLS, OR 97601	59	$ 314,925	
TX: ARK-TEX COUNCIL OF GOVTS	4808 ELIZABETH STREET P.O. BOX 5307, TEXARKANA, TX 75505	185	$ 999,245	

TX: HOUSING AUTHORITY OF EL PASO	5300 PAISANO, EL PASO, TX 79905	26	$ 161,778	
VA: NORFOLK REDEVELOPMENT & H/A	555 E. MAIN STREET, 17TH FLOOR P.O. BOX 968, NORFOLK, VA 23501	10	$ 89,030	
VA: PORTSMOUTH REDEVELOPMENT & H/A	PO BOX 1098 3116 SOUTH STREET, PORTSMOUTH, VA 23705	209	$ 1,970,561	
VA: SUFFOLK REDEVELOPMENT & H/A	530 EAST PINNER STREET, SUFFOLK, VA 23434	46	$ 437,902	
WA: SEATTLE HOUSING AUTHORITY	120 SIXTH AVENUE NORTH PO BOX 19028, SEATTLE, WA 98109	228	$ 3,651,356	
CA: CITY OF LOS ANGELES HSG AUTH	2600 WILSHIRE BLVD., 3RD FLOOR, LOS ANGELES, CA 90057	13	$ 170,611	
CO: HOUSING AUTHORITY OF THE CITY AND COUNTY OF DENVER	777 GRANT STREET, DENVER, CO 80203	672	$ 8,928,542	
IN: ANDERSON HA	528 WEST 11TH ST, ANDERSON, IN 46016	2	$ 11,828	
NM: ALBUQUERQUE HSG AUTHORITY	1840 UNIVERSITY BLVD. SE, ALBUQUERQUE, NM 87106	24	$ 161,626	
SC: HA COLUMBIA	1917 HARDEN STREET, COLUMBIA, SC 29204	127	$ 992,139	
VA: CHARLOTTESVILLE REDEVELOPMENT & H/A	605 EAST MAIN STREET,ROOM A040 P.O. BOX 1405, CHARLOTTESVILLE, VA 22902	52	$ 490,251	
CA: CITY OF SAN BUENAVENTURA HSG AUTHORITY	995 RIVERSIDE STREET, VENTURA, CA 93001	16	$ 181,037	
CO: FORT COLLINS HSG AUTH	1715 W. MOUNTAIN AVE., FORT COLLINS, CO 80521	42	$ 406,582	
FL: ST. PETERSBURG H/A	P. O. BOX 12849, ST. PETERSBURG, FL 33733	51	$ 510,102	
FL: HA TALLAHASSEE	2940 GRADY ROAD, TALLAHASSEE, FL 32312	198	$ 1,671,897	
IN: FORT WAYNE HA-CITY OF FORT WAYNE	PO BOX 13489, FORT WAYNE, IN 46869	23	$ 148,634	
IN: MUNCIE HA	409 E. FIRST STREET, MUNCIE, IN 47302	9	$ 53,466	
IN: BLOOMINGTON HOUSING AUTHORITY	1007 N SUMMIT STREET, BLOOMINGTON, IN 47404	29	$ 202,629	

IN: EAST CHICAGO HA	4920 LARKSPUR DR PO BOX 498, EAST CHICAGO, IN 46312	94	$ 689,479	
KY: HOPKINSVILLE HOUSING AUTHORITY	400 NORTH ELM STREET POST OFFICE BOX 437, HOPKINSVILLE, KY 42241	108	$ 411,792	
LA: LAFAYETTE (CITY) HOUSING AUTHORITY	115 KATTIE DRIVE, LAFAYETTE, LA 70501	26	$ 164,596	
LA: ST JOHN THE BAPTIST PARISH HA	152 JOE PARQUET CIRCLE, LAPLACE, LA 70068	70	$ 678,200	
MA: BOSTON HOUSING AUTHORITY	52 CHAUNCY STREET, BOSTON, MA 02111	447	$ 7,727,826	
MD: ELKTON HOUSING AUTHORITY	150 EAST MAIN STREET, ELKTON, MD 21921	58	$ 402,463	
ME: LEWISTON HOUSING AUTHORITY	1 COLLEGE STREET, LEWISTON, ME 04240	2	$ 14,784	
ME: BRUNSWICK HOUSING AUTHORITY	P. O. BOX A, BRUNSWICK, ME 04011	191	$ 1,351,547	
ME: BATH HOUSING AUTHORITY	80 CONGRESS STREET, BATH, ME 04530	97	$ 842,957	
MI: TAYLOR HOUSING COMMISSION	15270 PLAZA SOUTH DRIVE, TAYLOR, MI 48180	30	$ 210,676	
NC: KINSTON H/A	608 N QUEEN STREET PO BOX 697, KINSTON, NC 28502	80	$ 449,777	
NC: STATESVILLE HOUSING AUTHORITY	110 WEST ALLISON STREET, STATESVILLE, NC 28677	21	$ 153,478	
NH: NASHUA HOUSING AUTHORITY	40 EAST PEARL STREET 1ST FLOOR, NASHUA, NH 03060	48	$ 585,867	
NY: ALBANY HOUSING AUTHORITY	200 SOUTH PEARL, ALBANY, NY 12202	59	$ 453,931	
NY: HA OF SCHENECTADY	375 BROADWAY, SCHENECTADY, NY 12305	75	$ 534,474	
NY: WHITE PLAINS HOUSING AUTHORITY	223 DR. MARTIN LUTHER KING JR. BLVD., WHITE PLAINS, NY 10601	90	$ 1,072,149	
OH: LAKE MHA	189 FIRST STREET, PAINESVILLE, OH 44077	25	$ 181,570	
OK: OKLAHOMA CITY HOUSING AUTHORITY	1700 N E FOURTH STREET, OKLAHOMA CITY, OK 73117	24	$ 166,190	
PA: FAYETTE COUNTY HOUSING AUTHORITY	624 PITTSBURGH ROAD, UNIONTOWN, PA 15401	44	$ 252,404	
TX: HOUSTON HOUSING AUTHORITY	2640 FOUNTAIN VIEW, HOUSTON, TX 77057	184	$ 1,821,136	

TX: HOUSING AUTHORITY OF WACO	4400 COBBS DRIVE, WACO, TX 76703	64	$ 426,387	
TX: HOUSING AUTHORITY OF TATUM	P.O. BOX 1066 200 FOREST ACRES, TATUM, TX 75691	40	$ 223,555	
VA: RICHMOND REDEVELOPMENT & H/A	901 CHAMBERLAYNE PARKWAY P.O. BOX 26887, RICHMOND, VA 23261	142	$ 1,334,333	
WA: PENINSULA HOUSING AUTHORITY	2603 S FRANCIS ST, PORT ANGELES, WA 98362	229	$ 1,477,929	
WA: HOUSING AUTHORITY OF GRAYS HARBOR COUNTY	602 EAST FIRST STREET, ABERDEEN, WA 98520	17	$ 79,044	
AL: HA FOLEY	302 FOURTH AVE, FOLEY, AL 36535	87	$ 700,336	
CO: LITTLETON HSG AUTH	5844 S DATURA ST, LITTLETON, CO 80120	71	$ 763,912	
CT: HARTFORD HOUSING AUTHORITY	160 OVERLOOK TERRACE, HARTFORD, CT 06106	33	$ 298,725	
CT: WEST HAVEN HOUSING AUTHORITY	15 GLADE STREET, WEST HAVEN, CT 06516	254	$ 2,688,427	
IL: MENARD COUNTY HOUSING AUTHORITY	101 W. SHERIDAN ROAD, PETERSBURG, IL 62675	56	$ 352,759	
KS: ELLIS COUNTY PHA	C/O NORTHWEST KS HOUSING, INC. P.O. BOX 248, 319 N. POMEROY, HILLS CITY, KS 67642	7	$ 26,048	
NC: HA DURHAM	330 E MAIN STREET PO BOX 1726, DURHAM, NC 27702	31	$ 251,777	
NE: LEXINGTON HOUSING AUTHORITY	609 EAST THIRD STREET, LEXINGTON, NE 68850	32	$ 115,999	
NE: BELLEVUE HOUSING AUTHORITY	8214 ARMSTRONG CIRCLE, BELLEVUE, NE 68147	49	$ 317,932	
NH: SOMERSWORTH HOUSING AUTHORITY	25 A BARTLETT AVENUE, SOMERSWORTH, NH 03878	23	$ 235,009	
NY: HA OF GREENBURGH	9 MAPLE STREET, WHITE PLAINS, NY 10603	113	$ 1,551,617	
OH: PARMA PHA	1440 SNOW ROAD #306, PARMA, OH 44134	60	$ 362,700	
OR: HOUSING AUTHORITY OF LINCOLN COUNTY	PO BOX 1470, NEWPORT, OR 97365	19	$ 122,498	

TX: HOUSING AUTHORITY OF PLANO	1740 AVENUE G, PLANO, TX 75074	515	$ 4,962,417	
VA: HOPEWELL REDEVELOPMENT & H/A	350 E. POYTHRESS ST. (OFFICE) P.O. BOX 1361, HOPEWELL, VA 23860	98	$ 656,761	
	Total for Replacement	**9,500**	**$ 96,923,405**	
	SRO-Relocation/Replacement			
GA: HA SAVANNAH	P. O. BOX 1179 1407 WHEATON STREET, SAVANNAH, GA 31402	20	$ 158,784	
NM: GALLUP HSG AUTHORITY	203 DEBRA DRIVE P.O. BOX 1334, GALLUP, NM 87305	1	$ 4,814	
OH: JEFFERSON MHA	815 NORTH SIXTH STREET, STEUBENVILLE, OH 43952	22	$ 24,478	
	Total for Choice Neighborhood Relocation	**43**	**$188,076**	
	Mod Replacements			
CA: ALAMEDA COUNTY HSG AUTH	22941 ATHERTON STREET, HAYWARD, CA 94541	7	$ 143,934	
CA: SAN DIEGO HOUSING COMMISSION	1122 BROADWAY, SUITE 300, SAN DIEGO, CA 92101	5	$ 55,234	
ME: PORTLAND HSG AUTHORITY	14 BAXTER BOULEVARD, PORTLAND, ME 04101	5	$ 20,040	
PA: ALLEGHENY COUNTY HOUSING AUTHORITY	625 STANWIX ST, 12TH FLOOR, PITTSBURGH, PA 15222	6	$ 36,308	
NY: TOWN OF AMHERST	C/O BELMONT HOUSING RESOURCES 1195 MAIN STREET, BUFFALO, NY 14209	9	$ 35,162	
MI: DETROIT HOUSING COMMISSION	1301 EAST JEFFERSON AVENUE, DETROIT, MI 48207	4	$ 22,608	
PA: PHILADELPHIA HOUSING AUTHORITY	12 SOUTH 23RD STREET, PHILADELPHIA, PA 19103	62	$ 537,458	
SC: HA COLUMBIA	1917 HARDEN STREET, COLUMBIA, SC 29204	8	$ 60,910	

MD: MARYLAND DEPT OF HSG & COMMUNITY DEVELOPMENT	7800 HARKINS ROAD, LANHAM, MD 20706	1	$ 8,920	
OR: HOUSING AUTHORITY OF JACKSON COUNTY	2231 TABLE ROCK ROAD, MEDFORD, OR 97501	6	$ 39,848	
PA: WILKES BARRE HOUSING AUTHORITY	50 LINCOLN PLAZA S. WILKES-BARRE BLVD., WILKES BARRE, PA 18702	11	$ 104,647	
VT: VERMONT STATE HOUSING AUTHORITY	ONE PROSPECT STREET, MONTPELIER, VT 05602	4	$ 31,176	
WV: RANDOLPH COUNTY HOUSING AUTHORITY	P O BOX 1579 1404 N. RANDOLPH AVE., ELKINS, WV 26241	12	$ 48,955	
	Total for Choice Neighborhood Relocation	**140**	**$ 1,145,200**	
	Witness Relocation Assistance			
MD: MONTGOMERY CO HOUSING AUTHORITY	10400 DETRICK AVENUE, KENSINGTON, MD 20895	5	$ 167,193	
CT: MERIDEN HOUSING AUTHORITY	22 CHURCH STREET, MERIDEN, CT 06450	1	$ 18,036	
	Total for Choice Neighborhood Relocation	**6**	**$ 185,229**	
	Total for Public Housing	**10,227**	**$ 103,058,947**	
Multifamily Housing Conversion Actions				
	Certain At-Risk Households Low Vacancy			
DC: D.C HOUSING AUTHORITY	1133 NORTH CAPITOL STREET NE, WASHINGTON, DC 20002	140	$ 2,940,151	$ 28,000
FL: HOUSING AUTHORITY OF JACKSONVILLE	1300 BROAD STREET, JACKSONVILLE, FL 32202	10	$ 76,645	$ 2,000
FL: ORLANDO H/A	390 NORTH BUMBY AVENUE, ORLANDO, FL 32803	164	$ 393,472	$ 32,800

GA: HA OF THE CITY OF DECATUR	750 COMMERCE DRIVE SUITE 110, DECATUR, GA 30030	27	$ 223,184	$ 5,400
IL: QUINCY HOUSING AUTHORITY	540 HARRISON STREET, QUINCY, IL 62301	65	$ 90,396	$ 11,000
MA: MELROSE HSG AUTHORITY	910 MAIN ST, MELROSE, MA 02176	31	$ 224,411	$ 6,200
MD: MONTGOMERY CO HOUSING AUTHORITY	10400 DETRICK AVENUE, KENSINGTON, MD 20895	2	$ 29,581	$ 400
MI: MICHIGAN STATE HSG. DEV. AUTH.	P.O. BOX 30044, LANSING, MI 48909	8	$ 13,636	$ 1,000
NJ: PATERSON HOUSING AUTHORITY	60 VAN HOUTEN STREET, PATERSON, NJ 07505	119	$ 325,034	$ 23,800
TX: AUSTIN HOUSING AUTHORITY	P O BOX 41119, AUSTIN, TX 78704	36	$ 93,551	$ 7,200
VA: LYNCHBURG REDEVELOPMENT & H/A	P.O. BOX 1298 918 COMMERCE STREET, LYNCHBURG, VA 24505	65	$ 80,740	$ 13,000
CA: COUNTY OF MONTEREY HSG AUTH	123 RICO STREET, SALINAS, CA 93907	47	$ 154,748	$ 9,400
FL: SARASOTA HOUSING AUTHORITY	269 S OSPREY AVE SUITE 100, SARASOTA, FL 34236	147	$ 1,616,336	$ 29,200
MA: SPRINGFIELD HSG AUTHORITY	60 CONGRESS P O BOX 1609, SPRINGFIELD, MA 01101	64	$ 583,933	$ 12,800
MA: COMM DEV PROG COMM OF MA.,E.O.C.D.	100 CAMBRIDGE STREET, BOSTON, MA 02114	138	$ 1,556,872	$ 27,600
NJ: JERSEY CITY HOUSING AUTHORITY	400 US HIGHWAY #1, JERSEY CITY, NJ 07306	130	$ 1,709,276	$ 26,000
NY: TOWN OF AMHERST	C/O BELMONT HOUSING RESOURCES 1195 MAIN STREET, BUFFALO, NY 14209	14	$ 19,707	$ 2,800
NY: CITY OF NORTH TONAWANDA	C/O BELMONT HOUSING RESOURCES 1195 MAIN ST, BUFFALO, NY 14209	46	$ 232,922	$ 9,200
TX: SAN ANTONIO HOUSING AUTHORITY	818 S. FLORES STREET PO BOX 1300, SAN ANTONIO, TX 78295	82	$ 583,532	$ 10,600
WA: HOUSING AUTHORITY OF THE CITY OF VANCOUVER	2500 MAIN STREET, #200, VANCOUVER, WA 98660	13	$ 112,758	$ 2,600
	Total For Certain At-Risk Households Low Vacancy	**1,348**	**$ 11,060,885**	**$ 261,000**

	Mod Rehab SRO - RAD			
NY: THE CITY OF NEW YORK	DEPT OF HSG PRESERVATION & DEV 100 GOLD STREET ROOM 501, NEW YORK, NY 10038	159	$ 2,091,614	$ 31,800
WA: SEATTLE HOUSING AUTHORITY	120 SIXTH AVENUE NORTH PO BOX 19028, SEATTLE, WA 98109	51	$ 816,751	$ 9,400
CA: COUNTY OF SANTA CLARA HOUSING AUTH.	505 WEST JULIAN ST, SAN JOSE, CA 95110	4	$ 90,101	$ 800
CA: COUNTY OF SAN DIEGO	3989 RUFFIN ROAD, SAN DIEGO, CA 92123	28	$ 408,193	$ 5,400
	Total for Mod Rehab SRO - RAD	**242**	**$ 3,406,659**	**$ 47,400**
	Prepayment - RAD			
CA: COUNTY OF SANTA CLARA HOUSING AUTH.	505 WEST JULIAN ST, SAN JOSE, CA 95110	10	$ 210,331	$ 2,000
	Total for Prepayment - RAD	**10**	**$ 210,331**	**$ 2,000**
	Pre-payment Vouchers			
GA: HA OF THE CITY OF DECATUR	750 COMMERCE DRIVE SUITE 110, DECATUR, GA 30030	125	$ 1,033,260	$ 24,600
FL: HA WEST PALM BEACH GENERAL FUND	3700 GEORGIA AVE, WEST PALM BEACH, FL 33405	177	$ 2,230,051	$ 35,000
	Total for Pre-payment Vouchers	**302**	**$ 3,263,311**	**$ 59,600**
	Termination/Opt-out Vouchers			
CA: CITY OF SAN LUIS OBISPO HOUSING AUTHORITY	P.O. BOX 1289 487 LEFF STREET, SAN LUIS OBISPO, CA 93406	68	$ 683,457	$ 13,600
DC: D.C HOUSING AUTHORITY	1133 NORTH CAPITOL STREET NE, WASHINGTON, DC 20002	48	$ 1,008,052	$ 5,400

GA: GEORGIA DEPT. OF COMMUNITY AFFAIRS-RENTAL ASSIST.	60 EXECUTIVE PARK SOUTH, NE SUITE 250, ATLANTA, GA 30329	46	$ 382,155	$ 9,200
KS: WICHITA HOUSING AUTHORITY	455 N. MAIN, WICHITA, KS 67202	44	$ 260,320	$ 8,000
MA: CAMBRIDGE HOUSING AUTHORITY	675 MASSACHUSETTS AVENUE, CAMBRIDGE, MA 02139	166	$ 3,648,428	$ 32,600
MI: MICHIGAN STATE HSG. DEV. AUTH.	P.O. BOX 30044, LANSING, MI 48909	40	$ 292,843	$ 8,000
MN: DAKOTA COUNTY CDA	1228 TOWN CENTRE DRIVE, EAGAN, MN 55123	12	$ 96,330	$ 2,400
MN: METROPOLITAN COUNCIL HRA	390 ROBERT STREET NORTH, ST. PAUL, MN 55101	18	$ 192,536	$ 3,000
MO: NODAWAY COUNTY PHA	COMMUNITY SERVICES, INC. PO BOX 328, MARYVILLE, MO 64468	2	$ 4,944	$ -
NE: CENTRAL NEBRASKA JOINT HSG AUTH	P O BOX 509, LOUP CITY, NE 68853	7	$ 27,000	$ 400
NJ: PATERSON HOUSING AUTHORITY	60 VAN HOUTEN STREET, PATERSON, NJ 07505	16	$ 174,808	$ 3,000
NY: NYS HSG TRUST FUND CORPORATION	38-40 STATE STREET, ALBANY, NY 12207	81	$ 952,667	$ 16,200
OH: CINCINNATI METROPOLITAN HSG.AUTH.	1635 WESTERN AVE, CINCINNATI, OH 45214	16	$ 113,591	$ 1,800
OR: NORTHEAST OREGON HOUSING AUTHORITY	PO BOX 3357, LA GRANDE, OR 97850	8	$ 46,605	$ 1,600
SD: SIOUX FALLS HOUSING & REDEVELOPMENT COMMISSION	630 SOUTH MINNESOTA, SIOUX FALLS, SD 57104	12	$ 81,382	$ 2,400
VA: VIRGINIA HOUSING DEVELOPMENT AUTHORITY	601 SOUTH BELVIDERE STREET, RICHMOND, VA 23220	7	$ 60,284	$ 1,400
WA: SEATTLE HOUSING AUTHORITY	120 SIXTH AVENUE NORTH PO BOX 19028, SEATTLE, WA 98109	233	$ 2,721,019	$ 45,400
WI: WISCONSIN HOUSING & ECONOMIC	DEVELOPMENT AUTHORITY P O BOX 1728, MADISON, WI 53701	47	$ 241,849	$ 8,800
MA: SPRINGFIELD HSG AUTHORITY	60 CONGRESS P O BOX 1609, SPRINGFIELD, MA 01101	12	$ 109,488	$ 2,400

TX: SAN ANTONIO HOUSING AUTHORITY	818 S. FLORES STREET PO BOX 1300, SAN ANTONIO, TX 78295	29	$ 206,371	$ 5,800
CA: CITY OF LOS ANGELES HSG AUTH	2600 WILSHIRE BLVD., 3RD FLOOR, LOS ANGELES, CA 90057	26	$ 360,626	$ 5,200
CO: HOUSING AUTHORITY OF THE CITY AND COUNTY OF DENVER	777 GRANT STREET, DENVER, CO 80203	12	$ 159,438	$ 2,400
CT: ANSONIA HOUSING AUTHORITY	36 MAIN STREET, ANSONIA, CT 06401	8	$ 93,625	$ 1,600
IL: DUPAGE COUNTY HOUSING AUTHORITY	711 EAST ROOSEVELT ROAD, WHEATON, IL 60187	64	$ 692,268	$ 12,800
IN: ANDERSON HA	528 WEST 11TH ST, ANDERSON, IN 46016	70	$ 413,986	$ 14,000
KS: GREAT BEND HOUSING AUTHORITY	1101 KANSAS AVENUE, GREAT BEND, KS 67530	30	$ 101,452	$ 5,400
KS: SEK-CAP, INC	401 N. SINNET P O BOX 128, GIRARD, KS 66743	74	$ 343,692	$ 13,600
MI: DETROIT HOUSING COMMISSION	1301 EAST JEFFERSON AVENUE, DETROIT, MI 48207	173	$ 1,397,273	$ 21,800
MI: JACKSON HOUSING COMMISSION	301 STEWARD AVENUE, JACKSON, MI 49201	28	$ 156,999	$ 5,600
MI: PLYMOUTH HOUSING COMMISSION	1160 SHERIDAN, PLYMOUTH, MI 48170	8	$ 61,033	$ 1,600
MI: LIVONIA HOUSING COMMISSION	19300 PURLINGBROOK ROAD, LIVONIA, MI 48152	70	$ 399,613	$ 14,000
MO: ST. FRANCOIS COUNTY PH AGENCY	P O BOX N, PARK HILLS, MO 63601	11	$ 53,073	$ 1,600
MO: DALLAS COUNTY PHA	OACAC HOUSING ASSISTANCE PROGR 215 SOUTH BARNES, SPRINGFIELD, MO 65802	13	$ 53,110	$ 800
ND: MERCER COUNTY HOUSING AUTHORITY	PO BOX 517 1500 THIRD AVENUE NW, MANDAN, ND 58554	13	$ 59,408	$ 1,800
NE: HOUSING AUTHORITY OF LINCOLN	5700 "R" ST P O BOX 5327, LINCOLN, NE 68505	14	$ 68,347	$ 2,800
NH: PORTSMOUTH HOUSING AUTHORITY	245 MIDDLE STREET, PORTSMOUTH, NH 03801	48	$ 459,544	$ 7,600
NJ: NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS	101 SOUTH BROAD STREET POST OFFICE BOX 051, TRENTON, NJ 08625	2	$ 21,186	$ 400
NM: ALBUQUERQUE HSG AUTHORITY	1840 UNIVERSITY BLVD. SE, ALBUQUERQUE, NM 87106	60	$ 404,064	$ 10,800

OR: CENTRAL OREGON REGIONAL HOUSING AUTHORITY	405 SW 6TH STREET, REDMOND, OR 97756	10	$ 76,406	$ 2,000
PA: HOUSING AUTHORITY OF THE CITY OF PITTSBURGH	200 ROSS STREET ATTN: PATRICK BLACKWELL, PITTSBURGH, PA 15219	34	$ 257,856	$ 6,800
PA: PHILADELPHIA HOUSING AUTHORITY	12 SOUTH 23RD STREET, PHILADELPHIA, PA 19103	46	$ 406,879	$ 9,200
PA: HOUSING AUTH CO OF LAWRENCE	481 NESHANNOCK AVE P O BOX 988, NEW CASTLE, PA 16103	40	$ 173,074	$ 8,000
SC: HA COLUMBIA	1917 HARDEN STREET, COLUMBIA, SC 29204	200	$ 1,483,104	$ 24,400
SD: BROOKINGS HOUSING & REDEVELOPMENT COMMISSION	1310 MAIN AVE. SOUTH, BROOKINGS, SD 57006	28	$ 158,710	$ 3,000
TN: HA OAK RIDGE	10 VAN HICKS LANE, OAK RIDGE, TN 37830	10	$ 53,327	$ 1,600
TX: DENTON HOUSING AUTHORITY	1225 WILSON STREET, DENTON, TX 76205	78	$ 834,762	$ 15,600
WA: HA OF CHELAN COUNTY/CITY OF WENATCHEE	1555 SOUTH METHOW ST, WENATCHEE, WA 98801	84	$ 559,238	$ 16,800
WI: OSHKOSH/WINNEBAGO COUNTY HA	PO BOX 397, OSHKOSH, WI 54902	12	$ 47,521	$ 1,600
	Total for Termination/Opt-out Vouchers	**2,178**	**$ 20,653,743**	**$ 384,200**
	PD Relocation Vouchers			
AL: HA GREATER GADSDEN	P O BOX 1219, GADSDEN, AL 35902	82	$ 344,006	$ 9,600
	Total for SRO-Relocation/Replacement	**82**	**$ 344,006**	**$ 9,600**
	Relocation 8bb-sunset			
PA: ALLENTOWN HOUSING AUTHORITY	1339 ALLEN STREET, ALLENTOWN, PA 18102	4	$ 35,138	$ 800

KS: NEWTON HOUSING AUTHORITY	115 WEST 9TH STREET, NEWTON, KS 67114	30	$ 111,985	$ 6,000
	Total for SRO-Relocation/Replacement	**34**	**$ 147,123**	**$ 6,800**
	Total for Multifamily Housing Conversion Actions	**4,196**	**$ 39,086,058**	**$ 770,600**
	Grand total TPV HAP and Fees	**14,423**	**$ 142,145,005**	**$ 770,600**

[FR Doc. 2022–11893 Filed 6–2–22; 8:45 am]

BILLING CODE 4210–67–C

DEPARTMENT OF THE INTERIOR

[FWS–R4–ES–2022–N228; FVHC98220410150–XXX–FF04H00000]

Mississippi Trustee Implementation Group Deepwater Horizon Oil Spill Final Restoration Plan 3 and Environmental Assessment: Habitat Projects on Federally Managed Lands, Sea Turtles, Marine Mammals, Birds, and Provide and Enhance Recreational Opportunities; and Finding of No Significant Impact

AGENCY: Department of the Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the Oil Pollution Act of 1990, the National Environmental Policy Act of 1969, the Final Programmatic Damage Assessment Restoration Plan and Final Programmatic Environmental Impact Statement (Final PDARP/PEIS) and Record of Decision, and the Consent Decree, the Federal and State natural resource trustee agencies for the Mississippi Trustee Implementation Group (MS TIG) have prepared the *Mississippi Trustee Implementation Group Final Restoration Plan 3 and Environmental Assessment: Habitat Projects on Federally Managed Lands, Sea Turtles, Marine Mammals, Birds, and Provide and Enhance Recreational Opportunities* (Final RP3/EA); and Finding of No Significant Impact (FONSI). The Final RP3/EA describes and, in conjunction with the associated FONSI, selects for funding and implementation the preferred restoration projects considered by the MS TIG to compensate for natural resources and their services in the Mississippi Restoration Area as a result of the *Deepwater Horizon* oil spill. The approximate cost to implement the MS TIG's preferred projects is $19,000,000. The purpose of this notice is to inform the public of the availability of the Final RP3/EA and FONSI.

ADDRESSES: *Obtaining Documents:* You may download the Final RP3/EA from either of the following websites:

- *https://www.doi.gov/deepwaterhorizon*
- *https://www.gulfspillrestoration.noaa.gov/restoration-areas/mississippi*

Alternatively, you may request a CD of the Final RP3/EA (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Nanciann Regalado, at nanciann_regalado@fws.gov or 678–296–6805. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Introduction

On April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon* (DWH), which was being used to drill a well for BP Exploration and Production, Inc. (BP), in the Macondo prospect (Mississippi Canyon 252–MC252), experienced a significant explosion, fire, and subsequent sinking in the Gulf of Mexico, resulting in an unprecedented volume of oil and other discharges from the rig and from the wellhead on the seabed. The DWH oil spill is the largest offshore oil spill in U.S. history, discharging millions of barrels of oil over a period of 87 days. In addition, well over 1 million gallons of dispersants were applied to the waters of the spill area in an attempt to disperse the spilled oil. An undetermined amount of natural gas was also released into the environment as a result of the spill.

The Trustees conducted the natural resource damage assessment (NRDA) for the DWH oil spill under the Oil Pollution Act 1990 (OPA; 33 U.S.C. 2701 *et seq.*). Pursuant to OPA, Federal and State agencies act as trustees on behalf of the public to assess natural resource injuries and losses and to determine the actions required to compensate the public for those injuries and losses. The OPA further instructs the designated trustees to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship to baseline (the resource quality and conditions that would exist if the spill had not occurred). This includes the loss of use and services provided by those resources from the time of injury until the completion of restoration.

The DWH Trustees are:

- U.S. Department of the Interior (DOI), as represented by the National Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management;
- National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce;
- U.S. Department of Agriculture (USDA);
- U.S. Environmental Protection Agency (EPA);

- State of Louisiana Coastal Protection and Restoration Authority, Oil Spill Coordinator's Office, Department of Environmental Quality, Department of Wildlife and Fisheries, and Department of Natural Resources;
- State of Mississippi Department of Environmental Quality;
- State of Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama;
- State of Florida Department of Environmental Protection and Fish and Wildlife Conservation Commission; and
- State of Texas: Texas Parks and Wildlife Department, Texas General Land Office, and Texas Commission on Environmental Quality.

On April 4, 2016, the United States District Court for the Eastern District of Louisiana entered a Consent Decree resolving civil claims by the Trustees against BP arising from the DWH oil spill: *United States* v. *BPXP et al.,* Civ. No. 10–4536, centralized in MDL 2179, In re: Oil Spill by the Oil Rig ''Deepwater Horizon'' in the Gulf of Mexico, on April 20, 2010 (E.D. La.) (*http://www.justice.gov/enrd/deepwater-horizon*). Pursuant to the Consent Decree, restoration projects in the Mississippi Restoration Area are chosen and managed by the MS TIG. The MS TIG is composed of the following Trustees: State of Mississippi Department of Environmental Quality, DOI, NOAA, EPA, and USDA.

Background

On October 30, 2020, the MS TIG posted a public notice at *http://www.gulfspillrestoration.noaa.gov* requesting new or revised natural resource restoration project ideas by November 30, 2020, for the Mississippi Restoration Area. The notice stated that the MS TIG was seeking project ideas for the following restoration types: (1) Habitat Projects on Federally Managed Lands; (2) Sea Turtles; (3) Marine Mammals; (4) Birds; and (5) Provide and Enhance Recreational Opportunities. On June 11, 2021, the MS TIG announced that it had initiated drafting of the RP3/EA and that it would include a reasonable range of restoration alternatives (projects) for the five restoration types.

The MS TIG released the Draft RP3/EA on December 7, 2021, and its notice of availability was published in the **Federal Register** on December 7, 2021 (86 FR 69287). In accordance with the National Environmental Policy Act (NEPA) and the OPA NRDA regulations, the MS TIG analyzed a reasonable range of alternatives that would meet the Trustees' goals to restore and conserve habitat, replenish and protect living coastal and marine resources, and provide and enhance recreational opportunities, and identified the alternatives that the MS TIG preferred for implementation. The public review and comment period ran from the date of notice of publication in the **Federal Register** through January 26, 2022. To facilitate public review and comment, the MS TIG held a public webinar on January 11, 2022. Before finalizing the document, the MS TIG considered all public comments received during the webinar, through direct submittals to its online public comment portal, and by USPS. A summary of comments and the MS TIG's responses to those comments are provided in Chapter 6 of the Final RP3/EA.

Overview of the MS TIG Final RP3/EA

The Final RP3/EA provides the MS TIG's analysis of a reasonable range of alternatives, consisting of twelve alternatives, and a no action alternative for each restoration type in the plan. The MS TIG's seven preferred alternatives were ultimately selected for implementation and are presented in the following table under the restoration type from which funds would be allocated in accordance with the DWH Consent Decree. The approximate cost for the seven selected projects is $19,000,000.

Restoration Type: Habitat Projects on Federally Managed Lands
- Improve Native Habitats by Removing Marine Debris from Mississippi Barrier Islands

Restoration Type: Sea Turtles
- Maintaining Enhanced Sea Turtle Stranding Network Capacity and Diagnostic Capabilities (3 Years)

Restoration Type: Marine Mammals
- Maintaining Enhanced Marine Mammal Stranding Network Capacity and Diagnostic Capabilities
- Reduction of Marine Mammal Fishery Interactions through Trawl Technique and Component Material Improvements

Restoration Type: Birds
- Bird Stewardship and Enhanced Monitoring in Mississippi

Restoration Type: Provide and Enhance Recreational Opportunities
- Clower Thornton Nature Park Trail Improvement
- Environmental Education and Stewardship at Walter Anderson Museum of Art

Administrative Record

The documents comprising the Administrative Record for the Final RP3/EA can be viewed electronically at *https://www.doi.gov/deepwaterhorizon/adminrecord*.

Authority

The authority for this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*), its implementing NRDA regulations found at 15 CFR part 990, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and its implementing regulations found at 40 CFR 1500–1508.

Mary Josie Blanchard,

Department of the Interior, Director of Gulf of Mexico Restoration.

[FR Doc. 2022–10467 Filed 6–2–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[223D0102DM; DS65100000; DLSN00000.000000; DX.65101; Docket No. DOI–2022–0008]

Strengthening Public Trust in the Department of the Interior Law Enforcement Programs

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of listening sessions and request for public comments.

SUMMARY: In an effort to identify opportunities for improvement in law enforcement programs of the Department of the Interior (DOI) (National Park Service, U.S. Fish and Wildlife Service, Bureau of Land Management, Bureau of Indian Affairs, and Bureau of Reclamation) and to strengthen public trust in the Department's law enforcement practices and policies, the DOI is hosting twelve (12) listening sessions open to the public. DOI seeks to engage with diverse stakeholders who interact with, are impacted by, or have experience with DOI Law Enforcement Officers to strengthen public relations and inform DOI law enforcement programs. Transparency, building public trust and ensuring accountability are key tenets that support equitable law enforcement experiences across diverse geographic and demographic populations. The public can submit comments through this **Federal Register** Notice which will inform themes and recommendations for the Department.

DATES: The Department of the Interior will hold twelve (12) virtual listening sessions on the following dates:

- Monday, June 13, 2022, from 6:00 p.m.–8:00 p.m. EDT
- Wednesday, June 15, 2022, from 9:00 p.m.–11:00 p.m. EDT

- Tuesday, June 21, 2022, from 3:00 p.m.–5:00 p.m. EDT
- Thursday, June 23, 2022, from 12:00 p.m.–2:00 p.m. EDT
- Saturday, June 25, 2022, from 2:00 p.m.–4:00 p.m. EDT
- Monday, June 27, 2022, from 8:00 p.m.–10:00 p.m. EDT
- Tuesday, June 28, 2022, from 5:00 p.m.–7:00 p.m. EDT
- Thursday, June 30, 2022, from 7:00 p.m.–9:00 p.m. EDT
- Wednesday, July 6, 2022, from 12:00 p.m.–2:00 p.m. EDT
- Wednesday, July 13, 2022, from 10:00 p.m.–12:00 a.m. EDT
- Thursday, July 14, 2022, from 7:00 p.m.–9:00 p.m. EDT
- Saturday, July 16, 2022, from 2:00 p.m.–4:00 p.m. EDT

Interested persons are also invited to submit comments in writing or online on or before August 2, 2022.

ADDRESSES: We invite you to submit comments on this notice. You may submit comments online at *https://www.regulations.gov/* by entering ''DOI–2022–0008'' in the search bar and clicking ''Search'' or by mail to U.S. Department of the Interior, LE Task Force, 1849 C Street NW, MS 3428, Washington, DC 20240. You may respond to some, or all of the questions listed in the ''Supplementary Information—Questions'' section of this document. All public comments received are subject to the Freedom of Information Act and will be posted in their entirety at *https://www.regulations.gov/,* including any personal or business confidential information provided. Do not include any information you would not like to be made publicly available.

If you plan to attend one of the virtual listening sessions and need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation, please contact *doilawenforcement@kearnswest.com.*

FOR FURTHER INFORMATION CONTACT: Lisa Branum, *DOI_LE_Taskforce_External@ios.doi.gov,* (703–239–7126). Additionally, you can visit the DOI Law Enforcement Task Force website at: *https://www.doi.gov/oles/doi-law-enforcement-task-force.*

SUPPLEMENTARY INFORMATION:

Background

On July 7, 2021, Secretary Deb Haaland announced the establishment of a new departmental law enforcement task force to implement the highest standards for protecting the public and provide necessary policy guidance, resources, and training to agency personnel within the DOI. Led by Deputy Secretary of the Interior Tommy Beaudreau, the Task Force is responsible for implementing the Secretary's vision of utilizing an equity lens and evidence-based decision making to review and identify opportunities for improvement in law enforcement programs of the National Park Service, U.S. Fish and Wildlife Service, Bureau of Land Management, Bureau of Indian Affairs, and Bureau of Reclamation. The Task Force will focus on ways to (1) strengthen trust in our law enforcement programs; (2) ensure appropriate policy and oversight is implemented; and (3) ensure supportive resources are available for officer mental health, wellness, and safety.

A working group of subject matter experts, representatives of Bureaus with law enforcement programs, Bureau of Reclamation, and the DOI's Office of Law Enforcement and Security identified both internal and external key stakeholders that will inform this process. External stakeholders will include members of the public, visitors, advocacy groups, cooperating state and local organizations, neighbors and community members, and members of Tribes. With the goal of providing recommendations to improve the law enforcement programs within the DOI, the working group seeks input from these key stakeholders on DOI law enforcement services and areas for possible improvement.

DOI is conducting twelve (12) virtual listening sessions and inviting public comments to obtain stakeholder input on public perception of DOI law enforcement and understand how the DOI can best develop and maintain public trust, transparency, and legitimacy with its stakeholders.

Questions for Discussion

Polling Questions

- *Location:* Where are you participating from?
- *Affiliation:* What organization, tribe/nation, or association are you affiliated with?

Discussion Questions

- What are your perceptions of DOI law enforcement? What experiences or interactions have you had with them?
- How can the Interior best develop and maintain public trust, transparency, and legitimacy in the communities DOI law enforcement works in or serves?
- Is your perception of DOI law enforcement positive or negative? Which practices does DOI law enforcement engage in that inform your feelings about them?
- What recommendations or suggestions would you like to see adopted by DOI law enforcement (*i.e.,* policies and practices, measures to increase diversity in officers to reflect the community, etc.)?

Comments received in response to this notice, from listening sessions and in writing, will be evaluated and, as appropriate, incorporated into DOI's effort to improve public trust in law enforcement.

Registration Information

Advanced registration for individuals and groups is strongly encouraged. For additional information about the listening sessions and to register for a listening session, please visit the DOI Law Enforcement Task Force website at: *https://www.doi.gov/oles/doi-law-enforcement-task-force.* Details for the sessions will be posted to the website.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or Tele Braille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

This action is taken pursuant to delegated authority.

Joan M. Mooney,

Principal Deputy Assistant Secretary, Policy, Management and Budget.

[FR Doc. 2022–11892 Filed 6–2–22; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[223D0102DM, DS6CS00000, DLSN00000.000000. DX6CS25; OMB Control Number 1093–0012]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Application Requirement for States To Apply for Orphaned Well Site Plugging, Remediation, and Restoration Grant Consideration

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of the Secretary, Office of Budget are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before July 5, 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 Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to Departmental Information Collection Clearance Officer, U.S. Department of the Interior, 1849 C Street NW, Washington, DC 20240; or by email to *DOI-PRA@ios.doi.gov.* Please reference OMB Control Number 1093–0012 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this Information Collection Request (ICR), contact William B. Lodder Jr., Team Leader, Environmental Cleanup and Liability Management Team, Office of Environmental Policy and Compliance (OEPC), U.S. Department of the Interior, 1849 C Street NW, Washington, DC 20240; by telephone at 202–208–6128; or by email to *orphanedwells@ios.doi.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 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.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on Wednesday, March 30, 2022 (87 FR 18385). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. 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. 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: Public Law 117–58, Section 40601, ''*Orphaned Well Site Plugging, Remediation, and Restoration*'' contained in the Bipartisan Infrastructure Law (BIL) (November 15, 2021) amends section 349 of the Energy Policy Act of 2005 (42 U.S.C. 15907) and designates the U.S. Department of the Interior (Interior) as the key agency responsible for implementing a grant program for applicable government entities to plug, remediate, and reclaim orphaned wells on lands covered by the legislation. The associated investments, as part of the new grant programs, will rebuild America's critical infrastructure, tackle the climate crisis, advance environmental justice, and drive the creation of good-paying union jobs.

Interior will issue financial assistance through grant and cooperative agreement awards to state governments and Indian tribal governments under Assistance Listing (CFDA) program 15.018 Energy Community Revitalization Program (ECRP). The authority is the Infrastructure Investment and Jobs Act (Pub. L. 117–58), Title VI, Section 40601.

The program is separated into the following parts:

1. Initial Grants to States
2 Formula Grants to States
3. Performance Grants to States
4. Tribal Grants

The BIL requires Interior to collect information necessary to ensure that grant funds authorized by this legislation are used in accordance with the BIL and Federal assistance requirements under 2 CFR 200. Information collected by Interior's Office of Environmental Policy and Compliance (OEPC) as part of the consolidated workplan is described below. Interior seeks OMB approval to collect this information to manage and monitor grant awards to comply with the BIL.

To implement grant funds authorized by the BIL, the OEPC proposes to collect the following information associated with the administration of grants related to ''*Orphaned Well Site Plugging, Remediation, and Restoration*'' under Section 40601:

• Consolidated Workplans—We ask for the following information as part of the consolidated workplan:

—(a) The applicant's process for determining that a well has been orphaned, including what efforts will be made to redeem financial assurances or otherwise recoup remediation costs from any parties responsible;

—(b) A description of the applicant's plugging standards, including the witnessing requirements (qualifications of witness, documentation);

—(c) Details of the applicant's prioritization process for evaluating and ranking orphan wells and associated surface reclamation, including criteria, weighting, and how such prioritization will address resource and financial risk, public health and safety, potential environmental harm (including methane emissions where applicable), and other land use priorities;

—(d) If no prioritization process currently exists, the applicant should describe its plans to develop and implement a prioritization process;

—(e) Details of how the applicant will identify and address any disproportionate burden of adverse human health or environmental effects of orphaned wells on disadvantaged communities, including communities of color, low-income communities, and Tribal and indigenous communities;

—(f) The methodology to be used by the applicant to measure and track methane and other gases associated with orphaned wells, including how the applicant will confirm the effectiveness of plugging activities in reducing or eliminating such emissions;
—(g) The methodology to be used by the applicant to measure and track contamination of groundwater and surface water associated with orphaned wells, including how the applicant will confirm the effectiveness of plugging activities in reducing or eliminating such contamination;
—(h) The methodology to be used to decommission or remove associated pipelines, facilities, and infrastructure and to remediate soil and restore habitat that has been degraded due to the presence of orphaned wells and associated infrastructure;
—(i) Methods the applicant will use to solicit recommendations from local officials and the public regarding the prioritization of well plugging and site remediation activities, and any other processes the applicant will use to solicit feedback on the program from local officials and the public;
—(j) Latitude/Longitude and all other data elements and associated units of measure as indicated in the Orphaned Well Data Reporting Template (see guidance provided within the IC in ROCIS);
—(k) How the applicant will use funding to locate currently undocumented orphaned wells;
—(l) Plans the applicant has to engage third-parties in partnerships around well plugging and site remediation, or any existing similar partnerships the applicant currently belongs to;
—(m) Training programs, registered apprenticeships, and local and economic hire agreements for workers the applicant intends to conduct or fund in well plugging or site remediation;
—(n) Plans the applicant has to support opportunities for all workers, including workers underrepresented in well plugging or site remediation, to be trained and placed in good-paying jobs directly related to the project;
—(o) Plans the applicant has to incorporate equity for underserved communities into their planning, including supporting the expansion of high-quality, good paying jobs through workforce development programs and incorporating workforce strategy into project development;
—(p) Procedures the applicant will use to coordinate with Federal or Tribal agencies to determine whether efficiencies may exist by combining field survey, plugging, or surface remediation work across private, State, Federal, and Tribal land;
—(q) The applicant's authorities to enter private property, or an applicant's procedures to obtain landowner consent to enter private property, in the event that any wells to be plugged will be accessed from privately owned surface;
—(r) A work schedule covering the period of performance of the Initial grant; and
—(s) If applicable, a federally approved Indirect Cost Rate Agreement or statement regarding applicant's intention to negotiate or utilize the de minimis rate.

• Grant Applications—The OEPC proposes to collect the following additional elements from applicants:

—*Standard forms (SF) from the SF–424 Series:* Applicants must submit the following SF–424 series of forms:
○ SF–424, Application for Federal Assistance;
○ SF–424A, Budget Information for Non-Construction Programs or SF–424C Budget Information for Construction Program;
○ SF–424B, Assurances for Non-Construction Programs) or SF–424D Assurances for Construction Programs);
○ SF–428 Tangible Personal Property Report; and the
○ SF–LLL, Disclosure of Lobbying Activities, when applicable)
—*Indirect Cost Statement:* If requesting reimbursement for indirect costs, all applicants must include in their application a statement regarding how they anticipate charging indirect costs.
—*Negotiated Indirect Cost Rate Agreement (NICRA):* When applicable, a copy of the applicant's current Federal Agency-approved Negotiated Indirect Cost Rate Agreement is required.
—*Single Audit Reporting Statement:* All U.S. governmental entities and non-profit applicants must submit a statement regarding their single audit reporting status.
—*Conflict of Interest Disclosures:* Applicants must notify the Service in writing of any actual or potential conflicts of interest known at the time of application or that may arise during the life of this award, in the event the Service makes an award to the entity.
—*Certification Statement:* Applicants for the Initial Grant part of this program must provide a signed State Certification statement consistent with Section 40601(c)(3)(A)(ii)(III) or 40601(c)(3)(A)(i)(II) of the BIL.

• Amendments—For many budget and program plan revisions, 2 CFR 200 requires recipients submit revision requests to the Federal awarding agency in writing for prior approval. Interior reviews such requests received to determine the eligibility and allowability of new or revised activities and costs and approves certain items of cost.

• Reporting/Recordkeeping Requirements:

—*Financial Reports:* Recipients are required to submit all financial reports on the Standard Form 425, Federal Financial Report. All recipients must submit financial reports in accordance with 2 CFR 200. The frequency of financial reporting may vary between the different parts of this program. However, all recipients will be required to submit reports at least annually and no more frequently than quarterly. We may require interim reports more frequently than quarterly as a specific condition of award in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes, and preferably in coordination with performance reporting.
—*Performance Reports:* Recipients must submit performance reports in accordance with 2 CFR 200. We use performance reports as a tool to ensure that the recipient is accomplishing the work on schedule and to identify any problems that the awardee may be experiencing in accomplishing that work. This information is necessary for the Service to track accomplishments and performance-related data.
Performance reports must include:
○ A comparison of actual accomplishments to the goals and objectives established for the reporting period, the results/findings, or both;
○ If the goals and objectives were not met, the reasons why, including analysis and explanation of cost overruns or high unit costs compared to the benefit received to reach an objective;
○ Performance trend data and analysis to be used by the awarding program to monitor and assess recipient and Federal awarding program performance; and
○ Consolidated long-term work plan and accomplishments updates, when award is part of a large scale or long-term effort funded under multiple awards over time.

The frequency of performance reporting may vary between the

different parts of this program. However, all recipients will be required to submit reports at least annually and no more frequently than quarterly. We may require interim reports more frequently than quarterly as a specific condition of award in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes.

—*Final 15-month Report:* As required in the BIL, State recipients under the Initial Grants part of the program must submit a report no later than 15 months after the date on which the State receives the funds, describing the means by which the State used the funds in accordance with its application and certification, and including the reporting parameters described in this guidance.

—*Recordkeeping Requirements:* Recipients must retain financial records, supporting documents, statistical records, and all other records pertinent to a Federal award per 2 CFR 200 requirements.

Title of Collection: Application Requirement for States to Apply for Orphaned Well Site Plugging, Remediation, and Restoration Grant Consideration.

OMB Control Number: 1093–0012.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: 92/(27 State and 65 tribal governments).

Total Estimated Number of Annual Respondents: 470.

Total Estimated Number of Annual Responses: 470.

Estimated Completion Time per Response: Varies from 3 hours to 40 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 10,702 Hours.

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
Consolidated Workplan.					
Government	92	1	92	4	368
Applications.					
Government	92	1	92	40	3,680
Amendments.					
Government	10	1	10	3	30
Financial Reports.					
Reporting	92	1	92	6	552
Recordkeeping				2	184
Performance Reports.					
Reporting	92	1	92	24	2,208
Recordkeeping				8	736
Final 15-month Reports.					
Reporting	92	1	92	24	2,208
Recordkeeping				8	736
Totals:	*470*		*470*		*10,702*

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.*).

Jeffrey Parrillo,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–11934 Filed 6–2–22; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[212 LLUTY02000 L17110000.PN0000 LXSSJ0650000]

Notice of Public Meeting, Bears Ears National Monument Advisory Committee, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act, as amended, the Federal Advisory Committee Act, and the Federal Lands Recreation Enhancement Act, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Bears Ears National Monument Advisory Committee will meet as indicated below.

DATES: The Bears Ears National Monument Advisory Committee will hold virtual meetings on June 29–30, 2022, and September 13, 2022, and an in-person meeting on December 7, 2022. All meetings will occur from 8:00 a.m. to 3:00 p.m. Public comments will be received at 1:30 p.m. each meeting day. The meetings are open to the public.

ADDRESSES: The agenda and meeting access information (including how to log in and participate in virtual meetings) will be announced on the Bears Ears National Monument Advisory Committee web page 30 days before the meeting at *https://go.usa.gov/xu3Uf.* The December meeting will be held in-person at the Hideout (648 South Hideout Way, Monticello, UT 84535), unless there are COVID–19 restrictions in place, in which case the meeting will be held virtually. Any changes from an in-person to virtual meeting will be posted on the Bears Ears National Monument Advisory Committee web page.

FOR FURTHER INFORMATION CONTACT: Rachel Wootton, Canyon Country District Public Affairs Officer, P.O. Box

7, Monticello, Utah 84535, via email with the subject line ''BENM MAC'' to *blm_ut_mt_mail@blm.gov,* or by calling the Monticello Field Office at (435) 587–1500. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. Please contact us for reasonable accommodations to participate.

SUPPLEMENTARY INFORMATION: Presidential Proclamation 9558 and Presidential Proclamation 10285 established the Bears Ears National Monument Advisory Committee to provide advice and information to the Secretary of the Interior through the Director of the BLM, and to the Secretary of the U.S. Department of Agriculture (USDA) through the Chief of the USDA Forest Service, to consider for managing the Bears Ears National Monument. The 15-member committee represents a wide range of interests including local and state government, paleontological and archaeological expertise, the conservation community, livestock grazing permittees, Tribal members, developed and dispersed recreation interests, private landowners, local business owners, and the public at large.

Planned agenda items for the June meeting include administrative business; resource conditions and trends, uses, activities, and preliminary alternative management strategies for the Bears Ears National Monument; and an overview of the planning process. Planned agenda items for the September meeting include Monument planning updates, an overview of the scoping process, and identification and discussion of potential issues to consider in the planning process. Planned agenda items for the December meeting include a discussion on the draft environmental impact statement and potential alternatives for the Resource Management Plan.

A public comment period will be offered during these meetings. Depending on the number of people wishing to comment and the time available, the time for individual comments may be limited. Written comments may also be sent to the Monticello Field Office at the address listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. All comments received prior to the meeting will be provided to the Bears Ears National Monument Advisory Committee.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Detailed minutes for the Bears Ears National Monument Advisory Committee meeting will be maintained in the Canyon Country District Office and will be available for public inspection and reproduction during regular business hours within 90 days following the meeting. Minutes will also be posted to the Bears Ears National Monument Advisory Committee web page.

Authority: 43 CFR 1784.4–2.

Gregory Sheehan,

State Director.

[FR Doc. 2022–11980 Filed 6–2–22; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–IR1–NERO–32342; PPNENERON3.PPMPSPD1Y.S00000]

National Wild and Scenic Rivers System; Musconetcong Wild and Scenic River; Notice of Additional Segment Designation

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Assistant Secretary for Fish and Wildlife and Parks, exercising the delegated authority of the Secretary of the Interior, finds that the conditions for designation of the 4.3-mile segment C of the Musconetcong River within Pohatcong Township, Warren County, New Jersey under the National Wild and Scenic Rivers Act have been met. Accordingly, the Assistant Secretary hereby provides notice of her designation of this segment as a recreational segment, segment C of the Musconetcong Wild and Scenic River.

ADDRESSES: Musconetcong Wild and Scenic River information, including the river's management plan and designation legislation, are available online at *www.rivers.gov,* or *www.musconetcong.org.*

FOR FURTHER INFORMATION CONTACT: Jamie Fosburgh, Partnership Wild and Scenic Rivers, Interior Region 1, National Park Service; email: *jamie_fosburgh@nps.gov,* telephone: (617) 314–2810.

SUPPLEMENTARY INFORMATION: On July 18, 2018, The Pohatcong Township Council voted unanimously by resolution to demonstrate its support for adding segment C to the Musconetcong Wild and Scenic River designation (16 U.S.C. 1274(a)). The resolution satisfies the local support suitability requirement pursuant to Public Law 109–452, Section 5(d), which authorizes the Secretary of the Interior to add the additional segment upon a finding that there is adequate local support for designating the additional river segment and upon publication of notice in the **Federal Register**. Designating river segment C will add 4.3 miles to the river's designation, for a total of 28.5 miles. The Musconetcong River was designated into the National Wild and Scenic Rivers System on December 22, 2006. The segment will be managed as a recreational river, consistent with the *Musconetcong River Management Plan* and the provisions of Public Law 109–452.

Shannon Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2022–11978 Filed 6–2–22; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1560–1562 and 1564 (Final)]

Raw Honey From Argentina, Brazil, India, and Vietnam

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially injured by reason of imports of raw honey from Argentina, Brazil, India, and Vietnam, provided for in subheading 0409.00.00 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV'').[2] [3]

Background

The Commission instituted these investigations effective April 21, 2021, following receipt of petitions filed with the Commission and Commerce by the American Honey Producers Association (''AHPA''), Bruce, South Dakota, and the Sioux Honey Association (''SHA''), Sioux City, Iowa. The Commission scheduled the final phase of the investigations following notification of preliminary determinations by Commerce that imports of raw honey from Argentina, Brazil, India, Ukraine, and Vietnam were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)).[4] Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 9, 2021 (*86 FR 70144*). The Commission conducted its hearing on April 11, 2022. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to § 735(b) of the Act (19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on May 27, 2022. The views of the Commission are contained in USITC Publication 5327 (May 2022), entitled *Raw Honey from Argentina, Brazil, India, and Vietnam: Investigation Nos. 731–TA–1560–1562 and 1564 (Final).*

By order of the Commission.

Issued: May 24, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–11887 Filed 6–2–22; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 87 FR 22179, 87 FR 22182, 87 FR 22188, 87 FR 22184 (April 14, 2022).

[3] The Commission also finds that imports subject to Commerce's affirmative critical circumstances determination are not likely to undermine seriously the remedial effect of the antidumping duty order on Argentina. The Commission finds that imports subject to Commerce's affirmative critical circumstances determination are likely to undermine seriously the remedial effect of the antidumping duty order on Vietnam.

[4] On March 24, 2022, counsel for petitioners filed with Commerce and the Commission a withdrawal of their petition regarding imports of raw honey from Ukraine. Accordingly, the antidumping duty investigation concerning raw honey from Ukraine (Investigation No. 731–TA–1563 (Final)) was terminated. 87 FR 19855 (April 6, 2022), 87 FR 20462 (April 07, 2022).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1269]

Certain Electrolyte Containing Beverages and Labeling and Packaging Thereof; Notice of Commission Request for Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to request written submissions from the parties, interested government agencies, and interested persons, under the schedule set forth below, on remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–4716. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On July 6, 2021, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based on a complaint filed by CAB Enterprises, Inc. of Houston, Texas and Sueros y Bebidas Rehidratantes, S.A. de C.V. of Mexico (collectively, ''Complainants''). *See* 86 FR 35532–33 (July 6, 2021). The complaint, as supplemented, alleges a violation 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 electrolyte containing beverages and labeling and packaging thereof by reason of infringement of U.S. Trademark Registration Nos. 4,222,726; 4,833,885; 4,717,350; and 4,717,232 (collectively, ''the Asserted Trademarks''). *See id.* The notice of investigation names the following respondents (all of Mexico): (1) Carbonera Los Asadores de C.V.; Comercial Treviño de Reynosa, S.A. de C.V.; Distribuidora Mercatto S.A. de C.V.; H & F Tech International S.A. de C.V.; Leticia Angélica Saenz Fernandez; Yoselen Susana Martinez Tirado; Grupo Comercial Lux del Norte S.A. de C.V.; and Caribe Agencia Express, S.A. de C.V. (collectively, ''the Defaulting Respondents''); and (2) Flexicompuestos S.A. de C.V.; Comercializadora Degu S.A. de C.V.; MPC Foods S.A. de C.V.; Myrna Guadalupe Perez Martinez; Comercializadora Embers S.A. de C.V.; and Manuel Bautista Nogales (collectively, ''the Remaining Respondents''). *See id.* The Office of Unfair Import Investigations (''OUII'') is also a party to the investigation. *See id.*

On September 14, 2021, and April 7, 2022, the presiding administrative law judge (''ALJ'') issued initial determinations (Order Nos. 8 & 19) finding the Defaulting Respondents in default pursuant to Commission Rule 210.16 (19 CFR 210.16), for failure to respond to the complaint and notice of investigation and to orders to show cause (Order Nos. 7 & 9). *See* Order No. 8 (Sept. 14, 2021), *unreviewed by* Comm'n Notice (Oct. 6, 2021); Order No. 19 (Apr. 7, 2022), *unreviewed by* Comm'n Notice (Apr. 26, 2022).

On April 6, 2022, Complainants filed a motion for partial termination of the investigation as to the Remaining Respondents based on the withdrawal of the allegations in the complaint as to those respondents under 19 CFR 210.21(a). On April 7, 2022, OUII filed a response in support of the motion.

On April 18, 2022, Complainants filed a declaration under Commission Rule 210.16 (19 CFR 210.16) requesting the immediate entry of limited exclusion

orders against the Defaulting Respondents. Complainants also indicated pursuant to 19 CFR 210.16(c)(2) that they are not seeking a general exclusion order. No response to Complainants' declaration was received.

Commission Rule 210.16(c)(1) provides that ''[a]fter a respondent has been found in default by the Commission, the complainant may file with the Commission a declaration that it is seeking immediate entry of relief against the respondent in default'' and ''[t]he facts alleged in the complaint will be presumed to be true with respect to the defaulting respondent.'' *See* 19 CFR 210.16. In addition, ''[t]he Commission may issue an exclusion order, a cease and desist order, or both, affecting the defaulting respondent only after considering the effect of such order(s) upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers, and concluding that the order(s) should still be issued in light of the aforementioned public interest factors.'' *See id.*

Accordingly, the Commission has determined to request written submissions from the parties, interested government agencies, and interested persons, under the schedule set forth below, on remedy, the public interest, and bonding. More specifically, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (Dec. 1994).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainants are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are further requested to provide the HTSUS numbers under which the accused products are imported, and to supply the names of known importers of the products at issue in this investigation.

Written submissions and proposed remedial orders must be filed no later than close of business on June 10, 2022. Reply submissions must be filed no later than the close of business on June 17, 2022. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1269'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

While temporary remote operating procedures are in place in response to COVID–19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the Complainant(s) complete service for any party/parties without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).

The Commission's vote for this determination took place on May 27, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: May 24, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–11868 Filed 6–2–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1317]

Certain Barcode Scanners, Scan Engines, Mobile Computers With Barcode Scanning Functionalities, Products Containing the Same, and Components Thereof; 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 May 2, 2022, under section 337 of the Tariff Act of 1930, as amended on behalf of Honeywell International Inc. of Charlotte, North Carolina and Hand Held Products, Inc. of Charlotte, North Carolina. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain barcode scanners, scan engines, mobile computers with barcode scanning functionalities, products containing the same, and components thereof by reason of the infringement of certain claims of U.S. Patent No. 9,465,970 (''the '970 Patent''); U.S. Patent No. 10,956,695 (''the '695 Patent''); and U.S. Patent No. 11,238,252 (''the '252 Patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and 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: Katherine Hiner, Office of Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2021).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 31, 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, 3, 13–15, 21, 43, 45, 55–57, 84, 85, 87, 99, and 105 of the '970 patent; claims 1, 2, 6, 9–11, 13, and 14 of the '695 patent; and claims 13, 16, 18, 20, 22–24, 26, and 27 of the '252 patent, whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''barcode scanners (also known as barcode readers, barcode decoders, stationary scanners, handheld scanners, companion scanners, cabled scanners, wireless scanners, and mobile scanning devices), handheld computers, mobility devices, scan engines, undecoded scan engines, decoder boards, and imaging modules'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Honeywell International Inc., 855 S. Mint Street, Charlotte, NC 28202

Hand Held Products, Inc.,885 S. Mint Street, Charlotte, NC 28202

(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:

Zebra Technologies Corporation, 3 Overlook Point, Lincolnshire, IL 60069

Symbol Technologies, Inc., 1 Zebra Plaza, Holtsville, NY 11742

(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 will not participate 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.

By order of the Commission.

Issued: May 31, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–11979 Filed 6–2–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1190–0019]

Agency Information Collection Activities; Proposed eCollection; eComments Requested; Extension Without Change of a Currently Approved Collection. Requirement That Movie Theaters Provide Notice as to the Availability of Closed Movie Captioning and Audio Description

AGENCY: Civil Rights Division, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Disability Rights Section (DRS), Civil Rights Division, Department of Justice (the Department), will submit the following information collection extension request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Comments are encouraged and will be accepted for 60 days until August 2, 2022.

FOR FURTHER INFORMATION CONTACT: If you have additional comments (especially on the estimated public burden or associated compliance time) or need additional information, please contact: Rebecca B. Bond, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, by mail at 4CON, 950 Pennsylvania Ave. NW, Washington, DC 20530; send an email to *DRS.PRA@usdoj.gov;* or call (800) 514–0301 (voice) or (800) 514–0383 (TTY) (the Division's Information Line). Include the title of this proposed collection: ''Requirement that Movie Theaters Provide Notice as to the Availability of Closed Movie Captioning and Audio Description,'' in the subject line of all written comments.

You may obtain copies of this notice in an alternative format by calling the Americans with Disabilities Act (ADA) Information Line at (800) 514–0301 (voice) or (800) 514–0383 (TTY).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Civil Rights Division, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether, and if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of Information Collection

1. *Type of information collection:* Extension of Currently Approved Collection.

2. *The title of the form/collection:* Requirement that Movie Theaters Provide Notice as to the Availability of Closed Movie Captioning and Audio Description.

The agency form number, if any, and the applicable component of the Department sponsoring the collection:

Form Number: OMB Number 1190–0019.

Component: The applicable component within the Department of Justice is the Disability Rights Section in the Civil Rights Division.

3. *Affected public who will be required to comply, as well as a brief abstract:*

Affected Public (Primary): Businesses and not-for-profit institutions that own, operate, or lease a movie theater that has one or more auditoriums showing digital movies with closed movie captioning and audio description, and that provide notice of movie showings and times. Under the relevant regulation, ''movie theater'' means a facility other than a drive-in theater that is used primarily for the purpose of showing movies to the public for a fee.

Affected Public (Other): None.

Abstract: The Department's Civil Rights Division, Disability Rights Section (DRS), is seeking to extend its information collection arising from a regulatory provision that requires covered movie theaters to disclose information to the public regarding the availability of closed movie captioning and audio description for movies shown in their auditoriums.

Title III of the Americans with Disabilities Act (ADA), at 42 U.S.C. 12182, prohibits public accommodations from discriminating against individuals with disabilities. The existing ADA title III regulation, at 28 CFR 36.303(a)–(g), requires covered entities to ensure effective communication with individuals with disabilities. The title III regulation clarifies that movie theaters that provide captioning or audio description for digital movies must ensure that ''that all notices of movie showings and times at the box office and other ticketing locations, on websites and mobile apps, in newspapers, and over the telephone, inform potential patrons of the movies or showings that are available with captioning and audio description.'' 28 CFR 36.303(g). This requirement does not apply to any third-party providers of films, unless they are part of or subject to the control of the public accommodation. *Id.* Movie theaters' disclosure of this information will enable individuals with hearing and vision disabilities to readily find out where and when they can have access to movies with these features.

4. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The Department's initial PRA request for this collection relied on U.S. Census Bureau data from 2012 and estimated that there was a total of 1,876 firms owning one or more movie theaters in the United States that were potentially subject to this disclosure. 81 FR 37643 (June 10, 2016). The most recent U.S. Census Bureau data from 2019 estimates that there was a total of 1,892 firms owning one or more movie theaters. As the vast majority of U.S. movie theaters now show digital movies, which typically allow for closed captioning and audio description, to the extent that each of these movie theater firms that shows digital movies provides notices of movie showings and times to the public about those films, they must provide information concerning the availability of closed movie captioning and audio description in their communications.

The Department acknowledges that the amount of time it will take a respondent to comply with this requirement may vary depending on the number of movies that the respondent is showing at any given time. Based on a prior review of movie theater communications, the Department estimates that respondents will take an average of 10 minutes each week to update existing notices of movie showings and times with closed captioning and audio description information. Therefore, the Department estimates that each firm owning one or more theaters offering digital movies with closed captioning or audio description will spend approximately ((10 minutes/week × 52 weeks/year) ÷ 60 minutes/hour) 8.7 hours each year to comply with this requirement.

5. *Frequency:* The Department anticipates that firms owning one or more movie theaters will likely update their existing listings of movie showings and times to include information concerning the availability of closed movie captioning and audio description on a regular basis. The Department's research suggests that this information would only need to be updated whenever a new movie with these features is added to the schedule. This will vary as some movies stay on the schedule for longer periods of time than others, but the Department estimates that respondent firms will update their

listings to include this information weekly. In the future, if all movies are distributed with these accessibility features, specific notice on a movie-by-movie basis may no longer be necessary and firms owning movie theaters may only need to advise the public that they provide closed captioning and audio description for all of their movies.

6. *An estimate of the total annual public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 16,460 hours. The Department estimates that respondents will take an average of 10 minutes each week to update their existing listings of movie showings and times with the required information about closed captions and audio description. If each respondent spends 10 minutes each week to update its notices of moving showings and times to include this information, the average movie theater firm will spend 8.7 hours annually ((10 minutes/week × 52 weeks/year) ÷ 60 minutes/hour) complying with this requirement. The Department expects that the annual public burden hours for disclosing this information will total (1,892 respondents × 8.7 hours/year) 16,460 hours.

If additional information is required, contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: May 31, 2022.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2022–11984 Filed 6–2–22; 8:45 am]

BILLING CODE 4410–13–P

LEGAL SERVICES CORPORATION

Issuance of Updated Financial Guide for Grantees

AGENCY: Legal Services Corporation.

ACTION: Notice of issuance of final Financial Guide.

SUMMARY: The Legal Services Corporation (LSC) updated its Financial Guide (''Guide'') for grantees.

DATES: The guide will become effective January 1, 2023.

FOR FURTHER INFORMATION CONTACT: Stuart Axenfeld, Deputy Director for Fiscal Compliance, Legal Services Corporation, 3333 K St. NW, Washington, DC 20007; (202) 295–1539; *axenfelds@lsc.gov.*

SUPPLEMENTARY INFORMATION: In 2018, LSC conducted a comprehensive review of the Accounting Guide for LSC Recipients, 2010 Edition. Based on input from LSC grantees and LSC's fiscal compliance analysts, LSC determined the format of the Accounting Guide no longer best serves grantees or LSC. The new Financial Guide removes outdated or inapplicable materials, improves guidance directly related to LSC-specific issues, and adds clarity about both required and recommended financial practices. The new Financial Guide also addresses areas that were previously identified as problematic or complex, such as cost allocation, and assists grantees in the financial management of LSC grants. LSC removed sections that provided general accounting and financial guidance because neither LSC nor grantees found these sections useful.

Overall, the new Financial Guide reflects existing LSC and grantee practices and requirements. Additionally, in some places, the new Financial Guide sets out requirements that previously had not been published for comment. These are requirements that LSC has been applying through required corrective actions and most, perhaps all, grantees have already implemented.

LSC originally sought comment on the comprehensive revisions to the Financial Guide via a notice published in the **Federal Register** on July 7, 2020. 85 FR 40688. LSC received 38 unique comments on the draft Financial Guide from five grantees and the National Legal Aid and Defender Association (NLADA) on behalf of itself and its LSC grantee members. Generally, the commenters suggested clarifications and requested that LSC make many of the proposed requirements into recommendations to accommodate the diversity of grantee sizes, fiscal sophistication, and resources.

On December 15, 2021, LSC sought additional comments on discrete changes to the Financial Guide. 86 FR 71288, Dec. 15, 2021. LSC later extended the comment period to February 15, 2022. 87 FR 2638, Jan. 18, 2022. LSC received six unique comments from one grantee, NLADA, and Management Information Exchange.

LSC will publish the Financial Guide on LSC's website at *https://www.lsc.gov/lsc-financial-guide.* The Financial Guide will become effective on January 1, 2023. LSC will announce training opportunities at a later date.

LSC's Response to Comments

LSC considered all comments and made the changes described below in response. The Financial Guide adds clear definitions that ''must'' and ''shall'' state requirements, but ''should'' states a strong recommendation. For all required items, grantees may opt to use different methods of reaching the goal, subject to LSC's determination that the alternatives are sufficient.

Revised sections include:

Section 1.3—Recipient Responsibility

This new section contains general statements moved from other sections that grantees must keep their financial policies and procedures up to date with accounting standards and changes to LSC requirements (such as regulations, the Audit Guide, etc.).

This section also reinforces the requirement for grantee Board approval of grantee written policies, which many recipient organizations already practice. Additionally, LSC revised the Financial Guide to clarify that both grantee policies and procedures should be written.

Section 2.2.2—Time and Attendance (Payroll)

LSC revised the language related to the timing of payroll or the execution of payroll to focus on the review of time and attendance records to ensure they are authorized, complete, and accurate. Also, LSC clarified that grantees may develop an alternative report to maintain the components of a labor cost distribution report.

Section 2.5.3—Electronic Data Processing and Cybersecurity

LSC considered the increasing level of electronic threats and the significant risk those threats pose to the financial security of grantees. LSC is requiring grantees to gauge the risk to their organizations. Risk assessment procedures will vary by grantee. However, at a minimum, the process should:

- Identify the physical and digital assets susceptible to cyberattacks;
- identify risks to those assets (risks should be evaluated annually for changes);
- evaluate the risks (*e.g.,* high, medium, or low) based on likelihood and impact; and
- document the results of the risk assessment, including the development and implementation of appropriate controls.

Section 3.5—Procurement and Contracting

LSC added suggestions on how recipients should customize their policy requirements based on levels of risks.

Authority: 42 U.S.C. 2996(g)(e).

Dated: May 31, 2022.

Stefanie Davis,

Senior Associate General Counsel.

[FR Doc. 2022–11988 Filed 6–2–22; 8:45 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings

TIME AND DATE: The Finance Committee of the Legal Services Corporation Board of Directors will meet virtually on June 13, 2022. The meeting will commence at 3:30 p.m. EDT and will continue until the conclusion of the Committee's agenda.

PLACE: *Public Notice of Virtual Meeting.*

LSC will conduct the June 13, 2022 meeting via Zoom.

Public Observation: Unless otherwise noted herein, the Finance Committee meeting will be open to public observation via Zoom. Members of the public who wish to participate remotely in the public proceedings may do so by following the directions provided below.

Directions for Open Sessions

June 13, 2022

To join the Zoom meeting by computer, please use this link.

- *https://lsc-gov.zoom.us/j/87474557815?pwd=M2dlK05peks3b2dxaTJnMm1oWUxCQT09&from=addon.*
  - *Meeting ID:* 874 7455 7815
  - *Passcode:* 504510
- To join the Zoom meeting with one tap from your mobile phone, please click dial:
  - +13017158592,,87474557815# US (Washington DC)
  - +16468769923,,87474557815# US (New York)
- To join the Zoom meeting by telephone, please dial one of the following numbers:
  - +1 301 715 8592 US (Washington, DC)
  - +1 646 876 9923 US (New York)
  - +1 312 626 6799 US (Chicago)
  - +1 346 248 7799 US (Houston)
  - +1 408 638 0968 US (San Jose)
  - +1 669 900 6833 US (San Jose)
  - +1 253 215 8782 US (Tacoma)
    - *Meeting ID:* 874 7455 7815
    - *Passcode:* 504510

Once connected to Zoom, please immediately mute your computer or telephone. Members of the public are asked to keep their computers or telephones muted to eliminate background noise. To avoid disrupting the meetings, please refrain from placing the call on hold if doing so will trigger recorded music or other sound.

From time to time, the Finance Committee Chair may solicit comments from the public. To participate in the meeting during public comment, use the 'raise your hand' or 'chat' functions in Zoom and wait to be recognized by the Chair before stating your questions and/or comments.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda
2. Approval of minutes of the Finance Committee's meeting on April 4, 2022
3. Public comment regarding LSC's Fiscal Year 2024 budget request
4. Public comment on other matters
5. Consider and act on other business
6. Consider and act on adjournment of meeting

CONTACT PERSON FOR MORE INFORMATION: Kaitlin Brown, Executive and Board Project Coordinator, at (202) 295–1555. Questions may also be sent by electronic mail to *brownk@lsc.gov.*

Non-Confidential Meeting Materials: Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC website, at *https://www.lsc.gov/about-lsc/board-meeting-materials.*

Dated: 06/01/2022

Kaitlin D. Brown,

Executive and Board Project Coordinator, Legal Services Corporation.

[FR Doc. 2022–12104 Filed 6–1–22; 4:15 pm]

BILLING CODE 7050–01–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2022–3]

Best Edition Study: Notice and Request for Public Comment

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: The U.S. Copyright Office is undertaking a public study at the request of Senator Thom Tillis to evaluate the deposit requirements of section 407 and 408 of the Copyright Act and consider whether ''removing the 'best edition' requirement from the registration deposit process in section 408 could help improve the registration process.'' To aid in its review of this topic, the Office is soliciting input from interested members of the public.

DATES: Written comments must be received no later than 11:59 p.m. Eastern Time on July 18, 2022.

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov.* Specific instructions for submitting comments are available on the Copyright Office website at *https://www.copyright.gov/policy/best-edition.* If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Megan Efthimiadis, Assistant to the General Counsel, by email at *meft@copyright.gov* or telephone at (202) 707–8350.

SUPPLEMENTARY INFORMATION: On May 24, 2021, Senator Thom Tillis sent a letter seeking the Copyright Office's ''expertise and guidance regarding adjusted copyright examination and registration requirements.'' [1] Specifically, Senator Tillis requested that the Office complete ''a study regarding the feasibility of decoupling the deposit requirements of Section 407 of Title 17 from Section 408.'' [2] The letter states that ''[s]ome have asserted that'' decoupling ''could help improve the registration process by permitting low resolution digital deposits, for example.'' [3] In conducting the study, Senator Tillis asked the Office to consult with the Library of Congress to address the Library's need to grow its collections, as well as to consider the Office's own needs as part of the registration process.[4]

To guide its consideration of these issues, the Office is soliciting public comments on topics related to this inquiry. These comments will be used to inform the Office's discussions with the Library and its consideration of the Office's needs with respect to deposits for registration purposes.

[1] Letter from Sen. Thom Tillis, Ranking Member, Subcomm. on Intell. Prop. of the S. Comm. on the Judiciary, to Shira Perlmutter, Reg. of Copyrights, U.S. Copyright Office 1 (May 24. 2021), *https://www.copyright.gov/policy/best-edition/5-24-21-Ltr-USCO-Copyright-Examination-and-Registration-Requirements-Studies-Final.pdf.*

[2] *Id.*

[3] *Id.*

[4] *Id.*

I. Background

(A) Legal Background

The Copyright Act has two provisions requiring copyright owners to deposit copies of their works. First, under section 407 of the Act, once a copyrighted work is published in the United States, the copyright owner must, within three months of publication, deposit ''two complete copies of the best edition'' of the work with the Copyright Office ''for the use or disposition of the Library of Congress.'' [5] Second, under section 408, copyright owners who apply to register works that have been published must generally include with their applications a deposit that consists of ''two complete copies or phonorecords of the best edition'' of their works.[6] The term ''best edition,'' as used in both section 407 and section 408 is defined as ''the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes.'' [7]

Copyright owners can deposit a single set of best edition materials that will satisfy their obligations under both sections 407 and 408. Section 408 explicitly provides that deposits made to satisfy section 407 may also be used to satisfy the registration deposit requirement, provided they are accompanied by a copyright application and fee.[8] When applicants submit the required best edition copies with their registration applications, the Office provides the Library with copies of the materials that are within the Library's selection criteria for addition to its collections.[9]

Together, the deposits received pursuant to sections 407 and 408 allow the Library of Congress to grow its collection as the nation's library. The Copyright Office generally transfers over 700,000 copyright deposits to the Library each year.[10]

(B) Best Edition Requirements

The Office's regulations at appendix B to part 202 of title 37 of the Code of Federal Regulations—known as the Best Edition Statement—describe how to identify the best edition of a work. The regulations do not require a specific format; they instead describe an order of preference for formats of different types of works.[11] In most cases, physical copies of works must be submitted to meet the best edition requirement. For example, for printed textual matter, the Library of Congress prefers that the deposit be the largest possible size (other than a large-type edition for the partially-sighted), illustrated in color, and contain ''archival-quality rather than less-permanent paper,'' a hard cover, library binding, and a sewn rather than glued binding.[12] For photographs, the Library prefers the most widely distributed edition of the photograph, or an unmounted 8x10-inch glossy print on archival-quality paper.[13]

(C) Exceptions to Best Edition Requirements

The Office has the authority to waive the requirement that deposits be the best edition of a work, and it has done so in many circumstances. For section 407 deposits, the Office has promulgated regulations permitting deposit of versions that might not be the best edition as defined by the Best Edition Statement. For example, copyright owners of pictorial and graphic works published in small numbers have the option to deposit ''photographs or other identifying material'' of the works.[14] For other types of works, such as greeting cards and three-dimensional sculptural works, the Office's regulations waive the deposit requirement altogether.[15] Additionally, for electronic-only books and serials published only in electronic form and available only online, deposit is required only on demand from the Copyright Office.[16] The Office also may waive the best edition requirement for section 407 deposits for individual works upon request for ''special relief,'' typically when complying with the requirement would be burdensome or impractical.[17] These requests may permit copyright owners to deposit a version of their work that does not fit the best edition requirement, such as an electronic copy of a work that was published as physical printed text. The Library and the Copyright Office have entered into continuing ''special relief'' agreements with a number publishers, whereby electronic copies of works in a publisher's catalog are accepted as a substitute for the best edition under certain conditions.

The Office provides similar flexibility for section 408 registration deposits. For many works, such as computer programs, useful articles, and works exceeding 96 inches in any dimension, the Office permits applicants to deposit identifying material instead of the best edition.[18] Identifying material is a deposit that provides at least ''an adequate representation'' of the content an applicant seeks to register.[19] While the Office was closed to the public during the COVID–19 pandemic, the Office provided the option for applicants submitting electronic applications for works that required deposit of ''best edition'' physical copies to upload electronic copies of the works in addition to mailing the required physical copies, which enabled the Office to examine the works remotely.[20] As with section 407 deposits, the Office, in consultation with the Library, may also waive the best edition requirement on a case-by-case basis as ''special relief,'' upon request to permit the deposit of other formats that are more convenient for the applicant.[21]

(D) Criticism of Best Edition Requirements

While the best edition requirement satisfies important Library acquisition objectives, it can in some instances be an obstacle to registration and generally increases the Copyright Office's registration processing times. Some copyright owners have explained that they have difficulty complying with the best edition requirement because they do not possess copies of the best edition

[5] 17 U.S.C. 407(a), (b). *See generally* 37 CFR 202.19, 202.20.

[6] 17 U.S.C. 408(b)(2).

[7] *Id.* 101. *See also id.* 407(b).

[8] *Id.* 408(b).

[9] In many cases, the Copyright Office has issued regulations to require only one copy instead of two. *See, e.g.,* 37 CFR 202.19(d)(2)(vi) (permitting deposit of one complete copy of best edition for literary monographs), 202.20(c)(2)(i)(E) (permitting deposit of one complete copy of best edition of musical compositions published in copies).

[10] *See* U.S. Copyright Office, Annual Report Fiscal 2019, at 48 (2019), *https://www.copyright.gov/reports/annual/2019/ar2019.pdf* (roughly 727,000 deposits transferred to Library); U.S. Copyright Office, Annual Report for Fiscal 2018, at 24 (2018), *https://www.copyright.gov/reports/annual/2018/ar2018.pdf* (almost 737,000 deposits transferred to Library). The number of deposits decreased in fiscal year 2020 due to a backlog of processing physical deposits as a result of the COVID–19 pandemic. U.S. Copyright Office, Annual Report Fiscal 2020, at 40 (2020), *https://www.copyright.gov/reports/annual/2020/ar2020.pdf* (roughly 550,000 deposits transferred).

[11] *See, e.g.,* 37 CFR 202, App. B.I.C.2 (for printed textual works with illustrations, the best edition is version with ''[i]llustrations in color rather than black and white.''). The Best Edition Statement divides works into 10 categories: I. Printed Textual Matter, II. Photographs, III. Motion Pictures, IV. Other Graphic Matter, V. Phonorecords, VI. Musical Compositions, VII. Microforms, VIII. Machine-Readable Copies, IX. Electronic-Only Works Published in the United States and Available Only Online, and X. Works Existing in More Than One Medium. *Id.*

[12] *See id.* 202, App. B.I.

[13] *Id.* 202, App. B.II.

[14] *See id.* 202.19(d)(2)(iv).

[15] *See id.* 202.19(c)(2), (6).

[16] *See* 37 CFR 202.19(c)(5), 202.24.

[17] *Id.* 202.19(e).

[18] *See id.* 202.20(c)(vii), (xi)(A)(2), (xiii).

[19] *Id.* 202.21(b).

[20] U.S. Copyright Office, Operations Updates During the COVID–19 Pandemic, *https://www.copyright.gov/coronavirus/.*

[21] 37 CFR 202.20(d).

of a work. Obtaining two copies—or even one—of the best edition of a work may sometimes be time-consuming and expensive. Shaftel & Schmelzer, a consulting firm that works with visual artists, has explained that ''[v]isual creators sometimes have to purchase published copies at full retail price to submit with their registration application, adding significant cost to our registration. . . .'' [22] The statutory requirement that the best edition be one that has been published also creates a hurdle because creators may have difficulty determining if a particular version of a work has been published.[23]

In response to a prior Copyright Office inquiry, the Association of American Publishers (''AAP'') commented that publishers of literary works sometimes find the Office's registration deposit requirements to be ''costly, risky, and illogical,'' and indicated they would welcome the ability to submit electronic deposits for registration if they could do so in a manner that was secure, with the deposit ''kept wholly separate from the collections of the Library and its access or interlibrary lending or surplus books policies.'' [24] In particular, AAP explained that the current best edition requirements do not accept ePub files, which are its members' preferred format.[25] Likewise, the Copyright Alliance urged the Office to create options for applicants to upload digital deposits in a manner that takes into account applicants' operational systems and work processes.[26] Visual artists also have maintained that the ability to submit digital deposits of their works encourages registration.[27]

As the Office has explained to Congress, the section 408 best edition requirement often increases registration processing times for a number of reasons.[28] After electronic applications and fees have been submitted, authors or publishers must incur the time and expense of packaging and shipping physical copies of works, along with shipping slips that connect the physical works with the electronic applications. Once the physical copies arrive at the Office, they must undergo off-site security screening and decontamination, be matched to a corresponding electronic application, have security measures applied, and be physically brought to an examiner's workspace before examination can begin. The time delay adversely affects applicants because the effective date of registration is not assigned until the Office has received the deposit in addition to the application and fee.[29] Second, under the current rules, in addition to examining whether a work is copyrightable, an examiner must review each deposit for compliance with the best edition rules to confirm whether the proper version has been received. Correspondence with applicants is often necessary to ensure that they have complied with the Library's best edition criteria and the Copyright Office's regulations.[30] This adds additional complexities and time to the examination process.

As a result, applications with physical deposits take much longer for the Office to process than those with electronic deposits.[31] On average, examination of electronic applications that do not need correspondence takes 1.1 months for those with electronic deposits and takes 10.8 months for those with physical deposits. The average processing time for electronic applications that do need correspondence is 3.4 months for those with electronic deposits and 13.1 months for those with physical deposits.[32]

(E) Digital Deposit Options

The Office has been exploring options that would permit registration applicants to submit digital copies of works and provide the Library with physical copies only upon demand. Since 2018, the Office has required applicants seeking to register a group of newspapers to file an online application rather than a paper application and to upload a complete electronic copy of each issue through the electronic registration system instead of submitting them in physical form.[33] The Library has incorporated electronic copies of these registration deposits into its collections, and provides its patrons with secure onsite access to them, subject to a number of security restrictions.[34] If this model were applied to other categories and classes of registered works, the Office could both meet the Library's collections needs and expand the ability of applicants to provide electronic deposits in lieu of physical best edition copies, while providing secure, rights-restricted access to the works.

The Library's Office of Chief Information Officer (''OCIO'') is currently working with the Office to build a new Enterprise Copyright System (''ECS'') to improve the Office's provision of copyright services to the public, including its registration services. This will include replacing the Office's current electronic system for registration. As part of the Office's prior rulemaking on registration modernization, the Office inquired about providing greater flexibility for copyright applicants to deposit digital versions of their works, with physical copies only deposited upon request. The responses to that inquiry were generally very positive.[35]

The Library has been focusing on its digital collecting capacity and capability

[22] Shaftel & Schmelzer, Comments Submitted in Response to Notification of Inquiry on Registration Modernization, at 21 (Jan. 11, 2019). *See also* Coalition of Visual Artists, Comments Submitted in Response to Notification of Inquiry on Registration Modernization, at 25 (Jan. 15, 2019) (''Tracking down hard copies of the first published use of a particular image is often difficult or impossible. And purchasing two copies of a book, for example, unnecessarily increases registration expense.'').

[23] On December 4, 2019, the Office published a notification of inquiry in which it noted the uncertainty expressed by some registration applicants as to how the term ''publication'' applies in the online context, and sought perspectives and suggestions regarding possible new regulations interpreting the statutory definition of publication and policy guidance regarding the role that publication should play in copyright law and the registration process. 84 FR 66328 (Dec. 4, 2019). The Office recently described the actions it has taken to provide additional guidance regarding the definition of ''publication,'' and discussed how it will supplement those efforts going forward. Letter from Shira Perlmutter, Reg. of Copyrights, U.S. Copyright Office, to Sen. Thom Tillis, Ranking Member, Subcomm. on Intell. Prop. of the S. Comm. on the Judiciary (Dec. 1, 2021).

[24] Association of American Publishers, Comments Submitted in Response to Notification of Inquiry on Registration Modernization, at 2 (Jan. 15, 2019).

[25] *Id.* at 2 n.2.

[26] Copyright Alliance, Comments Submitted in Response to Notification of Inquiry on Registration Modernization, at 25–26 (Jan. 15, 2019).

[27] *See, e.g.,* Coalition of Visual Artists, Comments Submitted in Response to Notification of Inquiry on Registration Modernization, at 25–26 (Jan. 15, 2019) (describing the ''two best-edition'' requirement as ''archaic, unnecessary and impractical''); Graphic Artists Guild, Comments Submitted in Response to Notification of Inquiry on Registration Modernization, at 8–9 (Jan. 15, 2019) (requesting that applicants be permitted to submit digital deposits for all types of works and only be required to provide a physical deposit if the Library determines that it wants to include the work in its collection).

[28] Letter from Karyn A. Temple, Reg. of Copyrights, U.S. Copyright Office, to Sen. Thom Tillis, Chairman, Subcomm. on Intell. Prop. of the S. Comm. on the Judiciary, and Sen. Christopher A. Coons, Ranking Member, Subcomm. on Intell. Prop. of the S. Comm. on the Judiciary 18 (May 31, 2019), *https://www.copyright.gov/laws/hearings/response-to-march-14-2019-senate-letter.pdf* (''Senate Letter''); Letter from Karyn A. Temple, Reg. of Copyrights, U.S. Copyright Office, to Rep. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, and Rep. Doug Collins, Ranking Member, H. Comm. on the Judiciary 18 (May 31, 2019), *https://www.copyright.gov/laws/hearings/response-to-april-3-2019-house-letter.pdf* (''House Letter'').

[29] 17 U.S.C. 410(d); U.S. Copyright Office, *Compendium of U.S. Copyright Office Practices* sec. 625 (3d ed. 2021).

[30] Senate Letter at 18; House Letter at 18.

[31] Senate Letter at 19; House Letter at 19.

[32] U.S. Copyright Office, *Registration Processing Times, https://www.copyright.gov/registration/docs/processing-times-faqs.pdf.*

[33] 37 CFR 202.4(e).

[34] *Id.* 202.18.

[35] *See* 85 FR 12704, 12711–12 (Mar. 3, 2020) (summarizing public comments on issue of digital deposits).

for over two decades and has expressed a commitment to continuing to strengthen its digital collections. The Library has stressed that new electronic deposit options for copyright owners must take into account ''the Library's collection needs, technological capabilities, and security and access issues.'' [36] The Library's Library Collections and Services Group (part of which was formerly known as Library Services) has expressed support for permitting digital deposits for all copyright applications in the long run. Noting that the Library depends on the items acquired via copyright deposit to help build its collection, it further explained that ''[w]hile the submission of e-copies as opposed to print copies for purposes of registration would pose some difficulties in terms of service to Congress and other user groups, having access to e-copies of the content will be beneficial in the long term.'' [37]

The Library's Digital Collections Strategy: Fiscal Years 2022–2026 focuses on ''further mainstreaming and routinizing digital collecting and digital collections management across the wide range of areas, formats, and subjects the Library of Congress collects.'' [38] Pursuant to this Strategy, the Library has committed to continuing to work closely with the Office to explore possible regulatory updates to the deposit requirements, including ''planning electronic deposit workflows related to the acquisition of electronic deposits for mandatory deposit and registration deposit'' for works that could include ''books, serials, motion pictures, sound recordings, music compositions, maps, photographs, prints, drawings, design and architectural materials, technical designs, technical reports, and web content.'' [39] The Strategy also notes that the Library plans to transition to ''e-preferred,'' in which digital formats are preferred over traditional physical formats, across its major acquisitions streams, including deposits from the Copyright Office.[40]

[36] *Id. See also* Carla Hayden, Libr. of Congr., Responses to Questions for the Record, Subcomm. on Intell. Prop. of the S. Comm. on the Judiciary at 17 (Jan. 7, 2020), *https://www.judiciary.senate.gov/imo/media/doc/Hayden%20Responses%20to%20QFRs.pdf* (noting that digital deposits options must ''appropriately balance security with ease of use'').

[37] Library of Congress Library Services, Comments Submitted in Response to Notification of Inquiry on Registration Modernization, at 1–2 (Jan. 15, 2019).

[38] Library of Congress, Digital Collections Strategy Fiscal Years 2022–2026, at 3 (2021), *https://www.loc.gov/acq/devpol/Digital%20Collections%20Strategy%20Overview_final.pdf.*

[39] *Id.* at 4.

[40] *Id.* at 4–5.

II. Subjects of Inquiry

To guide the Office's consideration of these issues and its consultation with the Library, the Office invites written comments on the subjects below. A party choosing to respond to this notice of inquiry need not address every subject, but the Office requests that responding parties clearly identify and separately address each subject for which a response is submitted. The Office also requests that commenters explain their interest in the study and, with respect to each answer, the basis for their knowledge. Citations to published data and other external documents that support commenters' viewpoints are particularly helpful to the Office's review of written comments.

1. One way to address concerns raised regarding the best edition requirement would be to limit the categories of deposits to it applies. To what categor(y/ies) of deposits do you think the best edition requirement should apply and why? What would be the impact on Library collections? What would be the impact on claimants' ability to register their copyrights?

2. If registration and mandatory deposit requirements were no longer linked, how would this affect the deposit burden on copyright owners? How would it affect the Library's collections? How would it affect claimants' ability to register their copyrights?

3. Should the Office expand the options for submitting electronic deposits for the purpose of examining registration applications and selection by the Library for its collections while retaining the requirement to submit best edition copies upon demand by the Library pursuant to section 407? Why or why not?

4. Would copyright owners prefer to deposit electronic deposit copies for registration purposes instead of copies that meet the best edition standards? Why or why not? Would copyright owners like the option to provide electronic copies or best edition physical copies? Why or why not? How would the submission of electronic copies for registration affect the Library's collections and operations? What effect would the use of electronic copies have on the public record, and on a researcher's ability to use the work?

5. Would the option to deposit electronic deposit copies create security concerns that the Copyright Office's and the Library's protocols do not currently address? What are the security concerns most important to applicants if electronic deposit copies are permitted and how could the Library address them?

6. The Copyright Act requires that a ''best edition'' of a work must be the edition published in the U.S. Can this definition be interpreted to include digital file formats that were not themselves distributed to the public but contain the same copyrightable material as the edition distributed to the public?

7. Please identify any pertinent issues regarding digital deposit and the best edition requirement not referenced above that the Office should consider in conducting its study.

Dated: May 31, 2022.

Suzanne V. Wilson,

General Counsel and Associate Register of Copyrights.

[FR Doc. 2022–11953 Filed 6–2–22; 8:45 am]

BILLING CODE 1410–30–P

OFFICE OF MANAGEMENT AND BUDGET

Proposing To Extend the Information Collection 0348–0065

AGENCY: Office of Information and Regulatory Affairs, Office of Management and Budget, Executive Office of the President.

ACTION: Notice and request for comments.

SUMMARY: The Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) is proposing to extend the information collection 0348–0065 it uses for members of the public who request a meeting with OIRA on rules under review at the time pursuant to Executive Order 12866. The information collected is subject to the Paperwork Reduction Act (PRA) and this notice announces and requests comment on OIRA's proposal for such a collection.

DATES: Provide comments by July 5, 2022.

ADDRESSES: Submit comments by the following method:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for docket OMB–2022–0006. Comments submitted electronically, including attachments to *https://www.regulations.gov,* will be posted to the docket unchanged.

Instructions: Please submit comments only and cite Information Collection 0348–0065 in all correspondence related to this collection. To confirm receipt of your comment(s), please check *regulations.gov*, approximately two to three business days after submission to

verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: *Oira_submission@omb.eop.gov,* Lisa Jones, 202–395–5897.

SUPPLEMENTARY INFORMATION:

Title: Information on Meetings with Outside Parties Pursuant to Executive Order 12866.

Abstract: Executive Order 12866, ''Regulatory Planning and Review,'' issued by President Clinton on September 30, 1993, establishes and governs the process under which OIRA reviews agency draft proposed and final regulatory actions. The Executive Order also establishes a disclosure process regarding the OIRA Administrator's (or his/her designee's) meetings with outside parties during formal review of a regulatory action if such meetings occur. In such instances, OIRA would disclose the subject, date, and participants of the meeting on the *Reginfo.gov* website, as well as any materials provided to OIRA at such meetings.

These meetings occur at the initiative and request of outside parties who request a meeting to present views about a regulatory action under OIRA review. These requestors may invite other outside parties to attend. OIRA invites representatives from the agency or agencies that would issue the regulatory action. If such meetings occur, OIRA does not take minutes during the meeting but would, however, post on *RegInfo.gov* any written materials provided by outside parties during these meetings, including the initial meeting request.

To help ensure transparency associated with meetings pursuant to Executive Order 12866, OIRA would collect—and then post publicly—the following information from outside parties that request a meeting with OIRA to present their views on a regulatory action currently under review:

1. Names of all attendees from the outside party or parties who will be present at the meeting. Each attendee's organization or affiliation. If an attendee is representing another organization, the name of the organization the attendee is representing.

2. The name of the regulatory action under review on which the party would like to present its views.

3. Electronic copies of all of briefing materials that will be used during the presentation.

4. An acknowledgment by the requesting party that all information submitted to OIRA pursuant to this collection and meeting request will be made publicly available at *Reginfo.gov*.

OIRA welcomes any and all public comments on the proposed collection of information, such as the accuracy of OIRA's burden estimate, the practical utility of collecting this information, and whether there are additional pieces of information that could be collected from meeting requestors to further the disclosure provisions of Executive Order 12866.

Current actions: Proposal for extending an existing information collection requirement.

Type of review: Extension.

Affected public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Governments.

Expected average annual number of respondents: 300.

Average annual number of responses per respondent: 2.

Total number of responses annually: 600.

Burden per response: 15 minutes.

Total average annual burden: 150 hours.

Request for comments: OMB anticipates that comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information.

Please note that all public comments received are subject to the Freedom of Information Act and will be posted in their entirety, including any personal and/or business confidential information provided. Do not include any information you would not like to be made publicly available.

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.

Dominic J. Mancini,

Deputy Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 2022–11927 Filed 6–2–22; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (22–041)]

Centennial Challenges Break the Ice Lunar Challenge Phase 2 Registration

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Phase 2 of the Break the Ice Lunar Challenge is open, and teams that wish to compete may now register. NASA seeks to stimulate research and technology solutions to support future missions and inspire new national aerospace capabilities through public prize competitions called Centennial Challenges. The Break the Ice Lunar Challenge is one such competition. Centennial Challenges are managed at NASA's Marshall Space Flight Center in Huntsville, Alabama and are part of the Prizes, Challenges, and Crowdsourcing program within NASA's Space Technology Mission Directorate at the agency's Headquarters in Washington. Phase 2 of the Break the Ice Lunar Challenge is a prize competition with a total prize purse of $3,000,000 USD, (three million United States dollars) to be awarded to competitor teams that build and successfully demonstrate prototypes of novel excavation and transportation technologies that can operate in Lunar environmental conditions.

DATES: Phase 2 registration opens June 2, 2022, and will remain open until September 30, 2022, (11:59 p.m. Eastern). No further requests for registration will be accepted after this date. Other important dates, including deadlines for key deliverables from the

teams, are listed on the Challenge website: *www.nasa.gov/breaktheice.*

ADDRESSES: Phase 2 of the Break the Ice Lunar Challenge will include both virtual and in-person portions. Initial Levels of the Challenge will be virtual with competitor teams working on their solutions at a facility of their choosing and then submitting the deliverables listed in the Official Challenge Rules to NASA. Final Level of the Challenge will include an in-person competition at a facility chosen and prepared by NASA. Further details about this facility will be posted on the Challenge website.

FOR FURTHER INFORMATION CONTACT: To register or for additional information regarding the Break the Ice Lunar Challenge, please visit: *www.nasa.gov/breaktheice.*

Questions and comments regarding the challenge should be addressed to Denise Morris, 256–544–3989, Centennial Challenges Program Manager (Acting), NASA Marshall Space Flight Center Huntsville, AL 35812. Email address: *hq-stmd-centennialchallenges@mail.nasa.gov.* For general information on NASA prize competitions, challenges, and crowdsourcing opportunities, please visit: *www.nasa.gov/solve.*

SUPPLEMENTARY INFORMATION:

Summary

The goal of Phase 2 is to further the development of technologies that can excavate and transport large quantities of icy lunar regolith and can address the technology gaps listed below. Through a prototype demonstration, Teams must show that their solutions address the reliability, durability, and traversability challenges these systems must overcome to operate for long durations.

The specific NASA technology gaps that Phase 2 aims to address include:

- Excavate large quantities of icy regolith
- Delivery of large quantities of acquired resources
- Hardware and equipment that is lightweight and energy efficient
- Hardware and equipment that is reliable and durable
- Hardware and equipment that operates well in extreme lunar environmental conditions, including:
  - Reduced gravity
  - Complex terrain including rocks, craters, slopes, and loose granular soil

Successful demonstrations from this challenge will complement ongoing NASA investments in lunar In-Situ Resource Utilization Technologies. NASA is funding the prize purse and administration of the challenge competition. Any eligible individual or organization may participate in Phase 2. Teams are not required to have participated in Phase 1.

I. Prize Amounts

The Break the Ice Lunar Challenge Phase 2 total prize purse is $3,000,000 USD (three million United States dollars) to be awarded across Phase 2 of this competition. There will be three levels in Phase 2. The winners will be determined by a Judging Panel. Teams must meet the eligibility requirements for the NASA prize in order to receive a prize from NASA.

- Level 1—All Teams that submit compliant deliverables by the submission deadline will receive an equal share of $500,000 prize purse up to a maximum of $75,000 per Team.
- Level 2—1st Place—$300,000, 2nd Place—$200,000, 3rd Place—$125,000 and up to five (5) runners up with each runner up receiving $75,000 for a total prize purse of $1,000,000.
- Level 3—1st Place—$1,000,000 and 2nd Place—$500,000 for a total prize purse of $1,500,000. In addition to the cash prizes NASA will award opportunities to test concepts in a dusty Thermal Vacuum Chamber.

II. Eligibility To Participate and Win Prize Money

In order to participate in the Challenge, each individual, whether acting alone or as part of a Competitor Team must identify their nationality.

- No individual competitor shall be a citizen of a country on the NASA Export Control Program list of Designated Countries List Category II: Countries determined by the Department of State to support terrorism. The current list of designated countries can be found at *http://oiir.hq.nasa.gov/nasaecp.* Please check the link for the latest updates. This includes individuals with dual citizenship unless they are a U.S. citizen or a lawful permanent U.S. resident (green card holder).
- While China is not a Category II designated country, pursuant to Public Law 116–6, Section 530, NASA is prohibited from participating, collaborating, or coordinating bilaterally in any way with China or any Chinese-owned entity. Team members who are citizens of China but not affiliated with a Chinese entity may be permitted to participate on a Team.
- Subject to the conditions set forth herein, foreign nationals and foreign national Teams can participate in the Challenge. However, they are not eligible for a cash prize, and must acknowledge acceptance of this by signing and submitting a Foreign Participant Acknowledgement Form.
- A competitor Team-designated lead shall be responsible for both compliance with the rules (including prize eligibility rules) and the actions of all members of the Team.

In order to be eligible to win a prize:

1. Individuals must be U.S. citizens or permanent residents of the United States and be 18 years of age or older.
2. Organizations must be an entity incorporated in and maintaining a primary place of business in the United States.
3. Teams must be comprised of otherwise eligible individuals or organizations and led by an otherwise eligible individual or organization.
4. Team leader must be a U.S. citizen or permanent resident.

A Team may include foreign nationals and be eligible to win prize money as long as the foreign national signs and delivers a disclosure (separate form) wherein he/she discloses his/her citizenship and acknowledge that he/she is not eligible to win a prize from NASA, AND

1. The foreign national is an employee of an otherwise eligible U.S. entity participating in the Challenge,
2. The foreign national is an owner of such entity, so long as foreign citizens own less than 50% of the interests in the entity,
3. The foreign national is a contractor under written contract to such entity, OR
4. The foreign national is a full-time student, during the time of the Challenge, of an otherwise eligible entity which is an accredited institution of higher learning, AND the student is during the Challenge in the United States on a valid student visa and is otherwise in compliance with all local, state, and federal laws and regulations regarding the sale and export of technology.

Teams selected for an award will be required to provide proof of citizenship/permanent residency, proof of primary place of business, proof of incorporation, and/or proof of student visa. Proof must be provided within 3 business days to be eligible for an award. Any Team or team member who submitted the required proof documents in Phase 1 and was deemed eligible to compete will not be required to submit this documentation again in Phase 2. Teams must indicate which documents from Phase 1 should apply to Phase 2 entry and provide confirmation that all documents are still valid. A Team's failure to comply with any aspect of the eligibility requirements shall result in

the Team being disqualified from winning a prize from NASA.

Interested teams should refer to the official Challenge website (*www.nasa.gov/breaktheice*) for full details on eligibility requirements and registration.

III. Official Rules

The complete official rules for the Break the Ice Lunar Challenge, can be found at: *https://breaktheicechallenge.com/.*

Cheryl Parker,

NASA Federal Register Liaison Officer.

[FR Doc. 2022–11869 Filed 6–2–22; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Notice of the Networking and Information Technology Research and Development Fast Track Action Committee on Advancing Privacy-Preserving Data Sharing and Analytics Meetings

AGENCY: Networking and Information Technology Research and Development (NITRD) Program National Coordination Office (NCO), National Science Foundation.

ACTION: Notice of public meetings.

SUMMARY: Recognizing the opportunities presented by privacy-enhancing technologies (PETs) to harness the power of data and to enable increased collaboration across entities, sectors, and borders in a privacy-preserving and secure manner, the Office of Science and Technology Policy (OSTP), in partnership with the Subcommittee on Networking and Information Technology Research and Development of the National Science and Technology Council, initiated an interagency Fast Track Action Committee (FTAC), to develop a national strategy to advance the research, development, and adoption of privacy-preserving data sharing and analytics (PPDSA) technologies The FTAC is holding a series of virtual roundtables, open to the public, to provide an opportunity for broad stakeholder input into the development of the national strategy.

DATES:

1. Tuesday, June 7, 2022: 1:00–3:00 p.m. EDT, Roundtable on Vision
2. Thursday, June 9, 2022: 1:00–3:00 p.m. EDT, Roundtable on Technology
3. Friday, June 10, 2022: 1:00–3:00 p.m. EDT, Roundtable on Adoption and Use

ADDRESSES: The Roundtable sessions will be held virtually from 1:00–3:00 p.m. EDT on each of these dates: June 7, 2022; June 9, 2022; and June 10, 2022.

Instructions: Registration is required, and space is limited. Participation is open to the public on a first-come, first-served basis. Registration will be closed once capacity is reached. Interested persons or organizations are invited to register to participate in one or all the sessions at the following link: *https://www.nitrd.gov/coordination-areas/privacy-rd/ftac-appdsa-roundtable-series/.*

FOR FURTHER INFORMATION CONTACT: Jeri Hessman at *Privacy-FTAC-RT@nitrd.gov* or call at 202–459–9683.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Through the national strategy, the FTAC will put forth a vision for responsibly harnessing privacy-preserving data sharing and analytics to benefit individuals and society. It will also propose actions from research investments, to training and education initiatives, to the development of standards, policy, and regulations needed to achieve that vision.

To inform the development of these recommendations, the FTAC is arranging virtual roundtables to solicit input from a broad range of stakeholders, including representatives from academia, the private sector, and civil society. Each roundtable will be organized around a particular theme, described below:

1. *Roundtable on Vision:* Tuesday, June 7, 2022: 1:00–3:00 p.m. EDT.

Identification of characteristics of the future state that the national strategy should help achieve and guiding definitions and principles that the activities under the national strategy should follow.

2. *Roundtable on Adoption and Use:* Thursday, June 9, 2022: 1:00–3:00 p.m. EDT.

Identification of barriers and enablers to adoption and use of PPDSA technologies; and, identification of best practices and standards, including international considerations.

3. *Roundtable on Technology:* Friday, June 10, 2022: 1:00–3:00 p.m. EDT.

Understanding of the current state of PPDSA technologies and solutions; and identification of challenges, gaps and priorities in PPDSA research and development (R&D).

Submitted by the National Science Foundation in support of the Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO) on May 27, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2022–11857 Filed 6–2–22; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 11006444; NRC–2022–0118]

ALARA Logistics, LLC

AGENCY: Nuclear Regulatory Commission.

ACTION: Export license application; opportunity to provide comments, request a hearing, or petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received an application for an export license (XSNM3828) requested by ALARA Logistics, LLC. On April 5, 2022, ALARA Logistics, LLC filed an application with the NRC seeking approval for a license to export high enriched uranium to Belgium.

DATES: Submit comments by July 5, 2022. A request for a hearing or a petition for leave to intervene must be filed by July 5, 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–2022–0118. 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: Barry Miller, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–9075, email: *Barry.Miller@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to NRC–2022–0118 or Docket No. 11006444 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–2022–0118.
- *NRC's Public Website:* Go to *https://www.nrc.gov* and search for XSNM3828, Docket No. 11006444, or Docket ID NRC–2022–0118.
- *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 export license application from ALARA Logistics, LLC is available in ADAMS under Accession No. ML22108A017.
- *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–2022–0118 or Docket No. 11006444 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

On April 15, 2022, the NRC received an application from ALARA Logistics, LLC requesting a specific license (XSNM3828) to export high enriched uranium, in the form of fuel assemblies, to Belgium for use in the country's BR2 research reactor.

In accordance with section 110.70 paragraph (b) of title 10 of the *Code of Federal Regulations* (10 CFR), the NRC is providing notice of 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**.

A hearing request or petition for leave to intervene must include the information specified in 10 CFR 110.82(b). Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner in accordance with 10 CFR 110.89(a). As provided in 10 CFR 110.89(a), a request for hearing or petition for leave to intervene may be filed by delivery, by mail, or by filing with the NRC electronically in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

The information concerning this application for an export license follows.

NRC EXPORT LICENSE APPLICATION

Application Information	
Name of Applicant	ALARA Logistics, LLC.
Date of Application	April 5, 2022.
Date Received	April 15, 2022.
Application No	XSNM3828.
Docket No	11006444.
ADAMS Accession No	ML22108A017.

Description of Material	
Material Type	High enriched uranium in the form of driver fuel assemblies.
Total Quantity	Up to 105.4 kilograms of uranium-235 contained in a maximum of 113.2 kilograms of uranium enriched to a maximum of 93.20 weight percent.
End Use	Reload fuel for the BR2 research reactor.

NRC EXPORT LICENSE APPLICATION—Continued

Country of Destination	Belgium.

Dated: May 27, 2022.

For the Nuclear Regulatory Commission.

David L. Skeen,

Deputy Director, Office of International Programs.

[FR Doc. 2022–11854 Filed 6–2–22; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Investor Advisory Committee will hold a public meeting on Thursday, June 9, 2022. The meeting will begin at 10:00 a.m. (ET) and will be open to the public.

PLACE: The meeting will be conducted by remote means. Members of the public may watch the webcast of the meeting on the Commission's website at *www.sec.gov.*

STATUS: This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

PUBLIC COMMENT: The public is invited to submit written statements to the Committee. Written statements should be received on or before June 8, 2022.

Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's internet submission form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email message to *rules-comments@sec.gov.* Please include File No. 265–28 on the subject line; or

Paper Electronic Statements

- Send paper statements to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. 265–28. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method.

Statements also will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Room 1503, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All statements received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

MATTERS TO BE CONSIDERED: The agenda for the meeting includes: Welcome and introduction of new IAC members; opening remarks; approval of previous meeting minutes; a panel discussion regarding the accounting of non-traditional financial information; a panel discussion regarding climate disclosure; a discussion of a recommendation on protecting older investors, a discussion of a recommendation on funding investor advocacy clinics, subcommittee reports; and a non-public administrative session.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: June 1, 2022.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–12120 Filed 6–1–22; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95003; File No. SR–FINRA–2022–013]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend FINRA Rule 6730 To Enhance TRACE Reporting Obligations for U.S. Treasury Securities

May 27, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 23, 2022, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 6730 to: (i) Require members to report electronically executed transactions in U.S. Treasury Securities to FINRA's Trade Reporting and Compliance Engine (''TRACE'') in the finest increment captured by the system used to execute the transaction, subject to an exception for members with limited trading volume in U.S. Treasury Securities; and (ii) reduce the trade reporting timeframe for transactions in U.S. Treasury Securities to generally require reporting to TRACE as soon as practicable but no later than 60 minutes.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA 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, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 10, 2017,[3] FINRA members began reporting information on transactions in U.S. Treasury

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See Regulatory Notice* 16–39 (October 2016); *see also* Securities Exchange Act Release No. 79116 (October 18, 2016), 81 FR 73167 (October 24, 2016) (Order Granting Accelerated Approval of File No. SR–FINRA–2016–027).

Securities[4] to TRACE.[5] Information reported to TRACE regarding transactions in U.S. Treasury Securities is used for regulatory and other official sector purposes and is not disseminated publicly.[6] Among other regulatory uses, FINRA makes the data available to the official sector to assist them in the monitoring and analysis of the U.S. Treasury Security markets.[7]

Since members began reporting U.S. Treasury Security transaction information to TRACE,[8] FINRA has continued to study the data and, in consultation with the Treasury Department, consider potential ways to enhance the quality and availability of the data for FINRA and the official sector. FINRA is now proposing two changes to its TRACE reporting rules to enhance the regulatory audit trail and require members to report transactions in U.S. Treasury Securities to FINRA in a more timely manner. The first proposed change would require members to report electronically executed transactions in U.S. Treasury Securities to TRACE in the finest increment captured by the system that executed the transaction, as discussed below. FINRA is proposing to provide an exception from the amended execution timestamp provision for members with limited trading volume in U.S. Treasury Securities. The second proposed change would reduce the reporting timeframe for transactions in U.S Treasury Securities, as discussed further below.

Execution Timestamps

Existing Supplementary Material .04 to Rule 6730 provides that, when reporting transactions in U.S. Treasury Securities executed electronically to TRACE, members must report the Time of Execution[9] pursuant to paragraph (c)(8) of Rule 6730 to the finest increment of time captured by the member's system (*e.g.,* millisecond, microsecond), but at a minimum, in increments of seconds.[10] The ''member's system'' referenced in the existing rule refers to the system that is used to report the transaction to TRACE (*i.e.,* the member's ''reporting system''). Under the existing rule and related guidance, if a member uses multiple systems to facilitate trade reporting and those systems differ in granularity, then the member may use the finest increment that is common across all systems.[11] As a result, currently members may use a reporting system to report a trade to TRACE in an increment of time that is less precise than that captured by the system that is used to execute the transaction (*i.e.,* the ''execution system'').[12]

To improve the granularity and consistency of transaction information for U.S. Treasury Securities, FINRA is proposing to amend Supplementary Material .04 to Rule 6730 to instead provide that, when reporting transactions in U.S. Treasury Securities executed electronically, members must report the Time of Execution pursuant to paragraph (c)(8) of Rule 6730 to the finest increment of time captured by the execution system (*e.g.,* millisecond, microsecond), but reporting must be in an increment of (i) no longer than a second and (ii) no shorter than a microsecond. Amended Supplementary Material .04 would not require members to update execution systems for U.S. Treasury Securities—instead members must update their reporting systems, if necessary, to ensure that their TRACE reports reflect the finest increment of time captured by the execution system (but not finer than a microsecond).[13] Therefore, a member may be required to update its reporting system for U.S. Treasury Securities if such reporting system does not currently report to TRACE to the same level of granularity as the execution system.[14]

For example, if the execution system captures time in milliseconds but the reporting system for U.S. Treasury Security transactions reports the Time

[4] Under Rule 6710(p), a ''U.S. Treasury Security'' means a security, other than a savings bond, issued by the U.S. Department of the Treasury (the ''Treasury Department'') to fund the operations of the federal government or to retire such outstanding securities. The term ''U.S. Treasury Security'' also includes separate principal and interest components of a U.S. Treasury Security that has been separated pursuant to the Separate Trading of Registered Interest and Principal of Securities (STRIPS) program operated by the Treasury Department.

[5] TRACE is the FINRA-developed system that facilitates the mandatory reporting of over-the-counter transactions in eligible fixed income securities. *See generally* Rule 6700 Series.

[6] On March 10, 2020, FINRA began posting on its website weekly, aggregate data on the trading volume of U.S. Treasury Securities reported to TRACE. *See* FINRA Press Release, FINRA Launches New Data on Treasury Securities Trading Volume, *https://www.finra.org/media-center/newsreleases/2020/finra-launches-new-data-treasury-securities-trading-volume*; *see also* Securities Exchange Act Release No. 87837 (December 20, 2019), 84 FR 71986 (December 30, 2019) (Order Approving File No. SR–FINRA–2019–028). Information on individual transactions in U.S. Treasury Securities is not published or disseminated.

[7] The Treasury Department, the Board of Governors of the Federal Reserve System (the ''Federal Reserve''), the Federal Reserve Bank of New York, the SEC and the U.S. Commodity Futures Trading Commission comprise the Inter-Agency Working Group for Treasury Market Surveillance (IAWG or ''official sector'').

[8] Currently, the TRACE reporting requirements apply only to FINRA members. However, FINRA notes that the Federal Reserve has approved a rule change that will require certain non-FINRA member banks to begin reporting information on transactions in specified fixed income securities, including U.S. Treasury Securities, to TRACE. *See* Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB, 86 FR 59716 (October 28, 2021) (Federal Reserve approval to implement the Treasury Securities and Agency Debt and Mortgage-Backed Securities Reporting Requirements (FR 2956; OMB No. 7100–NEW)).

[9] Under Rule 6710(d), the ''Time of Execution'' generally means the time when the parties to a transaction agree to all of the terms of the transaction that are sufficient to calculate the dollar price of the trade.

[10] Existing Supplementary Material .04 provides that a member must report ''at a minimum, in increment of seconds.'' As discussed below, to avoid confusion, the proposed amendments update this language to clarify that members must report trades in an increment of ''no longer than a second'' and no shorter than a microsecond. TRACE currently cannot accept a Time of Execution in an increment that is finer than a microsecond. The proposed rule change would also make a non-substantive edit to Supplementary Material .04 to capitalize the defined term ''Time of Execution.''

[11] Specifically, TRACE Treasury FAQ #3.5.8 provides as follows: Question: Our firm will use two separate systems to facilitate trade reporting of U.S. Treasury Securities for different business lines. One system (''System A'') has the capability to capture the time of execution to the millisecond; however, the second system (''System B'') will only capture the time of execution to the second. Will our firm be required to update System B to capture the time of execution to the millisecond? Answer: No. The rule requires members to report the time of electronic executions to the finest increment of time captured in the member's system (*e.g.,* millisecond, microsecond), but at a minimum, in increments of seconds. Since the firm would be reporting the time of execution to the finest increment captured by each system, the firm would not need to make any updates to System B to comply with a finer time increment.

[12] For purposes of Supplementary Material .04, FINRA would consider the relevant execution system to be the system used to execute the particular U.S. Treasury Security transaction being reported to TRACE, regardless of whether the member is using its own internal systems for execution or if the transaction is executed through an external system. For example, if a member executes a transaction in a U.S. Treasury Security through an alternative trading system (''ATS'') or other electronic trading platform, the member would be required to report in the finest increment of time captured by such ATS or electronic trading platform (but no finer than a microsecond, in line with TRACE system parameters).

[13] The TRACE system does not accept trade reports in increments finer than a microsecond. Where a firm captures time in a finer increment, the firm must truncate the time when reporting the transaction to TRACE. Specifically, TRACE FAQ #3.5.37 provides as follows: Question: Is rounding permitted when reporting the Time of Execution of a U.S. Treasury Security transaction to TRACE? Answer: No. Members must accurately report a transaction's Time of Execution and are not permitted to round when reporting to TRACE. The TRACE system can accommodate reporting up to the microsecond and, where the firm captures time in an increment finer than microseconds, the firm must truncate when reporting to TRACE.

[14] *See supra* note 12. In connection with the proposed rule change, FINRA would also amend its existing TRACE FAQs to clarify that a member must report using the finest increment of time captured by the execution system, and therefore may need to update other systems to enable trade reporting using the execution system's level of timestamp granularity.

of Execution in seconds, the member would be required to update its reporting system to report the Time of Execution in milliseconds. Similarly, if a member's reporting system reports transactions in U.S. Treasury Securities in milliseconds but the member executes trades on an ATS that captures the execution times in microseconds, the member would be required to update its reporting system to report the Time of Execution in microseconds. FINRA believes the proposed change would result in FINRA and the official sector receiving more precise information with respect to the Time of Execution of transactions in U.S. Treasury Securities, which would assist with trade matching and sequencing for U.S. Treasury Securities.

FINRA is, however, proposing to add new Supplementary Material .07 to Rule 6730 to provide a limited exception for members with limited trading volume in U.S. Treasury Securities from the proposed requirement to report electronically executed transactions in U.S. Treasury Securities to the finest increment of time captured by the execution system.[15] The proposed Supplementary Material would define a ''member with limited trading volume in U.S. Treasury Securities'' as a member that executed transactions in U.S. Treasury Securities of $10 million or less in average daily par value, computed by aggregating buy and sell transactions, during the preceding calendar year. Where a member's activity is below the proposed criteria during the preceding calendar year, such member would not be required to report transactions in U.S. Treasury Securities in the finest increment captured by the execution system and would be permitted to continue to report the Time of Execution for transactions in U.S. Treasury Securities executed electronically as it does today for the duration of the following calendar year.

Under the proposed rule change, a member that relies on the exception for limited trading volume would be required to confirm on an annual basis that it continues to meet the criteria for the exception based on its trading activity during the preceding calendar year. Where a member no longer meets the criteria for the exception based on its trading activity during a given preceding calendar year, the member may no longer rely on the exception beginning 90 days after the end of such calendar year, which FINRA believes would provide such members with a sufficient amount of time to make any systems changes that may be needed to comply with the amended timestamp requirement.[16]

As discussed further below in the Economic Impact Assessment, FINRA believes that providing an exception from the amended execution timestamp requirement is appropriate as it would apply the enhanced obligations under the rule and associated burdens to the members that engage in substantial trading activity in U.S. Treasury Securities (based on the $10 million average daily par value traded threshold).

Reporting Timeframe Reduction

Under existing Rule 6730(a)(4)(A), transactions in U.S. Treasury Securities executed on a business day at or after 12:00:00 a.m. Eastern Time through 5:00:00 p.m. Eastern Time must be reported the same day during TRACE System Hours, *i.e.,* 8:00:00 a.m. Eastern Time through 6:29:59 p.m. Eastern Time.[17] A transaction executed on a business day after 5:00:00 p.m. Eastern Time but before the TRACE system closes can be reported the same day before the TRACE system closes, but must be reported no later than the next business day (T+1) during TRACE System Hours, *i.e.,* 8:00:00 a.m. Eastern Time through 6:29:59 p.m. Eastern Time, and, if reported on T+1, designated ''as/of'' and include the date of execution. Finally, a transaction executed on a business day at or after 6:30:00 p.m. Eastern Time through 11:59:59 p.m. Eastern Time (or a Saturday, a Sunday, a federal or religious holiday or other day on which the TRACE system is not open at any time during that day) must be reported the next business day (T+1) during TRACE System Hours, *i.e.,* 8:00:00 a.m. Eastern Time through 6:29:59 p.m. Eastern Time, designated ''as/of,'' and include the date of execution.

To provide more timely information about transactions in U.S. Treasury Securities, FINRA is proposing to amend Rule 6730(a)(4) to reduce the trade reporting timeframe as follows.[18] Amended Rule 6730(a)(4) would provide that transactions in U.S. Treasury Securities must be reported as soon as practicable, but no later than the following time periods.[19] Amended Rule 6730(a)(4)(A) would require that a transaction executed on a business day at or after 12:00:00 a.m. Eastern Time through 7:59:59 a.m. Eastern Time must be reported the same day no later than 60 minutes after the TRACE system opens. A transaction executed on a business day at or after the time the TRACE system opens at 8:00:00 a.m. Eastern Time through when the TRACE system closes at 6:29:59 p.m. Eastern Time (standard TRACE System Hours) must be reported within 60 minutes of the Time of Execution, except that a transaction executed on a business day less than 60 minutes before 6:30:00 p.m. Eastern Time can be reported the same day before the TRACE system closes, but must be reported no later than 60 minutes after the TRACE system opens the next business day (T+1), and if reported on T+1, designated ''as/of'' and

[15] The proposed rule change would also make non-substantive, conforming edits to the Supplementary Material to Rule 6730. Specifically, existing Supplementary Material .06 to Rule 6730 provided a temporary exception for aggregate transaction reporting of U.S. Treasury Securities executed in ATS trading sessions. By its terms, that temporary exception expired on April 12, 2019. Therefore, FINRA is proposing to delete the temporary exception under existing Supplementary Material .06, renumber existing Supplementary Material .07 (ATS Identification of Non-FINRA Member Counterparties for Transactions in U.S. Treasury Securities) as Supplementary Material .06 and add the new exception for members with limited trading volume in U.S. Treasury Securities as new Supplementary Material .07.

[16] Under the proposed rule change, once a member's activity falls outside of the scope of the proposed criteria based on its trading activity during a given preceding calendar year, such member generally may no longer rely on the exception beginning 90 days after the end of such calendar year, irrespective of whether it again meets the criteria in a subsequent calendar year. However, a member may consult with FINRA staff regarding the availability of the exception where the member has changed business lines or undergone a corporate restructuring that significantly impacts its level of activity in U.S. Treasury Securities.

[17] Under Rule 6710(t), ''TRACE System Hours'' means the hours the TRACE system is open, which are 8:00:00 a.m. Eastern Time through 6:29:59 p.m. Eastern Time on a business day, unless otherwise announced by FINRA.

[18] FINRA is not proposing to provide an exception for members with limited trading activity in U.S. Treasury Securities from the proposed reduced reporting timeframe requirement.

[19] In connection with the proposed changes to Rule 6730(a)(4) discussed above, the proposed rule change would also make conforming changes to Supplementary Material .03 to Rule 6730, which sets forth standards for firms reporting transactions ''as soon as practicable'' after the Time of Execution in accordance with Rule 6730(a). Existing Rule 6730.03 provides that ''[e]ach member with a trade reporting obligation pursuant to paragraph (a) above for a TRACE-Eligible Security that is subject to dissemination must adopt policies and procedures reasonably designed to comply with the requirement that transactions in TRACE-Eligible Securities be reported 'as soon as practicable' by implementing systems that commence the trade reporting process at the Time of Execution without delay.'' Under the proposed rule change, the ''as soon as practicable'' standard would also apply to transactions in U.S. Treasury Securities, which are not subject to dissemination. Therefore, FINRA is proposing to update the first sentence of Rule 6730.03 to provide that ''[e]ach member with an obligation to report a transaction in a TRACE-Eligible Security 'as soon as practicable' pursuant to paragraph (a) of this Rule must adopt policies and procedures reasonably designed to comply with this requirement by implementing systems that commence the trade reporting process at the Time of Execution without delay.''

include the date of execution. Finally, a transaction executed on a business day at or after 6:30:00 p.m. Eastern Time through 11:59:59 p.m. Eastern Time, or a Saturday, a Sunday, a federal or religious holiday or other day on which the TRACE system is not open at any time during that day (determined using Eastern Time) must be reported the next business day (T+1) no later than 60 minutes after the TRACE system opens, designated ''as/of,'' and include the date of execution.

FINRA believes the proposal to require that members report transactions in U.S. Treasury Securities to TRACE as soon as practicable, but no later than within 60 minutes of the Time of Execution (or within 60 minutes after the TRACE system opens for trades executed during specified periods, as described above) is a beneficial next step towards providing FINRA and the official sector with more timely information about activity in the U.S. Treasury Security markets than the current reporting timeframe, including more timely data about intraday pricing and liquidity. As discussed further in the Economic Impact Assessment, FINRA also notes that members already report over 90 percent of transactions in U.S. Treasury Securities within 60 minutes of the Time of Execution. FINRA will continue to consider whether further reducing the reporting timeframe for U.S. Treasury Securities may be beneficial.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice.* The effective date will be no later than 365 days following publication of the *Regulatory Notice* announcing Commission approval of the proposed rule change.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[20] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

FINRA believes that the proposed rule change to align the granularity of the Time of Execution provided in TRACE reports with the granularity of timestamps in the system used to execute transactions in U.S. Treasury Securities will enhance the regulatory audit trail for U.S. Treasury Securities available to FINRA and the official sector by facilitating more efficient matching and sequencing of transactions in the audit trail data. FINRA also believes that providing an exception from the amended execution timestamp requirement for members with limited trading volume in U.S. Treasury Securities will reduce burdens for members with limited activity while continuing to ensure that FINRA and the official sector receives valuable audit trail information for U.S. Treasury Security trades. FINRA further believes that requiring members to report transactions in U.S. Treasury Securities to TRACE in a more timely manner will improve the availability to regulators of information regarding transactions in the U.S. Treasury Security markets, including more timely data about intraday pricing and liquidity.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to further analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs, benefits, and distributional and competitive effects, relative to the current baseline, and the alternatives FINRA considered in assessing how best to meet its regulatory objective.

Regulatory Need

Under the existing rule, members may report a trade to TRACE in an increment of time that is less precise than that captured by the execution system, which makes it difficult to match interdealer trades when two sides report at different time granularity because coarse granularity in timestamps makes sequencing trades less precise. To address this, the proposed amendment requires that, when reporting transactions in U.S. Treasury Securities executed electronically, members must report the Time of Execution to the finest increment of time captured by the execution system, but must report in an increment of time that is no longer than a second and no shorter than a microsecond.

Under the existing rule, a transaction executed on a business day at or after 12:00:00 a.m. Eastern Time through 5:00:00 p.m. Eastern Time must be reported the same day during TRACE System Hours, while a transaction executed after 5:00:00 p.m. Eastern Time but before the TRACE system closes must be reported no later than the next business day (T+1) during TRACE System Hours. A transaction executed on a business day at or after 6:30:00 p.m. Eastern Time through 11:59:59 p.m. Eastern time or on a non-business day must be reported the next business day (T+1) during TRACE System Hours. To improve the timeliness of the information reported to TRACE, the proposed amendment will require transactions in U.S. Treasury Securities to be reported as soon as practicable, but no later than 60 minutes from the Time of Execution (or within 60 minutes after the TRACE system opens for trades executed during specified periods), which would provide more timely information to regulators.

Economic Baseline

The economic baseline of the proposed rule change is the existing TRACE U.S. Treasury Security reporting requirements, and member firms trading activities in these securities. FINRA has analyzed TRACE U.S. Treasury Security transaction reports during the sample period of July 2020 to June 2021 by 729 members and 21 ATSs, [21] during which there were approximately 336,612 transaction reports on average reported to TRACE per day.[22] ATSs collectively accounted for 58.8 percent of these reports. Among the top 10 TRACE reporters for U.S. Treasury Securities, five are ATSs and five are non-ATS FINRA members. The top 10 reporters collectively represented 71.8 percent of all TRACE U.S. Treasury Security reports, and the five ATSs accounted for 57.8 percent of the total. On average, there were 667 FINRA members that reported fewer than 100 transactions per day for the days on which they reported transactions in U.S. Treasury Securities.

During the sample period, 253 unique MPIDs reported transactions in U.S. Treasury Securities executed on or through an ATS to TRACE.[23] Of the 253 MPIDs, 173 MPIDs reported transactions in seconds and 80 MPIDs reported

[20] 15 U.S.C. 78*o*–3(b)(6).

[21] In selecting a sample period, FINRA also analyzed trade reports during the 2020 calendar year, which includes the March 2020 stress period, and found no significant difference in the statistics over the 2020 calendar year as compared to the statistics over the July 2020 to June 2021 period.

[22] The analysis considers all transaction reports for the purpose of the rule, and thus differs from the weekly aggregated statistics published by FINRA, which adjusts for multiple reporting of trades where a trade involves an ATS or both sides are FINRA members. *See supra* note 6.

[23] FINRA has analyzed the number of transactions executed on or through an ATS because these are a readily identifiable subset of all electronically executed transactions.

transactions in milliseconds or finer. Fifty-nine of the 173 reporters which reported in seconds had no more than $10 million in average daily par value traded. Thirty-four of the 80 reporters which reported in milliseconds or finer had no more than $10 million in average daily par value traded. There were approximately 70.2 million ATS transactions reported in the sample period across all 253 MPIDs. Most of these transactions (72.7 percent) were reported in milliseconds or finer.

Furthermore, for the sample period reviewed, FINRA analysis found that for transactions executed on business days between 8:00 a.m. and 5:00 p.m., members reported 96.5 percent of transactions within 60 minutes of the Time of Execution. Of the 749 MPIDs (either member firm or ATS) that reported transactions, 281 MPIDs always reported transactions within 60 minutes and 12 MPIDs always reported transactions more than 60 minutes after the execution. The remaining 456 MPIDs reported transactions both within 60 minutes and after 60 minutes of execution, of which 96.5 percent were reported within 60 minutes of execution. FINRA also observed that of the transactions that were executed from 5:00 p.m. through 7:59:59 a.m. the next business day or on non-business days by 318 MPIDs, 95.5 percent of these transactions were reported within 60 minutes after the TRACE system opened. Of the 318 MPIDs, 109 always reported within 60 minutes after the TRACE system opened. Of the 318 MPIDs, 193 reported both within and after 60 minutes after the TRACE system opened.

Economic Impacts

As discussed above, FINRA is proposing two enhancements to improve the quality and timeliness of the information reported to TRACE for transactions in U.S. Treasury Securities. The enhancements will result in benefits, including facilitating market oversight and providing FINRA and the official sector with valuable insight into U.S. Treasury Security transactions, thereby benefiting the markets and market participants, and strengthening investor protection.

FINRA recognizes that the proposed enhancements may result in costs for members that trade U.S. Treasury Securities where members must implement changes to their processes and systems for reporting U.S. Treasury Securities transactions to TRACE.

The proposed rule change may affect competition between member firms with reporting obligations and non-members engaging in U.S. Treasury Security trades. Such competitive impact could result from the extent to which members pass costs resulting from the reporting requirement to customers, either fully or partially. Customers may thus choose to trade using non-members who do not have TRACE reporting obligations. However, such substitutability would depend on, among other things, whether sufficient liquidity exists with these non-reporting firms, and regulatory or practical limitations on where customers and institutions may trade. In addition, search and other costs may further impose a burden on customers that may limit such potential substitution. Substitution may also be limited where other regulators impose TRACE reporting requirements that align with the proposed rule change, for example when the Federal Reserve implements TRACE reporting for U.S. Treasury Securities for banks.[24] The proposed rule change may also affect competition among reporting firms, where firms reporting only a limited number of trades may face the same costs of upgrading their systems and therefore find their limited trading in U.S. Treasury Securities less viable. The impact on such firms is expected to be mitigated as a result of the proposed exception for eligible members in connection with the proposed timestamp granularity provision, as described above.

Execution Timestamps

As discussed above, FINRA is proposing to require members to report electronically executed transactions in U.S. Treasury Securities in the finest increment of time as that captured by the execution system, but must report in an increment of time that is no longer than a second and no shorter than a microsecond. Finer time granularity in the audit trail will assist with trade matching and sequencing by allowing transactions to be matched more accurately and sequenced with more granularity. This facilitates market oversight by providing FINRA and the official sector with more information on U.S. Treasury Security transactions. It will result in costs for members that need to implement changes to their processes and systems.

FINRA is proposing an exception from the timestamp granularity requirement for members that engage in limited activity in U.S. Treasury Securities—specifically, members that executed transactions in U.S. Treasury Securities of no more than $10 million in average daily par value traded (computed by aggregating buy and sell transactions over the prior calendar year). The $10 million threshold would provide relief for firms with limited activity (and for which the technological changes required may be more significant compared to their level of activity in this space) while continuing to ensure that FINRA receives valuable audit trail information for U.S. Treasury Security trades. Based on 2020 data which is the full calendar year members' activity will be measured, the proposed threshold would provide relief to 485 firms that, in the aggregate, accounted for 0.11% of the total par value traded.

Reporting Timeframe Reduction

As discussed above, FINRA is proposing to reduce the timeframe for reporting transactions in U.S. Treasury Securities to TRACE to generally require reporting as soon as practicable but no later than within 60 minutes of the Time of Execution (or within 60 minutes after the TRACE system opens for trades executed during specified periods). This facilitates market oversight by providing FINRA and the official sector with more timely information on U.S. Treasury Security transactions. It will result in costs for members that need to implement changes to their processes and systems. As discussed in the baseline, members reported approximately 96 percent of transactions within 60 minutes of the Time of Execution.

Some members who trade in U.S. Treasury Securities also trade in other types of TRACE-Eligible Securities that already require reporting in a shorter timeframe. For example, transactions in corporate bonds and Agency Debt Securities [25] generally are required to be reported to FINRA as soon as practicable, but no later than within 15 minutes of the Time of Execution. In the sample period, of the 750 MPIDs that reported transactions in U.S. Treasury Securities, 691 MPIDs also reported transactions in corporate bonds and Agency Debt Securities. While these transactions may occur on separate

[24] *See supra* note 8.

[25] Under Rule 6710(l), an ''Agency Debt Security'' means a debt security (i) issued or guaranteed by an Agency; (ii) issued or guaranteed by a Government-Sponsored Enterprise; or (iii) issued by a trust or other entity that was established or sponsored by a Government-Sponsored Enterprise for the purpose of issuing debt securities, where such enterprise provides collateral to the trust or other entity or retains a material net economic interest in the reference tranches associated with the securities issued by the trust or other entity. The term excludes a U.S. Treasury Security and a Securitized Product, where an Agency or a Government-Sponsored Enterprise is the Securitizer (or similar person), or the guarantor of the Securitized Product.

trading desks, to the extent that members are able to leverage existing technology within the firm, the costs associated with the proposed reporting timeframe changes for U.S. Treasury Securities could potentially be reduced.

Alternatives Considered

FINRA considered several alternatives to the $10 million threshold for the exception from the timestamp granularity requirement. First, FINRA considered basing the relief on the number of trades reported rather than the par value traded. Based on its analysis, FINRA believes that average daily par value traded is a more appropriate measurement; specifically, some firms with fewer than 100 trades on average per day still had significant average trading volume. FINRA also considered basing the relief on different levels of trading activity, up to an average daily par value traded of $100 million (which is the threshold used by the Federal Reserve for bank reporting).[26] FINRA determined that a $100 million threshold would result in the loss of valuable audit trail information for members that trade significant U.S. Treasury Security volumes. FINRA also analyzed firms at or below a $50 million threshold, a $20 million threshold, and $15 million threshold and determined in each case that these thresholds were too high for purposes of the proposed exception and would result in the loss of valuable audit trail information. On balance, FINRA believes that the firms within scope of the proposed execution timestamp enhancement, using the proposed $10 million threshold, are active participants in the U.S. Treasury Security space and should be required to implement the U.S. Treasury Security reporting changes; therefore, this threshold would ensure that FINRA receives valuable audit trail information for U.S. Treasury Security trades from more active firms.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in *Regulatory Notice* 20–43 (December 2020). Nine comments were received in response to the *Regulatory Notice.* A copy of the *Regulatory Notice* is available on FINRA's website at *http://www.finra.org.* A list of the comment letters received in response to the *Regulatory Notice* is available on FINRA's website.[27] Copies of the comment letters received in response to the *Regulatory Notice* are also available on FINRA's website. The comments received in response to the *Regulatory Notice* that relate to the instant proposal are summarized below.[28]

Execution Timestamps

Comments regarding the proposed execution timestamp requirement were mixed. Citadel supported the proposal to increase the granularity of execution timestamps to match execution systems.[29] EA supported normalizing the Time of Execution information received and the general language proposed in the *Regulatory Notice,* but stated that it should be revised to indicate best and worst boundaries, *i.e.,* the worst being one second and the best one microsecond as currently supported by the TRACE facility.[30] As discussed above, the proposed rule change would clarify that the Time of Execution must be reported in an increment of no longer than a second and no shorter than a microsecond.

FIF did not support increasing the granularity of execution timestamps to match execution systems, stating that the proposal would require significant system changes to match the granularity of internal and third-party execution systems, and requested that FINRA provide additional insight into the objective of the proposal.[31] SIFMA also generally did not support increasing the granularity of execution timestamps, stated that the proposal would present technological complexities, and asked that FINRA provide additional information regarding the objectives of the proposal so that execution time information can be structured in a way that reflects the complexities of market practice, firm systems, and interactions among market participants.[32] SIFMA further stated that, while some firms already provide information at this level of granularity, it is not standard across firms, and that using the most granular time component within any element of larger systems would create substantial operational challenges. In addition, SIFMA noted that it is likely that firms receive timestamps at differing increments across venues (or potentially even products), and therefore it would not be an easy or straightforward undertaking to create the level of uniformity required by the proposal.

As discussed above, FINRA acknowledges that some members may need to make operational and technological changes to comply with the amended timestamp requirement. However, FINRA continues to believe that the benefits to the regulatory audit trail of aligning the timestamps reported to TRACE with those captured by the relevant execution system are appropriate. In particular, requiring firms to align the reporting system timestamp granularity to the level of granularity used in the execution system would result in more precise information with respect to the Time of Execution of transactions in U.S. Treasury Securities that would be available to FINRA and the official sector, which would assist with trade matching and sequencing for U.S. Treasury Securities. FINRA also notes that the proposed timestamp requirement would provide an exception for members with limited trading activity, which is intended to provide relief for firms with limited activity in the U.S. Treasury Security markets from making the operational and technological changes that may be needed to update their systems to comply with the new requirements.

SIFMA raised concerns regarding the proposed requirement for transactions that are ''executed electronically,'' and stated that it is unclear which transactions would be within scope of the proposal, and further stated that creating a different standard for voice versus electronic trades would create confusion. SIFMA also asserted that it would be most effective from a technological perspective to apply the same timestamp standards across all TRACE-Eligible Securities, such that timestamp granularity for U.S. Treasury Securities would be informed by the limitations and structural constraints that shape reporting timestamps for other TRACE-Eligible Securities.

With respect to commenter concerns regarding members' ability to accurately identify transactions that are ''executed electronically'' and the impact of establishing different standards for voice versus electronic trades, FINRA notes that the existing timestamp granularity provision for U.S. Treasury Securities in Rule 6730.04 specifically applies to transactions that are ''executed electronically,'' and FINRA is

[26] *See supra* note 8.

[27] *See* SR–FINRA–2022–013 (Form 19b-4, Exhibit 2b) for a list of abbreviations assigned to commenters (available on FINRA's website at *http://www.finra.org*).

[28] FINRA notes that *Regulatory Notice* 20–43 solicited comment on a number of potential enhancements to TRACE reporting for U.S. Treasury Securities, including items that are not being proposed in the instant filing. Thus, Item II.C. of this filing is limited to a discussion of comments received in response to the *Regulatory Notice* that relate to the items being proposed herein.

[29] *See* Citadel at 4.

[30] *See* EA at 1–2.

[31] *See* FIF at 5–6.

[32] *See* SIFMA at 4–5.

not aware that there has been confusion regarding the scope of the current requirement that has resulted in compliance concerns for members. To the extent that members encounter interpretive questions, FINRA will work with the industry to provide guidance, as appropriate, with respect to the proposed amendments.

FINRA appreciates commenter concerns regarding requiring a different timestamp granularity standard for U.S. Treasury Securities than for other TRACE-Eligible Securities. FINRA notes that, to the extent preferable, members may choose to make the systems changes required under the proposal for reporting all TRACE-Eligible Securities in the same increment as captured by the execution system used to execute the transaction (to the extent this is preferable to making the change solely for U.S. Treasury Securities). FINRA also notes that the proposal would not require that trades executed electronically be captured by execution systems in increments finer than a second; however, to the extent that the execution system uses a finer increment, the proposal would require that TRACE reports also reflect such finer increment (but no finer than a microsecond, in line with TRACE system parameters).

Reporting Timeframe Reduction

Comments regarding reducing the reporting timeframe for U.S. Treasury Securities were generally supportive. EA supported the proposed 60-minute reporting timeframe, noting that it already reports transactions within this timeframe. EA stated that the 60-minute requirement would be a significant step forward while still allowing members sufficient time between execution and reporting to resolve any system issues.[33] FIA PTG stated that there was no justification for the lengthy reporting window that exists today in light of the prevalence of electronic trading in this market.[34] As such, FIA PTG stated that, at a minimum, it supported the proposed reduction to a 60-minute timeframe, but would generally recommend further reducing the reporting timeframe to no greater than 15 minutes, congruent with current reporting requirements for corporate bonds. Additionally, with respect to on-the-run U.S. Treasury Securities, FIA PTG recommended a 10-second reporting window to mirror U.S. equity markets, given the liquidity profile of the market for on-the-run U.S. Treasury Securities.

Similarly, both Citadel and MFA supported the proposed reporting timeframe reduction, but both recommended further reducing the period to 15 minutes to harmonize reporting with corporate bonds.[35] Citadel agreed that the proposed reduction would provide the official sector with access to more timely data regarding intraday pricing and liquidity dynamics. Citadel argued that market participants should be well-situated to comply with a 15-minute timeframe for U.S. Treasury Securities, noting that members already report approximately 95% of U.S. Treasury Security transactions within an hour after execution, despite not being required to report until end-of-day. Citadel further stated that harmonizing reporting timeframes is warranted given the ongoing consideration of whether to publicly report secondary market U.S. Treasury Security transactions, as public dissemination would require trading activity to be reported to FINRA as soon as possible following execution. MFA also argued that regulators should have the same timely data with respect to the U.S. Treasury Securities as they do for corporate bonds, noting that timely data is critical for regulators to perform their supervisory functions, especially in times of extreme market volatility.

FIF stated that its members generally do not object to a reduction in the reporting timeframe. FIF stated that some members recommend a two-hour timeframe rather than the proposed 60-minute timeframe, while other FIF members recommend a shorter timeframe that is harmonized with requirements in other asset classes (*i.e.,* 15 minutes for corporate bonds).[36] SIFMA noted that, although shortening the reporting timeframe would be a substantial change, its members feel that some shortening of the reporting timeframe would be feasible for firm systems, provided that any change includes sufficient time for implementation and testing.[37] However, SIFMA recommends moving to a reporting timeframe of, at most, two hours, rather than the proposed 60-minute timeframe. SIFMA noted that operational challenges would be inherent in moving from the current reporting timeframe to the proposed 60 minute-timeframe, including the impact of transmitting more data through systems on an intraday basis, as well as the potential for increased late reports, cancels and corrections. SIFMA also stated that the reporting timeframe should reflect the unique operational and market responsibilities of firms active in the U.S. Treasury Security market, noting for example that primary dealers have responsibilities to support auctions and open market activity, such that a wider reporting window would provide more flexibility to meet firms' other time-sensitive requirements.

FINRA continues to believe that requiring members to report as soon as practicable, but no later than 60 minutes from the Time of Execution is appropriate for U.S. Treasury Securities. The proposed reporting timeframe would provide FINRA and the official sector with more timely data regarding U.S. Treasury Security transactions, which will significantly increase the ability of regulators to monitor intraday pricing and liquidity information in the U.S. Treasury Security markets. FINRA does not agree that a longer outer limit reporting timeframe than 60 minutes—*e.g.,* two hours—would be appropriate, as it would reduce the timeliness of intraday data available to FINRA and the official sector. FINRA does not believe that the operational challenges of reporting within 60 minutes would be significantly greater than reporting within two hours. As discussed above in the Economic Impact Assessment, FINRA notes that members already report over 90 percent of transactions in U.S. Treasury Securities within 60 minutes of the Time of Execution. FINRA also does not believe that establishing an outer limit of 15 minutes or 10 seconds is appropriate. As noted above, individual transaction information for U.S. Treasury Securities is not publicly disseminated, and therefore the shorter timeframes that generally apply to disseminated transactions are not necessary for U.S. Treasury Securities. Thus, FINRA continues to believe that requiring members to report as soon as practicable, but no later than 60 minutes from the Time of Execution is appropriate for U.S. Treasury Securities as it would provide more timely information for regulatory use while balancing concerns regarding the burdens that would be imposed on reporting members.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days of such date (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding

[33] *See* EA at 2.

[34] *See* FIA PTG at 1.

[35] *See* Citadel at 1–2; MFA at 2.

[36] *See* FIF at 6.

[37] *See* SIFMA at 5–6.

or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2022–013 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2022–013. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2022–013 and should be submitted on or before June 24, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–11878 Filed 6–2–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95002; File No. SR–ICC–2022–006]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC Model Validation Framework

May 27, 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 May 17, 2022, ICE Clear Credit LLC (''ICC'') 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 primarily by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to revise the ICC Model Validation Framework (the ''Model Validation Framework'' or ''Framework''). These revisions do not require any changes to the ICC Clearing Rules (the ''Rules'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICC proposes revisions to the Model Validation Framework, which provides assurances that ICC models are performing as expected. The proposed amendments include clarifications on the scope and applicability of the Framework, responsibilities of relevant stakeholders, and other validation elements. Additional proposed changes reorganize certain portions of the Framework and make language clarifications to promote readability. ICC believes the proposed changes will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. ICC proposes to make such changes following Commission approval of the proposed rule change. The proposed rule change is described in detail as follows.

ICC proposes amendments to Section 1 containing the introduction. To introduce the purpose of the Framework more clearly, ICC proposes to begin the document with an overview in Subsection 1.1. The revision history of the Framework would be moved to the end of the document. Proposed new language in Subsection 1.1 describes ICC's clearing approach that utilizes various models as part of its risk processes. For clarity, the definition of a model and the purpose of validation is included. Relevant language from current Subsection 1.1 is accordingly moved to Subsection 1.2 and certain other language is removed as described below.

Amended Subsection 1.2 applies the Framework to clearing house models, rather than risk management system models. ICC proposes these revisions to expand the scope of the Framework. The current language directly applies the Framework to ICC's risk management system models (*i.e.,* those relating to financial resources and liquidity resources). The proposed revisions clarify that the Framework applies to all ICC models, which would include an additional model relating to counterparty credit. Accordingly, the changes frame the components that make up a model (''model components'') in terms of ICC's models rather than its risk management system. Information in current Subsection 1.1 regarding risk drivers would be removed to avoid confusion as it is specific to risk management system models and not relevant elsewhere in the document. Detailed information regarding risk

[38] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

drivers and ICC's risk management system is more appropriate in ICC's risk policies. ICC would continue to distinguish between new, enhanced, and retired model components (collectively, ''model change''). References to the risk management system are replaced with references to models in Section 1 and throughout the document. ICC's Model Inventory, which lists ICC models, is introduced in this subsection instead of later in the document. Additional procedures are incorporated for consulting with the Risk Committee regarding adding, enhancing, or retiring models or model components.

Amended Subsection 1.3 includes language from current Subsection 2.2 pertaining to materiality classifications of model changes. The language remains mostly the same with a small update to spell out an abbreviated term. Such language is more fitting in the introductory section, as it provides the foundation of how ICC views model changes in terms of materiality.

New Subsection 1.4 contains language from current Subsection 1.2 with certain clarifications. Specifically, Subsection 1.4 applies the development process set out in the document to new model and model change development rather than just model change development. This is intended to be a clarification and would not change how ICC develops new models. The development process continues to include design, implementation, user-acceptance testing, and deployment phases.

ICC also proposes revisions to Section 2 containing information on Framework oversight. The Risk Oversight Officer (''ROO'') continues to be responsible for the operation and maintenance of the Framework under Subsection 2.1. Since language from Subsection 2.2 is moved, the following subsections are renumbered accordingly. Amended Subsection 2.2 details how a team of independent validators meets the criteria for independence and technical expertise. Minor changes pertaining to the ROO's responsibilities are also included. In Subsection 2.3, a redundant statement is removed and minor language clarifications are made. In Subsection 2.4, ICC would specify that the Model Inventory holds key information about all ICC models, model components, and model changes. The Model Inventory is maintained by the ROO, who would review it with the ICC Risk Department.

ICC further proposes amending Section 3 describing the Framework controls. Subsection 3.1 takes language (including Figure 1) from current Subsection 1.3, which provides an overview of the Framework controls. This information is more appropriate in Section 3, which covers Framework controls. The following subsections are renumbered accordingly and continue to describe the same four controls.

Revisions regarding initial validations are made in Subsection 3.2. Subsection 3.2.2 specifies that an independent initial validation is required for all new models. Updates to part (a) and throughout the subsection clarify that the validation may consider new models or model change. Proposed language in part (b) describes the validation report deliverable in more detail, noting certain information the report should include. This is not a new requirement and is intended to reflect and memorialize current and good practices to ensure reports are effective. Amended part (c) includes minor changes regarding the presentation of the report to the Risk Committee, including the role of the ROO and the presentation scope, which are not new requirements and are intended to reflect current practices.

Minor updates are included in Subsection 3.3. ICC proposes to more generally refer to certain policies in Subsection 3.3.1 and to remove references to specific policies in Subsection 3.3.3. ICC considers such references unnecessary, as the Framework is not intended to introduce other policies. ICC also proposes a clarification in Subsection 3.3.3 that it performs several types of outcome analyses comparing model results to corresponding actual or hypothetical outcomes (*e.g.,* stress testing and back testing).

ICC proposes amending Subsection 3.5 related to independent periodic reviews. ICC proposes to begin by referencing applicable regulations on its requirement to perform independent periodic reviews. Information on the Chief Risk Officer's responsibilities is moved to the end. ICC continues to ensure that not more than twelve months passes between each independent periodic review. Additional references to the twelve-month period are referred to generally as the review cycle. For models that are not subject to the annual requirement, proposed language directs the ROO, in consultation with the Risk Committee, to set an established periodicity for independent periodic review. Currently, the ROO as the individual responsible for the operation and maintenance of the Framework determines the appropriate periodicity of review for models, in consultation with the Risk Committee. Such language is intended to memorialize current practices and formalize the requirement in the Framework. In Subsection 3.5.1, ICC proposes updates to an independent periodic review component, including when it is not applicable, to ensure that ICC adequately addresses any open items. In Subsection 3.5.2, ICC proposes to describe the independent periodic review report deliverable in more detail, noting certain information the report should include, to reflect and memorialize current and good practices to ensure reports are effective. ICC also proposes minor changes regarding the presentation of the report to the Risk Committee, including the role of the ROO and the presentation scope, which are not new requirements and are intended to reflect current practices. Additional information regarding remediation of items in the reports is proposed, including required consultations with the Risk Committee on remedial actions and timelines. Such updates ensure that ICC remediates high priority items as soon as possible and considers any applicable governance or regulatory actions or technology implementations in timelines for remedial actions. Currently, ICC consults with the Risk Committee on remedial action timelines and closure of items. The proposed language is intended to memorialize current practices and formalize the requirement in the Framework. New Subsection 3.5.3 proposes procedures for ad hoc reviews of methodologies that are not considered models under the Framework. Finally, ICC proposes an appendix that clearly sets out the current ICC models.

(b) Statutory Basis

ICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [3] and the regulations thereunder applicable to it, including the applicable standards under Rule 17Ad–22.[4] In particular, Section 17A(b)(3)(F) of the Act [5] requires that the rule change be consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICC, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest.

The proposed rule change is generally designed to enhance, clarify, and more clearly document ICC's model validation processes and procedures.

[3] 15 U.S.C. 78q–1.

[4] 17 CFR 240.17Ad–22.

[5] 15 U.S.C. 78q–1(b)(3)(F).

The changes clarify that the Framework applies to all ICC models, which would expand the scope of the Framework. Additional stakeholder responsibilities are included pertaining to the ROO, Risk Department, and Risk Committee. Further information regarding validation elements is proposed, such as applicable regulations, remedial actions and timelines, and procedures for ad hoc reviews of methodologies. Proposed language specifies that ICC remediate high priority items as soon as possible and consider applicable governance or regulatory actions or technology implementations in remedial action timelines. These amendments would strengthen the Framework to ensure that it appropriately provide assurances that all ICC models are performing as expected and that ICC remediates report items in an appropriate and timely manner. The proposed revisions also provide clarity, reflect current practices, and formalize certain requirements in the documentation to ensure that the Framework remains up-to-date, transparent, and effective. Furthermore, other proposed changes promote readability and understanding, including beginning the document with an overview, reorganizing text to follow section headings more closely, and making minor language clarifications, and will promote the successful maintenance and operation of the Framework. ICC believes that the proposed rule change would facilitate and enhance its ability to carry out its model validation procedures and fulfill its model validation requirements in respect of the models utilized as part of ICC's risk processes and thus promote overall risk management and stability of ICC. Accordingly, in ICC's view, the proposed rule change is consistent with the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[6]

The amendments would also satisfy relevant requirements of Rule 17Ad–22.[7] Rule 17Ad–22(b)(4)[8] requires ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for an annual model validation consisting of evaluating the performance of its margin models and the related parameters and assumptions associated with such models by a qualified person who is free from influence from the persons responsible for the development or operation of the models being validated. Rule 17Ad–22(e)(4)(vii)[9] requires ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by performing a model validation for its credit risk models not less than annually or more frequently as may be contemplated by its risk management framework. Rule 17Ad–22(e)(6)(vii)[10] requires ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, among other things, requires a model validation for its margin system and related models to be performed not less than annually, or more frequently as may be contemplated by its risk management framework. Rule 17Ad–22(e)(7)(vii)[11] requires ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by ICC, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by, among other things, performing a model validation of its liquidity risk models not less than annually or more frequently as may be contemplated by its risk management framework. As described above, the amendments clarify that the Framework applies to all ICC models, including an appendix to clearly set out current models. The amendments propose updates and specificity regarding the report deliverable and presentation as well as how a team of validators meets independence and technical expertise requirements. The amendments incorporate applicable regulatory requirements and procedures related to annual validation cycles and periodic reviews. ICC believes that such changes continue to ensure that ICC receives independent and effective model validations and that ICC continues to perform model validations in accordance with applicable regulations. Therefore, ICC believes the proposed rule change is consistent with the requirements of Rule 17ad–22(b)(4), (e)(4)(vii), (e)(6)(vii) and (e)(7)(vii).[12]

Rule 17Ad–22(e)(2)(i) and (v)[13] requires ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility. The Framework continues to describe the personnel responsible for, and the governance procedures associated with, the successful operation and maintenance of the Framework. Additional responsibilities of relevant stakeholders are included in the Framework. For instance, updates and procedures are incorporated for presenting reports to the Risk Committee and consulting with the Risk Committee to add, enhance, or retire models or model components and regarding remedial actions and timelines. The amendments more clearly set out the role of the ROO in the operation and maintenance of the Framework and the role of the Risk Department in reviewing the Model Inventory. Moreover, for models that are not subject to the annual requirement, proposed language directs the ROO, in consultation with the Risk Committee, to set an established periodicity for review. Memorializing additional detail and responsibilities, including to reflect current practices, would strengthen the Framework to ensure that responsible parties effectively carry out ICC's model validation procedures. As such, ICC believes that the proposed rule change ensures that ICC maintains policies and procedures that are reasonably designed to provide for clear and transparent governance arrangements and specify clear and direct lines of responsibility, consistent with Rule 17Ad–22(e)(2)(i) and (v).[14]

Rule 17Ad–22(e)(4)(ii)[15] requires ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing

[6] *Id.*

[7] 17 CFR 240.17Ad–22.

[8] 17 CFR 240.17Ad–22(b)(4).

[9] 17 CFR 240.17Ad–22(e)(4)(vii).

[10] 17 CFR 240.17Ad–22(e)(6)(vii).

[11] 17 CFR 240.17Ad–22(e)(7)(vii).

[12] 17 CFR 240.17Ad–22(b)(4), (e)(4)(vii), (e)(6)(vii) and (e)(7)(vii).

[13] 17 CFR 240.17Ad–22(e)(2)(i) and (v).

[14] *Id.*

[15] 17 CFR 240.17Ad–22(e)(4)(ii).

agency in extreme but plausible market conditions. The Framework supports ICC's ability to maintain sufficient risk requirements and enhances ICC's approach to identifying potential weaknesses in the risk management system through the use of independent validations and periodic reviews. The amended Framework continues to provide a process for reviewing and enhancing the models that ICC utilizes as part of its risk processes. The changes strengthen the Framework and ensure completeness by expanding the scope to clearing house models, including procedures regarding ad hoc reviews of methodologies to ensure objective and effective review, and including procedures regarding remedial actions and timelines to ensure remediation of report items in an appropriate and timely manner. Additional changes ensure the Framework remains up-to-date, transparent, and focused on clearly articulating the policies and procedures used to support ICC's model validation efforts, including by reorganizing text, removing unnecessary references to policies, and specifying when an independent periodic review component is not applicable. In ICC's view, the proposed rule change would facilitate and enhance its ability to carry out its validation processes and procedures in respect of the models utilized as part of ICC's risk processes or other methodologies. As such, the proposed amendments would strengthen ICC's ability to maintain its financial resources and withstand the pressures of defaults, consistent with the requirements of Rule 17Ad–22(e)(4)(ii).[16]

(B) Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition. The proposed changes to the Framework will apply uniformly across all market participants. They are generally designed to enhance, clarify, and more clearly document ICC's model validation processes and procedures and include clarifications on the scope and applicability of the Framework, responsibilities of relevant stakeholders, and other validation elements. ICC does not believe these amendments would affect the costs of clearing or the ability of market participants to access clearing. Therefore, ICC does not believe the proposed rule change would impose any burden on competition that is inappropriate in furtherance of the purposes of the Act.

[16] *Id.*

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–ICC–2022–006 on the subject line.

Paper Comments

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–ICC–2022–006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at *https://www.theice.com/clear-credit/regulation.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2022–006 and should be submitted on or before June 24, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–11877 Filed 6–2–22; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95001; File No. SR–MIAX–2022–22]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 519, MIAX Order Monitor

May 27, 2022.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 13, 2022, Miami International Securities Exchange, LLC (''MIAX Options'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange 519, MIAX Order Monitor.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/* at MIAX Options' principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 519, MIAX Order Monitor to (i) establish an Exchange default Threshold Setting for market orders [3] to sell an option when the national best bid is zero; (ii) provide that a Member [4] may supply their own pre-set value to be used as the Threshold Setting; (iii) reorganize the rule text for ease of reference; and (iv) adopt new rule text to add additional detail regarding the Exchange's process for evaluating and reevaluating market orders to sell.

Background

Currently, in order to avoid the occurrence of potential obvious or catastrophic errors on the Exchange the MIAX Order Monitor will prevent certain orders from executing or being placed on the Book [5] at prices outside pre-set standard limits. Beginning after the Opening Process [6] is complete, the MIAX Order Monitor will be operational each trading day until the close of trading.[7] Exchange Rule 519(a)(1)(i) provides that if the Exchange upon initial receipt or reevaluation evaluates a market order to sell an option when the national best bid is zero and the Exchange's disseminated offer is equal to or less than $0.10, the System [8] will convert the market order to sell to a limit order to sell with a limit price of one Minimum Trading Increment.[9] In this case, such sell orders will automatically be placed on the Book in time priority and will be displayed at the appropriate Minimum Price Variation.[10] Exchange Rule 519(a)(1)(ii) provides that if the Exchange upon initial receipt or reevaluation evaluates a market order to sell an option when the national best bid is zero and the national best offer is greater than $0.10, the System will cancel the market order to sell.

Proposal

The Exchange now proposes to allow Members to determine their own pre-set value to be used as the threshold setting (''Threshold Setting'') that the Exchange will use when evaluating market orders to sell when the national best bid is zero and the national best offer is less than, equal to, or greater than, the Threshold Setting. Members are not constrained by the Exchange in determining their Threshold Setting and may set the threshold at any value in accordance to their business and risk tolerances. Members will communicate their desired threshold value to the Exchange's Help Desk [11] in a form and manner to be determined by the Exchange and communicated to Members via Regulatory Circular. The Exchange will establish a default Threshold Setting of $0.10 (the current setting) and communicate its value to Members via Regulatory Circular.[12]

The Exchange proposes to adopt new subparagraph (i) to paragraph (a)(1) of Rule 519 to provide that, for the purposes of this Rule a Member may establish a pre-set value to be used as the Threshold Setting by communicating its value to the Exchange's Help Desk in a form and manner to be determined by the Exchange and communicated via Regulatory Circular. The Exchange will establish a default Threshold Setting of $0.10 and communicate its value to Members via Regulatory Circular. If a Member does not establish a Threshold Setting the Exchange default value will be used. Currently, the Exchange uses a value of $0.10 as its threshold value for purposes of evaluating or reevaluating market orders to sell when the national best bid is zero.[13]

The Exchange proposes to adopt new subparagraph (ii) to paragraph (a)(1) of Rule 519 to provide that, if the Exchange receives a market order to sell an option when the national best bid is zero and the national best offer is less than or equal to the Threshold Setting, the System will convert the market order to sell, to a limit order to sell, with a limit price of one Minimum Trading Increment.[14] The Exchange proposes to use the national best offer as the reference price in determining how to handle a market order to sell when the national best bid is zero as the national best offer better represents the current market conditions. This provision is consistent with the operation of the current rule, however the Threshold Setting used for evaluation purposes under the Exchange's proposal may now be either the Exchange's default setting of $0.10 or the Member's Threshold Setting.

The Exchange proposes to adopt new subparagraph (iii) to paragraph (a)(1) of Rule 519 to provide that, if the Exchange reevaluates [15] a market order to sell an option when the resulting national best bid is zero and either the trade price, route price, or national best offer is less than or equal to the Threshold Setting, the System will convert the market order to sell, to a limit order to sell, with a limit price of one Minimum Trading Increment. In the event the Exchange receives a market order to sell and the Exchange is zero bid but an away market is not, the Exchange will route the order to that away exchange at the away market price, the ''route price.'' For the purposes of this rule, the execution price of a trade in the subject series is

[3] A market order is an order to buy or sell a stated number of option contracts at the best price available at the time of execution. *See* Exchange Rule 516(a).

[4] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[5] The term ''Book'' means the electronic book of buy and sell orders and quotes maintained by the System. *See* Exchange Rule 100.

[6] *See* Exchange Rule 503.

[7] *See* Exchange Rule 519(a).

[8] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[9] *See* Exchange Rule 510(b).

[10] *See* Exchange Rule 510(a).

[11] The term ''Help Desk'' means the Exchange's control room consisting of Exchange staff authorized to make certain determinations on behalf of the Exchange. The Help Desk shall report to and be supervised by a senior executive of the Exchange. *See* Exchange Rule 100.

[12] The Exchange proposes to convert its current $0.10 threshold setting to the Exchange default Threshold Setting.

[13] *See* Exchange Rule 519(a)(1)(i) and (ii).

[14] *See* Exchange Rule 510, Minimum Price Variations and Minimum Trading Increments.

[15] A reevaluation of an order occurs when the order has been routed to an away exchange and is returned to the Exchange partially, or completely, unfilled.

considered the ''trade price.'' The Exchange uses the route price, trade price, or national best offer to determine the proper disposition of a market order to sell when the national best bid becomes zero.

Current paragraph (i) describes the initial evaluation and reevaluation process of a market order to sell whereas each process is given separate treatment under this proposal. Specifically, new proposed paragraph (ii) describes the initial evaluation process of a market order to sell when the national best bid is zero and new proposed paragraph (iii) describes the reevaluation process of a market order to sell when the national best bid becomes zero. The Exchange believes this format provides additional clarity to the Exchange's rules regarding its order handling process when the Exchange reevaluates a market order to sell when the national best bid becomes zero.

The Exchange proposes to adopt new subparagraph (iv) to paragraph (a)(1) of Rule 519 to provide that, in either case of (ii) or (iii) above, such sell orders will automatically be placed on the Book in time priority and will be displayed at the appropriate Minimum Price Variation.[16] The Exchange notes that this language is identical to the current rule text.[17]

The Exchange proposes to adopt new subparagraph (v) to paragraph (a)(1) of Rule 519 to provide that, if the Exchange receives a market order to sell an option when the national best bid is zero and the national best offer is greater than the Threshold Setting, the System will reject the order. This provision is consistent with the operation of the current rule, however under the Exchange's proposal the Threshold Setting used for evaluation purposes may now be either the Exchange default setting of $0.10 or the Member's Threshold Setting.

The Exchange proposes to adopt new subparagraph (vi) to paragraph (a)(1) of Rule 519 to provide that, if the Exchange reevaluates a market order to sell an option when the resulting national best bid is zero and both (A) the trade price or route price, and (B) the national best offer, are greater than the Threshold Setting, the System will reject the order or cancel any unexecuted balance of the order. The Exchange uses the route price or trade price, in conjunction with the national best offer to determine the proper disposition of a market order to sell when the national best bid becomes zero. The Exchange believes considering both the route price or trade price, and the national best offer, provides a clear indication of the current market conditions when either the route price or trade price and the national best offer is greater than the Threshold Setting and allows the Exchange to make the proper determination regarding the disposition of the order.

The proposed rule text provides additional detail regarding the System's behavior when the Exchange reevaluates a market order to sell and the national best bid has become zero. Example 1 below describes the System processing when the national best bid is below the Threshold Setting, and Example 2 describes the System processing when the national best bid is above the Threshold Setting.

Example 1

MPV: $0.05
Exchange default Threshold Setting: $0.10
Member selected Threshold Setting: $0.25
MBBO[18] (0) 0.00 × 5.00 (10)
ABBO[19] (10) 0.10 × 0.15 (10)
NBBO[20] (10) 0.10 × 0.15 (10)

Market order to sell 20 contracts is received by the Exchange.

The Exchange routes the order to the away exchange by sending a limit order to sell 10 contracts at $0.10 (the route price).

The order is executed on the away exchange, sell 10 at $0.10, and the away market becomes zero bid.

MBBO: (0) 0.00 × 5.00 (10)
ABBO: (0) 0.00 × 0.15 (10)
NBBO: (0) 0.00 × 0.15 (10)

Using the Member selected Threshold Setting of $0.25 to reevaluate the order, the remainder of the order (10 contracts) would be converted to a limit order to sell and placed on the Exchange as the national best offer ($0.15) (and the route price of $0.10) is less than or equal to the Member selected Threshold Setting of $0.25. The 10 contracts would then be displayed on the Exchange at an offer price of one minimum trading increment or $0.05.

MBBO: (0) 0.00 × 0.05 (10)
ABBO: (0) 0.00 × 0.15 (10)
NBBO: (0) 0.00 × 0.05 (10)

If the Exchange default Threshold Setting was used for the evaluation, the remainder of the order would be cancelled as the national best offer (0.15) is greater than the Exchange default Threshold Setting of $0.10.

Example 2

MPV: $0.05
Exchange default Threshold Setting: $0.10
Member selected Threshold Setting: $0.25
MBBO (0) 0.00 × 5.00 (10)
ABBO (10) 0.40 × 0.50 (10)
NBBO (10) 0.40 × 0.50 (10)

Market order to sell 20 contracts is received by the Exchange. The Exchange is zero bid for that series and routes the order to the away exchange by sending a limit order to sell 10 at $0.40 (the route price).

The order is executed on the away exchange, sell 10 at $0.40, and the away market becomes zero bid.

MBBO: (0) 0.00 × 5.00 (10)
ABBO: (0) 0.00 × 0.50 (10)
NBBO: (0) 0.00 × 0.50 (10)

Using the Member selected Threshold Setting of $0.25 to reevaluate the order, the remainder of the order (10 contracts) would be cancelled as both (i) the route price ($0.40) and (ii) the national best offer ($0.50) are greater than the Threshold Setting ($0.25).

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act[21] in general, and furthers the objectives of Section 6(b)(5) of the Act[22] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes its proposal promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system, and in general, protects investors and the public interest by allowing Members to establish the threshold setting for the evaluation of market orders to sell when the national best bid is zero. The Exchange believes

[16] *Id.*

[17] *See* Exchange Rule 519(a)(1)(i).

[18] The term ''MBBO'' means the best bid or offer on the Exchange. *See* Exchange Rule 100.

[19] The term ''ABBO'' or ''Away Best Bid or Offer'' means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Rule 1400(g)) and calculated by the Exchange based on market information received by the Exchange from OPRA. *See* Exchange Rule 100.

[20] The term ''NBBO'' means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from OPRA. *See* Exchange Rule 100.

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

that allowing Members to determine the threshold setting provides greater flexibility and allows the Member to tailor the threshold setting to the business and risk tolerances of the Member.

The Exchange believes its proposal to allow Members the flexibility to establish their own pre-set value to be used for evaluation purposes of market orders to sell when the national best bid is zero allows Members to align their risk protections with their risk tolerance. Members have the discretion to set their pre-set value to whatever value best aligns to their risk profile, which may be as low as $0.00.[23] The Exchange provides Members the ability to tailor risk protection functionality to the risk profile of the Member, and has allowed Members to customize their risk protection settings for other risk protections. Specifically, the Exchange allows Members to set the maximum size of an order for the purposes of the MIAX Order Monitor Order Size Protection,[24] and if the maximum size of an order is not designated by the Member, the Exchange provides an Exchange defined default value.[25] Additionally, the Exchange provides Members the option to set a price protection limit on a per order basis,[26] and orders received without a price protection limit specified receive the Exchange defined default value.[27] The current proposal to allow Members to determine a pre-set value to be used as the Threshold Setting continues the Exchange's approach of allowing a Member to customize its risk protections to better align to the risk tolerance of the Member.

The Exchange believes its proposal to reorganize the current rule text to describe each scenario separately (*i.e.,* evaluation of a market order to sell when the national best bid is zero and the national best offer is less than or equal to the Threshold Setting (proposed paragraph (ii)); reevaluation of a market order to sell when the national best bid becomes zero and the national best offer is less than or equal to the Threshold Setting (proposed paragraph (iii)); initial evaluation of a market order to sell when the national best bid is zero and the national best offer is greater than the Threshold Setting (proposed paragraph (v)); and reevaluation of a market order to sell when the national best bid becomes zero and the national best offer is greater than the Threshold Setting (proposed paragraph vi))) better organizes the rule text. The Exchange believes discussing each scenario separately and describing the evaluations that are performed by the System to determine the proper disposition of the order provides transparency and clarity in the Exchange's rules.

The Exchange believes its proposal promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system, and in general, protects investors and the public interest by providing additional detail regarding the Exchange's process for reevaluating market orders to sell when the national best bid becomes zero. The Exchange believes it is in the interest of investors and the public to accurately describe the behavior of the Exchange's System in its rules as this information may be used by investors to make decisions concerning the submission of their orders. Transparency and clarity are consistent with the Act because it removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest by accurately describing how market orders to sell in zero bid series are handled on the Exchange. It is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion.

Additionally, the Exchange believes its proposal promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system, and in general, protects investors and the public interest by re-organizing the rule text for ease of reference. The Exchange believes that Exchange rules should be clear and transparent so as to avoid the potential for confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that its proposal will impose any burden on intra-market competition as all Members that submit market orders to the Exchange will be treated equally and the Rules of the Exchange apply equally to all Exchange Members. Additionally, the proposal allows each Member to determine the pre-set value to be used as the Threshold Setting and allows each Member to align their Threshold Setting to their risk tolerance.

The Exchange does not believe that its proposal will impose any burden on inter-market competition as the Exchange's proposal is not a competitive filing but one that provides additional detail regarding the Exchange's process for reevaluating market orders to sell when the national bid becomes zero. Additionally, the Exchange's proposal is similar to the rules of at least one other options exchange.[28]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A)

[23] The Exchange notes that the Nasdaq Phlx does not have a threshold evaluation and, in the case where the bid price for any options series is $0.00, a Market Order accepted into the System to sell that series shall be considered a Limit Order to sell at a price equal to the minimum trading increment as defined in Nasdaq Phlx Options 3, Section 3. Orders will be placed on the Limit Order book in the order in which they were received by the System. With respect to Market Orders to sell which are submitted prior to the Opening Process and persist after the Opening Process, those orders are posted at a price equal to the minimum trading increment as defined in Options 3, Section 3. *See* Nasdaq Phlx Options 3, Section 10(b).

[24] *See* Securities Exchange Act Release No. 80121 (February 28, 2017), 82 FR 12656 (March 6, 2017) (SR–MIAX–2017–09).

[25] *See* MIAX Options Regulatory Circular 2017–15, Mandatory Usage of MIAX Options Order Monitor Protections (March 21, 2017) available at *https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_Options_RC_2017_15.pdf.*

[26] *See* Securities Exchange Act Release No. 80230 (March 13, 2017), 82 FR 14251 (March 17, 2017) (SR–MIAX–2017–12).

[27] *See* MIAX Options Regulatory Circular 2018–37, Changes to MIAX Options Price Protection Process (August 20, 2018) available at *https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_Options_RC_2018_37.pdf.*

[28] *See* Cboe Rule 5.34(a)(1)(A) which provides that if the System receives a sell market order in a series after it is open for trading with an NBB of zero: (i) If the NBO in the series is less than or equal to $0.50, then the System converts the market order to a limit order with a limit price equal to the minimum trading increment applicable to the series and enters the order into the Book with a timestamp based on the time it enters the Book. If the order has a Time-in-Force of GTC or GTD that expires on a subsequent day, the order remains on the Book as a limit order until it executes, expires, or the User cancels it. (ii) if the NBO in the series is greater than $0.50, then the System cancels or rejects the market order, or routes the market order to PAR for manual handling, subject to a User's instructions.

of the Act [29] and Rule 19b–4(f)(6) [30] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2022–22 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–MIAX–2022–22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2022–22, and should be submitted on or before June 24, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–11876 Filed 6–2–22; 8:45 am]

BILLING CODE 8011–01–P

[29] 15 U.S.C. 78s(b)(3)(A).

[30] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95004; File No. SR–ICEEU–2022–008]

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change Relating to Amendments to the ICE Clear Europe Operational Risk Management Policy and Risk Identification Framework

May 27, 2022.

I. Introduction

On March 31, 2022, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Operational Risk Management Policy (the ''ORMP'') and add to ICE Clear Europe's rule framework the Risk Identification Framework (the ''RIF''). The proposed rule change was published for comment in the **Federal Register** on April 14, 2022.[3] The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

i. ORMP

The current ORMP describes ICE Clear Europe's process for identifying, assessing, managing, monitoring, and reporting operational risks and requires that ICE Clear Europe assess its operational risks at least annually.[4] The proposed rule change would maintain the overall process as found in the current ORMP but revise the description of the specific steps that makeup the overall process—generally by incorporating into the ORMP additional detail regarding current practices relating to those steps—and modify certain aspects of some of those steps.

First, the proposed rule change would explicitly incorporate into the ORMP ICE Clear Europe's Enterprise Risk Register, which ICE Clear Europe also refers to as the Risk Register Dashboard (referred to herein as the ''Risk Dashboard''). Currently, once ICE Clear Europe identifies operational risks pursuant to the existing ORMP, it documents those risks in the Risk Dashboard. The Risk Dashboard therefore serves as an inventory of the specific operational risks that ICE Clear Europe has identified as part of its existing risk identification process under the ORMP. The Risk Dashboard also includes information about, among other things, the ICE Clear Europe department that owns the risk (the ''Risk Owner''), the level of inherent risk, and the overall rating for the control that mitigates each risk. However, while the Risk Dashboard currently is used as part of ICE Clear Europe's risk identification process under the ORMP, it is not actually referenced in the ORMP. The proposed rule change would formally incorporate the Risk Dashboard into the ORMP and include it as an appendix to the ORMP. The proposed rule change also would add to the ORMP a description of the process for reviewing and updating the Risk Register as part of ICE Clear Europe's existing annual assessment of its operational risks, thereby formalizing that process as a requirement under the ORMP.

The current ORMP requires that Risk Owners complete the risk identification process at least once a year and specifies that this process shall not only allow the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to Amendments to the ICE Clear Europe Operational Risk Management Policy and Risk Identification Framework, Exchange Act Release No. 34–94649 (Apr. 8, 2022); 87 FR 22273 (Apr. 14, 2022) (SR–ICEEU–2022–008) (''Notice'').

[4] This description is substantially excerpted from the Notice, 87 FR 22273. Capitalized terms not otherwise defined herein have the meanings assigned to them in the ORMP, the RIF, or ICE Clear Europe's Rules, as applicable.

identification of new risks but also the discontinuation of those that no longer exist. It also specifies that if risks emerge or cease to exist in between the annual reviews, ad hoc assessments shall be triggered, which necessarily implies that risks must be identified more frequently than annually as needed to determine whether risks emerge or cease to exist in between annual reviews. The revised ORMP would continue to require that Risk Owners complete the risk identification process at least once a year, but explicitly require that the risk identification process be completed more frequently than annually as needed to reflect material risk changes, such as operational risk incidents. The revised ORMP also would explicitly acknowledge that this process would allow ICE Clear Europe to identify new risks and discontinue documenting risks that no longer exist.

With respect to the assessment of risks, the current ORMP requires that Risk Owners measure the potential impact of identified risks and categorize this potential impact by severity and likelihood. Risk Owners also consider the effect of controls on reducing the potential impact of identified risks. The risk remaining after considering the reduction caused by a control is the residual risk. The current ORMP treats residual risk as an assessment of the effectiveness of a control in reducing the potential impact of a risk. The revised ORMP would maintain the same general framework for risk assessment as currently used, but would provide additional detail with respect to controls and the assessment of their effectiveness. Under the current ORMP, Risk Owners musts assess risks on a controlled and uncontrolled basis and must consider whether existing control mechanisms should be enhanced, substituted, or abandoned. ICE Clear Europe proposes to continue requiring such assessments, but to elaborate on the process by focusing discussion in the ORMP on inherent risk versus residual risk. Under the revised ORMP, Risk Owners would consider each risk on an inherent basis (without taking into account the reduction caused by mitigating controls) and on a residual basis (taking into account the reduction caused by mitigating controls). Risk Owners would rate each inherent and residual risk on a five-point scale—very low, low, medium, high, or very high. As part of this process, Risk Owners also would rate the mitigation that each control is expected to provide as high/medium/low and the effectiveness of each control as satisfactory/needs improvement/unsatisfactory. Risk Owners would derive the effectiveness of a control from a number of measures, such as control testing, metrics, and governance. The revised ORMP would require Risk Owners to perform the risk assessment and related control assessment at least once a year or more frequently as needed to reflect material risk changes, such as operational risk incidents.

The current ORMP makes Risk Owners responsible for proposing and implementing remedial actions to manage risks, subject to the approval of the Executive Risk Committee. Further, the type of remedial action depends on the potential expected impact of the operational risk and is implemented following the risk assessments or control assessments. The revised ORMP would similarly require Risk Owners to propose and implement remedial actions, but they also would be required to take into account the expected impact of mitigating controls and further remediating actions would be explicitly required for any residual risks assessed as high or very high. In addition, rather than being subject solely to the approval of the Executive Risk Committee, the revised ORMP would require any proposed remedial actions to be immediately escalated to Senior Management and applicable Risk Committees or the ICE Clear Europe Board.

The monitoring of risks under the revised ORMP would be generally the same as under the current ORMP. The current ORMP requires that Risk Owners and the Risk Oversight Department continuously monitor risks, including daily monitoring through the use of certain indicators. The revised ORMP similarly would require that Risk Owners and the Risk Oversight Department continuously monitor risks, but would specify that such monitoring should be ongoing monitoring (not just daily), in order to clarify that monitoring should be continuous and not just once a day. This particular change could be beneficial if, for example, under the current daily monitoring ICE Clear Europe conducts monitoring at a single specific time during the day and the risk emerges after that time. Moreover, the current ORMP requires that the Risk Oversight Department monitor risks daily through the Risk Appetite Metrics and the Management Thresholds. The revised ORMP would likewise require the Risk Oversight Department to conduct such monitoring, but it would specify that the monitoring would be either daily or monthly given that some metrics and thresholds are considered monthly and others are considered daily. ICE Clear Europe calculates some existing risk metrics on a monthly basis, so specifying monthly monitoring here would take into account these metrics while maintaining daily monitoring for the existing daily metrics.

The current ORMP requires assessments and operational incidents to be reported to senior management, the Audit Committee, and the Board Risk Committee, and further provides that the Board Risk Committee and Board shall be informed of material incidents. The review and assessment of operational incidents is part of ICE Clear Europe's second line risk function, therefore the revised ORMP would require that assessments and operational incidents be reported to senior management and the Board Risk Committee, but it would replace the Audit Committee, which is part of ICE Clear Europe's third line of risk defense with the Executive Risk Committee, which is part of its second line of defense, thereby aligning the risk function with its appropriate line of defense. The Commission further notes that given at least one member of the Audit Committee is also a member of the Board Risk Committee, this member could share information related to operational risk with the Audit Committee as needed.[5]

The requirement that the Board Risk Committee and Board be informed of material incidents would not change. The current ORMP also specifies that the Product Risk Committees and the Executive Risk Committees will receive information related to operational risk. The revised ORMP would require that the Risk Oversight Department report operational risks daily and monthly to senior management and the Executive Risk Committee. Thus, the revised ORMP would specify that the Risk Oversight Department would report this information, and would not include any role for Product Risk Committees. The Commission notes that although the revised ORMP would remove the Product Risk Committees, the CDS Product Risk Committee includes as a member either the ICE Clear Europe President or the Head of First Line Clearing Risk, and that the President and the Head of First Line Clearing Risk are both voting members of the Executive Risk Committee. Given that, the Commission believes that the President or Head of First Line Clearing Risk could share information related to

[5] *See* ICE Clear Europe Limited, Compliance with Principles for Financial Market Infrastructures Disclosure Framework, *available at https://www.theice.com/publicdocs/clear_europe/ICE_Clear_Europe_Disclosure_Framework.pdf.*

operational risk with the CDS Product Risk Committee as needed.[6]

The revised ORMP would require that the Executive Risk Committee approve changes in the Risk Dashboard at each monthly meeting and report those changes to Board Risk Committee and Board. Although the proposed rule change would add this language to the ORMP (it is not stated in the current ORMP), this requirement is currently found in the Risk Identification Framework, as discussed below.

With respect to the oversight of the ORMP itself, currently the policy provides that it is subject to the oversight of the Audit Committee and Risk Oversight Department. The proposed rule change would remove the Audit Committee, such that the revised ORMP would only be subject to the oversight of the Risk Oversight Department, thereby aligning the risk function with its appropriate line of defense, as discussed above.

Finally, the proposed rule change would correct typographical errors throughout the ORMP. The proposed rule change also would update the appendices to the ORMP by adding descriptive titles to the appendices. For example, the proposed rule change would specify that Appendix A is the Risk Dashboard. The proposed rule change also would explain the numerical scores attached to the assessment guidelines in Appendix C.

ii. Risk Identification Framework

ICE Clear Europe has had its current Risk Identification Framework in place since 2016 but has not yet adopted it through the Commission's proposed rule change process. The proposed rule change would formally adopt the RIF as a Rule of ICE Clear Europe without change to the current document.

As described in Section 1, the RIF provides ICE Clear Europe's Board with a structure to explore, identify, and monitor risks as well as ensure that risk tolerance is articulated and documented. It does this by providing a description of the components of ICE Clear Europe's operational risk management process.

Section 2 of the RIF describes four components of this structure: the risk taxonomy, the Risk Dashboard, risk assessment, and emerging risk assessment. The Risk Taxonomy, which is a single universal risk structure, terminology, and hierarchy, is incorporated into the Risk Dashboard, which, as noted above, inventories ICE Clear Europe's risks and assigns an owner for each risk. The RIF requires that the Enterprise Risk Committee approve changes to the Risk Dashboard monthly and report them to the Board Risk Committee. With respect to the risk assessment, the RIF refers to the details provided in the ORMP, as described above. Finally, with the respect to the emerging risk assessment, the RIF also describes how ICE Clear Europe assesses emerging risks, which are potential, undefined, or unfamiliar one-off risk events that may have a detrimental impact on ICE Clear Europe. ICE Clear Europe does so through a special emerging risk assessment and a register of emerging risk, which is presented to the Board and certain board committees.

Section 3 of the RIF describes the documentation ownership and governance processes in respect of the RIF itself. The Chief Risk Officer owns the RIF, and the Executive Risk Committee and Board must approve any material changes. The Executive Risk Committee and Board review the Risk Identification Framework annually.

Finally, the RIF contains appendices like those found in the ORMP, including the Risk Dashboard and impact assessment guidelines.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[7] For the reasons discussed below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[8] and Rules 17Ad–22(e)(2)(v) and 17Ad–22(e)(17) thereunder.[9]

i. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICE Clear Europe be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions.[10] Based on its review of the record, and for the reasons discussed below, the Commission believes the proposed changes to the ORMP and the formalization of the RIF are consistent with the promotion of the prompt and accurate clearance and settlement of securities transactions.

The Commission believes that the proposed rule change would improve ICE Clear Europe's process for identifying, assessing, managing, monitoring, and reporting operational risks. It would do so, for example, by revising the description of the risk identification process in the ORMP to include the Risk Dashboard and by including the Risk Dashboard itself as an appendix to the ORMP and to the RIF. Because the Risk Dashboard documents all of ICE Clear Europe's identified operational risks, the Commission believes that adding Risk Dashboard as appendix to the ORMP and RIF would help to ensure that Risk Owners focus on identifying new, undocumented operational risks by delineating ICE Clear Europe's existing, known risks.

Similarly, the Commission believes that the revisions to the ORMP could improve ICE Clear Europe's overall ability to assess the potential impact of operational risks. For example, the requirement that Risk Owners consider and rate each risk on an inherent and a residual basis should help identify the impact of a risk with and without a mitigating control. The Commission believes such an assessment could highlight the impact that could result from the failure of a mitigating control. This assessment in turn could inform Risk Owners' ratings of the effectiveness of mitigating controls and efforts to improve ineffective controls. Overall, the Commission believes that the focus on mitigating controls and their effectiveness would help to ensure that ICE Clear Europe maintains controls that are effective at mitigating operational risk. Finally, requiring Risk Owners to perform the risk assessment and related control assessment at least once a year or more frequently as needed to reflect material risk changes, instead of ad hoc assessments if risks emerge or cease to exist in-between the annual reviews, should help to ensure that ICE Clear Europe timely identifies any issues with respect to the effectiveness of its controls.

The Commission further believes that revising the ORMP to focus on the management of residual risks would improve ICE Clear Europe's ability to manage its operational risks. Because ICE Clear Europe has controls in place to mitigate the potential impact of its operational risks, the Commission considers it appropriate to focus ICE Clear Europe's efforts on maintaining

[6] *See* ICE Clear Europe Limited, Compliance with Principles for Financial Market Infrastructures Disclosure Framework, *available at https://www.theice.com/publicdocs/clear_europe/ICE_Clear_Europe_Disclosure_Framework.pdf.*

[7] 15 U.S.C. 78s(b)(2)(C).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 240.17Ad–22(e)(2)(v) and (e)(17).

[10] 15 U.S.C. 78q–1(b)(3)(F).

the effectiveness of those controls (as discussed above) and the management of the residual risk remaining after accounting for the mitigating controls. The Commission believes that requiring remediating actions for any residual risks assessed as high or very high should help to ensure that ICE Clear Europe manages those residual risks that have a significant impact on ICE Clear Europe's operations. The Commission further believes that requiring that any proposed remedial actions be escalated to Senior Management and applicable Risk Committees or the ICE Clear Europe Board, as opposed to just being approved by the Executive Risk Committee, would help to ensure that appropriate ICE Clear Europe personnel, including Board-level committees, are informed and involved in the management of residual risks.

Finally, the Commission believes that the proposed monitoring and reporting of risks under the revised ORMP would help to ensure that ICE Clear Europe appropriately monitors its operational risks. For example, requiring ongoing monitoring (not just daily) should help to ensure that such monitoring is conducted on an ongoing basis, and not just once a day. As discussed above, this particular change could be beneficial if, for example, under the current daily monitoring ICE Clear Europe conducts monitoring at a single specific time during the day and the risk emerges after that time.

Similarly, requiring monitoring daily or monthly (not just daily) through the Risk Appetite Metrics and the Management Thresholds should help to ensure the inclusion of those metrics and thresholds that are only considered monthly. As discussed above, ICE Clear Europe calculates some existing risk metrics on a monthly basis, so specifying monthly monitoring would take into account these metrics while maintaining daily monitoring for the existing daily metrics. The Commission believes this change would make the ORMP more specific in this regard, thereby making its application by ICE Clear Europe more consistent and clear.

As discussed above, the current ORMP requires assessments and operational incidents to be reported to senior management, the Audit Committee, and the Board Risk Committee, and further provides that the Board Risk Committee and Board shall be informed of material incidents. The revised ORMP similarly would require regular reporting to senior management, the Board Risk Committee, and the Executive Risk Committee. The Commission believes that such reporting should help to ensure that appropriate decision-makers are involved in management of operational risk and able to respond as need to any incidents involving operational risk.

As discussed above, the RIF helps to provide ICE Clear Europe's Board with information on ICE Clear Europe's operational risk management process. The Commission believes that codifying the RIF as part of ICE Clear Europe's rule requirements should help to ensure that the Board has a permanent framework for providing input on the operational risk management process. The Commission believes that the Board's input could, in turn, improve ICE Clear Europe's operational risk management. For example, given the experience of Board members and their vantage point overseeing all of ICE Clear Europe, Board members may be able to offer improvements to mitigating controls.

For these reasons, the Commission believes the proposed rule change would improve the ORMP and the RIF. As discussed above, ICE Clear Europe uses the ORMP and the RIF to manage its operational risk. The Commission therefore believes that these improvements to the ORMP and the RIF should in turn improve ICE Clear Europe's overall management of its operational risks. Improved management of operational risks should, in turn, decrease the likelihood that operational incidents disrupt ICE Clear Europe's ability to promptly and accurately clear and settle securities transactions. The Commission believes therefore the proposed rule change should enhance ICE Clear Europe's ability to promptly and accurately clear and settle securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[11]

ii. Consistency With Rule 17Ad–22(e)(2)(v)

Rule 17Ad–22(e)(2)(v) requires that ICE Clear Europe establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that, among other things, specify clear and direct lines of responsibility.[12]

As discussed above, the current ORMP requires assessments and operational incidents to be reported to senior management, the Audit Committee, and the Board Risk Committee, and further provides that the Board Risk Committee and Board shall be informed of material incidents. The revised ORMP would require that assessments and operational incidents be reported to senior management and the Board Risk Committee, but it would replace the Audit Committee with the Executive Risk Committee. The requirement that the Board Risk Committee and Board be informed of material incidents would not change. The Commission believes replacing the Audit Committee with the Executive Risk Committee would specify a clear and direct line of responsibility for the Executive Risk Committee. The Commission further notes that although the revised ORMP would remove the Audit Committee, given that at least one member of the Audit Committee is also a member of the Board Risk Committee, the Commission believes that this member could share information related to operational risk with the Audit Committee as needed.[13]

Moreover, as discussed above, the current ORMP also specifies that the Product Risk Committees and the Executive Risk Committees will receive information related to operational risk. The revised ORMP would require that the Risk Oversight Department report operational risks daily and monthly to senior management and the Executive Risk Committee. Thus, the revised ORMP would specify that the Risk Oversight Department would report this information, and the revised ORMP would not include any role for Product Risk Committees. The Commission believes this change would specify a clear and direct line of responsibility for the Risk Oversight Department. The Commission further notes that although the revised ORMP would remove the Product Risk Committees, the CDS Product Risk Committee includes as a member either the ICE Clear Europe President or the Head of First Line Clearing Risk, and that the President and the Head of First Line Clearing Risk are both voting members of the Executive Risk Committee. Given that, the Commission believes that the President or Head of First Line Clearing Risk could share information related to operational risk with the CDS Product Risk Committee as needed.[14]

The revised ORMP also would require that the Executive Risk Committee approve changes in the Risk Dashboard at each monthly meeting and report

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 17 CFR 240.17Ad–22(e)(2)(v).

[13] *See* ICE Clear Europe Limited, Compliance with Principles for Financial Market Infrastructures Disclosure Framework, *available at https://www.theice.com/publicdocs/clear_europe/ICE_Clear_Europe_Disclosure_Framework.pdf.*

[14] *See* ICE Clear Europe Limited, Compliance with Principles for Financial Market Infrastructures Disclosure Framework, *available at https://www.theice.com/publicdocs/clear_europe/ICE_Clear_Europe_Disclosure_Framework.pdf.*

those changes to the Board Risk Committee and Board. The Commission believes that adding this language to the ORMP (it is not stated in the current ORMP but is part of the RIF), would specify a clear and direct line of responsibility for the Executive Risk Committee.

Finally, with respect to the oversight of the ORMP itself, currently the policy provides that it is subject to the oversight of the Audit Committee and Risk Oversight Department. The proposed rule change would remove the Audit Committee, such that the revised ORMP would only be subject to the oversight of the Risk Oversight Department. The Commission believes this change would specify a clear and direct line of responsibility for the Risk Oversight Department, in accordance with the appropriate line of risk defense, as discussed above.

Therefore, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(e)(2)(v).[15]

iii. Consistency With Rule 17Ad–22(e)(17)

Rule 17Ad–22(e)(17) requires that ICE Clear Europe establish, implement, maintain and enforce written policies and procedures reasonably designed to manage its operational risks by, among other things, identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls.[16] The Commission believes that the revised ORMP should improve ICE Clear Europe's ability to manage operational risk by identifying the plausible sources of operational risk at ICE Clear Europe. For example, the revised ORMP would include the Risk Dashboard as an appendix, and similarly the RIF includes the Risk Dashboard as an appendix. Because the Risk Dashboard documents all of ICE Clear Europe's identified operational risks, the Commission believes that adding it formally as an appendix to the ORMP would help to ensure that Risk Owners focus on identifying new, undocumented operational risks by delineating those risks that ICE Clear Europe already knows of and has identified.

Similarly, the Commission believes that the revised ORMP should improve ICE Clear Europe's ability to manage operational risk by mitigating the impact of operational risk through the use of appropriate controls. For example, the revised ORMP would provide additional detail with respect to controls and the assessment of their effectiveness, including how Risk Owners would rate the effectiveness of controls. The Commission believes that doing so could help identify and improve controls that could mitigate the impact of operational risks.

Therefore, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(e)(17).[17]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act[18] and Rules 17Ad–22(e)(2)(v) and 17Ad–22(e)(17) thereunder.[19]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[20] that the proposed rule change (SR–ICEEU–2022–008) be, and hereby is, approved.[21]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

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[15] 17 CFR 240.17Ad–22(e)(2)(v).

[16] 17 CFR 240.17Ad–22(e)(17).

[17] 17 CFR 240.17Ad–22(e)(17).

[18] 15 U.S.C. 78q–1(b)(3)(F).

[19] 17 CFR 240.17Ad–22(e)(2)(v) and (e)(17).

[20] 15 U.S.C. 78s(b)(2).

[21] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95000; File No. SR–PEARL–2022–22]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 519, MIAX Pearl Order Monitor (''MOM'')

May 27, 2022.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 13, 2022, MIAX PEARL, LLC (''MIAX Pearl'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange 519, MIAX Pearl Order Monitor (''MOM'').

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 519, MIAX Pearl Order Monitor (''MOM'') to (i) establish an Exchange default Threshold Setting for market orders[3] to sell an option when the national best bid is zero; (ii) provide that an Electronic Exchange Member (''EEM'')[4] may supply their own pre-set value to be used as the Threshold Setting; (iii) reorganize the rule text for ease of reference; and (iv) adopt new rule text to add additional detail regarding the Exchange's process for evaluating and reevaluating market orders to sell.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A market order is an order to buy or sell a stated number of option contracts at the best price available at the time of execution. *See* Exchange Rule 516(a).

[4] The term ''Electronic Exchange Member'' or ''EEM'' means the holder of a Trading Permit who is a Member representing as agent Public Customer Orders or Non-Customer Orders on the Exchange and those non-Market Maker Members conducting proprietary trading. Electronic Exchange Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

Background

Currently, in order to avoid the occurrence of potential obvious or catastrophic errors on the Exchange the MIAX Pearl Order Monitor will prevent certain orders from executing or being placed on the Book [5] at prices outside pre-set standard limits. Beginning after the Opening Process [6] is complete, the MIAX Pearl Order Monitor will be operational each trading day until the close of trading.[7] Exchange Rule 519(a)(1)(i) provides that if the Exchange upon initial receipt or reevaluation evaluates a market order from an EEM to sell an option when the national best bid is zero and the Exchange's disseminated offer is equal to or less than $0.10, the System [8] will convert the market order to sell to a limit order to sell with a limit price of one Minimum Trading Increment.[9] In this case, such sell orders will automatically be placed on the Book in time priority and will be displayed at the appropriate Minimum Price Variation.[10] Exchange Rule 519(a)(1)(ii) provides that if the Exchange upon initial receipt or reevaluation evaluates a market order from an EEM to sell an option when the national best bid is zero and the national best offer is greater than $0.10, the System will cancel the market order to sell.

Proposal

The Exchange now proposes to allow an Electronic Exchange Member to determine their own pre-set value to be used as the threshold setting (''Threshold Setting'') that the Exchange will use when evaluating market orders to sell when the national best bid is zero and the national best offer is less than, equal to, or greater than, the Threshold Setting. EEM Members are not constrained by the Exchange in determining their Threshold Setting and may set the threshold at any value in accordance to their business and risk tolerances. EEM Members will communicate their desired threshold value to the Exchange's Help Desk [11] in a form and manner to be determined by the Exchange and communicated to Members via Regulatory Circular. The Exchange will establish a default Threshold Setting of $0.10 (the current setting) and communicate its value to Members via Regulatory Circular.[12]

The Exchange proposes to adopt new subparagraph (i) to paragraph (a)(1) of Rule 519 to provide that, for the purposes of this Rule an EEM may establish a pre-set value to be used as the Threshold Setting by communicating its value to the Exchange's Help Desk in a form and manner to be determined by the Exchange and communicated via Regulatory Circular. The Exchange will establish a default Threshold Setting of $0.10 and communicate its value to Members via Regulatory Circular. If an EEM does not establish a Threshold Setting the Exchange default value will be used. Currently, the Exchange uses a value of $0.10 as its threshold value for purposes of evaluating or reevaluating market orders to sell when the national best bid is zero.[13]

The Exchange proposes to adopt new subparagraph (ii) to paragraph (a)(1) of Rule 519 to provide that, if the Exchange receives a market order from an EEM to sell an option when the national best bid is zero and the national best offer is less than or equal to the Threshold Setting, the System will convert the market order to sell, to a limit order to sell, with a limit price of one Minimum Trading Increment.[14] The Exchange proposes to use the national best offer as the reference price in determining how to handle a market order to sell when the national best bid is zero as the national best offer better represents the current market conditions. This provision is consistent with the operation of the current rule, however the Threshold Setting used for evaluation purposes under the Exchange's proposal may now be either the Exchange's default setting of $0.10 or the Member's Threshold Setting.

The Exchange proposes to adopt new subparagraph (iii) to paragraph (a)(1) of Rule 519 to provide that, if the Exchange reevaluates [15] a market order from an EEM to sell an option when the resulting national best bid is zero and either the trade price, route price, or national best offer is less than or equal to the Threshold Setting, the System will convert the market order to sell, to a limit order to sell, with a limit price of one Minimum Trading Increment. In the event the Exchange receives a market order to sell and the Exchange is zero bid but an away market is not, the Exchange will route the order to that away exchange at the away market price, the ''route price.'' For the purposes of this rule, the execution price of a trade in the subject series is considered the ''trade price.'' The Exchange uses the route price, trade price, or national best offer to determine the proper disposition of a market order to sell when the national best bid becomes zero.

Current paragraph (i) describes the initial evaluation and reevaluation process of a market order to sell whereas each process is given separate treatment under this proposal. Specifically, new proposed paragraph (ii) describes the initial evaluation process of a market order to sell when the national best bid is zero and new proposed paragraph (iii) describes the reevaluation process of a market order to sell when the national best bid becomes zero. The Exchange believes this format provides additional clarity to the Exchange's rules regarding its order handling process when the Exchange reevaluates a market order to sell when the national best bid becomes zero.

The Exchange proposes to adopt new subparagraph (iv) to paragraph (a)(1) of Rule 519 to provide that, in either case of (ii) or (iii) above, such sell orders will automatically be placed on the Book in time priority and will be displayed at the appropriate Minimum Price Variation.[16] The Exchange notes that this language is identical to the current rule text.[17]

The Exchange proposes to adopt new subparagraph (v) to paragraph (a)(1) of Rule 519 to provide that, if the Exchange receives a market order from an EEM to sell an option when the national best bid is zero and the national best offer is greater than the Threshold Setting, the System will reject the order. This provision is consistent with the operation of the current rule, however under the Exchange's proposal the Threshold Setting used for evaluation purposes may now be either the Exchange default setting of $0.10 or the Member's Threshold Setting.

The Exchange proposes to adopt new subparagraph (vi) to paragraph (a)(1) of Rule 519 to provide that, if the Exchange reevaluates a market order

[5] The term ''Book'' means the electronic book of buy and sell orders and quotes maintained by the System. *See* Exchange Rule 100.

[6] *See* Exchange Rule 503.

[7] *See* Exchange Rule 519(a).

[8] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[9] *See* Exchange Rule 510(b).

[10] *See* Exchange Rule 510(a).

[11] The term ''Help Desk'' means the Exchange's control room consisting of Exchange staff authorized to make certain determinations on behalf of the Exchange. The Help Desk shall report to and be supervised by a senior executive of the Exchange. *See* Exchange Rule 100.

[12] The Exchange proposes to convert its current $0.10 threshold setting to the Exchange default Threshold Setting.

[13] *See* Exchange Rule 519(a)(i) and (ii).

[14] *See* Exchange Rule 510, Minimum Price Variations and Minimum Trading Increments.

[15] A reevaluation of an order occurs when the order has been routed to an away exchange and is returned to the Exchange partially, or completely, unfilled.

[16] *Id.*

[17] *See* Exchange Rule 519(a)(1)(i).

from an EEM to sell an option when the resulting national best bid is zero and both (A) the trade price or route price, and (B) the national best offer are greater than the Threshold Setting, the System will reject the order or cancel any unexecuted balance of the order. The Exchange uses the route price or trade price, in conjunction with the national best offer to determine the proper disposition of a market order to sell when the national best bid becomes zero. The Exchange believes considering both the route price or trade price, and the national best offer, provides a clear indication of the current market conditions when either the route price or trade price and the national best offer is greater than the Threshold Setting and allows the Exchange to make the proper determination regarding the disposition of the order.

The proposed rule text provides additional detail regarding the System's behavior when the Exchange reevaluates a market order from an EEM to sell and the national best bid is zero. Example 1 below describes the System processing when the national best bid is below the Threshold Setting, and Example 2 describes the System processing when the national best bid is above the Threshold Setting.

Example 1

MPV: $0.05
Exchange default Threshold Setting: $0.10
EEM selected Threshold Setting: $0.25
PBBO [18] (0) 0.00 × 5.00 (10)
ABBO [19] (10) 0.10 × 0.15 (10)
NBBO [20] (10) 0.10 × 0.15 (10)

Market order to sell 20 contracts is received by the Exchange.

The Exchange routes the order to the 0.10 bid on the away exchange by sending a limit order to sell 10 at $0.10 (the route price).

The order is executed on the away exchange, sell 10 at $0.10, and the away market becomes zero bid.

PBBO: (0) 0.00 × 5.00 (10)
ABBO: (0) 0.00 × 0.15 (10)
NBBO: (0) 0.00 × 0.15 (10)

Using the EEM selected Threshold Setting of $0.25 to reevaluate the order, the remainder of the order (10 contracts) would be converted to a limit order to sell and placed on the Exchange as the national best offer (0.15) (and the route price of $0.10) is less than or equal to the EEM selected Threshold Setting of $0.25. The 10 contracts would then be displayed on the Exchange at an offer price of one minimum trading increment or $0.05.

PBBO: (0) 0.00 × 0.05 (10)
ABBO: (0) 0.00 × 0.15 (10)
NBBO: (0) 0.00 × 0.05 (10)

If the Exchange default Threshold Setting was used for the evaluation, the remainder of the order would be cancelled as the national best offer (0.15) is greater than the Exchange default Threshold Setting of $0.10.

Example 2

MPV: $0.05
Exchange default Threshold Setting: $0.10
Member selected Threshold Setting: $0.25
PBBO (0) 0.00 × 5.00 (10)
ABBO (10) 0.40 × 0.50 (10)
NBBO (10) 0.40 × 0.50 (10)

Market order to sell 20 contracts is received by the Exchange. The Exchange is zero bid for that series and routes the order to the away exchange by sending a limit order to sell 10 at $0.40 (the route price).

The order is executed on the away exchange, sell 10 at $0.40, and the away market becomes zero bid.

PBBO: (0) 0.00 × 5.00 (10)
ABBO: (0) 0.00 × 0.50 (10)
NBBO: (0) 0.00 × 0.50 (10)

Using the Member selected Threshold Setting of $0.25 to reevaluate the order, the remainder of the order (10 contracts) would be cancelled as both (i) the route price ($0.40) and (ii) the national best offer ($0.50) are greater than the Threshold Setting ($0.25).

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act [21] in general, and furthers the objectives of Section 6(b)(5) of the Act [22] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes its proposal promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system, and in general, protects investors and the public interest by allowing EEMs to establish the threshold setting for the evaluation of market orders to sell when the national best bid is zero. The Exchange believes that allowing EEMs to determine the threshold setting provides greater flexibility and allows the EEM to tailor the threshold setting to the business and risk tolerances of the Member.

The Exchange believes its proposal to allow EEMs the flexibility to establish their own pre-set value to be used for evaluation purposes of market orders to sell when the national best bid is zero allows EEMs to align their risk protections with their risk tolerance. EEMs have the discretion to set their pre-set value to whatever value best aligns to their risk profile, which may be as low as $0.00.[23] The Exchange provides EEMs the ability to tailor risk protection functionality to the risk profile of the EEM, and has allowed EEMs to customize their risk protection setting for other risk protections offered on the Exchange. Specifically, the Exchange allows EEMs to set the maximum size of an order for the purposes of the MIAX Pearl Order Monitor Size Protection, and if the EMM does not designate the maximum size, the Exchange provides a default value.[24] Additionally, the Exchange provides Members the option to set a price protection limit on a per order basis, and orders received without a price protection limit receive the Exchange defined default value.[25] The current proposal to allow EEMs to determine a pre-set value to be used as the Threshold Setting continues the Exchange's approach of allowing a Member to customize its risk

[18] The term ''PBBO'' means the best bid or offer on MIAX Pearl. *See* Exchange Rule 100.

[19] The term ''ABBO'' or ''Away Best Bid or Offer'' means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Rule 1400(g)) and calculated by the Exchange based on market information received by the Exchange from OPRA. *See* Exchange Rule 100.

[20] The term ''NBBO'' means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from OPRA. *See* Exchange Rule 100.

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

[23] The Exchange notes that the Nasdaq Phlx does not have a threshold evaluation and, in the case where the bid price for any options series is $0.00, a Market Order accepted into the System to sell that series shall be considered a Limit Order to sell at a price equal to the minimum trading increment as defined in Nasdaq Phlx Options 3, Section 3. Orders will be placed on the Limit Order book in the order in which they were received by the System. With respect to Market Orders to sell which are submitted prior to the Opening Process and persist after the Opening Process, those orders are posted at a price equal to the minimum trading increment as defined in Options 3, Section 3. *See* Nasdaq Phlx Options 3, Section 10(b).

[24] *See* Exchange Rule 519(b).

[25] *See* Exchange Rule 515(c).

protections to better align to the risk tolerance of the Member.

The Exchange believes its proposal to reorganize the current rule text to describe each scenario separately (*i.e.,* evaluation of a market order to sell when the national best bid is zero and the national best offer is less than or equal to the Threshold Setting (proposed paragraph (ii)); reevaluation of a market order to sell when the national best bid becomes zero and the national best offer is less than or equal to the Threshold Setting (proposed paragraph (iii)); initial evaluation of a market order to sell when the national best bid is zero and the national best offer is greater than the Threshold Setting (proposed paragraph (v)); and reevaluation of a market order to sell when the national best bid becomes zero and the national best offer is greater than the Threshold Setting (proposed paragraph vi))) better organizes the rule text. The Exchange believes discussing each scenario separately and describing the evaluations that are performed by the System to determine the proper disposition of the order provides transparency and clarity in the Exchange's rules.

The Exchange believes its proposal promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system, and in general, protects investors and the public interest by providing additional detail regarding the Exchange's process for reevaluating market orders from an EEM to sell when the national best bid becomes zero. The Exchange believes it is in the best interest of investors and the public to accurately describe the behavior of the Exchange's System in its rules as this information may be used by investors to make decisions concerning the submission of their orders. Transparency and clarity are consistent with the Act because it removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest by accurately describing how market orders to sell in zero bid series are handled on the Exchange. It is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion.

Additionally, the Exchange believes its proposal promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system, and in general, protects investors and the public interest by re-organizing the rule text for ease of reference. The Exchange believes that Exchange rules should be clear and transparent so as to avoid the potential for confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that its proposal will impose any burden on intra-market competition as all EEMs that submit market orders to the Exchange will be treated equally and the Rules of the Exchange apply equally to all Exchange Members. Additionally, the proposal allows each EEM to determine the pre-set value to be used as the Threshold Setting and allows each EEM to align their Threshold Setting to their risk tolerance.

The Exchange does not believe that its proposal will impose any burden on inter-market competition as the Exchange's proposal is not a competitive filing but one that provides additional detail regarding the Exchange's process for reevaluating market orders from an EEM to sell when the national bid becomes zero. Additionally, the Exchange's proposal is similar to the rules of at least one other options exchange.[26]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act[27] and Rule 19b–4(f)(6)[28] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–PEARL–2022–22 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–PEARL–2022–22. 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

[26] *See* Cboe Rule 5.34(a)(1)(A) which provides that if the System receives a sell market order in a series after it is open for trading with an NBB of zero: (i) If the NBO in the series is less than or equal to $0.50, then the System converts the market order to a limit order with a limit price equal to the minimum trading increment applicable to the series and enters the order into the Book with a timestamp based on the time it enters the Book. If the order has a Time-in-Force of GTC or GTD that expires on a subsequent day, the order remains on the Book as a limit order until it executes, expires, or the User cancels it. (ii) if the NBO in the series is greater than $0.50, then the System cancels or rejects the market order, or routes the market order to PAR for manual handling, subject to a User's instructions.

[27] 15 U.S.C. 78s(b)(3)(A).

[28] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2022–22, and should be submitted on or before June 24, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–11875 Filed 6–2–22; 8:45 am]

BILLING CODE 8011–01–P

[29] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 11755]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Wolfgang Tillmans: To Look Without Fear'' 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 ''Wolfgang Tillmans: To Look Without Fear'' at The Museum of Modern Art, New York, 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. 2022–11949 Filed 6–2–22; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 11754]

Notice of the Program for the Study of Eastern Europe and Eurasia (Title VIII) Advisory Committee Open Virtual Meeting

ACTION: Notice of an advisory committee open meeting.

SUMMARY: Pursuant to section 10 of the Federal Advisory Committee Act (FACA), notice is hereby given to announce a public virtual meeting of the Title VIII Advisory Committee on Thursday, June 30, 2022.

DATES: The meeting will begin at approximately 1:30 p.m. Eastern Daylight Time (EDT) on Thursday, June 30, 2022, via Google Meets and adjourn at approximately 4:00 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, Ms. Sidni Dechaine, Title VIII Program Officer, Department of State, Bureau of Intelligence and Research, *TitleVIII@state.gov.*

SUPPLEMENTARY INFORMATION: All meeting participants are being asked to RSVP by Tuesday, June 28, 2022 via email to *TitleVIII@state.gov,* subject line ''Title VIII Advisory Committee Public Meeting 2022.'' Members of the public requesting reasonable accommodation should make such requests when they register. Upon receipt of the RSVP, attendees will be registered, and will receive the meeting number and password. Members of the public who will participate are encouraged to dial into the meeting 10 minutes prior to the start of the meeting.

Purpose of Meeting and Topics To Be Discussed: The Advisory Committee will announce its recommendations for grant recipients for the 2022 funding opportunity for the Program for the Study of Eastern Europe and the Independent States of the Former Soviet Union, in accordance with the Research and Training for Eastern Europe and the Independent States of the Former Soviet Union Act of 1983, Public Law 98–164, as amended. The agenda will include opening statements by the Committee chair and Committee members. The Committee will provide an overview and discussion of eligible grant proposals submitted from U.S organizations with an interest and expertise in conducting research and foreign language training concerning the countries and languages of Eastern Europe and the Independent States of the Former Soviet Union, based on the guidelines set forth in the March 25, 2022 request for proposals published on *Grants.gov* and SAMS Domestic (*mygrants.service-now.com*). Following Committee deliberation, interested members of the public may make oral statements concerning the Title VIII program. This meeting will be open to the public; however, attendees must register in advance.

Sidni J. Dechaine,

Designated Federal Officer, Advisory Committee for the Program for the Study of Eastern Europe and the Independent States of the Former Soviet Union, Department of State.

[FR Doc. 2022–11947 Filed 6–2–22; 8:45 am]

BILLING CODE 4710–32–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 682 (Sub–No. 13)]

2021 Tax Information for Use in the Revenue Shortfall Allocation Method

The Board is publishing, and providing the public an opportunity to comment on, the 2021 weighted average state tax rates for each Class I railroad, as calculated by the Association of American Railroads (AAR), for use in the Revenue Shortfall Allocation Method (RSAM).

The RSAM figure is one of three benchmarks that together are used to determine the reasonableness of a challenged rate under the Board's *Simplified Standards for Rail Rate Cases,* EP 646 (Sub–No. 1), slip op. at 10 (STB served Sept. 5, 2007),[1] as further revised in *Simplified Standards for Rail Rate Cases—Taxes in Revenue Shortfall Allocation Method* (*Simplified Standards—Taxes in RSAM*), EP 646 (Sub–No. 2) (STB served Nov. 21, 2008). RSAM is intended to measure the

[1] *Aff'd sub nom. CSX Transp., Inc.* v. *STB,* 568 F.3d 236 (D.C. Cir. 2009), *vacated in part on reh'g,* 584 F.3d 1076 (D.C. Cir. 2009).

average markup that the railroad would need to collect from all of its ''potentially captive traffic'' (traffic with a revenue-to-variable-cost ratio above 180%) to earn adequate revenues as measured by the Board under 49 U.S.C. 10704(a)(2) (*i.e.,* earn a return on investment equal to the railroad industry cost of capital). *Simplified Standards—Taxes in RSAM,* EP 646 (Sub–No. 2), slip op. at 1. In *Simplified Standards—Taxes in RSAM,* EP 646 (Sub–No. 2), slip op. at 3, 5, the Board modified its RSAM formula to account for taxes, as the prior formula mistakenly compared pre-tax and after-tax revenues. In that decision, the Board stated that it would institute a separate proceeding in which Class I railroads would be required to submit the annual tax information necessary for the Board's annual RSAM calculation. *Id.* at 5–6.

Pursuant to 49 CFR 1135.2, AAR is required to annually calculate and submit to the Board the weighted average state tax rate for each Class I railroad for the previous year. On May 26, 2022, AAR filed its calculation of the weighted average state tax rates for 2021, listed below for each Class I railroad:

WEIGHTED AVERAGE STATE TAX RATES

Railroad	2021 (percent)	2020 (percent)	% Change
BNSF Railway Company	5.068	5.119	−0.051
CSX Transportation, Inc.	5.010	5.101	−0.091
Grand Trunk Corporation	7.904	8.124	−0.220
The Kansas City Southern Railway Company	5.164	5.139	0.025
Norfolk Southern Combined Railroad Subsidiaries	5.671	5.713	−0.042
Soo Line Corporation	7.827	8.122	−0.295
Union Pacific Railroad Company	5.451	5.598	−0.147

Pursuant to 49 CFR 1135.2(b), notice of AAR's submission will be published in the **Federal Register**. Any party wishing to comment on AAR's calculation of the 2021 weighted average state tax rates should file a comment by July 5, 2022. *See* 49 CFR 1135.2(c). If any comments opposing AAR's calculations are filed, AAR's reply will be due by July 25, 2022. *Id.* If any comments are filed, the Board will review AAR's submission, together with the comments, and serve a decision within 60 days of the close of the record that either accepts, rejects, or modifies AAR's railroad-specific tax information. *Id.* If no comments are filed by July 5, 2022, AAR's submitted weighted average state tax rates will be automatically adopted by the Board, effective July 6, 2022. *Id.*

It is ordered:

1. Comments on AAR's calculation of the 2021 weighted average state tax rates for the Class I railroads are due by July 5, 2022. If any comments opposing AAR's calculations are filed, AAR's reply is due by July 25, 2022.

2. If no comments are filed, AAR's calculation of the 2021 weighted average state tax rates for each Class I railroad will be automatically adopted by the Board, effective July 6, 2022.

Decided: May 31, 2022.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2022–11970 Filed 6–2–22; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36598]

Delaware and Raritan River Railroad, LLC—Modified Rail Certificate

Delaware and Raritan River Railroad, LLC (DRRR), a noncarrier, has filed a notice for a modified certificate of public convenience and necessity under 49 CFR part 1150 subpart C—*Modified Certificate of Public Convenience and Necessity,* to operate a rail line from Howell, N.J. (approximately milepost 20.3+/−) to a point west of Yellowbrook Road near Farmingdale, N.J. (approximately milepost 22.3+/−), all in Monmouth County, New Jersey (the Line). DRRR states that the Line is owned by New Jersey Transit Corporation (NJT).

According to DRRR, the Line was formerly owned and operated by Penn Central Corporation. DRRR states that, pursuant to the Final System Plan, the Line was part of a larger segment that was not designated for transfer to the Consolidated Rail Corporation (Conrail), and that the Line was therefore authorized to be abandoned without further regulatory approval. DRRR further states that NJT subsequently acquired the Line for potential, future railroad operations, but the Line has remained inactive for many years.

According to DRRR, NJT and DRRR have entered into an agreement (the Agreement) for DRRR to operate over the Line,[1] along with other portions of rail lines for which DRRR seeks operating authority in *Delaware & Raritan River Railroad—Operation Exemption—Consolidated Rail Corporation,* Docket No. FD 36596. This proceeding is related to a concurrently filed notice of exemption in *Kean Burenga—Continuance in Control Exemption—Delaware & Raritan River Railroad,* Docket No. FD 36597, in which Kean Burenga and Chesapeake and Delaware, LLC, seek authority to continue in control of DRRR upon its becoming a Class III rail carrier. According to DRRR, although it could commence modified certificate operations over the Line immediately, it does not intend to do so until it can begin operations pursuant to the operating authority sought in Docket No. FD 36596.

The notice states that the Line connects with other sections of track owned by NJT and over which DRRR is seeking operating authority and that, by way of those lines, DRRR will be able to connect to and interchange traffic with Conrail.

The Line qualifies for a modified certificate of public convenience and necessity. *See Common Carrier Status of States, State Agencies & Instrumentalities & Political Subdivisions,* FD 28990F (ICC served July 16, 1981); 49 CFR 1150.22.

DRRR states that no subsidy is involved and there are no preconditions that shippers must meet to receive rail service, although service is subject to the restoration of the track along the Line. DRRR also provides information

[1] DRRR notes that Conrail is a party to the Agreement because it holds certain rights on portions of other rail lines that DRRR will operate under the Agreement, but that Conrail holds no rights to operate over the Line that is the subject of this proceeding.

regarding the nature and extent of its liability insurance coverage. *See* 49 CFR 1150.23(b)(4)–(5).

This notice will be served on the Association of American Railroads (Car Service Division), as agent for all railroads subscribing to the car-service and car-hire agreement, at 425 Third Street, SW, Suite 1000, Washington, DC 20024; and on the American Short Line and Regional Railroad Association at 50 F Street NW, Suite 500, Washington, DC 20001.

Board decisions and notices are available at *www.stb.gov.*

Decided: May 31, 2022.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Eden Besera,

Clearance Clerk.

[FR Doc. 2022–11975 Filed 6–2–22; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36596]

Delaware and Raritan River Railroad, LLC—Lease and Operation Exemption—Consolidated Rail Corporation and New Jersey Transit Corporation

Delaware and Raritan River Railroad, LLC (DRRR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate over certain rail lines (the Lines) owned by New Jersey Transit Corporation (NJT) and Consolidated Rail Corporation (Conrail), totaling 49.9 route miles, all located in New Jersey.

According to DRRR, it has entered into two agreements: (1) A three-party agreement (Agreement) with NJT and Conrail, under which DRRR will provide common carrier service on certain NJT-owned lines, and (2) a lease agreement with Conrail, pursuant to which DRRR will lease and operate certain Conrail-owned line segments.[1]

The NJT-owned Lines are: (1) Two portions of the Freehold Secondary, between Freehold, N.J. (approximately milepost 17.1+/−), and Howell, N.J. (approximately milepost 20.3+/−), and between a point west of Yellowbrook Road near Farmingdale, N.J. (approximately milepost 22.3+/−) and Farmingdale, N.J. (approximately milepost 24.6+/−), a total distance of approximately 5.5 route miles; and (2) a portion of the Southern Branch between Red Bank, N.J. (approximately milepost 38.1+/−) and South Lakewood, N.J. (approximately milepost 63.0+/−) (the Southern Secondary), a total distance of approximately 24.9 route miles.

The Conrail-owned Lines are: (1) The portion of the Freehold Secondary from and including the switch for the east and west legs of the Jamesburg wye and the grade crossing of Gatzmer Avenue in Jamesburg, N.J. (approximately milepost 5.6+/−), southeast to the end of Conrail's ownership at the west side of Broad Street (approximately milepost 17.1+/−), in Freehold, a total distance of approximately 11.5 route miles; (2) the portion of the Southern Secondary, from the beginning of Conrail's ownership at South Lakewood (approximately milepost 63.0+/−) to the end of Conrail's ownership at Lakehurst, N.J. (approximately milepost 66.0+/−), a total distance of approximately 3.0 route miles; and (3) the Toms River Industrial Track, from the connection with the Southern Secondary at or near Lakehurst (approximately milepost 65.9+/− on the Southern Secondary) to the end of Conrail's ownership of regulated main line track near Toms River, N.J. (approximately milepost 5.0+/−), a total distance of approximately 5.0 route miles.

This transaction is related to a verified notice of exemption filed concurrently in *Kean Burenga—Continuance in Control Exemption—Delaware & Raritan River Railroad,* Docket No. FD 36597, in which Kean Burenga and Chesapeake and Delaware, LLC, seek to continue in control of DRRR upon DRRR's becoming a Class III rail carrier. This transaction is also related to a verified notice for a modified certificate of public convenience and necessity in *Delaware & Raritan River Railroad—Modified Rail Certificate,* Docket No. FD 36598, in which DRRR seeks authority to operate an additional NJT-owned line segment which will connect the two NJT-owned line segments that are the subject of this verified notice.

DRRR certifies that its projected annual revenues from this transaction will not result in its becoming a Class I or Class II rail carrier and will not exceed $5 million. DRRR also certifies that the proposed transaction does not include an interchange commitment.

The transaction may be consummated on or after June 19, 2022, the effective date of the exemption (30 days after the verified notice was filed).

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 June 10, 2022 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36596, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on DRRR's representative, Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606–3208.

According to DRRR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: May 31, 2022.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Eden Besera,

Clearance Clerk.

[FR Doc. 2022–11973 Filed 6–2–22; 8:45 am]

BILLING CODE 4915–01–P

[1] DRRR filed a copy of the Agreement in conjunction with a motion for protective order pursuant to 49 CFR 1104.14. The motion for protective order will be addressed in a separate decision.

SURFACE TRANSPORTATION BOARD

Two-Week Notice of Request for Emergency Approval of Information Collection: Urgent Rail Service Issues

AGENCY: Surface Transportation Board.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Surface Transportation Board (Board) gives notice of its intent to request from the Office of Management and Budget (OMB) emergency approval for an existing collection without an OMB Control Number, as described below. If granted, the emergency approval is only valid for up to 180 days. If necessary, the Board will follow this emergency request with a submission for a 3-year approval through OMB's normal PRA clearance process.

DATES: Comments on this information collection should be submitted by June 17, 2022.

ADDRESSES: Direct all comments to Chris Oehrle, PRA Officer, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001, or to

PRA@stb.gov. When submitting comments, please refer to ''Urgent Rail Service Issues.'' For further information regarding this collection, contact Ian Anderson at (202) 245–0337 or *Ian.Anderson@stb.gov.* Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Comments are requested concerning each collection as to (1) whether the particular collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate. Submitted comments will be included and summarized in the Board's request for OMB approval.

Subjects: In this notice, the Board is requesting comments on the following information collection:

Description of Collection

Title: Urgent Rail Service Issues.

OMB Control Number: 2140–XXXX.

STB Form Number: None.

Type of Review: Emergency approval of an existing information collection without an OMB control number.

Respondents: Class I (Large) Railroads.

Number of Respondents: Seven.

Estimated Time Per Response: See Table below.

TABLE—ESTIMATED HOURS PER RESPONSE

Type of filing	Estimated hours per response
Service Recovery Plans *	42
Historical Data *	8
Service Progress Reports *	8
Individual Conference Calls *	0.5
Weekly Performance Data	8
Monthly Employment Data	8
Supplement to April 2022 Employment Data	8

* These sub-collections only apply to the four largest Class I railroads.

Frequency: One-time, bi-weekly and monthly, as provided in Table below.

TABLE—ESTIMATED NUMBER OF RESPONSES

Type of filing	Number of respondents	Estimated frequency
Service Recovery Plans *	4	1
Historical Data *	4	1
Service Progress Reports *	4	13
Individual Conference Calls *	4	6
Weekly Performance Data	7	26
Monthly Employment Data	7	6
Supplement to April 2022 Employment Data	7	1

* These sub-collections only apply to the four largest Class I railroads.

Total Burden Hours (annually including all respondents): 2,476 (sum of estimated hours per response × number of annual responses for each type of filing), as provided in Table below.

TABLE—TOTAL ESTIMATED BURDEN HOURS

Type of filing	Estimated hours per response	Number of respondents	Estimated frequency	Total annual burden hours
Service Recovery Plans *	42	4	1	168
Historical Data *	8	4	1	32
Service Progress Reports *	8	4	13	416
Individual Conference Calls *	0.5	4	6	12
Weekly Performance Data	8	7	26	1,456
Monthly Employment Data	8	7	6	336
Supplement to April 2022 Employment Data	8	7	1	56
Total Annual Burden Hours	.....	.....	.....	2,476

* These sub-collections only apply to the four largest Class I railroads.

Total Annual ''Non-hour Burden'' Cost: There are no non-hourly burden costs for this collection. The itemized sub-collections may be filed electronically.

Needs and Uses: Under the Interstate Commerce Act, as amended by the ICC Termination Act of 1995, the Board is responsible for the economic regulation of common carrier rail transportation. Under 49 U.S.C. 1321(b), 11123, and 11145(a), the Board is empowered to address immediate service issues. Collecting this information will enable the Board to take necessary action to timely deal with the unanticipated and urgent service issues affecting the U.S. rail system. These measures are meant to inform the Board's assessment of further actions that may be warranted to address the acute service issues facing the rail industry and to promote industry-wide transparency, accountability, and improvements in rail service.

At the Board's April 26 and 27, 2022 public hearing in *Urgent Issues in Freight Rail Service,* the Board received extensive testimony on severe rail service issues reported by a wide range of witnesses—including agricultural, energy, and other shippers, as well as government officials, rail labor, and rail experts. The Board has also continued to review and monitor weekly rail

service performance data that indicated substantial deterioration in service. This information collection focuses on the adequacy of service recovery efforts involving BNSF Railway Company (BNSF), CSX Transportation (CSXT), Norfolk Southern Railway Company (NS), and Union Pacific Railroad Company (UP), and it requires more comprehensive and customer-centric reporting of all Class I (large) railroads' service metrics.

In a decision served on May 6, 2022, the Board found that immediate action was needed to address the significant service problems, and it ordered certain railroads to immediately submit relevant information. This information collection directs the four largest U.S. rail carriers—UP, BNSF, CSX, and NS—to submit service recovery plans, along with bi-weekly progress reports for the next six months, in an effort to address service deficiencies that are impacting the public, businesses, and the U.S. economy. This collection also requires all Class I rail carriers operating in the United States to report more comprehensive and customer-centric performance metrics and employment data, also for a six-month period. The Board is taking this action to better inform its assessment of actions that may be warranted to address the acute service issues described above.

The information received by the Board from this collection will be filed in Docket No. EP 770 (Sub-No. 1) and will be publicly available at *www.stb.gov* and may be found by a search in that docket under the ''proceedings and dockets'' pull-down menu.

The Board makes this submission because, under the PRA, a federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under 5 CFR 1320.13, emergency processing is appropriate here and the Board is providing a two-week comment period through publication in the **Federal Register** concerning each proposed collection of information.

Dated: May 31, 2022.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2022–11981 Filed 6–2–22; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36597]

Kean Burenga and Chesapeake and Delaware, LLC—Continuance in Control Exemption—Delaware and Raritan River Railroad, LLC

Kean Burenga (Burenga), an individual and noncarrier, and Chesapeake and Delaware, LLC (CAD), a noncarrier holding company, (collectively, Applicants) filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to continue in control of Delaware and Raritan River Railroad, LLC (DRRR), a noncarrier, upon DRRR's becoming a Class III rail carrier.

This notice of exemption is related to a concurrently filed notice of exemption in *Delaware & Raritan River Railroad—Operation Exemption—Consolidated Rail Corporation,* Docket No. FD 36596, in which DRRR seeks authority to operate over certain rail lines owned by New Jersey Transit Corporation (NJT) and to lease and operate certain rail lines owned by Consolidated Rail Corporation (Conrail), totaling 49.9 miles in New Jersey, and a concurrently filed notice of modified certificate of public convenience and necessity in *Delaware & Raritan River Railroad—Modified Rail Certificate,* Docket No. FD 36598, in which DRRR seeks to operate over an additional NJT-owned line segment in New Jersey.

The transaction may be consummated on or after June 19, 2022, the effective date of the exemption (30 days after the verified notice was filed).

According to the notice, CAD currently controls two Class III railroads, Dover and Rockaway River Railroad, LLC (DRRV) and Dover and Delaware River Railroad, LLC (DDRR), and Burenga has authority to control DRRV, DDRR, Belvidere & Delaware River Railway Company, Inc. (BDRV), and Black River & Western Corp. (BRW).[1]

Applicants represent that: (1) DRRR will not connect with any of the Burenga Railroads; (2) the transaction is not part of a series of anticipated transactions that would connect DRRR with any of the Burenga Railroads or any of the Burenga Railroads with each other; and (3) the transaction does not involve a Class I rail carrier. Therefore, the proposed transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

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 to stay must be filed no later than June 10, 2022 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36597, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Applicants' representative, Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606–3208.

According to Applicants, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: May 31, 2022.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Eden Besera,

Clearance Clerk.

[FR Doc. 2022–11974 Filed 6–2–22; 8:45 am]

BILLING CODE 4915–01–P

[1] DRRV, DDRR, BDRV, and BRW collectively are referred to as the Burenga Railroads. The verified notice states that Burenga has a controlling interest in BDRV and that he recently acquired a controlling interest in BRW, but that he only possesses a minority equity interest in DDRR and DRRV, although he is a director for both railroads and currently holds a management position in each. According to the verified notice, Burenga will assume a similar minority stake in DRRR and will hold a like directorship in, and management position with, DRRR, and that Burenga ''seeks permissive control authority for DRRR out of an abundance of caution.''

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Product Exclusion Extensions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice.

SUMMARY: In prior notices, the U.S. Trade Representative modified the action in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation by excluding from additional duties certain medical-care products needed to address the COVID–19 pandemic. Exclusions for medical care products to address COVID–19 were published on December 29, 2020, and subsequently extended. In November 2021, the U.S. Trade Representative determined to extend 81 of the COVID–19 related product exclusions for an additional 6 months. These exclusions are scheduled to expire on May 31, 2022. This notice announces the U.S. Trade Representative's determination to further extend the 81 COVID exclusions for an additional 6 months.

DATES: The extensions announced in this notice will extend the product exclusions through November 30, 2022.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Associate General Counsel Philip Butler or Assistant General Counsel Rachel Hasandras at (202) 395–5725. For specific questions on customs classification or implementation of the product exclusions, contact *traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

On December 29, 2020 (85 FR 85831), USTR announced the extension of 80 product exclusions on medical-care and/or COVID response products; further modifications in the form of 19 product exclusions to remove Section 301 duties from additional medical-care and/or COVID response products; and that USTR might consider further extensions and/or modifications as appropriate.

On March 10, 2021 (86 FR 13785), USTR extended These 99 exclusions until September 30, 2021. On August 27, 2021 (86 FR 48280), USTR published a notice requesting public comments on whether any of these exclusions should be further extended for up to six months. To provide time for USTR to review the comments it received in response to the August 27 notice, USTR announced interim extensions of these 99 exclusions through November 14, 2021 (86 FR 54011), and then through November 30, 2021.

On November 16, 2021 (86 FR 63438), USTR announced the extension of 81 of the COVID exclusions for an additional 6 months (until May 31, 2022) and that USTR might consider further extensions and/or modifications as appropriate.

B. Determination To Extend COVID Exclusions

In light of the continuing efforts to combat COVID–19, the U.S. Trade Representative has determined that a 6-month extension of the 81 COVID–19-related product exclusions is warranted. The U.S. Trade Representative's decision to extend the 81 product exclusions takes into account public comments previously provided, and the advice of advisory committees and the interagency Section 301 Committee.

As provided in the November 16 notice, the exclusion extensions are available for any product that meets the description in the product exclusion. Further, the scope of each extended product exclusion is governed by the scope of the ten-digit Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting numbers and product descriptions in note 20(sss) to subchapter III of chapter 99 of the HTSUS. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

The U.S. Trade Representative may continue to consider further extensions and/or additional modifications as appropriate.

Annex

The U.S. Trade Representative has determined to extend all exclusions previously extended under heading 9903.88.66 and U.S. notes 20(sss)(i), 20(sss)(ii), 20(sss)(iii), and 20(sss)(iv) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS). *See* 86 FR 63438 (November 16, 2021). The extension is effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on June 1, 2022, and before 11:59 p.m. eastern daylight time on November 30, 2022. Effective on June 1, 2022, the article description of heading 9903.88.66 of the HTSUS is modified by deleting ''June 1, 2022,'' and by inserting ''December 1, 2022,'' in lieu thereof.

Greta Peisch,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2022–11884 Filed 6–2–22; 8:45 am]

BILLING CODE 3290–F2–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of the Draft Environmental Assessment and Draft General Conformity Determination for the Proposed Terminal Area Plan and Air Traffic Procedures at Chicago O'Hare International Airport

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that the Draft Environmental Assessment (EA) and Draft General Conformity Determination for the Proposed Terminal Action Plan and Air Traffic Procedures for Chicago O'Hare International Airport, Chicago, Illinois is available for public review and comment.

FOR FURTHER INFORMATION CONTACT: Deb Bartell, Manager, Chicago Airports District Office (847) 294–7336.

SUPPLEMENTARY INFORMATION: The Draft EA analyzes and discloses the potential environmental impacts associated with the Proposed Terminal Area Plan and Air Traffic Procedures at Chicago O'Hare International Airport, pursuant to the National Environmental Policy Act.

The FAA will host Public Workshops on the Draft document. An in-person Public Workshop on the Draft EA will be held at Monty's Elegant Banquets at 703 South York Road, Bensenville, IL 60106 from 6:00 p.m. to 9:00 p.m. (Central Daylight Time) on July 12, 2022. A virtual Public Workshop will be held via Zoom at 6:00 p.m. (Central Daylight Time) on July 14, 2022. Registration for the virtual meeting is available on the FAA website, found here: *https://www.faa.gov/airports/great_lakes/TAPandATEA/.*

Representatives of FAA and its consultants will provide information about the Draft EA. Spanish language translators will be available at the Public Workshops. If you need the assistance of a translator, other than Spanish, please call 312–374–1881 by July 5, 2022.

The comment period is open as of Thursday, June 2, 2022 and closes Monday, July 18, 2022 at midnight. All comments are to be submitted to FAA, care of HMMH, as noted below. Written comments must be postmarked, and emails must be sent by no later than midnight (Central Daylight Time), Monday, July 18, 2022.

The Draft EA is available for review online (*https://www.faa.gov/airports/great_lakes/TAPandATEA/*) and notices have been provided to local libraries through July 18, 2022:

The FAA requests that comments be submitted online at *https://www.faa.gov/airports/great_lakes/TAPandATEA/*. Court reporters will be available to record verbal comments at the Public Workshops and copies of comment forms will also be available at the in-person meeting.

Issued in Des Plaines, IL.

Dated: May 31, 2022.

Debra L. Bartell,

Manager, Chicago Airports District Office.

[FR Doc. 2022–11929 Filed 6–2–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent of Waiver With Respect to Land; Sioux Falls Regional Airport, Sioux Falls, South Dakota

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA is considering a proposal to change approximately 64.93 acres of airport land from aeronautical use to non-aeronautical use and to authorize the sale of airport property located at the Sioux Falls Regional Airport, Sioux Falls, South Dakota. The property is made up of three parcels. Parcel 1 is approximately 16.40 acres, located on the southwest side of the airport and is currently used as a City storage lot. Parcel 2 is approximately 39.16 acres, located under the approach surface to Runway 3 and is currently used as part of the Elmwood Golf Course. Parcel 3 is approximately 9.37 acres, located north of National Guard Drive and is currently vacant land.

DATES: Comments must be received on or before July 5, 2022.

ADDRESSES: Documents are available for review by appointment at the FAA Dakota-Minnesota Airports District Office, Jeremy McLeod, Program Manager, 2301 University Dr., Bldg. 23B, Bismarck, ND 58504–7595, Telephone: (701)323–7381.

Written comments on the Sponsor's request must be delivered or mailed to: Jeremy McLeod, Program Manager, Federal Aviation Administration, Dakota-Minnesota Airports District Office, 2301 University Dr., Bldg. 23B, Bismarck, ND 58504–7595, Telephone Number: 701–323–7381.

FOR FURTHER INFORMATION CONTACT: Jeremy McLeod, Program Manager, Federal Aviation Administration, Dakota-Minnesota Airports District Office, 2301 University Dr., Bldg. 23B, Bismarck, ND 58504–7595, Telephone Number: 701–323–7381.

SUPPLEMENTARY INFORMATION: In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

Parcel 1 is currently used by the City of Sioux Falls as a City storage lot and its proposed future use will remain the same. The City of Sioux Falls originally acquired this parcel as part of a Surplus Property Quitclaim deed from the United States of America, acting by and through the War Assets Administrator on December 19, 1947. Parcel 2 is currently used as part of the City of Sioux Falls Elmwood Golf Course and its proposed future use will remain the same. This parcel was acquired by the City of Sioux Falls on March 31, 1942. Parcel 3 is currently vacant land the airport leases out for haying and is proposed to continue to be used for airport compatible non-aeronautical purposes. This parcel was acquired by the City of Sioux Falls on December 27, 1965. On July 8, 1987, the City of Sioux Falls, transferred ownership of the airport, including these three parcels to the Sioux Falls Regional Airport Authority. The Sioux Falls Regional Airport Authority is proposing to grant these three parcels of airport property to the City of Sioux Falls. In return, the City will deed 2.65 acres of City property located within the Runway 3/21 Safety Area and approximately 273.3 acres of easements that will protect the Runway 3/21 Runway Protection Zone and Approach surfaces. This proposed swap of land is advantageous to the airport and enhances the Sioux Falls Regional Airport Authority's ability to ensure future compatible land use within the Runway Protection Zones and Approach surfaces for Runway 3/21.

The disposition of proceeds from the sale of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696).

This notice announces that the FAA is considering the release of the subject airport property at the Sioux Falls Regional Airport, Sioux Falls, South Dakota from federal land covenants, subject to a reservation for continuing right of flight as well as restrictions on the released property as required in FAA Order 5190.6B section 22.16. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

The legal descriptions for the three parcels are as follows:

Parcel 1—Tract 3 of County Auditor's Subdivision in the SE ⅓ of Section 6, Township 101N, Range 49 west of the 5th Principal Meridian.

Parcel 2—Tract 2 of Airport 4th Addition to the City of Sioux Falls, Minnehaha County, South Dakota.

Parcel 3—Tract 1 of Airport 6th Addition to the City of Sioux Falls, Minnehaha County, South Dakota.

Issued in Minneapolis, Minnesota on May 31, 2022.

E. Lindsay Butler,

Manager, Dakota-Minnesota Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2022–11976 Filed 6–2–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on the Interstate 81 Viaduct Project, Onondaga County, New York

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other Federal agencies.

SUMMARY: This notice announces action taken by FHWA and other Federal agencies that are final. The actions relate to the Interstate 81 Viaduct Project located in Onondaga County, New York.

DATES: By this notice, FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before October 31, 2022. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such

claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Richard J. Marquis, Division Administrator, Federal Highway Administration, Leo W. O'Brien Federal Building, 11A Clinton Avenue, Suite 719, Albany, New York 12207, Telephone (518) 431–4127.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA and other Federal agencies have taken final agency actions by issuing approvals for the following highway project in the State of New York: Interstate 81 Viaduct Project, Onondaga County, New York. The purpose of the Project is to address structural deficiencies and non-standard highway features while creating an improved transportation corridor through the City of Syracuse that meets the transportation needs and provides the infrastructure to support long-range transportation planning efforts.

The objectives of the Project are to:

- Address the transportation network structural deficiencies, particularly associated with aging bridge structures and non-standard/non-conforming design features within the project limits along Interstate 81 and Interstate 690.
- Address vehicular, pedestrian, and bicycle geometric and operational deficiencies within the project limits.
- Maintain or enhance vehicle access to the interstate highway network and key destinations (*i.e.,* business districts, hospitals, and institutions) within neighborhoods within and near Downtown Syracuse.
- Maintain or enhance the vehicular, pedestrian, and bicycle connections in the local street network within the project limits in and near Downtown Syracuse to allow for connectivity between neighborhoods, business districts, and other key destinations.
- Maintain access to existing local bus service and enhance transit amenities within the project limits in and near Downtown Syracuse.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the FHWA Final Environmental Impact Statement (FEIS) for the project, signed April 4, 2022, in the Record of Decision (ROD) for the project, issued on May 31, 2022, and in other documents in the FHWA administrative record. The FEIS, ROD, and other documents in the FHWA administrative record files are available by contacting FHWA at the address provided above. The FEIS and ROD can also be viewed and downloaded from the project website at: *https://webapps.dot.ny.gov/i-81-viaduct-project.*

This notice applies to FHWA agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. National Environmental Policy Act [42 U.S.C. 4321–4351].
2. Federal-Aid Highway Act [23 U.S.C. 109].
3. Clean Air Act [42 U.S.C. 7401–7671(q)].
4. Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].
5. Endangered Species Act [16 U.S.C. 1531–1544 and 1536].
6. Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)].
7. Migratory Bird Treaty Act [16 U.S.C. 703–712].
8. Bald and Golden Eagle Protection Act [16 U.S.C. 668–668c].
9. Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470].
10. Farmland Protection Policy Act [7 U.S.C. 4201–4209].
11. Clean Water Act (Section 319, Section 401, Section 402, Section 404) [33 U.S.C. 1251–1377].
12. Safe Drinking Water Act [42 U.S.C. 300(f) *et seq.*].
13. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [42 U.S.C. 4601 *et seq.*].
14. Noise Control Act of 1972 [42 U.S.C. 4901 *et seq.*].
15. Resource Conservation and Recovery Act [42 U.S.C. 6901–6992(k)].
16. Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601–9675].
17. Americans with Disabilities Act of 1990 [42 U.S.C. 12101].
18. Executive Order 11990 Protection of Wetlands.
19. Executive Order 11988 Floodplain Management.
20. Executive Order 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.
21. Executive Order 11593 Protection and Enhancement of Cultural Resources.
22. Executive Order 13007 Indian Sacred Sites.
23. Executive Order 13287 Preserve America.
24. Executive Order 13175 Consultation and Coordination with Indian Tribal Governments.
25. Executive Order 11514 Protection and Enhancement of Environmental Quality.
26. Executive Order 13112 Invasive Species.
27. Executive Order 13166 Improving Access to Services for Persons with Limited English Proficiency.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: May 31, 2022.

Richard J. Marquis,

Division Administrator, Albany, NY.

[FR Doc. 2022–11996 Filed 6–2–22; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0034]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 22 individuals for an exemption from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions would enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: Comments must be received on or before July 5, 2022.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2022–0034 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number, FMCSA–2022–0034, in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m.,

ET, Monday through Friday, except Federal Holidays.

• *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2022–0034), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/docket?D=FMCSA-2022-0034.* Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–2022–0034, in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The 22 individuals listed in this notice have requested an exemption from the hearing requirement in 49 CFR 391.41(b)(11). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 3, 1971).

On February 1, 2013, FMCSA announced in a Notice of Final Disposition titled, ''Qualification of Drivers; Application for Exemptions; National Association of the Deaf,'' (78 FR 7479), its decision to grant requests from 40 individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers. Since that time the Agency has published additional notices granting requests from hard of hearing and deaf individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers.

III. Qualifications of Applicants

Christopher Adams

Mr. Adams, 29, holds a class C license in Iowa.

Jerritt Boehle

Mr. Boehle, 51, holds a class D license in Illinois.

Nathan Bohannon

Mr. Bohannon, 30, holds a class C license in Texas.

John Darr

Mr. Darr, 32, holds a class D license in Tennessee.

Jeremy Earl

Mr. Earl, 38, holds a class DM license in Illinois.

Taniko Graham

Ms. Graham, 25, holds a class D license in Tennessee.

Rodney Henley

Mr. Henley, 36, holds a class D license in Alabama.

Quincy Hicks

Mr. Hicks, 57, holds a class D license in Virginia.

Omar Ibrahim

Mr. Ibrahim, 41, holds a class D license in Minnesota.

Larry Mancill

Mr. Mancill, 31, holds a class F license in Missouri.

Glenn McCormack

Mr. McCormack, 39, holds a class D license in Illinois.

Carlos Morales

Mr. Morales, 51, holds a class A license in Florida.

Steven Morris

Mr. Morris, 24, holds a class C license in Texas.

Tisha Simmons

Ms. Simmons, 46, holds a class C license in North Carolina.

Viramdeep Singh

Mr. Singh, 28, holds a class A license in New York.

Joseph Stanford, III

Mr. Stanford, 28, holds a class C license in Oregon.

Charles Stire

Mr. Stire, 41, holds a class D license in Kentucky.

Amanda Sturdevant

Ms. Sturdevant, 42, holds a class C license in Texas.

Robert Walker, Jr.

Mr. Walker, 51, holds a regular operator's license in Washington.

Joshua Wayland

Mr. Wayland, 35, holds a class D license in Illinois.

Kevin Young

Mr. Young, 36, holds a class D license in Alabama.

Karisa Zapotocky

Ms. Zapatocky, 29, holds a class C license in California.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–11946 Filed 6–2–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2022–0010]

Agency Information Collection Activity Under OMB Review: Ferry Programs

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

ACTION: Emergency clearance notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for emergency approval of a proposed information collection. DOT requests that OMB authorize this collection of information on or before June 15, 2022. Upon receiving the requested six-month emergency approval by OMB, DOT will follow the normal PRA procedures to obtain extended approval for this proposed information collection. The purpose of this collection is to enable public transportation providers, local governmental entities, States and federally recognized Tribes that operate a public ferry system to apply for grant assistance under the Passenger Ferry Grant Program, Electric or Low-Emitting Ferry Pilot Program and Ferry Service for Rural Communities. DOT is requesting emergency approval due to the urgency of making the associated funds available to public transportation providers, local governmental entities, States and federally recognized Tribes that meet the eligibility requirements under the law. The ICR describes the nature of the information collection and their expected burdens.

DATES: Comments on this proposal for emergency review should be received within June 21, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 15 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* All comments received are part of the public record. Comments will generally be posted without change. Upon receiving the requested six–month emergency approval by OMB, FTA will follow the normal PRA procedures to obtain extended approval for this proposed information collection.

FOR FURTHER INFORMATION CONTACT: *ftaferryprograms@dot.gov,* or call Vanessa Williams at (202)-366–4818.

SUPPLEMENTARY INFORMATION: FTA requests public comment on this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency; (b) the accuracy of the agency's estimate of the burden (including hours and cost); (c) ways for FTA to enhance the quality, utility and clarity of the information collection; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection. The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The requirements are being submitted for clearance by OMB as required by the PRA.

Title: Passenger Ferry Grant Program, Electric or Low Emitting Ferry Pilot Program and Ferry Service for Rural Communities.

OMB Control Number: 2132–New.

Type of Request: Request for emergency approval of an information collection.

Abstract: The Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act, established two new grant programs Electric or Low-Emitting Ferry Pilot Program (IIJA § 71102) and Ferry Service for Rural Communities (IIJA § 71103). Funding for these two new programs will be announced in a joint Notice of Funding Opportunity (NOFO) with FTA's existing Passenger Ferry Grant Program (49 U.S.C. 5307(h)). The Passenger Ferry Grant Program provides competitive funding for projects that support passenger ferry systems in urbanized areas. The Electric or Low-Emitting Ferry Pilot Program makes Federal funds available competitively to projects that support the purchase of electric or low-emitting ferry vessels. The Ferry Service for Rural Communities makes Federal funds available competitively to States and territories to ensure basic essential ferry service is provided to rural areas. FTA anticipates using an online, web-based grant management system to collect the following information:

- Legal name of the applicant (*i.e.,* the legal name of the business entity), as well as any other identities under which the applicant may be doing business.
- Address, telephone, and email contact information for the applicant.
- Legal authority under which the applicant is established.
- Name and title of the authorized representative of the applicant (who will attest to the required certifications).
- DOT may also require the identity of external parties involved in preparation of the application, including outside accountants, attorneys, or auditors who may be assisting the business entity that is applying for assistance under this program.

• The specific statutory criteria that the applicant meets for eligibility under this program. The statute defines eligible applicants to include municipalities or community owned utilities excluding for-profit entities. Accordingly, DOT will require the applicant to identify which of these categories they meet, and how.

• Location where the applicant was legally established, created, or organized to do business. This information and supporting documentation will be required to demonstrate how the applicant meets the statutory requirement to be ''established, created, or organized in the United States or under the laws of the United States.''

• Other identification numbers, including but not limited to the Employer/Taxpayer Identification Number (EIN/TIN), Data Universal Numbering System (DUNS) number, Unique Entity Identifier under 2 CFR part 25, etc. All applicants will be required to have pre-registered with the System for Award Management (SAM) at *https://sam.gov/SAM/.*

• Description of the applicant's business operations, in sufficient detail to demonstrate how the applicant meets the statutory requirement as a municipality or community owned utility.

• Responses to the evaluation criteria and selection consideration statements as outlined in the NOFO.

FTA estimates that it will take applicants approximately 10 hours to complete the application process. FTA estimates that grant recipients will spend another 4 hours, annually, submitting post-award reports. The burden estimate below accounts for the total amount of effort involved.

Respondents: Public transportation providers, local governmental entities, States and federally recognized Tribes that operate a public ferry system.

Estimated Average Total Annual Respondents: 30.

Estimated Average Total Responses: 60.

Estimated Annual Burden Hours: 420.

Estimated Annual Burden per Respondent: 14 Hours.

Frequency: Annually.

Nadine Pembleton,

Deputy Associate Administrator for Administration, Office of Administration.

[FR Doc. 2022–11861 Filed 6–2–22; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2022–0036]

Pipeline Safety: Request for Special Permit, Kinder Morgan Texas Pipeline, LLC

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice.

SUMMARY: PHMSA is publishing this notice to solicit public comments on a request for special permit received from Kinder Morgan Texas Pipeline, LLC. (KMTP). The special permit request is seeking relief from compliance with certain requirements in the federal pipeline safety regulations. At the conclusion of the 30-day comment period, PHMSA will review the comments received from this notice as part of its evaluation to grant or deny the special permit request.

DATES: Submit any comments regarding this special permit request by July 5, 2022.

ADDRESSES: Comments should reference the docket number for this special permit request and may be submitted in the following ways:

• *E-Gov website: http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

• *Fax:* 1–202–493–2251.

• *Mail:* Docket Management System: 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:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two (2) copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *http://www.Regulations.gov.*

Note: There is a privacy statement published on *http://www.Regulations.gov.* Comments, including any personal information provided, are posted without changes or edits to *http://www.Regulations.gov.*

Confidential Business Information: 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 notice 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 notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 Code of Federal Regulations (CFR) 190.343, you may ask PHMSA to give confidential treatment to information you give to the agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as ''Confidential''; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this notice. Submissions containing CBI should be sent to Kay McIver, DOT, PHMSA–PHP–80, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this matter.

FOR FURTHER INFORMATION CONTACT:

General: Ms. Kay McIver by telephone at 202–366–0113, or by email at *kay.mciver@dot.gov.*

Technical: Mr. Steve Nanney by telephone at 713–272–2855, or by email at *steve.nanney@dot.gov.*

SUPPLEMENTARY INFORMATION: PHMSA received a special permit request from KMTP, a subsidiary of Kinder Morgan, Inc., seeking a waiver from the requirements of 49 CFR 192.611(a) and (d): Change in class location: Confirmation or revision of maximum allowable operating pressure, and 49 CFR 192.619(a): Maximum allowable operating pressure: Steel or plastic pipelines.

This special permit is being requested in lieu of pipe replacement, pressure reduction, or new pressure tests for a Class 1 to 3 location change on one (1) gas transmission special permit segment totaling 814.78 feet (approximately

0.154 miles) of pipeline in Harris County, Texas. The special permit segment is on KMTP's 16-inch diameter Line Index 65–15 Pipeline, which operates at a maximum allowable operating pressure of 1,211 pounds per square inch gauge and was constructed in 2002.

The special permit request, proposed special permit with conditions, and draft environmental assessment (DEA) for the above listed KMTP special permit segment is available for review and public comments in Docket No. PHMSA–2022–0036. PHMSA invites interested persons to review and submit comments on the special permit request and DEA in the docket. Please include any comments on potential safety and environmental impacts that may result if the special permit is granted. Comments may include relevant data.

Before issuing a decision on the special permit request, PHMSA will evaluate all comments received on or before the comments closing date. Comments received after the closing date will be evaluated, if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment it receives in making its decision to grant or deny this special permit request.

Issued in Washington, DC, on May 16, 2022, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2022–11874 Filed 6–2–22; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2004–16951]

Agency Request for Renewal of a Previously Approved Information Collection: Exemptions for Air Taxi Operations

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Department of Transportation (DOT) invites public comments about our intention to request the Office of Management and Budget (OMB)'s approval to renew an information collection. The collection involves a classification of air carriers known as air taxi operators and their filings of a one-page form that enables them to obtain economic authority from DOT. The information to be collected is necessary for DOT to determine whether an air taxi operator meets DOT's criteria for an economic authorization in accordance with DOT rules. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995, Public Law 104–13.

DATES: Written comments should be submitted by August 2, 2022.

ADDRESSES: You may submit comments [identified by Docket No. DOT–OST–2004–16951] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Operations Office, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Snoden, (202) 366–4834, *barbara.snoden@dot.gov,* Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2105–0565.

Title: Exemptions for Air Taxi Operations.

Form Numbers: OST Form 4507.

Type of Review: Renewal of an information collection.

Background: Part 298 of title 14 of the Code of Federal Regulations, Exemptions for Air Taxi Registration, establishes a classification of air carriers known as air taxi operators that offer on-demand passenger service. The regulation exempts these small operators from certain provisions of the Federal statute to permit them to obtain economic authority by filing a one-page, front and back, OST Form 4507, Air Taxi Operator Registration, and Amendments under part 298 of DOT's Regulations.

DOT expects to receive 200 new air taxi registrations and 2,200 amended air taxi registrations each year, resulting in 2,400 total respondents. Further, DOT expects filers of new registrations to take 1 hour to complete the form, while it should only take 30 minutes to prepare amendments to the form. Thus, the total annual burden is expected to be 1,300 hours.

Respondents: U.S. air taxi operators.

Number of Respondents: 2,400.

Frequency: On occasion.

Number of Responses: 2,400.

Total Annual Burden: 1,300 hours.

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 [your office]'s performance; (b) the accuracy of the estimated burden; (c) ways for DOT 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.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC, on May 31, 2022.

Lauralyn Jean Remo Temprosa,

Associate Director, Air Carrier Fitness Division, Office of Aviation Analysis.

[FR Doc. 2022–11959 Filed 6–2–22; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

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 persons 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 effective date(s).

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 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 Actions

On May 27, 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.

Individual:

1. JONG, Yong Nam, Minsk, Belarus; DOB 26 Jan 1966; nationality Korea, North; Gender Male; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Passport PS 927120050 (Korea, North) (individual) [NPWMD].

   Designated pursuant to section 1(a)(iv) of Executive Order 13382 of June 28, 2005, "Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters," 70 FR 38567, 3 CFR, 2006 Comp., p. 170 (E.O. 13382), for acting or purporting to act for or on behalf of, directly or indirectly, SECOND ACADEMY OF NATURAL SCIENCES, a person whose property and interests in property are blocked pursuant to this order.

Entities:

1. AIR KORYO TRADING CORPORATION, Dandong, China; Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Target Type State-Owned Enterprise [NPWMD].

   Designated pursuant to section 1(a)(iii) of E.O. 13382, for having provided, or having attempted to provide, financial, material, technological or other support for, or goods or services in support of, MINISTRY OF ROCKET INDUSTRY, a person whose property and interests in property are blocked pursuant to this order.

2. FAR EASTERN BANK (Cyrillic: ДАЛЬНЕВОСТОЧНЫЙ БАНК) (a.k.a. JOINT STOCK COMPANY FAR EASTERN BANK), 27-a, Verkhneportovaya St., Vladivostok, Primorskiy Kray 690990, Russia; SWIFT/BIC FAEBRU8V; BIK (RU) 040507705; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Tax ID No. 2540016961 (Russia); Legal Entity Number 253400YGH90JM0RMLU50 (Russia); Registration Number 1022500000786 (Russia) [DPRK3].

   Designated pursuant to section 2(a)(vii) of E.O. 13722, "Blocking Property of the Government of North Korea and the Workers' Party of Korea, and Prohibiting Certain Transactions With Respect to North Korea," 81 FR 14943, 3 CFR, 2016 Comp., p. 446 (E.O. 13722), for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, AIR KORYO, a person whose property and interests in property are blocked pursuant to this order.

3. PUBLIC JOINT-STOCK COMPANY COMMERCIAL BANK 'SPUTNIK' (a.k.a. BANK SPUTNIK; a.k.a. BANK SPUTNIK CJSC; a.k.a. CB SPUTNIK; a.k.a. CB SPUTNIK PJSC; a.k.a. COMMERCIAL BANK SPUTNIK PUBLIC JOINT-STOCK COMPANY; f.k.a. OPEN JOINT-STOCK COMPANY COMMERCIAL BANK 'SPUTNIK'), Agibalov St. 48, Office 70, Samara, Samarskaya, Oblast 443041, Russia; SWIFT/BIC CSPJRU33; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Registration Number 1071 (Russia) [NPWMD].

Designated pursuant to section 1(a)(iii) of E.O. 13382, for having provided, or having attempted to provide, financial, material, technological or other support for, or goods or services in support of, FOREIGN TRADE BANK OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA, a person whose property and interests in property are blocked pursuant to this order.

Authority: E.O. 13382, 70 FR 38567, 3 CFR, 2006 Comp., p. 170.; E.O. 13722, 81 FR 14943, 3 CFR, 2016 Comp., p. 446.

Dated: May 27, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–11961 Filed 6–2–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request for Form 1045

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 1045, Application for Tentative Refund.

DATES: Written comments should be received on or before August 2, 2022 to be assured of consideration.

ADDRESSES: Direct all written comments to Andrés Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Please include, ''OMB Number: 1545–0098—Public Comment Request Notice'' in the Subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ronald J. Durbala, at (202) 317–5746, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application of tentative refund.

OMB Number: 1545–0098.

Form Number: 1045.

Abstract: Form 1045 is used by individuals, estates, and trusts to apply for a quick refund of taxes due to carryback of a net operating loss, unused general business credit, or claim of right adjustment under Internal Revenue Code section 1341(b). The information obtained is used to determine the validity of the application.

Current Actions: Form 1045 has been revised to comply with updates in current laws and regulatory requirements.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 17,503.

Estimated Time per Respondent: 24 hours 29 min.

Estimated Total Annual Burden Hours: 428,649.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: May 31, 2022.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2022–11895 Filed 6–2–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Solicitation of Nominations for Appointment to the Veterans and Community Oversight and Engagement Board

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is seeking nominations of qualified candidates to be considered for appointment as a member of the Veterans and Community Oversight and Engagement Board (herein-after referred in this section to as ''the Board'') for the VA West Los Angeles Campus in Los Angeles, CA (''Campus'') for the 2022 membership cycle.

DATES: Nominations for membership on the Board must be received no later than 5:00 p.m. EST on July 22, 2022.

ADDRESSES: All nominations should be mailed to the Veterans Experience Office, Department of Veterans Affairs, 810 Vermont Avenue NW (30), Washington, DC 20420; or sent electronically to the Advisory Committee Management Office mailbox at *vaadvisorycmte@va.gov* with a subject line: Nomination to VCOEB.

FOR FURTHER INFORMATION CONTACT: Eugene W. Skinner Jr., Designated Federal Officer, Veterans Experience Office, Department of Veterans Affairs, 810 Vermont Avenue NW (30), Washington, DC 20420, telephone 202–631–7645 or via email at *Eugene.Skinner@va.gov*.

SUPPLEMENTARY INFORMATION: In carrying out the duties set forth in the West LA Leasing Act, the Board shall:

(1) Provide the community with opportunities to collaborate and communicate by conducting public forums; and

(2) Focus on local issues regarding the Department that are identified by the community with respect to health care, implementation of the Master Plan, and any subsequent plans, benefits, and memorial services at the Campus. Information on the Master Plan can be found at *https://www.losangeles.va.gov/masterplan/*.

Authority: The Board is a statutory committee established as required by Section 2(i) of the West Los Angeles Leasing Act of 2016, Public Law 114–226 (the West LA Leasing Act). The Board operates in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. app. 2. The Board is established to coordinate locally with the Department of Veterans Affairs to identify the goals of the community and Veteran partnership; provide advice and recommendations to the Secretary to improve services and outcomes for Veterans, members of the Armed Forces, and the families of such Veterans and members; and provide advice and recommendations on the implementation of the Draft Master Plan approved by the Secretary on January 28, 2016, and on the creation and implementation of any other successor master plans.

Membership Criteria: VA is seeking nominations for Board membership.

The Board is composed of fifteen members and several ex-officio members. The Board meets up to four times annually; and it is important that Board members attend meetings to achieve a quorum so that Board can effectively carry out its duties. The members of the Board are appointed by the Secretary of Veterans Affairs from the general public, from various sectors and organizations, and shall meet the following qualifications, as set forth in the West LA Leasing Act:

(1) Not less than 50% of members shall be Veterans; and

(2) Non-Veteran members shall be:

a. Family members of Veterans,

b. Veteran advocates,

c. Service providers,

d. Real estate professionals familiar with housing development projects, or

e. Stakeholders.

The Board members may also serve as Subcommittee members.

In accordance with the Board Charter, the Secretary shall determine the number, terms of service, and pay and allowances of Board members, except that a term of service of any such member may not exceed two years. The Secretary may reappoint any Board member for additional terms of service.

To the extent possible, the Secretary seeks members who have diverse professional and personal qualifications including but not limited to subject matter experts in the areas described above. We ask that nominations include any relevant experience and information so that VA can ensure diverse Board membership.

Requirements for Nomination Submission:

Nominations should be typed written (one nomination per nominator). Nomination package should include:

(1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.* specific attributes which qualify the nominee for service in this capacity), and a statement from the nominee indicating a willingness to serve as a member of the Board;

(2) The nominee's contact information, including name, mailing address, telephone numbers, and email address;

(3) The nominee's curriculum vitae, not to exceed three pages and a one-page cover letter; and

(4) A summary of the nominee's experience and qualifications relative to the membership criteria and professional qualifications criteria listed above.

The Department makes every effort to ensure that the membership of VA Federal advisory committees is diverse in terms of points of view represented and the committee's capabilities. Appointments to this Board shall be made without discrimination because of a person's race, color, religion, sex, sexual orientation, gender identity, national origin, age, disability, or genetic information. Nominations must state that the nominee is willing to serve as a member of the Board and appears to have no conflict of interest that would preclude membership. An ethics review is conducted for each selected nominee. An OGE Form 450, Confidential Financial Disclosure, is required annually for all Board Members.

Dated: May 31, 2022.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2022–11967 Filed 6–2–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Funding Opportunity: Staff Sergeant Parker Gordon Fox Suicide Prevention Grant Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of funding opportunity; correction.

SUMMARY: The Department of Veterans Affairs (VA) published a document in the **Federal Register** on April 15, 2022, concerning a Notice of Funding Opportunity (NOFO) for suicide prevention services grants under the Staff Sergeant Parker Gordon Fox Suicide Prevention Grant Program (SSG Fox SPGP). This Notice amends two provisions in section I to clarify requirements regarding the provision or coordination of a baseline mental health screening to participants.

DATES: Applications for suicide prevention services grants under the SSG Fox SPGP Program must be received by 11:59 p.m. Eastern Time on June 10, 2022. In the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and

VA will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays, computer service outages or other submission-related problems.

ADDRESSES: *For a Copy of the Application Package:* Copies of the application can be downloaded from the SSG Fox SPGP website at *https://www.mentalhealth.va.gov/ssgfox-grants/*. Questions should be referred to the SSG Fox SPGP at *VASSGFoxGrants@va.gov*. For detailed SSG Fox SPGP information and requirements, see part 78 of title 38 CFR part 78.

Application Submission: Applicants must submit applications electronically following instructions found at: *www.mentalhealth.va.gov/ssgfox-grants/*. Applications may not be mailed or sent by facsimile (fax). Applications must be received by the SSG Fox SPGP Office no later than 11:59 p.m. Eastern Time on the application deadline date. Applications must arrive as a complete package. Materials arriving separately will not be included in the application package and may result in the application being rejected.

Technical Assistance: Information on obtaining technical assistance preparing a suicide prevention services grant application is available on the SSG Fox SPGP website at *https://www.mentalhealth.va.gov/ssgfox-grants/*.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Foley, Director, SSG Fox SPGP, Office of Mental Health and Suicide Prevention, 11MHSP, 202–502–0002 (this is not a toll-free telephone number), or *VASSGFoxGrants@va.gov*.

SUPPLEMENTARY INFORMATION: As VA prepares to implement the SSG Fox SPGP and coordinate with grantees, we identify the requirement in 38 CFR 78.50(a) that ''Grantees must provide or coordinate the provision of a baseline mental health screening to all participants,'' including children, could present significant logistical and legal difficulties. VA is unaware of any validated tool that can be used by non-clinicians as a baseline mental health screening to assess suicide risk and mental and behavioral health conditions for persons under the age of 18. Further, persons under the age of 18 generally need parental consent to access screening services like this, and such a requirement could delay, or at least complicate, compliance with this requirement. It is also unclear how often children under the age of 18 would be active participants in programs administered by grantees, physically present with the grantee or otherwise in contact and coordination with the grantee. Given these factors, we do not believe it is appropriate, at this time, to require applicants to plan to screen participants under the age of 18 in their programs. Consequently, VA will not require applicants under this Notice, or grantees awarded funds pursuant to this Notice, to provide or coordinate a baseline mental health screening to participants under the age of 18. VA will consider possible changes to this requirement, as it prepares a final rule to implement its interim final regulations from March 10, 2022.

We emphasize one point for clarity. VA expects applicants to be aware that children may be members of a household of an eligible individual and consequently could be participants in their programs. VA expects that any applicant awarded a grant who is presented with a person under the age of 18 who is in a mental health crisis or emergency will take all appropriate actions necessary to serve and protect that person.

CORRECTION:

In the **Federal Register** (FR) NOFO of April 15, 2022, in FR Doc 2022–08040, correct:

(1) Section I (Funding Opportunity Description), Paragraph D (Approach), first paragraph, second sentence to read: ''Applicants must include in their application how they will provide or coordinate the provision of the baseline mental health screening to all participants age 18 and over.''

(2) Section I (Funding Opportunity Description), Paragraph D (Approach), third paragraph, first sentence to read: ''Baseline mental health screening: Grantees must provide or coordinate the provision of baseline mental health screenings to all participants age 18 and over they serve at the time those services begin.''

(3) Section I (Funding Opportunity Description), Paragraph F (Guidance for the Use of Suicide Prevention Services Funds), fifth paragraph, third and fourth sentences to read: ''Grantees must determine and document the degree of risk of suicide for each participant age 18 and over using tools identified in the suicide prevention services grant agreement. Prior to services ending, grantees must provide or coordinate the provision of a mental health screening to all participants age 18 and over they serve, when possible.''

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on May 23, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2022–11899 Filed 6–2–22; 8:45 am]

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FEDERAL REGISTER

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Part II

Department of the Treasury

Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

12 CFR Parts 25, 228, and 345

Community Reinvestment Act; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

[Docket ID OCC–2022–0002]

RIN 1557–AF15

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Regulation BB; Docket No. R–1769]

RIN 7100–AG29

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064–AF81

Community Reinvestment Act

AGENCY: Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of the Comptroller of the Currency, Treasury

ACTION: Joint notice of proposed rulemaking; request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) propose to amend their regulations implementing the Community Reinvestment Act of 1977 (CRA) to update how CRA activities qualify for consideration, where CRA activities are considered, and how CRA activities are evaluated.

DATES: Comments must be received on or before August 5, 2022.

ADDRESSES: Comments should be directed to:

OCC: Commenters are encouraged to submit comments through the Federal eRulemaking Portal. Please use the title ''Community Reinvestment Act'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

• *Federal eRulemaking Portal—Regulations.gov:* Go to *https://regulations.gov/.* Enter ''Docket ID OCC–2022–0002'' in the Search Box and click ''Search.'' Public comments can be submitted via the ''Comment'' box below the displayed document information or by clicking on the document title and then clicking the ''Comment'' box on the top-left side of the screen. For help with submitting effective comments please click on ''Commenter's Checklist.'' For assistance with the *Regulations.gov* site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. EST or email *regulations@erulemakinghelpdesk.com.*

• *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

• *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2022–0002'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this action by the following method:

• *Viewing Comments Electronically—Regulations.gov:* Go to *https://regulations.gov/.* Enter ''Docket ID OCC–2022–0002'' in the Search Box and click ''Search.'' Click on the ''Documents'' tab and then the document's title. After clicking the document's title, click the ''Browse Comments'' tab. Comments can be viewed and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen. Supporting materials can be viewed by clicking on the ''Documents'' tab and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Documents Results'' options on the left side of the screen.'' For assistance with the *Regulations.gov* site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. EST or email *regulations@erulemakinghelpdesk.com.*

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

Board: You may submit comments, identified by Docket No. R–1769 and RIN 7100–AG29, by any of the following methods:

• *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

• *Email: regs.comments@federalreserve.gov.* Include docket and RIN numbers in the subject line of the message.

• *Fax:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

Instructions: All public comments are available from the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C Street NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. during Federal business weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

FDIC: You may submit comments, identified by RIN 3064–AF81, by any of the following methods:

• *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.* Follow instructions for submitting comments on the Agency website.

• *Email: comments@fdic.gov.* Include RIN 3064–AF81 on the subject line of the message.

• *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments RIN 3064–AF81, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

• *Hand Delivery/Courier:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street NW) on business days between 7:00 a.m. and 5:00 p.m.

Public Inspection: Comments received, including any personal information provided, may be posted without change to *https://www.fdic.gov/resources/regulations/federal-register-publications/.* Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion

of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this notice will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT:

OCC: Heidi Thomas, Special Counsel, or Emily Boyes, Counsel, Chief Counsel's Office, (202) 649–5490; or Vonda Eanes, Director for CRA and Fair Lending Policy, or Karen Bellesi, Director for Community Development, Bank Supervision Policy, (202) 649–5470, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

Board: S. Caroline (Carrie) Johnson, Manager, Division of Consumer and Community Affairs, (202) 452–2762; Amal S. Patel, Counsel, Division of Consumer and Community Affairs, (202) 912–7879, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

FDIC: Patience R. Singleton, Senior Policy Analyst, Supervisory Policy Branch, Division of Depositor and Consumer Protection, (202) 898–6859; Pamela Freeman, Chief Fair Lending and CRA Examination Section, Division of Depositor and Consumer Protection, (202) 898–3656; Richard M. Schwartz, Counsel, Legal Division, (202) 898–7424; or Sherry Ann Betancourt, Counsel, Legal Division, (202) 898–6560, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: In this Notice of Proposed Rulemaking (NPR or proposal), the OCC, Board, and the FDIC, (together referred to as ''the agencies'') seek feedback on changes to update and clarify the regulations to implement the CRA.[1] The CRA encourages banks [2] to help meet the credit needs of the local communities in which they are chartered, consistent with a bank's safe and sound operations, by requiring the Federal banking regulatory agencies to examine banks' records of meeting the credit needs of their entire community, including low- and moderate-income neighborhoods.

The agencies implement the CRA through their CRA regulations.[3] The CRA regulations establish the framework and criteria by which the agencies assess a bank's record of helping to meet the credit needs of its community, including low- and moderate-income neighborhoods, consistent with safe and sound operations. Under the CRA regulations, the agencies apply different evaluation standards for banks of different asset sizes and types.

This NPR seeks to update the CRA regulations in adherence with objectives that include the following:

- Update CRA regulations to strengthen the achievement of the core purpose of the statute;
- Adapt to changes in the banking industry, including the expanded role of mobile and online banking;
- Provide greater clarity and consistency in the application of the regulations;
- Tailor performance standards to account for differences in bank size and business models and local conditions;
- Tailor data collection and reporting requirements and use existing data whenever possible;
- Promote transparency and public engagement;
- Confirm that CRA and fair lending responsibilities are mutually reinforcing; and
- Create a consistent regulatory approach that applies to banks regulated by all three agencies.

A key part of the proposal is a new evaluation framework for evaluating CRA performance for banks. The agencies propose an evaluation framework that would establish the following four tests for large banks: Retail Lending Test; Retail Services and Products Test; Community Development Financing Test; and Community Development Services Test. Intermediate banks would be evaluated under the Retail Lending Test and the *status quo* community development test, unless they choose to opt into the Community Development Financing Test. Small banks would be evaluated under the *status quo* small bank lending test, unless they choose to opt into the Retail Lending Test. Wholesale and limited purpose banks would be evaluated under a tailored version of the Community Development Financing Test.

The agencies request feedback on all aspects of the proposal, including but not limited to the specific questions outlined in the **SUPPLEMENTARY INFORMATION**. The agencies are setting forth in this **SUPPLEMENTARY INFORMATION** the proposed rule using common regulation text for ease of commenter review. The agencies are proposing agency-specific amendatory text where necessary to account for differing agency authority and terminology.

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[1] 12 U.S.C. 2901 *et seq.*

[2] For purposes of this **SUPPLEMENTARY INFORMATION**, the term ''bank'' includes insured national and state banks, Federal and state savings associations, Federal branches as defined in 12 CFR part 28, insured State branches as defined in 12 CFR 345.11(c), and state member banks as defined in 12 CFR part 208, except as provided in 12 CFR __.11(c).

[3] *See* 12 CFR part 25 (OCC), 12 CFR part 228 (Regulation BB) (Board), and 12 CFR part 345 (FDIC). For clarity and to streamline references, citations to the agencies' *existing* common CRA regulations are provided in the following format: 12 CFR __.xx; for example, references to 12 CFR 25.12 (OCC), 12 CFR 228.12 (Board), and 12 CFR 345.12 (FDIC) would be streamlined as follows: ''12 CFR __.12.'' Likewise, references to the agencies' *proposed* common CRA regulations are provided in the following format: ''proposed § __.xx.''

I. Introduction

A. Background

The CRA is designed to encourage regulated banks to help meet the credit needs of the local communities in which they are chartered. Specifically, Congress found that ''(1) regulated financial institutions are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business; (2) the convenience and needs of communities include the need for credit as well as deposit services; and (3) regulated financial institutions have continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered.'' [4]

The CRA statute requires the agencies to ''assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution.'' [5] Upon completing this assessment, the statute requires the agencies to ''prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods.'' [6] In addition, the statute requires making portions of these written evaluations, referred to by the agencies as performance evaluations, available to the public.[7] The statute further provides that each agency must consider a bank's CRA performance ''in its evaluation of an application for a deposit facility by such institution.'' [8]

Since its enactment, Congress has amended the CRA several times, including through: the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [9] (which required public disclosure of a bank's CRA written evaluation and rating); the Federal Deposit Insurance Corporation Improvement Act of 1991 [10] (which required the inclusion of a bank's CRA examination data in the determination of its CRA rating); the Housing and Community Development Act of 1992 [11] (which included assessment of the record of nonminority-owned and nonwomen-owned banks in cooperating with minority-owned and women-owned banks and low-income credit unions); the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 [12] (which (i) required an agency to consider an out-of-state national bank's or state bank's CRA rating when determining whether to allow interstate branches, and (ii) prescribed certain requirements for the contents of the written CRA evaluation for banks with interstate branches); and the Gramm-Leach-Bliley Act of 1999 [13] (which, among other things, provided regulatory relief for smaller banks by reducing the frequency of their CRA examinations).

Congress directed the agencies to publish regulations to carry out the CRA's purposes,[14] and in 1978 the agencies promulgated the first CRA regulations, which included evidence of prohibited discriminatory or other illegal credit practices as a performance factor.[15] Since then, the agencies have together significantly revised and sought to clarify their CRA regulations twice, in 1995 and 2005—with the most substantive interagency update occurring in 1995. In addition, the agencies have periodically jointly published the Interagency Questions and Answers Regarding Community Reinvestment (Interagency Questions and Answers) [16] to provide guidance on the CRA regulations.

B. The Current CRA Regulations and Guidance for Performance Evaluations

1. CRA Performance Evaluations

The agencies' CRA regulations provide different methods to evaluate a bank's CRA performance depending on its asset size and business strategy.[17] Under the current framework:

- Small banks—currently, those with assets of less than $346 million as of December 31 of either of the prior two calendar years—are evaluated under a lending test and may receive an ''Outstanding'' rating based only on their retail lending performance. Qualified investments, services, and delivery systems that enhance credit availability in a bank's assessment areas may be considered for an ''Outstanding'' rating, but only if the bank meets or exceeds the lending test criteria in the small bank performance standards.
- Intermediate small banks—currently, those with assets of at least $346 million as of December 31 of both of the prior two calendar years and less than $1.384 billion as of December 31 of either of the prior two calendar years—are evaluated under the lending test for small banks and a community development test. The intermediate small bank community development test evaluates all community development activities together.
- Large banks—currently, those with assets of more than $1.384 billion as of December 31 of both of the prior two calendar years—are evaluated under separate lending, investment, and service tests. The lending and service tests consider both retail and community development activities, and the investment test focuses on qualified community development investments. To facilitate the agencies' CRA analysis, large banks are required to report annually certain data on community development loans, small business loans, and small farm loans (small banks and intermediate small banks are not required to report these data unless they opt into being evaluated under the large bank lending test).
- Designated wholesale banks (those engaged in only incidental retail lending) and limited purpose banks (those offering a narrow product line to a regional or broader market) are evaluated under a standalone community development test.
- Banks of any size may elect to be evaluated under a strategic plan that sets out measurable, annual goals for lending, investment, and service activities in order to achieve a ''Satisfactory'' or an ''Outstanding'' rating. A strategic plan must be developed with community input and approved by the appropriate Federal banking agency.

[4] 12 U.S.C. 2901(a).

[5] 12 U.S.C. 2903(a)(1).

[6] 12 U.S.C. 2906(a).

[7] 12 U.S.C. 2906(b).

[8] 12 U.S.C. 2903(a)(2).

[9] Public Law 101–73, 103 Stat. 183 (Aug. 9, 1989).

[10] Public Law 102–242, 105 Stat. 2236 (Dec. 19, 1991).

[11] Public Law 102–550, 106 Stat. 3874 (Oct. 28, 1992).

[12] Public Law 103–328, 108 Stat. 2338 (Sept. 29, 1994).

[13] Public Law 106–102, 113 Stat. 1338 (Nov. 12, 1999).

[14] 12 U.S.C. 2905.

[15] 43 FR 47144 (Oct. 12, 1978). Congress also charged, in addition to the agencies, the Office of Thrift Supervision (OTS) and its predecessor agency, the Federal Home Loan Bank Board, with implementing the CRA. The OTS had CRA rulemaking and supervisory authority for all savings associations. Pursuant to Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376, 1522 (2010), the OTS's CRA rulemaking authority for all savings associations transferred to the OCC and the OTS's CRA supervisory authority for State savings associations transferred to the FDIC. As a result, the OCC's CRA regulation applies to both State and Federal savings associations, in addition to national banks, and the FDIC enforces the OCC's CRA regulations with respect to State savings associations.

[16] *See* 81 FR 48506 (July 25, 2016). ''Interagency Questions and Answers'' refers to the ''Interagency Questions and Answers Regarding Community Reinvestment'' guidance in its entirety. ''Q&A'' refers to an individual question and answer within the Interagency Questions and Answers.

[17] *See generally* 12 CFR __.21 through __.27. The agencies annually adjust the CRA asset-size thresholds based on the annual percentage change in a measure of the Consumer Price Index.

The agencies also consider applicable performance context information to inform their analysis and conclusions when conducting CRA examinations. Performance context comprises a broad range of economic, demographic, and bank- and community-specific information that examiners review to calibrate a bank's CRA evaluation to its local communities.

2. Assessment Areas

The existing CRA regulations require a bank to delineate one or more assessment areas in which its record of meeting its CRA obligations will be evaluated.[18] The regulations require a bank to delineate assessment areas consisting of geographic areas (metropolitan statistical areas (MSAs) or metropolitan divisions) or political subdivisions [19] in which its main office, branches, and deposit-taking automated teller machines (ATMs) are located, as well as the surrounding geographies (*i.e.,* census tracts) [20] where a substantial portion of its loans are originated or purchased.

The assessment area requirements and emphasis on branches reflects the prevailing business model for financial service delivery when the CRA was enacted. The statute instructs the agencies to assess a bank's record of meeting the credit needs of its ''entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution, and to take such record into account in its evaluation of an application for a deposit facility by such institution.'' [21] The statute does not prescribe the delineation of assessment areas, but they are an important aspect of the regulation because they define ''community'' for purposes of the evaluation of a bank's CRA performance.

3. Qualifying Activities

The CRA regulations and the Interagency Questions and Answers provide detailed information, including applicable definitions and descriptions, respectively, regarding activities that are eligible for CRA consideration in the evaluation of a bank's CRA performance. Banks that are evaluated under a performance test that includes a review of their retail activities are assessed in connection with retail lending activity (as applicable, home mortgage loans, small business loans, small farm loans, and consumer loans) [22] and, where applicable, retail banking service activities (*e.g.,* the current distribution of a bank's branches in geographies of different income levels, and the availability and effectiveness of the bank's alternative systems for delivering banking services to low- and moderate-income geographies and individuals).[23]

Banks evaluated under a performance test that includes a review of their community development activities are assessed with respect to community development lending, qualified investments, and community development services, which by definition must have a primary purpose of community development.[24]

4. Guidance for Performance Evaluations

In addition to information included in their CRA regulations, the agencies also provide information to the public regarding how CRA performance tests are applied, where CRA activities are considered, and what activities are eligible through publicly available CRA performance evaluations,[25] the Interagency Questions and Answers, interagency CRA examination procedures,[26] and interagency instructions for writing performance evaluations.[27]

C. Stakeholder Feedback and Recent Rulemaking

The financial services industry has undergone transformative changes since the CRA statute was enacted, including the removal of national bank interstate branching restrictions and the expanded role of mobile and online banking. To better understand how these developments impact both consumer access to banking products and services and a bank's CRA performance, the agencies have reviewed feedback from the banking industry, community groups, academics, and other stakeholders on several occasions.

1. Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA)

From 2013 to 2016, the agencies solicited feedback on the CRA as part of the EGRPRA review process.[28] Stakeholders raised issues related to assessment area definitions; incentives for banks to serve low- and moderate-income, unbanked, underbanked, and rural individuals and communities; recordkeeping and reporting requirements; the need for clarity regarding performance measures and better examiner training to ensure consistency in examinations; and refinement of CRA ratings.[29]

2. OCC CRA Advance Notice of Proposed Rulemaking and Federal Reserve Outreach Sessions

On September 5, 2018, the OCC published an Advance Notice of Proposed Rulemaking (ANPR) to solicit ideas for a new CRA regulatory framework.[30] More than 1,500 comment letters were submitted in response. To augment that input, the Federal Reserve System (the Board and the Federal Reserve Banks) held about 30 outreach meetings with representatives of banks, community organizations, and the other agencies.[31]

3. OCC–FDIC CRA Notice of Proposed Rulemaking and OCC CRA Final Rule

On December 12, 2019, the FDIC and the OCC issued a joint NPR to revise and update their CRA regulations.[32] In response, the FDIC and the OCC received over 7,500 comment letters.

On May 20, 2020, the OCC issued a CRA final rule (OCC 2020 CRA final rule), retaining the most fundamental elements of the proposal but also making adjustments to reflect stakeholder input.[33] The OCC deferred establishing the metrics-framework for evaluating banks' CRA performance until it was able to assess additional data,[34] with the final rule having an

[18] 12 CFR __.41.

[19] Political subdivisions include cities, counties, towns, townships, and Indian reservations. *See* Q&A § __.41(c)(1)–1.

[20] 12 CFR __.12(k).

[21] 12 U.S.C. 2903(a).

[22] 12 CFR__.12(j), (l), (v), and (w).

[23] *See generally* 12 CFR __.21 through __.27 and __.24(d).

[24] *See generally* 12 CFR __.12(g), (h), (i), and (t) and 12 CFR __.21 through __.27.

[25] *See, e.g., https://apps.occ.gov/crasearch/default.aspx* (OCC); *https://www.federalreserve.gov/apps/CRAPubWeb/CRA/BankRating* (Board); *https://crapes.fdic.gov/* (FDIC).

[26] *See, e.g.,* Federal Financial Institutions Examination Council (FFIEC), ''Community Reinvestment Act: CRA Examinations,'' *https://www.ffiec.gov/cra/examinations.htm.*

[27] *Id.*

[28] *See, e.g.,* 80 FR 7980 (Feb. 13, 2015).

[29] *See* FFIEC, Joint Report to Congress: Economic Growth and Regulatory Paperwork Reduction Act, 82 FR 15900 (Mar. 30, 2017), *https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf.*

[30] 83 FR 45053 (Sept. 5, 2018).

[31] For a summary of the Federal Reserve outreach session feedback, *see* ''Perspectives from Main Street: Stakeholder Feedback on Modernizing the Community Reinvestment Act'' (June 2019), *https://www.federalreserve.gov/publications/files/stakeholder-feedback-on-modernizing-the-community-reinvestment-act-201906.pdf.*

[32] 85 FR 1204 (Jan. 9, 2020).

[33] 85 FR 34734 (June 5, 2020).

[34] *See* OCC, News Release 2020–63, ''OCC Finalizes Rule to Strengthen and Modernize Community Reinvestment Act Regulations'' (May

Continued

October 1, 2020 effective date and January 1, 2023 and January 1, 2024 compliance dates for certain provisions.[35]

4. Board CRA Advance Notice of Proposed Rulemaking

On September 21, 2020, the Board issued a CRA ANPR (Board CRA ANPR) requesting public comment on an approach to modernize the CRA regulations by strengthening, clarifying, and tailoring them to reflect the current banking landscape and better meet the core purpose of the CRA.[36] The Board CRA ANPR sought feedback on ways to evaluate how banks meet the needs of low- and moderate-income communities and address inequities in credit access. The Board received over 600 comment letters on this ANPR.

5. Recent Developments

On July 20, 2021, the agencies issued an interagency statement indicating their commitment to working collectively to, in a consistent manner, strengthen and modernize their CRA regulations.[37] On the same day, the OCC stated its intention to rescind the OCC 2020 CRA final rule.[38] Subsequently, on September 8, 2021, the OCC issued a notice of proposed rulemaking to rescind the OCC 2020 CRA final rule and replace it with CRA regulations based on those that the agencies jointly issued in 1995, as amended.[39] On December 15, 2021, the OCC issued a final rule completing the rescission and replacement effective January 1, 2022. The final rule also integrated the OCC's CRA regulation for savings associations into its national bank CRA regulation at 12 CFR part 25.[40]

D. CRA, Illegal Discrimination, and Fair Lending

The CRA was one of several laws enacted in the 1960s and 1970s to address fairness and financial inclusion in access to housing and credit. During this period, Congress passed the Fair Housing Act (FHA) in 1968,[41] to prohibit discrimination in renting or buying a home,[42] and the Equal Credit Opportunity Act (ECOA) in 1974 [43] (amended in 1976), to prohibit creditors from discriminating against an applicant in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, or age. These fair lending laws provide the legal basis for prohibiting discriminatory lending practices based on race and ethnicity.[44]

Prior to passage of these laws, inequitable access to credit and other financial services—due in large part to a practice known as ''redlining''—along with a lack of public and private investment, greatly contributed to the economic distress experienced by lower-income and minority communities. The former Federal Home Owners' Loan Corporation (HOLC), established in 1933, employed color-coded maps [45] to designate its perception of the relative risk of lending in a range of neighborhoods, with ''hazardous'' (the highest risk) areas coded in red often with reference to the racial makeup of the neighborhood.[46] In addition to referring to HOLC maps, the term redlining has also been used to more broadly describe excluding neighborhoods or areas from provision of credit or other financial services on account of the race or ethnicity of residents in those areas. As Senator William Proxmire, who authored the CRA legislation, testified when discussing its purpose:

> By redlining let me make it clear what I am talking about. I am talking about the fact that banks and savings and loans will take their deposits from a community and instead of reinvesting them in that community, they will actually or figuratively draw a red line on a map around the areas of their city, sometimes in the inner city, sometimes in the older neighborhoods, sometimes ethnic and sometimes black, but often encompassing a great area of their neighborhood.[47]

Even with the implementation of the CRA and the other complementary laws, the wealth gap and disparities in other financial outcomes remain persistent. For example, ''data from the 2019 Survey of Consumer Finances (SCF) show that long-standing and substantial wealth disparities between families in different racial and ethnic groups were little changed since the last survey in 2016; the typical White family has eight times the wealth of the typical Black family and five times the wealth of the typical Hispanic family.'' [48]

The Board CRA ANPR discussed this history of redlining and racial discrimination prior to the enactment of these laws and asked for feedback on the following question: ''In considering how the CRA's history and purpose relate to the nation's current challenges, what modifications and approaches would strengthen CRA regulatory implementation in addressing ongoing systemic inequity in credit access for minority individuals and communities?'' [49] The Board received comments from a number of stakeholders on this question, providing feedback across different topics.

As has been the case since the first regulations were issued by the agencies, the agencies continue to recognize that CRA and fair lending are mutually reinforcing. In this NPR, the agencies propose to retain the conditions that bank assessment areas are prohibited from reflecting illegal discrimination or arbitrarily excluding low- or moderate-income census tracts. The agencies also propose to retain the regulatory provision that CRA ratings can be downgraded as a result of discriminatory practices, among other practices. The agencies are committed to upholding their regulatory responsibilities for both fair lending and CRA examinations, and the agencies seek to coordinate those examinations where feasible to do so.

In furtherance of the agencies' objective to promote transparency, the agencies propose providing additional information to the public in CRA performance evaluations for large banks related to the distribution by borrower

20, 2020), *https://www.occ.gov/news-issuances/news-releases/2020/nr-occ-2020-63.html; see also* 85 FR at 34736.

[35] 85 FR at 34784.

[36] 85 FR 66410 (Oct. 19, 2020).

[37] *See* Interagency Statement on Community Reinvestment Act, Joint Agency Action (July 20, 2021), *https://www.occ.gov/news-issuances/news-releases/2021/nr-ia-2021-77.html* (OCC); *https://www.federalreserve.gov/newsevents/pressreleases/bcreg20210720a.htm* (Board); *https://www.fdic.gov/news/press-releases/2021/pr21067.html* (FDIC).

[38] *See* OCC, News Release 2021–76, Statement on Rescinding its 2020 Community Reinvestment Act Rule (July 20, 2021), *https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-76.html.*

[39] 86 FR 52026 (Sept. 17, 2021).

[40] 86 FR 71328 (Dec. 15, 2021).

[41] 42 U.S.C. 3601 *et seq.*

[42] 42 U.S.C. 3604 through 3606.

[43] 15 U.S.C. 1691 *et seq.*

[44] *See* Interagency Fair Lending Examination Procedures (Aug. 2009), *available at https://www.ffiec.gov/pdf/fairlend.pdf.*

[45] *See* University of Richmond's Digital Scholarship Lab, ''Mapping Inequality: Redlining in New Deal America,'' *https://dsl.richmond.edu/panorama/redlining/#loc=5/39.1/*-94.58 (archive of HOLC maps).

[46] *See, e.g.,* Daniel Aaronson, Daniel Hartley, and Bhashkar Mazumder, Federal Reserve Bank of Chicago, ''The Effects of the 1930s HOLC 'Redlining' Map'' (Revised Aug. 2020), *https://www.chicagofed.org/publications/working-papers/2017/wp2017-12,* p.1 (''Neighborhoods were classified based on detailed risk-based characteristics, including housing age, quality, occupancy, and prices. However, non-housing attributes such as race, ethnicity, and immigration status were influential factors as well. Since the lowest rated neighborhoods were drawn in red and often had the vast majority of African American residents, these maps have been associated with the so-called practice of 'redlining' in which borrowers are denied access to credit due to the demographic composition of their neighborhood.'').

[47] 123 Cong. Rec. 17630 (June 6, 1977).

[48] Neil Bhutta et al., ''Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances'' (Sept. 28, 2020), *https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm.*

[49] 85 FR at 66413.

race and ethnicity of the bank's home mortgage loan originations and applications in each of the bank's assessment areas. This disclosure would leverage existing data available under the Home Mortgage Disclosure Act (HMDA). As discussed in Section XIX of this **SUPPLEMENTARY INFORMATION**, providing the data in this disclosure would have no independent impact on the conclusions or ratings of the bank and would not on its own reflect any fair lending finding or violation. Instead, this proposal is intended to provide transparent information to the public.

II. Overview of Proposed Rule

This **SUPPLEMENTARY INFORMATION** includes a detailed discussion of the proposed rule, including on the following topics:

Community Development Definitions. Section III discusses the following proposed definitions for community development activities: Affordable housing; economic development that supports small businesses and small farms; community supportive services; revitalization activities; essential community facilities; essential community infrastructure; recovery activities in designated disaster areas; disaster preparedness and climate resiliency activities; activities with minority depository institutions (MDIs), women's depository-institutions (WDIs), low-income credit unions (LICUs), and Community Development Financial Institutions (CDFIs) certified by the U.S. Department of the Treasury (Treasury Department), referred to as Treasury Department-certified CDFIs; financial literacy; and qualifying activities in Native Land Areas. The agencies propose using a *primary purpose* standard for determining eligibility of the above activities, with *pro rata* consideration for certain affordable housing activities.

Qualifying Activities Confirmation and Illustrative List of Activities. Section IV describes the agencies' proposal to maintain a publicly available illustrative, non-exhaustive list of activities eligible for CRA consideration. In addition, the agencies propose a process, open to banks, for confirming eligibility of community development activities in advance.

Impact Review of Community Development Activities. Section V describes the agencies' proposal for specific impact review factors to inform the impact and responsiveness evaluation of a bank's activities under the Community Development Financing Test, the Community Development Services Test, and the Community Development Financing Test for Wholesale or Limited Purpose Banks.

Assessment Areas and Areas for Eligible Community Development Activity. Section VI describes proposals on delineating facility-based assessment areas for main offices, branches, and deposit-taking remote service facilities (to include ATMs). Under the proposal, large banks would delineate assessment areas comprised of full counties, metropolitan divisions, or MSAs. Intermediate and small banks could continue to delineate partial county facility-based assessment areas, consistent with current practice.

The section also describes the proposal for large banks to delineate retail lending assessment areas where a bank has concentrations of home mortgage and/or small business lending outside of its facility-based assessment areas. Under this proposal, a large bank would delineate retail lending assessment areas where it has an annual lending volume of at least 100 home mortgage loan originations or at least 250 small business loan originations in an MSA or nonmetropolitan area of a state for two consecutive years.

The section also discusses the proposal to allow banks to receive CRA credit for any qualified community development activity, regardless of location, although performance within facility-based assessment areas would be emphasized.

Performance Tests, Standards, and Ratings in General. Section VII describes the agencies' proposed evaluation framework tailored for differences in bank size and business model. The agencies propose the following four tests for large banks: Retail Lending Test; Retail Services and Products Test; Community Development Financing Test; and Community Development Services Test. Intermediate banks would be evaluated under the Retail Lending Test and the *status quo* community development test, unless they choose to opt into the Community Development Financing Test. Small banks would be evaluated under the *status quo* small bank lending test, unless they choose to opt into the Retail Lending Test. Wholesale and limited purpose banks would be evaluated under a tailored version of the Community Development Financing Test.

Under this framework, large banks would be banks that had average quarterly assets, computed annually, of at least $2 billion in both of the prior two calendar years; intermediate banks would be banks that had average quarterly assets, computed annually, of at least $600 million in both of the prior two calendar years and less than $2 billion in either of the prior two calendar years; and small banks would be banks that had average quarterly assets, computed annually, of less than $600 million in either of the prior two calendar years. The agencies are in the process of seeking approval from the U.S. Small Business Administration (SBA) to use the $600 million threshold, where applicable and adjusted annually for inflation, rather than the SBA's recently updated size standards.[50]

The agencies propose to further tailor aspects of the proposal within the large bank category. The agencies propose that certain provisions of the Retail Services and Products Test and Community Development Services Test would apply only to large banks that had average quarterly assets, computed annually, of over $10 billion in both of the prior two calendar years. These banks are referred to in this **SUPPLEMENTARY INFORMATION** as large banks with assets of over $10 billion. Large banks that had average quarterly assets, computed annually, of $10 billion or less in either of the prior two calendar years are referred to in this **SUPPLEMENTARY INFORMATION** as large banks with assets of $10 billion or less.

The section also discusses a new proposed definition of ''operations subsidiary'' to the Board's CRA regulation and ''operating subsidiary'' for the FDIC's and OCC's CRA regulations (referred to collectively in this **SUPPLEMENTARY INFORMATION** as ''bank subsidiaries'') to identify those bank affiliates whose activities would be required to be attributed to a bank's CRA performance. The agencies propose to maintain the current flexibilities that would allow a bank to choose to include or exclude the activities of other bank affiliates that are not considered ''bank subsidiaries.'' The section also discusses performance context, and the requirement for activity in accordance with safe and sound operations.

Retail Lending Test Product Categories and Major Product Lines. Section VIII describes the proposed categories and standards for determining when a bank's retail lending product lines are evaluated under the Retail Lending Test. The agencies propose the following retail lending product line categories: A

[50] 87 FR 18627, 18830 (Mar. 31, 2022). Of particular relevance to the Agencies' CRA regulations, the SBA revised the size standards applicable to small commercial banks and savings institutions, respectively, from $600 million to $750 million, based upon the average assets reported on such a financial institution's four quarterly financial statements for the preceding year. The final rule has a May 2, 2022 effective date.

closed-end home mortgage, open-end home mortgage, multifamily, small business, and small farm lending. The agencies also propose including automobile lending as an eligible retail lending product line. In addition, the agencies propose a major product line standard to determine when a retail lending product line is evaluated.

The NPR proposes to define the terms ''small business'' and ''small farm'' consistent with the Consumer Financial Protection Bureau's (CFPB) proposal under section 1071 (Section 1071 Rulemaking) [51] of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act [52]). The CFPB has proposed to define a ''small business'' as having gross annual revenues of $5 million or less in the preceding fiscal year. The agencies are in the process of seeking approval from the SBA to use the standard proposed by the CFPB in its Section 1071 Rulemaking rather than the SBA's size standards.[53]

Retail Lending Test Evaluation Framework for Facility-Based Assessment Areas and Retail Lending Assessment Areas. Section IX discusses the proposed Retail Lending Test for standardizing evaluations of retail lending performance in facility-based assessment areas and retail lending assessment areas for large and intermediate banks. The agencies propose using a *retail lending volume screen* to evaluate a bank's retail lending volumes. The agencies also propose to evaluate a bank's major product lines using two distribution metrics that measure the bank's record of lending in low- and moderate-income census tracts and to borrowers of different income or revenue levels. Further, the agencies propose to establish a standardized methodology for setting performance expectations for specific product lines. The methodology defines performance ranges for each conclusion category for each product, and this performance is then averaged together. Under the methodology, the amount of lending needed to achieve a given conclusion would differ across assessment areas according to local credit demand and would calibrate across business cycles.

Retail Lending Test Evaluation Framework for Retail Lending Test Conclusions in State, Multistate MSAs, and at the Institution Level. Section X describes the agencies' proposal to assign conclusions on the Retail Lending Test for large and intermediate banks at the state and multistate MSA levels based on the conclusions reached at individual facility-based and retail lending assessment areas, as applicable. The agencies also propose to assign conclusions on the Retail Lending Test at the institution level by similarly combining conclusions from all of a bank's facility-based and retail lending assessment areas, as applicable, as well as the bank's retail lending performance outside of its assessment areas. The consideration of outside lending recognizes that some bank lending may be geographically diffuse, without concentrations in particular local markets that would be captured by the proposed retail lending assessment areas.

Retail Services and Products Test. Section XI describes the agencies' proposal to evaluate large banks under the Retail Services and Products Test. This test would use a predominantly qualitative approach, incorporating quantitative measures as guidelines, as applicable. First, the delivery systems part of the proposed test seeks to achieve a balanced evaluation framework that considers a bank's branch availability and services, remote service facility availability, and its digital and other delivery systems. The agencies propose that the evaluation of digital and other delivery systems and deposit products would be required for large banks with assets of over $10 billion, and not required for large banks with assets of $10 billion or less.

Second, the credit and deposit products part of the proposed test aims to evaluate a bank's efforts to offer products that are responsive to the needs of low- and moderate-income communities. The agencies propose that the evaluation of deposit products responsive to the needs of low- or moderate-income individuals would be required for large banks with assets of over $10 billion, and not required for large banks with assets of $10 billion or less.

Community Development Financing Test. Section XII describes the agencies proposals for the Community Development Financing Test, which would apply to large banks as well as intermediate banks that choose to opt into this test. The Community Development Financing Test would consist of a community development financing metric, benchmarks, and an impact review. These components would be assessed at the facility-based assessment area, state, multistate MSA and institution levels, and would inform conclusions at each of those levels.

Community Development Services Test. Section XIII describes the agencies' proposal to assess a large bank's community development services, underscoring the importance of these activities for fostering partnerships among different stakeholders, building capacity, and creating the conditions for effective community development. The agencies propose that in nonmetropolitan areas, banks may receive community development services consideration for volunteer activities that meet an identified community development need, even if unrelated to the provision of financial services. The proposed test would consist of a primarily qualitative assessment of the bank's community development service activities. For large banks with assets of over $10 billion, the agencies propose also using a metric to measure the hours of community development services activity per full time employee of a bank.

Wholesale and Limited Purpose Banks. Section XIV describes the agencies' proposed Community Development Financing Test for Wholesale and Limited Purpose Banks, which would include a qualitative review of a bank's community development lending and investments in each assessment area and an institution level-metric measuring a bank's volume of activities relative to its capacity. The agencies also propose giving wholesale and limited purpose banks the option to have examiners consider community development service activities that would qualify under the Community Development Services Test.

Strategic Plans. Section XV describes the agencies' proposal to maintain a strategic plan option as an alternative method for evaluation. Banks that elect to be evaluated under a CRA strategic plan would continue to request approval for the plan from their appropriate Federal banking agency. The agencies propose more specific criteria to ensure that all banks are meeting their CRA obligation to serve low- and moderate-income individuals and communities. Banks approved to be evaluated under a CRA strategic plan option would have the same assessment area requirements as other banks and would submit plans that include the same performance tests and standards that would otherwise apply unless the

[51] *See* 15 U.S.C. 1691c–2. The CFPB's Section 1071 Rulemaking would amend Regulation B to implement changes to ECOA made by section 1071 of the Dodd-Frank Act. This rulemaking would require covered financial institutions to collect and report to the CFPB data on applications for credit for small businesses, including businesses that are owned by women or minorities. *See* 86 FR 56356 (Oct. 8, 2021), as corrected by 86 FR 70771 (Dec. 13, 2021).

[52] Public Law 111–203, 124 Stat. 1376 (July 21, 2010).

[53] This assumes the CFPB's section 1071 rulemaking is finalized as proposed with a ''small business'' defined as having gross annual revenues of $5 million or less.

bank is substantially engaged in activities outside the scope of these tests. In seeking approval for a plan that does not adhere to requirements and standards that are applied to other banks, the plan would be required to include an explanation of why the bank's view is that different standards would be more appropriate in meeting the credit needs of its communities.

Assigned Conclusions and Ratings. Section XVI describes the agencies' proposal to provide greater transparency and consistency on assigning ratings for a bank's overall performance. The proposed approach would produce performance scores for each applicable test, at the state, multistate MSA, and institution levels based on a weighted average of assessment area conclusions, as well as consideration of additional test-specific factors at the state, multistate MSA, or institution level. These performance scores are mapped to conclusion categories to provide test-specific conclusions for the state, multistate MSA, and at the institution level. The agencies propose to combine these performance scores across tests to produce ratings at the state, multistate MSA, and the institution level.

The agencies propose to determine a bank's overall state, multistate MSA, or institution rating by taking a weighted average of the applicable performance test scores. For large banks the agencies propose the following weights: 45 percent for Retail Lending Test performance score; 15 percent for Retail Services and Products Test performance score; 30 percent for Community Development Financing Test performance score; and 10 percent for Community Development Services Test performance score. For intermediate banks, the agencies propose to weight the Retail Lending test at 50 percent and the community development test, or if the bank chooses to opt into the Community Development Financing Test, at 50 percent.

The agencies also propose updating the criteria to determine how discriminatory and other illegal practices would adversely affect a rating, as well as what rating level (state, multistate MSA, and institution) would be affected.

Performance Standards for Small and Intermediate Banks. Section XVII describes the agencies' proposal to continue evaluating small banks under the small bank performance standards in the current CRA framework and to apply the proposed metrics-based Retail Lending Test to intermediate banks. Under the proposal, small banks could opt into the Retail Lending Test and could continue to request additional consideration for other qualifying CRA activities. For intermediate banks, in addition to the proposed Retail Lending Test, the agencies propose to also evaluate an intermediate bank's community development activity pursuant to the criteria under the current intermediate small bank community development test. Intermediate banks could also opt to be evaluated under the proposed Community Development Financing Test.

Effect of CRA Performance on Applications. In Section XVIII, the agencies propose to maintain the current regulatory provisions for considering CRA performance on bank applications, such as those for mergers and acquisitions, deposit insurance, and branch openings and relocations.

Data Collection, Reporting, and Disclosure. In Section XIX, the agencies propose to revise data collection and reporting requirements to increase the clarity, consistency, and transparency of the evaluation process through the use of standard metrics and benchmarks. The proposal recognizes the importance of using existing data sources where possible, and tailoring data requirements, where appropriate.

In addition to leveraging existing data, the proposal would require large banks to collect, maintain, and report additional data. All large banks would have the same requirements for certain categories of data, including community development financing data, branch location data, and remote service facility location data. Some new data requirements would only apply to large banks with assets of over $10 billion. Large banks with assets of over $10 billion would have data requirements for deposits data, automobile lending data, retail services data on digital delivery systems, retail services data on responsive deposit products, and community development services data. The proposal also provides updated standards for all large banks to report the delineation of their assessment areas. Data requirements for intermediate banks and small banks would remain the same as the current requirements.

Content and Availability of Public File, Public Notice by Banks, Publication of Planned Examination Schedule, and Public Engagement. Section XX describes the agencies' proposal to provide more transparent information to the public on CRA examinations and encourage communication between members of the public and banks. The agencies propose to make a bank's CRA public file more accessible to the public by allowing any bank with a public website to include its CRA public file on its website. The agencies also propose publishing a list of banks scheduled for CRA examinations for the next two quarters at least 60 days in advance in order to provide additional notice to the public. Finally, the agencies propose to establish a way for the public to provide feedback on community needs and opportunities in specific geographies.

Transition. Section XXI discusses the agencies' proposed timeline for the transition from the current regulatory and supervisory framework to the proposed rule's CRA regulatory and supervisory framework.

Regulatory Analysis. Section XXII discusses the required regulatory analyses for the proposed rule. This includes a description of the Board's and the FDIC's Initial Regulatory Flexibility Analyses, which conclude that the proposed rule will not have a significant economic impact on a substantial number of small entities, and the OCC's certification that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Text of Common Proposed Rule. Section XXIII sets forth the common regulatory text for the proposed CRA regulation.

III. Community Development Definitions

Under the current and proposed CRA rule, a bank may, depending on its size, be evaluated for its community development lending, investments, and/or services under various tests. These activities must have community development as their primary purpose. Community development activities currently fall into four broad categories: Affordable housing; community services; economic development; and revitalization and stabilization. The agencies propose to revise the community development definitions in order to clarify eligibility criteria for different community development activities by including eleven categories that establish specific eligibility standards for a broad range of community development activities. The new definitions incorporate some aspects of guidance that are currently provided in the Interagency Questions and Answers. The proposed definitions reflect an emphasis on activities that are responsive to community needs, especially the needs of low- and moderate-income individuals and communities and small businesses and small farms.

A. Primary Purpose of Community Development

In § __.13, the agencies propose to define in the CRA regulations standards for determining whether a community development activity has a ''primary purpose'' of community development. Currently, the approach to demonstrating that an activity has a primary purpose of community development is explained in the Interagency Questions and Answers.[54] Under the proposal, a loan, investment, or service meets the primary purpose standard when it is designed for the express purpose of community development as set forth in proposed § __.13(a)(1). In general, activities with a primary purpose of community development, as proposed, would receive full CRA credit for the Community Development Financing Test and Community Development Services Test, as described below.

To determine whether an activity is designed for an express community development purpose, the agencies propose applying several approaches. First, if a majority of the dollars, applicable beneficiaries, or housing units of the activity are identifiable to one or more of the community development activities defined in § __ .13(a)(2), then the activity meets the requisite primary purpose and would receive full CRA credit.

Second, and alternatively, where the measurable portion of any benefit bestowed or dollars applied to the community development purpose is less than a majority of the entire activity's benefits or dollar value, then the activity may still be considered to possess the requisite primary purpose, and the bank may receive CRA credit for the entire activity, if: (i) The express, *bona fide* intent of the activity, as stated, for example, in a prospectus, loan proposal, or community action plan, is primarily one or more of the enumerated community development purposes; (ii) the activity is specifically structured to achieve the expressed community development purpose; and (iii) the activity accomplishes, or is reasonably certain to accomplish, the community development purpose involved.

Pro Rata Credit for Qualified Affordable Housing. The agencies propose that affordable housing that is developed in conjunction with Federal, state, local, or tribal government programs that have a stated purpose or bona fide intent to promote affordable housing would be considered even if fewer than the majority of the beneficiaries of the housing are low- or moderate-income individuals. In such cases, the activity would be considered to have a primary purpose of affordable housing only for the percentage of total housing units in the development that are affordable. For example, if a bank makes a $10 million loan to finance a mixed-income housing development in which 10 percent of the units will be set aside as affordable housing for low- or moderate-income individuals, the bank may treat $1 million of such loan as a community development loan. In other words, the pro-rata dollar amount of the total activity would be based on the percentage of units set aside for affordable housing for low- or moderate-income individuals.

The agencies propose a different approach for an activity that involves low-income housing tax credits (LIHTCs). Specifically, a bank would receive consideration for the full amount of the loan or investment for a LIHTC-financed project, regardless of the share of units that are considered affordable. This proposal is consistent with current guidance adopted in 2010 that clarified that projects developed with LIHTCs had a bona fide intent of providing affordable housing.[55]

Pro Rata Consideration for Other Community Development Activities. The proposal does not specify any other application of partial credit for activities, but the agencies seek feedback on whether such consideration is appropriate for this rulemaking in other specific cases. For example, an essential infrastructure project may serve a broad area where low- and moderate-income census tracts comprise a minority of total census tracts. In such cases, the activity could provide benefit to some low- or moderate-income individuals, although the overall project did not focus on low- or moderate-income census tracts or individuals. The agencies have considered whether banks should receive partial consideration more generally for these activities based on the share of low- or moderate-income census tracts or low- or moderate-income individuals that benefit from the project compared to the number of census tracts or total population that benefited from the project overall. However, partial consideration of activities could result in a significant expansion of the activities that could qualify, and thereby serve to divert limited resources from projects specifically targeted to benefit low- or moderate-income people or communities. In addition, the agencies believe that the proposed primary purpose standard retains appropriate flexibility to provide consideration for activities where less than the majority of the entire activity benefits low- or moderate-income individuals or communities, if those activities have the express, bona fide intent of community development.

Request for Feedback

Question 1. Should the agencies consider partial consideration for any other community development activities (for example, financing broadband infrastructure, health care facilities, or other essential infrastructure and community facilities), or should partial consideration be limited to only affordable housing?

Question 2. If partial consideration is extended to other types of community development activities with a primary purpose of community development, should there be a minimum percentage of the activity that serves low- or moderate-income individuals or geographies or small businesses and small farms, such as 25 percent? If partial consideration is provided for certain types of activities considered to have a primary purpose of community development, should the agencies require a minimum percentage standard greater than 51 percent to receive full consideration, such as a threshold between 60 percent and 90 percent?

B. Affordable Housing

The agencies are proposing a definition for affordable housing that includes four components: (i) Affordable rental housing developed in conjunction with Federal, state, and local government programs; (ii) multifamily rental housing with affordable rents; (iii) activities supporting affordable low- or moderate-income homeownership; and (iv) purchases of mortgage-backed securities that finance affordable housing. The proposed definition is intended to clarify the eligibility of affordable housing as well as to recognize the importance of promoting affordable housing for low- or moderate-income individuals.

[54] As discussed in the Interagency Questions and Answers, a loan, investment, or service has as its primary purpose community development when it is designed for the express purpose of revitalizing or stabilizing low- or moderate-income areas, designated disaster areas, or underserved or distressed nonmetropolitan middle-income areas, providing affordable housing for, or community services targeted to, low- or moderate-income persons, or promoting economic development by financing small businesses or small farms that meet the requirements set forth in 12 CFR __.12(g). *See* Q&A § __.12(h)–8.

[55] *See* 75 FR 11642 (Mar. 11, 2010).

1. Background

a. Current Approach to Affordable Housing

The current CRA regulations define ''community development'' to include ''affordable housing (including multifamily rental housing) for low- or moderate-income individuals.'' [56] The agencies have stated in the Interagency Questions and Answers that low- or moderate-income individuals must benefit or be likely to benefit from the housing in order to qualify and meet the existing primary purpose standard.[57] Currently, the agencies consider activities that support both single-family (1–4 family units) and multifamily (more than 4-family units) affordable housing. Single-family home mortgage loans are generally considered as part of the lending test, and other activities that are not home mortgage loans and that support single-family affordable housing may be considered as community development.[58] Multifamily loans are considered separately and may qualify for both retail lending and community development consideration if they meet the definition of affordable housing.[59] Purchases of mortgage-backed securities that primarily consist of single-family mortgage loans to low- or moderate-income individuals, or of multifamily affordable housing, are also considered as qualifying community development activities.[60]

Multifamily Housing. Multifamily housing qualifies under two different categories of affordable housing: Subsidized or unsubsidized housing. Housing that is financed or supported by a government affordable housing program or a government subsidy is considered subsidized affordable housing. Subsidized affordable housing is generally viewed as qualifying under affordable housing criteria if the government program or subsidy has a stated purpose of providing affordable housing to low- or moderate-income individuals, thereby satisfying Interagency Questions and Answers guidance that low- or moderate-income individuals benefit, or are likely to benefit, from the housing.[61] Examples of subsidized affordable housing include housing financed with LIHTCs, the HOME Investment Partnerships Program, or Project-Based Section 8 Rental Assistance.

Multifamily housing with affordable rents, but that is not financed or supported by a government affordable housing program or a government subsidy, is generally considered unsubsidized affordable housing, and is also referred to in this **SUPPLEMENTARY INFORMATION** as ''naturally occurring affordable housing.'' This housing can qualify as affordable housing if the rents are affordable to low- or moderate-income individuals, and if it is clear that low- or moderate-income individuals benefit, or are likely to benefit, from this housing. However, there are no standards currently in place for determining that low- or moderate-income individuals will benefit, or are likely to benefit, from the housing. Guidance indicates that it is not sufficient to determine that low- or moderate-income individuals are likely to benefit from the housing solely because the rents or housing prices are set according to a particular formula.[62] To assess whether the housing will benefit low- or moderate-income individuals, examiners may consider a range of demographic, economic or market factors, such as the median rents of the assessment area and the project based on project rent rolls; the low- or moderate-income population in the area of the project; or the past performance record of the organization(s) undertaking the project.[63]

Under the current framework, there is not a specified standard for determining when a property or unit is considered affordable to low- or moderate-income individuals. One approach used by banks and examiners is to calculate an affordable rent based on what is affordable to a moderate-income renter, assuming that 30 percent of the renter's income is spent on rent. Alternatively, some use the U.S. Department of Housing and Urban Development's (HUD) Fair Market Rents as a standard for measuring affordability.[64] Stakeholders note that lack of a consistent standard for affordability, combined with unclear methods for determining whether low- or moderate-income individuals are likely to benefit, leads to inconsistent consideration of unsubsidized affordable housing.

Single-Family Housing. Certain activities related to single-family housing can also qualify as affordable housing provided that the housing is affordable and low- or moderate-income individuals benefit, or are likely to benefit, from the housing. While single-family mortgages qualify under the lending test,[65] activities that support the construction of affordable housing or other activities to promote affordable homeownership for low- or moderate-income individuals are considered as affordable housing under the community development definition. Similar to the issues noted above with unsubsidized rental housing, there are no consistent standards in place to demonstrate that single-family for-sale housing is affordable and likely to benefit low- or moderate-income individuals. Therefore, under the current framework, stakeholders note that it is difficult for certain single-family projects to qualify, unless it is a project developed in partnership with a government program or non-profit organization that has a mission of providing affordable housing to low- or moderate-income individuals.

Mortgage-Backed Securities. Mortgage-backed securities qualify as an affordable housing activity provided they demonstrate a primary purpose of community development. Specifically, the security must primarily address affordable housing (including multifamily housing) of low- or moderate-income individuals.[66] Thus, a mortgage-backed security that contains a majority of mortgages to low- or moderate-income borrowers can qualify as an investment with a primary purpose of affordable housing.

b. Stakeholder Feedback on Affordable Housing

Stakeholders have expressed support for a definition of affordable housing that includes both subsidized and unsubsidized housing, and that is informed by more clear and specific eligibility standards. Stakeholders generally support the current approach of qualifying housing developed, purchased, rehabilitated, or preserved in conjunction with a Federal, state, local, or tribal government program. Many stakeholders also indicate support for including naturally occurring affordable housing in the definition of affordable housing, but note that more consistent and practically feasible qualification standards are needed. They also raise concerns about the types of requirements or restrictions—if any—that should be put in place to ensure that these properties remain affordable. For example, some stakeholders have noted that a bank financing a naturally

[56] 12 CFR __.12(g)(1).

[57] *See* Q&A § __.12(g)(1)–1.

[58] Single-family home mortgage loans may be included as community development under the intermediate small bank methodology. *See* Q&A § __.12(h)–3.

[59] *See* Q&A § __.42(b)(2)–2.

[60] *See* Q&A § __.12(t)–2.

[61] *See* Q&A § __.12(g)(1)–2.

[62] *See* Q&A § __.12(g)(1)–1.

[63] *See* Q&A § __.12(g)(1)–1.

[64] *See* HUD, Fair Market Rents, *https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/landlord/fmr.*

[65] *See* Q&A § __.12(h)–3.

[66] *See* Q&A § __.12(t)–2.

occurring affordable housing activity would often not be able to verify and document the income of tenants at time of rental and on an ongoing basis.

Regarding the current treatment of mortgage-backed securities, some stakeholders have expressed concern that some banks rely on purchases of mortgage-backed securities for CRA purposes in lieu of pursuing other activities that would have a more direct impact on the community or that would be more responsive to specific needs. Some stakeholders have also noted concerns that some banks may purchase high volumes of mortgage-backed securities shortly before their CRA examinations and sell them shortly afterwards, reducing any potential benefits to liquidity for lenders and credit availability for communities. Stakeholders generally have not opposed the consideration of mortgage-backed securities as a qualified investment, although some suggested additional requirements, such as preventing banks from receiving CRA credit for mortgage-backed securities that are purchased and then quickly resold.

2. Rental Housing in Conjunction With Government Programs

First, the agencies propose that a rental housing unit would be considered affordable housing if it is purchased, developed, financed, rehabilitated, improved, or preserved in conjunction with a Federal, state, local, or tribal government affordable housing plan, program, initiative, tax credit, or subsidy with a stated purpose or the bona fide intent of providing affordable housing for low- or moderate-income individuals. Examples below demonstrate how this component of the definition intends to add greater clarity around the many types of subsidized activities that currently qualify for consideration.

The proposal covers a broad range of government-related affordable rental housing activities for low- and moderate-income individuals, including affordable housing plans, programs, initiatives, tax credits, and subsidies pertaining to both multifamily and single-family properties. This would cover government subsidy programs that provide affordable rental housing for low- or moderate-income individuals, such as Project-Based Section 8 Rental Assistance and the HOME Investment Partnerships Program. The proposal also includes activities with rental properties receiving LIHTCs. Although LIHTCs are sometimes described as a ''program,'' the agencies propose including the term ''tax credits'' to provide clarity about the eligibility of tax credit programs focused on affordable housing for low- or moderate-income individuals.

The proposed language encompasses affordable housing activities tied to every level of government, not just Federal Government programs. In addition to affordable housing programs at the Federal level, the agencies also propose to include state and local affordable housing plans, programs, initiatives, tax credits, or subsidies that support affordable housing for low- or moderate-income individuals. This would include affordable rental units for low- or moderate-income individuals created as a result of local government inclusionary zoning programs. Inclusionary zoning provisions in many local jurisdictions provide requirements or incentives for developers to set aside a portion of housing units within a property that meet an affordability standard and are occupied by low- or moderate-income individuals. In addition, affordable multifamily housing programs offered by state housing finance agencies and affordable housing trust funds managed by a local government to support the development of affordable housing for low- or moderate-income individuals would be included in this component. The proposal also specifies that affordable housing activities related to tribal governments would be included under the scope of the definition.

To qualify under the proposed definition, a government-related affordable housing plan, program, initiative, tax credit, or subsidy would need to have a stated purpose or bona fide intent of supporting affordable rental housing for low- or moderate-income individuals. The agencies propose this requirement to emphasize affordable housing activities benefitting low- or moderate-income individuals. The agencies are not proposing a separate affordability standard for this prong of the definition and would rely upon the affordability standards set in each respective government affordable housing plan, program, initiative, tax credit, or subsidy, provided that the program has a stated purpose or bona fide intent of providing rental housing that is affordable to low- or moderate-income individuals.

The agencies seek feedback on whether additional requirements should be included to ensure that activities qualifying under this definition support housing that is both affordable to and occupied by low- or moderate-income individuals. For example, the agencies are considering whether to include a specific affordability standard of 30 percent of 80 percent of area median income for the cost of rents of housing that receives consideration under this definition, or a requirement that any programs verify that occupants of the affordable units are low- or moderate-income individuals.

The agencies seek feedback on whether activities involving government programs that have a stated purpose or bona fide intent to provide affordable housing serving low-, moderate-, and middle-income individuals should qualify under this definition in certain circumstances. For example, the agencies seek feedback on this alternative when the housing is located in a nonmetropolitan county, or in *High Opportunity Areas.* The agencies recognize that nonmetropolitan counties may have limited opportunities for affordable housing, and that it may be appropriate to consider affordable housing activities in these areas that include middle-income renters. Broadening this category to include activities that support housing that is affordable to middle-income individuals in nonmetropolitan counties could include developing affordable housing in conjunction with programs such as the U.S. Department of Agriculture Section 515 Rural Rental Housing or Multifamily Guaranteed Rural Rental Housing programs.[67]

Under a second alternative, the agencies would consider these activities in *high opportunity areas.* One option would be to define *high opportunity areas* to align with the definition of these areas by the Federal Housing Finance Agency (FHFA), as discussed in Section V.[68] These areas include census tracts with high costs of development and low poverty rates, and the agencies consider affordable housing activities in these areas to be especially responsive. For example, these activities may include financing for a multifamily rental housing development that serves middle-income residents in a *high opportunity area* that is supported by tax-exempt bonds that are issued by state or local agencies to support affordable housing. Consideration of

[67] *See* Rural Rental Housing Loans (Section 515) (Sept. 2002), *https://www.hud.gov/sites/documents/19565_515_RURALRENTAL.pdf,* and U.S. Department of Agriculture, Multifamily Guaranteed Rural Rental Housing (Dec. 2021), *https://www.rd.usda.gov/sites/default/files/fact-sheet/508_RD_FS_RHS_MFGuarantee.pdf.*

[68] *See, e.g.,* Federal Housing Financing Agency, ''Overview of the 2020 High Opportunity Areas File'' (2020), *https://www.fhfa.gov/DataTools/Downloads/Documents/Enterprise-PUDB/DTS_Residential-Economic-Diversity-Areas/DTS_High%20Opportunity_Areas_2020_README.pdf,* and HUD's Office of Policy Development and Research (PD&R), Qualified Census Tracts and Difficult Development Areas, *https://www.huduser.gov/portal/datasets/qct.html.*

activities supporting housing that is affordable to middle-income families in these geographies would reflect the limited supply of affordable housing in these markets and would provide additional flexibility for banks to identify opportunities to address community needs. However, the agencies have also considered that broadening the definition could reduce the emphasis on activities that serve low-and moderate-income individuals more directly and where the need is more acute.

3. Multifamily Rental Housing With Affordable Rents

For the second prong of the affordable housing definition in proposed § __.13(b), the agencies propose to provide clear and consistent criteria in order to qualify affordable low- or moderate-income multifamily rental housing that does not involve a government program, initiative, tax credit, or subsidy, also referred to as ''naturally occurring affordable housing'' in this **SUPPLEMENTARY INFORMATION**, for purposes of CRA affordable housing consideration.

The agencies recognize that naturally occurring affordable housing is an important source of affordable housing for many low- and moderate-income individuals. In addition, the agencies also recognize that this category of housing poses unique challenges in terms of ensuring that its benefits extend to low- or moderate-income individuals, since there is often no consistent way to confirm renter income for these properties, in contrast to properties receiving government subsidies. The proposed definition seeks to address this by clarifying that this category of affordable housing can receive CRA credit if it meets a specified set of applicable standards.

First, in order to qualify under this prong of the proposed definition, the agencies propose that the rent for the majority of the units in a multifamily property could not exceed 30 percent of 60 percent of the area median income for the metropolitan area or nonmetropolitan county. These rental amounts would need to reflect the rents used by the bank to underwrite the property, including post-construction or post-renovation monthly rents. Second, naturally occurring affordable housing would also need to meet at least one of the following criteria in order to increase the likelihood that units benefit low- or moderate-income individuals: (i) The housing is located in a low- or moderate-income census tract; (ii) the housing is purchased, developed, financed, rehabilitated, improved, or preserved by a non-profit organization with a stated mission of, or that otherwise directly supports, providing affordable housing; (iii) there is an explicit written pledge by the property owner to maintain rents affordable to low- or moderate-income individuals for at least five years or the length of the financing, whichever is shorter; or (iv) the bank provides documentation that a majority of the residents of the housing units are low- or moderate-income individuals or families, for example documentation that a majority of residents have Housing Choice Vouchers.

a. Affordability Standard for Naturally Occurring Affordable Housing

The proposed rental affordability standard for naturally occurring affordable housing—30 percent of 60 percent of the area median income—is intended to target the definition for units affordable to low- or moderate-income households. This would establish a higher bar than what is often used today to determine whether rents are affordable for low- or moderate-income individuals, which is 30 percent of 80 percent of area median income. The agencies considered using the standard of 30 percent of 80 percent of area median income but believe it would be preferable to use a more targeted definition to ensure that rents are affordable to low-income households and to increase the likelihood that low- or moderate-income households will occupy the units. For example, in 2019, approximately 46 percent of occupied rental units with affordability levels between 61–80 percent of area median income were occupied by middle- or upper-income households.[69] This is compared to 24 percent of occupied rental units with affordability levels under 60 percent of area median income being occupied by middle- or upper-income households. Limiting eligibility to those units with affordability levels under 60 percent of area median income may therefore help to ensure that the households served by this housing are in fact low- or moderate-income households.

However, a potential drawback to using an affordability standard anchored to 60 percent of area median income is that it could restrict eligibility for properties with affordability levels at 80 percent of area median income where many, but not all, of the units are occupied by low- or moderate-income households. The agencies seek feedback on the alternative approach of using 80 percent area median income as the affordability standard under proposed § __.13(b)(2).

In calculating whether rents meet the affordability standard, the agencies propose using the monthly rental amounts as underwritten by the bank. The definition further specifies that this rent would need to reflect any post-construction or post-renovation rents considered as part of the bank's financing. Consider, for example, a multifamily property that meets the proposed affordability standard before bank financing, but where the property owner plans to renovate the building after receiving the loan and subsequently increases the rents above the affordability standard. In this example, if the bank relied on the post-renovation rents as part of its underwriting, then the loan would not count for CRA purposes under the proposed affordable housing definition. The agencies' objective in including this provision is to target CRA credit to properties that are likely to remain affordable and to avoid providing credit for activities that may result in displacement of low- or moderate-income individuals.

The agencies seek feedback on whether there are alternative ways to ensure that CRA credit for naturally occurring affordable housing is targeted to properties where rents remain affordable for low- or moderate-income individuals.

The proposed definition would require the majority of units in a naturally occurring affordable housing property to meet the affordability standard. Properties in which fewer than 50 percent of units are affordable would not qualify under the proposed definition. This requirement is intended to ensure that activities qualifying as naturally occurring affordable housing support housing that remains affordable to and occupied by low- or moderate-income individuals.

The agencies seek feedback on whether single-family rental housing should also be considered under the naturally occurring affordable housing category, provided it meets the same combination of criteria proposed for multifamily rental housing. The agencies also seek feedback on whether such an alternative should be limited to rural areas. The agencies recognize that the composition of the housing stock varies across geographies, and that some areas, such as rural communities, may lack affordable multifamily rental housing that is either in conjunction

[69] Thyria Alvarez and Barry L. Steffen, HUD, Office of Policy Development and Research, ''Worst Case Housing Needs 2021 Report to Congress'' (July 2020) (agencies' calculations using Exhibit A–12 at 74), *https://www.huduser.gov/portal/publications/Worst-Case-Housing-Needs-2021.html.*

with a government program or naturally occurring affordable housing. In these communities, single-family rental housing may be an important source of affordable housing for low- and moderate-income individuals. In considering how and whether to incorporate affordable single-family rental housing into the naturally occurring affordable housing definition, the agencies are mindful of the fact that home mortgage loans for single-family rental housing would count in the geographic distribution metrics of the proposed Retail Lending Test.

b. Additional Eligibility Standards for Naturally Occurring Affordable Housing

The agencies are proposing four additional criteria under proposed § __.13(b) for qualifying multifamily housing with affordable rents as naturally occurring affordable housing. These criteria are intended to focus the definition on housing that is more likely to benefit low- or moderate-income individuals or increase the likelihood that rents will remain affordable for low- or moderate-income individuals. In addition to the underwriting requirement (rents not exceeding 30 percent of 60 percent of area median income), the proposal requires a property to meet at least one of the following criteria: (i) The location of the housing is in a low- or moderate-income census tract; (ii) the housing is developed in association with a non-profit organization with a mission of, or that otherwise directly supports, affordable housing; (iii) the financing is provided in conjunction with a written affordability pledge by the developer of at least 5 years, or the length of the financing, whichever is shorter; or (iv) the bank provides documentation that the majority of the housing units are occupied by low- or moderate-income households.

Low- or Moderate-Income Census Tract. The first proposed criterion is the location of eligible properties in a low- or moderate-income census tract, because the majority low- or moderate-income status of a census tract indicates that affordable rental housing in that census tract is likely to benefit low- or moderate-income individuals. Using geography as a proxy for tenant income is generally consistent with current guidance.[70] In addition, census tract income data is readily available and verifiable information, in contrast to verifying tenant income, which may prove infeasible for many property owners or developers.

An additional approach that the agencies seek feedback on is whether to expand this criterion to also encompass middle- and upper-income census tracts in which at least 50 percent of renters are low- or moderate-income. Following the same logic as the proposed low- and moderate-income census tract criteria, the agencies have considered that affordable rental housing in a neighborhood in which the majority of renters are low- or moderate-income would also be likely to benefit low- or moderate-income individuals. In addition, applying this standard would qualify affordable housing in more middle-and upper-income census tracts, thereby expanding this criterion beyond only low- and moderate-income census tracts. While 33 percent of census tracts are designated as low- or moderate-income, a total of 72 percent of census tracts meet either the low- and moderate-income census tract standard or the low- and moderate-income median renter census tract standard.[71] The agencies seek feedback on whether these additional census tracts should be added to the proposed definition.

Additionally, the agencies seek feedback on an alternative in which no geographic criteria are included. Under this option, activities qualifying as supporting naturally occurring affordable housing would instead be required to meet one of the other criteria described below (mission-driven non-profit organization, written affordability pledge, or tenant income documentation), in addition to the standard of rents not exceeding 30 percent of 60 percent of area median income. By removing the geographic criteria, this alternative approach would be intended to equally apply the other criteria across census tracts of all income levels. However, the agencies are mindful that this alternative would require banks to provide documentation required under the other proposed criterion in order to receive consideration for naturally occurring affordable housing.

Mission-Driven Non-Profit Organization. A second proposed criterion for determining whether multifamily housing with affordable rents is eligible is if the housing is purchased, developed, financed, rehabilitated, improved, or preserved by any non-profit organization with a stated mission of, or that otherwise directly supports, providing affordable housing. The agencies intend this provision to encompass organizations that target services to low- or moderate-income individuals and communities, and may also have a mission to serve individuals and communities that are especially vulnerable to housing instability. In addition, affordable properties in any census tract, including middle- and upper-income census tracts, could qualify under this option. This criterion does not include government programs or entities, as such activities would be considered under the affordable housing category in proposed § __.13(b)(1).

Written Affordability Pledge. A third proposed criterion for determining if multifamily housing with affordable rents is eligible under the definition is the presence of an explicit written pledge on the part of the property owner to maintain rents that are affordable for at least five years or for the length of the financing, whichever is shorter.[72] This prong would address concerns about the likelihood of rents in an eligible property increasing in the future and potentially displacing low- or moderate-income households. In addition, affordable properties in any census tract, including middle- and upper-income census tracts, could qualify under this option. Some stakeholders have urged the requirement of a written pledge in order for any naturally occurring affordable housing to qualify for CRA purposes. However, the agencies are mindful that such a requirement would necessitate additional documentation to receive consideration for naturally occurring affordable housing. For this reason, the agencies believe that it is preferable to include this criterion as one of several options for meeting the eligibility standard.

Tenant Income Documentation. A fourth proposed criterion for determining if multifamily housing with affordable rents is eligible under the definition is documentation provided by the bank demonstrating that the majority of the housing units are occupied by low- or moderate-income

[70] *See* Q&A § __.12(g)(1)–1.

[71] The sample used for this analysis includes all census tracts for which there was non-missing renter median income data (2019 5-year American Community Survey) plus census tracts that were known to be low- or moderate-income but had missing data. The agencies' analysis found that there are 69,161 census tracts with non-missing renter median income data. Of those census tracts, 22,521 (33 percent) are designated low- or moderate-income; 27,070 (39 percent) are designated as renter low- or moderate-income; and the remaining 19,570 (28 percent) are neither low- or moderate-income nor renter low- or moderate-income. Seventy-three percent of all census tracts could be a geography where affordable housing is located under that alternative proposal.

[72] The agencies expect that the length of financing would often go beyond the five-year written affordability pledge. The agencies would scrutinize short-term financing (less than five years) to ensure such financing is not a way to avoid the affordability commitment.

individuals or households. Such documentation would be direct evidence that the activity benefits low- or moderate-income individuals. In addition, this criterion could apply to affordable properties in any census tract, including middle- or upper-income census tracts. For example, a multifamily rental property with a majority of rents set at 30 percent of 60 percent of area median income that is located in a middle-income census tract, and where the bank can document that the majority of occupants receive Housing Choice Vouchers,[73] would receive consideration under this criterion. The agencies recognize that it may be challenging for banks to obtain this documentation. Accordingly, the agencies are proposing to include this factor as one of several options for meeting the eligibility standard.

4. Activities That Support Affordable Homeownership for Low- or Moderate-Income Individuals

The agencies propose a third prong for the affordable housing definition to include: (i) Activities that directly assist low- or moderate-income individuals to obtain, maintain, rehabilitate, or improve affordable owner-occupied housing; or (ii) activities that support programs, projects, or initiatives that assist low- or moderate-income individuals to obtain, maintain, rehabilitate, or improve affordable owner-occupied housing. This category could include owner-occupied housing in single-family or multifamily properties.

While these activities could be conducted in conjunction with a variety of financing types, such as conventional mortgages, shared equity models, or community land trusts, any reported mortgage loan that is evaluated under the Retail Lending Test would not count under this definition. Instead, this category would include activities such as construction loan financing for a non-profit housing developer building single-family owner-occupied homes affordable to low- or moderate-income individuals; financing or a grant to a non-profit community land trust focused on providing affordable housing to low- or moderate-income individuals; a loan to a resident-owned manufactured housing community with homes that are affordable to low- or moderate-income individuals; a shared-equity program operated by a non-profit organization to provide long-term affordable homeownership; and financing or grants for organizations that provide down payment assistance to low- or moderate-income homebuyers.

Activities eligible under this criterion may include activities with a governmental or non-profit organization with a stated purpose of, or that otherwise directly supports, providing affordable housing. Additionally, this category may include activities conducted by the bank itself, or with other for-profit partners, provided that the activity supports affordable homeownership for low- or moderate-income individuals. For example, a bank providing direct down payment assistance or supporting free home repairs or maintenance for low- or moderate-income homeowners could be considered under this prong of the definition.

The agencies seek feedback on what conditions or terms, if any, should be added to this criterion to ensure that activities that support affordable low- and moderate-income homeownership are sustainable and beneficial to low- or moderate-income individuals and communities.

5. Mortgage-Backed Securities

The agencies propose to define standards for investments in mortgage-backed securities related to affordable housing that qualify for community development consideration. Consistent with current practice, the agencies are proposing that mortgage-backed securities would qualify as affordable housing when the security contains a majority of either single-family home mortgage loans for low- and moderate-income individuals or loans financing multifamily affordable housing that otherwise qualifies under the proposed affordable housing definition in proposed § __.13(b).

This definition recognizes that purchases of qualifying mortgage-backed securities that contain home mortgage loans to low- or moderate-income borrowers or that contain qualifying affordable housing loans are investments in affordable housing. The issuance and purchase of these securities may improve liquidity for affordable housing development and for lenders that make home mortgage loans to low- or moderate-income borrowers, which in turn allows them to make more loans to low- or moderate-income borrowers than would otherwise be possible. However, some stakeholders have noted that qualifying purchases of mortgage-backed securities are lower in impact and responsiveness to community credit needs than other qualifying affordable housing activities that more directly support housing for low- or moderate-income individuals.

The agencies seek feedback on alternative approaches that would create a more targeted definition of qualifying mortgage-backed securities. One alternative the agencies are considering is to consider mortgage-backed securities for only the portion of loans in the security that are affordable. For example, if 60 percent of a qualifying mortgage-backed security consists of single-family home mortgage loans to low- or moderate-income borrowers, and 40 percent of the security consists of loans to middle- or upper-income borrowers, the mortgage-backed security would receive consideration only for the dollar value of the loans to low- or moderate-income borrowers. This treatment would reflect that a qualifying mortgage-backed security represents a purchase of multiple home mortgage loans, some of which may not meet the definition of affordable housing or have a primary purpose of community development. However, the agencies are mindful of the added complexity that this approach could create.

The agencies are also considering whether to limit consideration of mortgage-backed securities to the initial purchase of a mortgage-backed security from the issuer, and not considering subsequent purchases of the security. This change would be intended to emphasize activities that more directly serve low- or moderate-income individuals and communities and to reduce the possibility of multiple banks receiving CRA credit for purchasing the same security.

The agencies seek feedback on these alternatives and on other ways of appropriately considering qualifying mortgage-backed security investments so as to emphasize community development financing activities that are most responsive to low- or moderate-income community needs.

Request for Feedback

Question 3. Is the proposed standard of government programs having a ''stated purpose or bona fide intent'' of providing affordable housing for low- or moderate-income (or, under the alternative discussed above, for low-, moderate- or middle-income) individuals appropriate, or is a different standard more appropriate for considering government programs that

[73] The housing choice voucher program is the Federal government's major program for assisting very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market. *See* 24 CFR part 982 (program requirements for the tenant-based housing assistance program under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f); the tenant-based program is the housing choice voucher program). *See also* ''U.S. Department of Housing and Urban Development, Housing. Choice Vouchers Fact Sheet,'' *https://www.hud.gov/topics/housing_choice_voucher_program_section_8.*

provide affordable housing? Should these activities be required to meet a specific affordability standard, such as rents not exceeding 30 percent of 80 percent of median income? Should these activities be required to include verification that at least a majority of occupants of affordable units are low- or moderate-income individuals?

Question 4. In qualifying affordable rental housing activities in conjunction with a government program, should the agencies consider activities that provide affordable housing to middle-income individuals in *high opportunity areas,* in nonmetropolitan counties, or in other geographies?

Question 5. Are there alternative ways to ensure that naturally occurring affordable housing activities are targeted to properties where rents remain affordable for low- and moderate-income individuals, including properties where a renovation is occurring?

Question 6. What approach would appropriately consider activities that support naturally occurring affordable housing that is most beneficial for low- or moderate-income individuals and communities? Should the proposed geographic criterion be expanded to include census tracts in which the median renter is low- or moderate-income, or in distressed and underserved census tracts, in order to encourage affordable housing in a wider range of communities, or would this expanded option risk crediting activities that do not benefit low- or moderate-income renters?

Question 7. Should the proposed approach to considering naturally occurring affordable housing be broadened to include single-family rental housing that meets the eligibility criteria proposed for multifamily rental housing? If so, should consideration of single-family rental housing be limited to rural geographies, or eligible in all geographies, provided the eligibility criteria to ensure affordability are met?

Question 8. How should the agencies consider activities that support affordable low- or moderate-income homeownership in order to ensure that qualifying activities are affordable, sustainable, and beneficial for low- or moderate-income individuals and communities?

Question 9. Should the proposed approach to considering mortgage-backed securities that finance affordable housing be modified to ensure that the activity is aligned with CRA's purpose of strengthening credit access for low- or moderate-income individuals? For example, should the agencies consider only the value of affordable loans in a qualifying mortgage-backed security, rather than the full value of the security? Should only the initial purchase of a mortgage-backed security be considered for affordable housing?

Question 10. What changes, if any, should the agencies consider to ensure that the proposed affordable housing definition is clearly and appropriately inclusive of activities that support affordable housing for low- or moderate-income individuals, including activities that involve complex or novel solutions such as community land trusts, shared equity models, and manufactured housing?

C. Economic Development

The agencies propose several revisions to what constitutes economic development activities that are intended to encourage activities supportive of small businesses and small farms. The proposal in § __.13(c) is also intended to improve the overall transparency of the definition by including certain activities that are currently addressed in guidance. In addition, the agencies seek to simplify the way that small business and small farm lending is considered under CRA evaluations.

A significant change compared to the current CRA regulations' criteria for economic development is that all reported lending to small businesses and small farms would be considered under the proposed Retail Lending Test, described in Section IX, and not under the proposed economic development definition. This change is related to the agencies' proposal to leverage the CFPB's proposed small business standard under section 1071 to define ''small business'' and ''small farm'' as those with $5 million in gross annual revenues and below, as discussed above.

In some ways, the proposed Retail Lending Test approach would afford broader consideration of loans to small businesses and small farms than the current CRA approach taken as a whole across the *status quo* lending and community development tests. There are also some differences that would narrow consideration of some loans that currently are considered under the economic development criteria.

1. Background

a. Current Approach to Economic Development

Under the current regulation, community development is defined to include ''activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the SBA's Development Company (SBDC) or Small Business Investment Company (SBIC) programs (13 CFR 121.301) or have gross annual revenues of $1 million or less'' [74] (the ''current economic development definition''). Under current guidance, activities qualify as economic development if they meet both a ''size test'' and a ''purpose test.'' [75] An institution's loan, investment, or service meets the size test if it finances, either directly, or through an intermediary, businesses or farms that either meet the size eligibility standards of the SBDC or SBIC programs, or have gross annual revenues of $1 million or less. For consideration under the size test, the term ''financing'' is considered broadly and includes technical assistance that readies a business that meets the size eligibility standards to obtain financing. To meet the purpose test, current guidance states that a bank's loan, investment, or service must promote economic development by creating, retaining, and/or improving jobs for low- or moderate-income persons, low- or moderate-income geographies, areas targeted for redevelopment, or by financing certain intermediaries. Activities that support job training or workforce development are also considered to meet the purpose test.[76]

b. Stakeholder Feedback on Economic Development

Stakeholders note various challenges with the current economic development definition. Some observe that while guidance includes a variety of economic development activities, the smallest businesses and farms may still face specific unmet financing needs. Industry stakeholders indicate that it can be difficult to demonstrate that an activity meets both the size test and purpose test. Specifically, these stakeholders point to difficulty in demonstrating that the primary purpose of a loan or investment with a small business or small farm was to create, retain, and/or improve low- or moderate-income employment and note that this requirement eliminates consideration of some other loans to small businesses that are also high impact, such as loans that help small businesses purchase new equipment in order to improve efficiency of operations.

Stakeholders generally indicate that more clarity is needed in the types of activities that will be considered to strengthen small business and small farms, though some stakeholders note

[74] 12 CFR __.12(g)(3).

[75] *See* Q&A § __.12(g)(3)–1.

[76] *Id.*

that the agencies should take a more flexible approach to defining the types of activities that qualify. Stakeholders also support qualifying workforce development for low- or moderate-income individuals regardless of the size of the business, as larger industries are a source of jobs for low- or moderate-income individuals.

2. Covering Small Business and Small Farm Loans Under the Evaluation of a Bank's Retail Lending Performance

Under the proposal, a bank's loans to small businesses and small farms would be evaluated in the Retail Lending Test portion of the CRA examination. As discussed further in Section VIII regarding proposed § __.22 for the Retail Lending Test, the agencies are considering alternative size standards for defining small businesses and small farms that would differ from the SBA's size standards.[77] Specifically, once CFPB section 1071 data is available, the agencies would transition from the current CRA definitions of small business and small farm loans to loans to small businesses and small farms with gross annual revenues of $5 million or less.[78] In the interim, for purposes of evaluation under the Retail Lending Test, the agencies propose to use the current approach that evaluates small business and small farm loans using the Reports of Condition and Income (Call Report) definitions. This current approach captures loans of $1 million or less to businesses, and loans of $500,000 or less to farms, as reported in the Call Report.[79]

Accordingly, the proposed economic development definition would not include a component to qualify a bank's loans to small businesses or small farms—apart from activities undertaken consistent with Federal, state, local, or tribal government plans, programs, or initiatives that support small businesses or small farms as those entities are defined in the plans, programs, or initiatives. With regard to economic development, the agencies currently evaluate businesses or farms that meet the size eligibility standards of the SBDC or SBIC programs (13 CFR 121.301) or have gross annual revenues of $1 million or less, only if not reported as a small business loan or a small farm loan under the CRA.[80] This would no longer be the case under the agencies' proposed economic development definition, since all reported lending for small businesses and small farms would be considered under the proposed Retail Lending Test.

The proposal to include small business loans and small farm loans in the Retail Lending Test, instead of under the economic development definition, is intended to recognize that loans to small businesses and small farms are primarily retail loan products, and more appropriately considered under the Retail Lending Test, while emphasizing other activities to promote access to financing for small businesses and small farms under the economic development definition. As discussed in Section XVII, the agencies are proposing that intermediate banks retain flexibility to have certain retail loans—small business, small farm, and home mortgage loans—be considered as community development loans. This option would be available to an intermediate bank if those loans have a primary purpose of community development and are not required to be reported by the bank.

Small business and small farm lending evaluated under the proposed Retail Lending Test would not have the accompanying requirement that these loans demonstrate job creation, retention, or improvement for low- or moderate-income areas or individuals, as is currently required for loans considered under the current criterion for economic development. As noted above, some stakeholders have reported having challenges demonstrating that activities satisfied this criterion, including demonstrating that jobs created or retained meaningfully benefit low- or moderate-income individuals and families. The agencies believe that this would appropriately broaden consideration of small business and small farm lending relative to the status quo, although it would involve a change of the test under which these loans would be considered.

The agencies recognize that these changes would have a number of intersecting impacts on the activities considered under the economic development definition and evaluated in the Retail Lending Test. For example, loans to certain businesses that meet SBIC and SBDC size standards and are now covered community development loans might not qualify for CRA consideration under the proposal. For some types of businesses, the SBIC and SBDC size standards exceed gross annual revenues of $5 million; accordingly, loans to businesses that meet SBIC and SBDC size standards and have gross annual revenues exceeding $5 million would no longer be covered community development loans. Under this scenario, these loans would also not be considered under the proposed Retail Lending Test.

Another example of the impact from this change involves the existing job creation, retention, or improvement for low- or moderate-income individuals standard. Compared to the volume of loans considered under the current economic development criteria, a greater volume of loans may be considered under the proposed Retail Lending Test as there would no longer be a requirement that loans to small businesses and small farms demonstrate job creation, retention, or improvement for low- or moderate-income individuals. The agencies recognize the critical importance of job creation as part of supporting local economies, and therefore seek feedback on the related proposals in both the Retail Lending Test and economic development definition sections.

The agencies also seek feedback on whether to continue considering bank loans to small businesses and small farms that currently qualify under the economic development criteria as community development activities during the transition period before solely considering these loans under the Retail Lending Test.

3. Activities Aligned With Federal, State, Local, or Tribal Efforts

The first prong of the proposed economic development definition includes activities undertaken consistent with Federal, state, local, or tribal government plans, programs, or initiatives that support small businesses or small farms as defined by these plans, programs, or initiatives. The current community development definitions do not include stand-alone criteria for economic development activities aligned with Federal, state, local, or tribal efforts. These activities are, however, referenced in the Interagency

[77] SBA regulations define ''small entities'' for banking purposes as entities with total assets of $600 million or less. *See* 13 CFR 121.201 (Sector 52, Subsector 522). The agencies have requested permission from the SBA to use size standards for defining small businesses and small farms that differ from the SBA's size standards, as provided in 15 U.S.C. 632(a)(2)(C).

[78] This assumes the CFPB's section 1071 rulemaking is finalized as proposed with a ''small business'' defined as having gross annual revenues of $5 million or less.

[79] *See* 12 CFR __.12(v) (defining a small business loan as a loan included in ''loans to small businesses'' as defined in the instructions for preparation of the Call Report). *See also* 12 CFR __ .12(w) (defining a small farm loan as a loan included in ''loans to small farms'' as defined in the instructions for preparation of the Call Report).

[80] 12 CFR __.12(g)(3). Activities that promote economic development finance businesses and farms that meet the size eligibility standards of the SBDC or SBIC programs (13 CFR 121.301) or have gross annual revenues of $1 million or less.

Questions and Answers.[81] Aligning economic development activities with government programs that address identified needs for small businesses and small farms can encourage coordination between banks, government agencies, and other program participants for activities that can be highly responsive to the unmet needs of communities.

In addition, this prong of the proposed definition specifies that lending to, investing in, or providing services to SBDCs, SBICs, New Markets Venture Capital Companies, qualified Community Development Entities, or U.S. Department of Agriculture Rural Business Investment Companies would qualify as economic development. The current regulation does not specifically address activities with these entities, but the Interagency Questions and Answers state that the agencies will presume that activities with these entities promote economic development.[82] As a result, the proposal is intended to provide greater clarity and encourage the continued participation in, and support of, programs offered through these providers of small business and small farm financing.

This prong of the proposed definition would not specify a gross annual revenue threshold of $5 million or under for the businesses or farms supported through these government plans, programs, or initiatives, or through the specified entities. Instead, this prong of the definition would leverage the size standards used by the respective government plans, programs, or initiatives. This would include using the standards established by SBDCs and SBICs for loans, investments, or services to these entities.

4. Support for Financing Intermediaries

The second prong of the proposed economic development definition includes activities with financial intermediaries that increase access to capital for businesses or farms with gross annual revenues of $5 million or less. The agencies propose using this same gross annual revenue standard to simplify the approach and to be consistent throughout the definition. The current regulation does not specifically address financing intermediaries that increase access to capital for small businesses and small farms, although both industry and community group stakeholders have stressed the importance of financial intermediaries, such as non-profit revolving loans funds, in providing access to financing for small businesses and small farms that are not ready for traditional bank financing. Examples of financial intermediaries include a Community Development Corporation that provides technical assistance to recently formed small businesses, or a CDFI that provides lending to support sustainability of small farms. The agencies propose to recognize the role of these financial intermediaries—which could include organizations, programs, and services—by including in the definition of economic development a component for activities that support financial intermediaries that lend to, invest in, or provide technical assistance to businesses or farms with gross annual revenues of $5 million or less.

5. Technical Assistance and Support Services for Small Businesses

The third prong of the proposed economic development definition includes technical assistance activities to support businesses or farms with gross annual revenues of $5 million or less. This prong would also include providing services such as shared space, technology, or administrative assistance to businesses or farms with gross annual revenues of $5 million or less, or to organizations that have a primary purpose of supporting such businesses or farms. While these activities are not included in the current regulation, they are addressed in the Interagency Questions and Answers.[83] In addition to reflecting current guidance, the agencies recognize that some small businesses and small farms may not be prepared to obtain traditional bank financing and may need technical assistance and other services in order to obtain credit in the future. Supporting these activities fills a gap in needed services for small businesses and small farms and plays a critical role in helping a small business and small farms grow and thrive.

6. Considering Workforce Development and Job Training Under Community Supportive Services

The agencies are proposing that workforce development and job training programs, which are currently qualified as a component of economic development, would instead be considered under the proposed definition of community supportive services. The current regulations do not address workforce development and training programs, but the Interagency Questions and Answers provide that these activities should be considered under the economic development definition. Stakeholders have affirmed the critical importance of workforce development and job training programs for low- and moderate-income individuals or unemployed persons. However, stakeholders have also noted the limitations of current guidance, which requires economic development activities to be tied to a financing activity for a small business. To address this concern, the agencies propose to recognize workforce development activities under the new community supportive services definition. The agencies believe that while the economic development definition could include workforce development and job training activities, such activities are better aligned with the focus of the proposed community supportive services definition, which does not restrict the size of the business involved. The proposal for community supportive services is discussed in greater detail in Section III.D.

Request for Feedback

Question 11. Would lending to small businesses and small farms that may also support job creation, retention, and improvement for low- or moderate-income individuals and communities be sufficiently recognized through the analysis of small business and small farm loans and the qualitative review in the Retail Lending Test?

Question 12. During a transition period, should the agencies continue to evaluate bank loans to small businesses and small farms as community development activities until these loans are assessed as reported loans under the proposed Retail Lending Test?

Question 13. Should the agencies retain a separate component for job creation, retention, and improvement for low- and moderate-income individuals under the economic development definition? If so, should activities conducted with businesses or farms of any size and that create or retain jobs for low- or moderate-income individuals be considered? Are there criteria that can be included to demonstrate that the primary purpose of an activity is job creation, retention, or improvement for low- or moderate-income individuals and that ensure activities are not qualified simply because they offer low wage jobs?

D. Community Supportive Services

The agencies propose to replace ''community services,'' which is a type of activity that has a community development purpose under the current regulation, with a new definition of

[81] *See, e.g.,* Q&A § __.12(g)(4)(i)–1 and Q&A § __.12(g)(3)–1.

[82] *See* Q&A § __.12(g)(3)–1.

[83] *See* Q&A § __.12(g)(3)–1.

''community supportive services.'' Proposed § __.13(d) defines community supportive services as general welfare activities that serve or assist low- or moderate-income individuals, such as childcare, education, workforce development and job training programs, health services, and housing services programs. In specifying these categories, the agencies' goal is to provide clearer standards in the regulation for identifying the kind of activities that qualify under the definition. The change in terminology from ''community services'' to ''community supportive services'' is intended to more clearly distinguish these activities from ''community development services,'' which the proposal generally defines in § __.25(d) as volunteer service hours that meet any one of the community development purposes.

1. Background

a. Current Approach to Community Services

The CRA regulations currently define community development to include ''community services targeted to low- or moderate-income individuals,'' but the regulations do not further define community services.[84] The Interagency Questions and Answers include examples of activities that qualify for consideration as community services, such as programs for low- or moderate-income youth, homeless centers, soup kitchens, healthcare facilities, domestic violence shelters, and alcohol and drug recovery programs serving low- or moderate-income individuals.[85]

b. Stakeholder Feedback on Community Services

Stakeholders generally support continuing to target services to low- or moderate-income individuals, and various stakeholders have expressed support for including clear criteria in the regulation for determining whether a community service is targeted to low- or moderate-income individuals. In addition, some stakeholders have indicated that using a geographic proxy, such as an activity taking place in a low- or moderate-income census tract, should be sufficient to determine whether an activity is qualifying.

2. Defining Community Supportive Services

As discussed above, and in order to increase clarity and consistency, the agencies propose to define community supportive services as general welfare activities that serve or assist low- or moderate-income individuals such as, but not limited to, childcare, education, workforce development and job training programs, health services and housing services programs. The agencies also propose to incorporate standards in the regulation to demonstrate that a community supportive services activity has a primary purpose of serving low- or moderate-income individuals.

Specifically, the agencies propose building on current guidance by both clarifying and expanding upon a non-exclusive list of standards that banks can use to demonstrate that a program or organization primarily serves low- or moderate-income individuals. Examples in the proposal include services provided to students or their families at a school where the majority of students qualify for free or reduced-price meals under the U.S. Department of Agriculture's National School Lunch Program,[86] and services that are targeted to individuals who receive or are eligible to receive Medicaid.[87]

Additionally, the agencies propose that an activity performed in conjunction with a qualified community development organization located in a low- or moderate-income census tract is a community supportive service given that these community-based organizations often serve the community where they are located. This change builds on an example currently included in the Interagency Questions and Answers to clarify within the definition the use of a geographic proxy to determine eligibility for activities.[88]

In addition, as noted previously, the agencies propose to consider workforce development and job training program activities under the definition of community supportive services and not as a component of economic development. The inclusion of workforce development activities within the community supportive services definition helps clarify that activities that support workforce development programs would receive consideration if the program's participants are low- or moderate-income individuals, and would not consider the size of the business.

E. Redefining Revitalization and Stabilization Activities

The agencies propose to replace the current revitalization and stabilization activities component of the community development definitions with six new categories of activities. The agencies intend for this new category of definitions to provide more clarity on the types of activities that qualify, and to better tailor the types of activities that qualify in different targeted geographies. Each of the categories focuses on place-based activities that benefit residents of targeted geographic areas: (i) Revitalization; (ii) essential community facilities; (iii) essential community infrastructure; (iv) recovery activities in designated disaster areas; (v) disaster preparedness and climate resiliency activities; and (vi) qualifying activities in Native Land Areas. These definitions are referred to collectively in this **SUPPLEMENTARY INFORMATION** as the place-based definitions.

The proposed definitions for the first four of these categories—revitalization activities undertaken with government plans, programs or initiatives; essential community facilities; essential community infrastructure; and recovery activities in designated disaster areas—build upon the current regulation's revitalization and stabilization component of the community development definitions and related guidance. Each of the new categories would provide additional clarity by capturing a specific set of activities, rather than falling under one broad category, as is currently the case under the current regulation. In addition, the agencies propose adding two new categories to the place-based definitions that may qualify for CRA consideration: (i) Disaster preparedness and climate resiliency activities and (ii) activities in Native Land Areas. While disaster preparedness and climate resiliency activities, and activities in Native Land Areas are not specified under the current approach, some activities that would qualify under these new categories would also qualify under the current approach, either as revitalization and stabilization, or under other prongs.

The six proposed place-based definitions share four common elements. First, each definition has a geographic focus (*e.g.,* low- or moderate-income census tracts) where the activities must occur. Second, each definition has standardized eligibility criteria that require the activity to benefit local residents, including low- or moderate-income residents, of the targeted geographies. Third, each definition has the eligibility requirement that the activity must not displace or exclude low- or moderate-income residents in the targeted geography. Finally, each definition provides that the activity must be

[84] *See* 12 CFR __.12(g)(2).

[85] *See* Q&A § __&.12(t)–4; and Q&A § __.12(g)(2)–1.

[86] *See* USDA Food and Nutrition Service, National School Lunch Program, *https://www.fns.usda.gov/nslp.*

[87] *See Medicaid.gov,* Medicaid program, *https://www.medicaid.gov/medicaid/index.html.*

[88] *See* Q&A § __.12(g)(2)–1.

conducted in conjunction with a government plan, program, or initiative that includes an explicit focus on benefitting the targeted geography. Together, these four common elements are intended to provide necessary clarity regarding the activities that may qualify for CRA credit, while maintaining sufficient flexibility. In addition, these four common elements are intended to ensure a strong connection between the activities and community needs.

1. Background

a. Current Approach to Revitalization and Stabilization

Under the current regulation, the revitalization and stabilization activities component of the community development definitions is intended to encourage banks to direct additional resources toward comprehensive efforts to rebuild entire communities, rather than solely focusing on the needs of low- and moderate-income individuals in these communities. The current regulations define four types of eligible geographies where activities that revitalize or stabilize qualify: Low- or moderate-income geographies; distressed nonmetropolitan middle-income geographies; underserved nonmetropolitan middle-income geographies; and designated disaster areas.[89]

Current guidance states that revitalization and stabilization activities are those that help to ''attract new, or retain existing, businesses or residents'' in an eligible geography and qualifying activities are generally similar in eligible low- and moderate-income geographies, distressed nonmetropolitan middle-income geographies and designated disaster areas.[90] In all targeted geographies, community facilities and infrastructure can be considered to the extent that these activities help to attract or retain residents or businesses. However, these activities are only explicitly noted in the guidance for underserved nonmetropolitan middle-income areas.[91]

Current guidance also states that an activity will be presumed to revitalize or stabilize a geography if the activity is consistent with a government plan for the revitalization or stabilization of the area.[92] However, the standards in the guidance for the types of plans that can be used to determine eligibility are inconsistent.

The current guidance also varies for the different targeted geographies. For instance, in both distressed and undeserved nonmetropolitan middle-income geographies and designated disaster areas, the guidance specifies that examiners will consider all activities that revitalize or stabilize a geography but give greater weight to those activities that are most responsive to community needs, including needs of low- or moderate-income individuals or neighborhoods.[93] However, in determining whether an activity revitalizes or stabilizes a low- or moderate-income geography, in absence of a Federal, state, local, or tribal government plan, guidance instructs examiners to evaluate activities based on the actual impact on the geography, if that information is available.[94] The Interagency Questions and Answers do not further specify how to measure an activity's actual impact for a targeted geography, which may create varying interpretations. As a result, considering activities under the existing revitalization and stabilization definition can prove challenging to banks, community groups, and examiners alike due to these inconsistent criteria.

b. Stakeholder Feedback on Revitalization and Stabilization

Stakeholders have provided feedback on a number of issues related to the current revitalization and stabilization component of the community development definition. First, stakeholders have noted that current guidance does not provide sufficient upfront clarity about the range of activities that will be eligible for consideration or where the activities must occur to be considered. Various stakeholders also note the need for additional clarity in defining eligible revitalization and stabilization activities, while also maintaining flexibility to meet local needs and/or changing circumstances. Some stakeholders have also indicated that an illustrative list of qualifying revitalization and stabilization activity examples could help provide needed clarity.

Second, some community group stakeholders have noted that not all qualifying activities with a revitalization and stabilization purpose benefit low- or moderate-income individuals or underserved communities. Various community stakeholders indicate that the agencies should update the revitalization and stabilization activities component so that qualifying activities primarily benefit low- or moderate-income residents of targeted, underserved geographies, noting that activities currently considered under revitalization and stabilization do not always provide direct benefit for low- or moderate-income individuals.

Third, stakeholders have indicated varying levels of support for greater consistency regarding government plans to revitalize or stabilize a geography. Some stakeholders have stated that activities should not be required to align with a government plan, but that activities that do align with a government plan should receive automatic CRA consideration. Other stakeholders have stated opposition to placing great emphasis on a government plan as leading to more-or-less automatic qualification of an activity, noting government plans vary widely, including in scope, purpose, level of community engagement, and the rigor of included criteria.

Lastly, many stakeholders have supported providing consideration for activities related to disaster preparedness and climate resiliency. Some stakeholders supported evaluating these activities as essential infrastructure or within the broader category of revitalization activities. Community group stakeholders noted that low- and moderate-income communities are particularly vulnerable to weather-related disasters and expressed that consideration for disaster preparedness and climate resiliency activities should be limited to activities that benefit low- or moderate-income individuals or census tracts. Other stakeholders expressed concerns that the qualifying definitions should not be broadened to include activities whose purpose is to mitigate climate change, such as carbon capture facilities.

2. Common Elements for Proposed Place-Based Definitions

The agencies propose four common elements which would be required eligibility standards for each of the six place-based definitions. First, across all place-based definitions, the agencies propose targeted census tracts where activities would be eligible for consideration. Under this proposal, revitalization activities, essential infrastructure activities, essential community facilities activities, and disaster preparedness and climate resiliency activities would be eligible if they benefit residents of targeted census tracts. As set forth in proposed § __.12,

[89] *See* 12 CFR __.12(g)(4).

[90] *See* Q&A § __.12(g)(4)(i)–1; Q&A § __.12(g)(4)(ii)–2; and Q&A § __.12(g)(4)(iii) –3.

[91] *See* Q&A § __.12(g)(4)(iii)–4.

[92] *See* Q&A § __.12(g)(4)(i)–1; Q&A § __.12(g)(4)(ii)–2; and Q&A § __.12(g)(4)(iii)–3.

[93] *See* Q&A § __.12(g)(4)(ii)–2 and Q&A § __.12(g)(4)(iii)–3.

[94] *See* Q&A § __.12(g)(4)(i)–1.

targeted census tracts include low- and moderate-income census tracts, as well as distressed or underserved nonmetropolitan middle-income census tracts. The proposed approach in § __.13 provides consistency on activities eligible across these targeted census tracts.

Consistent with current guidance, the agencies are also proposing that recovery activities in designated disaster areas qualify in census tracts of all income levels, provided that the activities benefit residents in an area subject to a Federal Major Disaster Declaration, excluding Major Disaster Categories A and B. Qualified activities in Native Land Areas would be eligible in those geographies, as separately defined in proposed § __.12. The agencies' approach of defining geographic eligibility under this framework is intended to tailor the requirements for each definition, while maintaining the flexibility needed for diverse, local redevelopment needs.

Second, the agencies propose that all place-based activities benefit or serve residents of the targeted census tract(s), including low- and moderate-income residents. Adding this specific eligibility requirement establishes the expectation that residents in targeted census tracts must benefit from the activity and is intended to provide greater certainty that an activity is responsive to community needs compared to the current approach that relies upon examiner judgment ''to give greater weight to those activities that are most responsive to community needs'' in targeted geographies.[95] For example, financing to support development of a new industrial park in conjunction with a city-sponsored revitalization plan would be eligible for CRA credit if it benefitted residents of the targeted census tracts by providing new employment opportunities, including for low- and moderate-income residents.

The agencies are not proposing that all place-based activities solely benefit or serve low- or moderate-income residents. Rather, the proposal seeks to maintain flexibility for activities to meet a range of community needs while also requiring the inclusion of low- or moderate-income residents as beneficiaries of an activity. Such flexibility is particularly important in distressed and underserved nonmetropolitan middle-income census tracts, which can have fewer low- or moderate-income residents.

Third, the agencies propose that eligible place-based activities cannot lead to the displacement or exclusion of low- or moderate-income residents in targeted geographies. For example, if low- or moderate-income individuals were not able to have access to or benefit from an activity, then the activity would not meet this part of the definition and would be ineligible for CRA credit. Likewise, as another example, if a project to build commercial development to revitalize an area involved demolishing housing occupied by low- or moderate-income individuals, then the activity would not meet this part of the definition and would be ineligible for CRA credit. In proposing these requirements, the agencies seek to ensure that qualifying activities do not have a detrimental effect on low- or moderate-income individuals or communities or on other underserved communities.

Lastly, under the proposal, activities eligible under the place-based community development definitions would need to be in conjunction with a government plan, program, or initiative that includes an explicit focus on benefitting the targeted census tracts. The current standard in Interagency Questions and Answers states that activities may qualify if consistent with the community's formal or informal plans for the revitalization and stabilization of a low- or moderate-income geography.[96] In addition, under current guidance, activities are presumed to revitalize or stabilize a distressed nonmetropolitan middle-income area if the activity is consistent with a ''bona fide'' government revitalization or stabilization plan.[97]

The agencies' proposal to require activities eligible under the place-based community development definitions to be in conjunction with a government plan, program, or initiative is intended to achieve several objectives. First, this standard helps to ensure that the activity is responsive to identified community needs. Second, the proposed standard is intended to increase clarity, because all activities eligible under the place-based community development definitions would need to meet this criterion. Currently, standards vary across the targeted geographies and the reliance on a plan to demonstrate that an activity helps to attract or retain residents is used inconsistently.

Third, the agencies' proposal is intended to provide flexibility, because it would allow consideration of an activity to be in conjunction with a government plan, program, or initiative. By including consideration for activities in conjunction with a program or initiative, in addition to a government plan, banks would have the flexibility to pursue responsive place-based activities that are in conjunction with a program or initiative even if not part of a plan. For example, a grant to support a park in a low-income census tract could qualify if it was in conjunction with a citywide initiative, or program, to expand greenspace in low- or moderate-income areas. Additionally, the standard of ''in conjunction with'' would provide greater clarity than provided under current guidance by expressly stating that an eligible activity must be included as part of a government plan, program, or initiative.

3. Revitalization Activities Undertaken With a Government Plan, Program, or Initiative

The agencies are proposing a new place-based definition for activities undertaken in conjunction with a Federal, state, local, or tribal government plan, program, or initiative that includes an explicit focus on revitalizing or stabilizing targeted census tracts. While the goals of a plan, program or initiative could include stabilization or revitalization of other geographies, the plan, program, or initiative would also need to specifically include the targeted census tracts. Activities meeting this definition would need to meet the four common elements for place-based criteria described above. This definition incorporates some aspects of existing guidance for revitalization and stabilization but would no longer focus eligibility of activities on the extent that an activity helps to attract or retain residents or businesses in targeted geographies. Instead, activities would be eligible for consideration under this proposal if they are in conjunction with a plan, program, or initiative for the targeted geography, allowing for more comprehensive redevelopment goals. Additionally, conducting activities in conjunction with a government plan, program, or initiative provides a mechanism to ensure that activities are intentional and support articulated community revitalization goals.

The agencies provide several examples in the proposed regulation that are drawn from current guidance to provide some clarity on the type of activities that could be considered under this definition. These examples include adaptive reuse of vacant or blighted buildings, brownfield redevelopment, or activities consistent with a plan for a business improvement district or main street program.

[95] *See* Q&A § __.12(g)(4)(i)–1; Q&A § __.12(g)(4)(ii)–2; and Q&A § __.12(g)(4)(iii)–3.

[96] *See* Q&A § __.12(g)(4)(i)–1.

[97] *See* Q&A § __.12(g)(4)(iii)–3.

However, this list is not exhaustive, and the agencies' intent is to allow flexibility for qualifying activities to help meet a range of identified community needs.

The agencies propose that housing-related activities would not be covered by the definition of revitalization activities. Under current guidance, activities that provide housing for middle-income and upper-income individuals can qualify if the activities meet certain criteria and help to revitalize or stabilize a distressed or underserved nonmetropolitan middle-income geography or designated disaster area.[98] However, some stakeholders have noted concerns that housing that benefits middle- or upper-income individuals, particularly in a low- or moderate-income census tract, can lead to displacement of existing residents. In addition, the agencies note that additional clarity would come from qualifying most housing-related community development activities in the affordable housing definition. The agencies recognize that housing activities are often components of government plans, programs, and initiatives to revitalize communities, and therefore seek feedback on whether housing-related revitalization activities should be considered under either the affordable housing definition or the revitalization activities definition and under what circumstances.

4. Essential Community Infrastructure and Essential Community Facilities

The agencies propose creating separate definitions for essential community infrastructure and for essential community facilities that benefit or serve residents in one or more of the eligible targeted census tracts. Under proposed § __.13(f), activities that qualify as essential community infrastructure are those that provide financing or other support for such items as broadband, telecommunications, mass transit, water supply and distribution, and sewage treatment and collection systems. Activities that qualify as essential community facilities include those that finance or provide other support for public amenities in targeted areas. Illustrative examples of essential community facility activities include, but are not limited to, financing activities to support the development of schools, libraries, childcare facilities, parks, hospitals, healthcare facilities, and community centers. Similar to the other place-based definitions, the agencies specify that activities would need to be in conjunction with a Federal, state, local, or tribal government plan, program, or initiative with an explicit focus on benefitting a geographic area that includes the targeted census tracts. This proposal is intended to ensure that the activities have a clear objective of meeting needs in targeted communities.

The proposal builds on the current Interagency Questions and Answers guidance to clarify that both essential community infrastructure activities and essential community facilities activities would be considered if they are conducted in and benefit or serve residents of low- or moderate-income census tracts, as well as distressed or underserved nonmetropolitan middle-income census tracts. Current guidance explicitly notes that these activities are eligible in underserved middle-income nonmetropolitan geographies, but these activities are only qualified in low- or moderate-income census tracts, distressed nonmetropolitan middle-income census tracts or designated disaster areas if they help attract or retain businesses or residents. Consequently, the current treatment of these activities in targeted geographies is inconsistent, and the agencies' proposal aims to provide more clarity and certainty for when these activities can be considered and to do so consistently across the different categories of targeted census tracts.

The agencies' proposed requirements for all place-based definitions, described previously, is intended to ensure that any qualifying activity related to essential community infrastructure or essential community facilities benefits or serves residents of the eligible targeted census tracts, including low- or moderate-income residents. Several community stakeholders have raised concern that larger scale infrastructure projects can often provide limited benefits for targeted census tracts, especially for low- and moderate-income residents in these geographies. Under the agencies' proposal, such activities are eligible for consideration if there is a demonstrated benefit for the residents of the targeted census tracts and it is evident that low- or moderate-income residents would be beneficiaries of the activity and not be excluded from the larger-scale improvements. For example, a bank could purchase a bond to fund improvements for a city-wide water treatment project that is consistent with a city's capital improvement plan. This project would qualify if it benefits or serves residents in the eligible census tracts to a degree sufficient to meet the primary purpose standard and does not exclude low- or moderate-income residents. The agencies seek feedback on whether any additional criteria for infrastructure and essential community facilities would further ensure that activities include a benefit to low- or moderate-income residents in the communities served by these projects.

5. Recovery Activities in Designated Disaster Areas

The agencies propose a definition for activities targeted to the recovery of designated disaster areas. The needs of these areas often differ from other targeted geographic areas, and the proposed definition is intended to more accurately and specifically describe eligible disaster recovery activities. The proposed definition includes activities that revitalize or stabilize geographic areas subject to a Major Disaster Declaration administered by the Federal Emergency Management Agency (FEMA). Consistent with current guidance, activities in designated disaster areas that meet this eligibility standard would be considered, regardless of the income level of the designated census tracts. The agencies believe activities that promote the recovery of designated disaster areas benefit the entire community, including, but not limited to, low- or moderate-income individuals and low- or moderate-income communities.

To qualify under the proposed definition, a disaster recovery activity would need to be in conjunction with a Federal, state, local, or tribal government disaster plan that includes an explicit focus on the recovery of the geographic area. The proposed definition incorporates existing guidance that states an activity will be presumed to revitalize or stabilize a designated disaster area if the activity is consistent with a bona fide government revitalization or stabilization plan or disaster recovery plan.[99] Examples of activities eligible under this definition include, but are not limited to, assistance with rebuilding infrastructure and other community services, financing to retain businesses that employ local residents, and recovery-related housing or financial assistance to individuals in the designated disaster areas. Additionally, although activities in all census tract income-levels would be considered, these activities would need to be responsive to community needs, including low- or moderate-income community needs, and could not displace or exclude low- or

[98] *See* Q&A § __.12(g)(4)–2.

[99] *See* Q&A § __.12(g)(4)(ii)–2.

moderate-income residents of designated disaster areas.

The agencies considered whether the definition of a designated disaster area should include any FEMA disaster declaration, including areas receiving Categories A and B assistance. However, the agencies believe that activities covered under Categories A and B are generally short-term recovery activities that would significantly expand the number of designated disaster areas where activities could be considered without providing long-term benefits to impacted communities. Therefore, the agencies propose to retain the definition of designated disaster areas included in the Interagency Questions and Answers and propose that exceptions be considered, such as the disaster declarations for the COVID–19 pandemic, on a case-by-case basis.

6. Disaster Preparedness and Climate Resiliency Activities

The agencies propose a definition for disaster preparedness and climate resiliency activities that is separate from the recovery activities in the designated disaster areas category that exists under the current CRA framework. The proposed definition focuses on activities that assist individuals and communities to prepare for, adapt to, and withstand natural disasters, weather-related disasters, or climate-related risks. The proposal would encompass activities in low- or moderate-income census tracts, as well as distressed and underserved nonmetropolitan middle-income census tracts. To be eligible, the proposed disaster preparedness and climate resiliency definition would require these activities to be conducted in conjunction with a government plan, program, or initiative that is focused on disaster preparedness or climate resiliency that includes an explicit focus on benefitting a geographic area that includes the targeted census tracts.

a. Background

There is growing evidence that highlights the ways in which lower-income households and communities are especially vulnerable to the impact of natural disasters and weather-related disasters, as well as climate-related risks.[100] Low- and moderate-income communities are more likely to be located in areas or buildings that are particularly vulnerable to disasters or climate-related risks, such as storm shocks or drought.[101] Since residents of affordable housing are more likely to be low-income, and affordable housing tends to be older and of poorer quality, low- and moderate-income households are more likely to have housing that is susceptible to disaster-related damage.[102] Additionally, lower-income households tend to have fewer financial resources, making them less resilient to the temporary loss of income, property damage, displacement costs, and health challenges they face from disasters.[103] Finally, low- and moderate-income communities are often disproportionately affected by the health impacts associated with natural disasters and climate-related events.[104]

To date, the agencies' CRA regulations have allowed CRA credit for certain activities that help communities, including low- or moderate-income communities, recover from natural disasters. Under the current CRA framework, banks can receive consideration for activities that help to revitalize and stabilize designated disaster areas, such as financial assistance for services to individuals who have been displaced from designated disaster areas, and financial assistance for rebuilding needs.[105] On a limited basis, activities that help designated disaster areas mitigate the impact of future disasters may be considered under CRA if Hazard Mitigation Assistance is included in the FEMA disaster declaration.[106] Outside of activities related to disaster recovery, current CRA guidance provides that consideration will be given for loans financing renewable energy facilities or energy-efficient improvements in either affordable housing or community facilities that otherwise meet the existing definition of community development.[107] Current guidance does not explicitly include activities related to helping low- or moderate-income individuals, low- or moderate-income communities, small businesses, or small farms prepare for disasters or build resilience to future climate-related events.

b. Defining Disaster Preparedness and Climate Resiliency Activities

Under the proposed definition, disaster preparedness and climate resiliency activities are defined as activities that assist individuals and communities to prepare for, adapt to, and withstand natural disasters, weather-related disasters, or climate-related risks. The proposed definition would encompass activities that help low- or moderate-income individuals and communities proactively prepare for or mitigate the effect of disasters and climate-related risks, for example, earthquakes, severe storms, droughts, flooding, and forest fires.

Examples of eligible activities could include, but would not be limited to, developing financial products and services that help residents, small businesses, and small farms in targeted geographies prepare for and withstand the impact of future disasters; supporting the establishment of flood control systems in a flood prone low- or moderate-income or underserved or distressed nonmetropolitan middle-income census tract; and retrofitting affordable housing to withstand future disasters or climate-related events. Additional examples of qualifying activities could include, but would not be limited to: Promoting green space in low- or moderate-income census tracts

[100] Federal Reserve Bank of New York, ''Reducing Climate Risk for Low-Income Communities,'' news release, (Nov. 19, 2020), *https://www.newyorkfed.org/newsevents/events/regional_outreach/2020/1119-2020;* Jesse M. Keenan and Elizabeth Mattiuzzi, ''Climate Adaptation Investment and the Community Reinvestment Act,'' Community Development Research Briefs (June 16, 2019), *https://www.frbsf.org/community-development/publications/community-development-research-briefs/2019/june/climate-adaptation-investment-and-the-community-reinvestment-act/.*

[101] Eleanor Kruse and Richard V. Reeves, Brookings Institution, ''Hurricanes hit the poor the hardest,'', (Sept. 18, 2017), *https://www.brookings.edu/blog/social-mobility-memos/2017/09/18/hurricanes-hit-the-poor-the-hardest/*; U.S. Global Research Program, Fourth National Climate Assessment, Volume II: Impacts, Risks, and Adaptation in the United States (Washington, DC: U.S. Global Change Research Program, 2018), *https://nca2018.globalchange.gov/;* Bev Wilson, Journal of the American Planning Association, Volume 86, 2020—Issue 4, ''Urban Heat Management and the Legacy of Redlining'' (2020), *https://www.tandfonline.com/doi/full/10.1080/01944363.2020.1759127.*

[102] Maya K. Buchanan et al., Environ. Res. Lett. 15 124020 (2020), ''Sea level rise and coastal flooding threaten affordable housing,'' *https://iopscience.iop.org/article/10.1088/1748-9326/abb266.*

[103] U.S. Global Research Program, Fourth National Climate Assessment, Volume II: Impacts, Risks, and Adaptation in the United States (Washington, DC: U.S. Global Change Research Program, 2018), *https://nca2018.globalchange.gov/;* Patrick Sisson, Bloomberg, ''In Many Cities, Climate Change Will Flood Affordable Housing'' (Dec. 1, 2020), *https://www.bloomberg.com/news/articles/2020-12-01/how-climate-change-is-targeting-affordable-housing;* and Eleanor Kruse and Richard V. Reeves, Brookings Institution, ''Hurricanes hit the poor the hardest,'' (Sept. 18, 2017), *https://www.brookings.edu/blog/social-mobility-memos/2017/09/18/hurricanes-hit-the-poor-the-hardest/.*

[104] Eleanor Kruse and Richard V. Reeves, ''Hurricanes hit the poor the hardest,'' Brookings Institution (Sept. 18, 2017), *https://www.brookings.edu/blog/social-mobility-memos/2017/09/18/hurricanes-hit-the-poor-the-hardest/;* U.S. Global Research Program, Fourth National Climate Assessment, Volume II: Impacts, Risks, and Adaptation in the United States (Washington, DC: U.S. Global Change Research Program, 2018), *https://nca2018.globalchange.gov/.*

[105] *See* Q&A § __.12(g)(4)(ii)–2.

[106] *See* FEMA, How A Disaster Gets Declared, *https://www.fema.gov/disaster/how-declared.*

[107] *See* Q&A § __.12(h)–1.

in order to mitigate the effects of extreme heat, particularly in urban areas; energy efficiency improvements to community facilities that lower energy costs; financing community centers that serve as cooling or warming centers in low- or moderate-income census tracts that are more vulnerable to extreme temperatures; infrastructure to protect targeted geographies from the impact of rising sea levels; and assistance to small farms to adapt to drought challenges.

Similar to the other place-based definitions, disaster preparedness and climate resiliency activities would need to meet the required common elements specified in proposed § __.13(e). To ensure that a range of activities qualify for consideration, the agencies have proposed a comprehensive definition of disaster preparedness and climate resiliency activities; however, the agencies recognize that there may be overlap between the various components of the definition. For example, a loan to help develop a levee to prevent flooding in a moderate-income community could qualify as either a preparation to withstand a natural disaster or to adapt to climate-related risks.

The agencies intend that some energy efficiency activities would be eligible under the proposed definition for activities that help low- or moderate-income individuals and communities proactively prepare for, adapt to, or withstand natural disasters, weather-related disasters, or climate-related risks. As noted earlier, under current guidance, consideration could be given for loans that finance energy-efficient improvements in either affordable housing or community facilities that otherwise meet the existing definition of community development. Such activities may help lower utility costs, therefore making housing more affordable to low- and moderate-income individuals and lowering operating expenses for needed community facilities. Examples include, but are not limited to, weatherization upgrades to affordable housing in a targeted census tract, new and more efficient heating and air-cooling systems, or new energy efficient appliances. The agencies seek feedback on whether certain activities that support energy efficiency should be included as an explicit component of the proposed disaster preparedness and climate resiliency definition. Alternatively, the agencies seek feedback on whether these activities should be included when appropriate in other definitions, such as affordable housing and community facilities. Additionally, the agencies seek feedback on whether there should be energy efficiency standards for determining whether an activity provides a sufficient benefit to targeted census tracts, including low- or moderate-income residents.[108]

The agencies also seek feedback on the extent to which energy-related activities that would benefit residents in targeted census tracts should be considered as part of a disaster preparedness and climate resiliency definition. Although distinct from projects that focus on energy-efficiency improvements to housing or other buildings, some stakeholders suggest that focusing on access to renewable energy could also provide important benefits to targeted communities. Under the proposed definition an example of such a qualifying project could include, but would not be limited to, battery storage projects in low- and moderate-income areas with high flood or wind risk, thereby reducing risks of power loss due to flooding and high winds. However, the agencies do not intend that the proposed definition would include utility-scale projects.

The agencies seek feedback on whether the discussion above captures the range of activities that promote disaster preparedness and climate resiliency, and are appropriately tailored to meet the needs in low- and moderate-income communities and distressed or underserved nonmetropolitan middle-income areas.

In order for an activity to be eligible under this definition, the agencies propose that an activity must benefit or serve residents of targeted census tracts—specifically, low- or moderate-income census tracts, as well as distressed and underserved nonmetropolitan middle-income census tracts. The agencies considered whether eligibility for disaster preparedness and climate resiliency activities should extend to designated disaster areas. Activities related to disaster recovery, which can also include some activities to mitigate the impact of future disasters, would still be considered in all designated disaster areas. However, the agencies intend to provide eligibility for disaster preparedness and climate resiliency activities in geographic areas with more limited resources to prepare for, adapt to, and withstand natural disasters, weather-related disasters, or climate-related risks. Therefore, the agencies propose to limit consideration to activities conducted in low- or moderate-income census tracts and distressed or underserved nonmetropolitan middle-income census tracts.

The agencies also seek feedback on whether the disaster preparedness and climate resiliency definition should include a separate prong that specifically focuses on activities that benefit low- or moderate-income individuals. Incorporating a separate prong of the definition for low- or moderate-income individuals would allow consideration in all communities for certain activities that are tied specifically to assisting low- or moderate-income individuals, and not just those in targeted geographies. For example, this could include activities that help low- or moderate-income individuals in any community with weatherization improvements or to establish savings accounts to mitigate the impact from future disasters. The agencies seek feedback on this option, as well as the types of activities that would be appropriate to consider under this prong.

Similar to the other place-based definitions, the agencies propose that disaster preparedness and climate resiliency activities must be in conjunction with a Federal, state, local, or tribal government plan, program, or initiative that includes an explicit focus on benefitting a geographic area that includes the targeted census tracts. This proposal is intended to ensure that the activities have a clear objective of meeting needs in targeted communities. However, the agencies recognize that disaster preparedness or climate resiliency plans or programs may not be in place for some targeted communities. Additionally, some government plans may not be specifically focused on disaster preparation or climate resiliency. Therefore, the agencies seek feedback on whether a plan, program, or initiative provides sufficient standards around what kinds of activities benefit targeted census tracts and should qualify for CRA purposes. The agencies also seek feedback on whether there are other options to determine whether disaster preparedness and climate resiliency activities are appropriately targeted.

Request for Feedback

Question 14. Should any or all place-based definition activities be required to be conducted in conjunction with a government plan, program, or initiative and include an explicit focus of benefitting the targeted census tract(s)?

[108] *See* 12 CFR 1282.34(d)(2) and (d)(3). For example, under its Duty to Serve regulation, the FHFA sets a standard that energy or water efficiency improvements must reduce energy or water consumption by at least 15 percent and that these energy efficiencies generated over an improvement's expected life will exceed the cost of installation.

If so, are there appropriate standards for plans, programs, or initiatives? Are there alternative options for determining whether place-based definition activities meet identified community needs?

Question 15. How should the proposals for place-based definitions focus on benefitting residents in targeted census tracts and also ensure that the activities benefit low- or moderate-income residents? How should considerations about whether an activity would displace or exclude low- or moderate-income residents be reflected in the proposed definitions?

Question 16. Should the agencies include certain housing activities as eligible revitalization activities? If so, should housing activities be considered in all, or only certain, targeted geographies, and should there be additional eligibility requirements for these activities?

Question 17. Should the agencies consider additional requirements for essential community infrastructure projects and essential community facilities to ensure that activities include a benefit to low- or moderate-income residents in the communities served by these projects?

Question 18. Should the agencies consider any additional criteria to ensure that recovery of disaster areas benefits low- or moderate-income individuals and communities?

Question 19. Does the disaster preparedness and climate resiliency definition appropriately define qualifying activities as those that assist individuals and communities to prepare for, adapt to, and withstand natural disasters, weather-related disasters, or climate-related risks? How should these activities be tailored to directly benefit low- or moderate-income communities and distressed or underserved nonmetropolitan middle-income areas? Are other criteria needed to ensure these activities benefit low- or moderate-income individuals and communities?

Question 20. Should the agencies include activities that promote energy efficiency as a component of the disaster preparedness and climate resiliency definition? Or should these activities be considered under other definitions, such as affordable housing and community facilities?

Question 21. Should the agencies include other energy-related activities that are distinct from energy-efficiency improvements in the disaster preparedness and climate resiliency definition? If so, what would this category of activities include and what criteria is needed to ensure a direct benefit to the targeted geographies?

Question 22. Should the agencies consider utility-scale projects, such as certain solar projects, that would benefit residents in targeted census tracts as part of a disaster preparedness and climate resiliency definition?

Question 23. Should the agencies include a prong of the disaster preparedness and climate resiliency definition for activities that benefit low- or moderate-income individuals, regardless of whether they reside in one of the targeted geographies? If so, what types of activities should be included under this prong?

Question 24. Should the agencies qualify activities related to disaster preparedness and climate resiliency in designated disaster areas? If so, are there additional criteria needed to ensure that these activities benefit communities with the fewest resources to address the impacts of future disasters and climate-related risks?

F. Activities With MDIs, WDIs, LICUs, and CDFIs

The agencies are seeking ways to strengthen CRA provisions to support MDIs, WDIs, LICUs, and Treasury Department-certified CDFIs. To emphasize such activity, the agencies propose several provisions related to activities with these entities.

1. Background

a. Current Treatment of MDIs, WDIs, LICUs, and CDFIs

Under the CRA statute, nonminority- or nonwomen-owned financial institutions can receive CRA credit for capital investment, loan participation, and other ventures in cooperation with MDIs, WDIs,[109] and LICUs, provided that these activities help meet the credit needs of local communities in which such institutions and credit unions are chartered. These activities need not also benefit a bank's assessment areas or the broader statewide or regional area that includes the bank's assessment areas.

b. Stakeholder Feedback on MDIs, WDIs, LICUs, and CDFIs

Stakeholders have noted that CRA activities through bank partnerships with MDIs, WDIs, LICUs, and CDFIs are key in helping to meet the credit needs of low- or moderate-income individuals and communities. Stakeholders have supported a stronger emphasis on community development financing and services that support these institutions, including equity investments, long-term debt financing, technical assistance, and contributions to non-profit affiliates. Some stakeholders have suggested the need to increase certainty surrounding the treatment of activities in partnership with MDIs, WDIs, LICUs, and CDFIs. For example, stakeholders have noted that examiners may require extensive documentation that a CDFI assists low-income populations, even though CDFI certification by the Treasury Department is an indication of having a mission of community development.[110] To provide a stronger incentive and reduce burden, most stakeholders support conferring automatic CRA community development consideration for community development activities with Treasury Department-certified CDFIs.

2. Activities Related to MDIs, WDIs, LICUs, and Treasury Department-Certified CDFIs

The agencies propose a definition in § __.13 specific to MDIs, WDIs, LICUs, and Treasury Department-certified CDFIs. In addition, in § __.12, the proposal defines the term MDI in two ways. For purposes of a bank engaging in an activity described in 12 U.S.C. 2907(a) (*i.e.,* a bank that donates, sells on favorable terms, or makes certain branches available on a rent-free basis to an MDI), the proposal defines MDI by cross-reference to the definition of the term in 12 U.S.C. 2907(b)(1). Section 2907(b)(1) states that an MDI is a depository institution (as defined in 12 U.S.C. 1813(c)) in which (i) more than 50 percent of the ownership or control is held by one or more minority individuals and (ii) more than 50 percent of the net profit or loss of which accrues to one or more minority individuals).[111] For all other purposes, the proposal defines an MDI as a bank that (i) meets the 12 U.S.C. 2907(b)(1) definition; (ii) is an MDI as defined in section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 1463 note);

[109] The terms minority-owned financial institution and women-owned financial institution are not defined in the CRA statute. *See* 12 U.S.C. 2903(b). The CRA statute does define similar terms for minority depository institution (MDI) and women's depository institution (WDI) for purposes of the branch-related activities referenced in 12 U.S.C. 2907(a). This **SUPPLEMENTARY INFORMATION** uses MDI and WDI unless it is necessary to use the terms minority-owned financial institution or women-owned financial institution for clarity.

[110] *See* Treasury Department, Community Financial Institutions Fund, CDFI Certification, *https://www.cdfifund.gov/programs-training/certification/cdfi.*

[111] Two sections of the CRA statute reference minority- and women-owned institutions: 12 U.S.C. 2903(b) and 12 U.S.C. 2907. However, these sections use different terms for these institutions (*e.g.,* 12 U.S.C. 2903(b) uses the term ''minority- and women-owned financial institutions'' and 12 U.S.C. 2907 uses the terms ''minority depository institution'' and ''women's depository institution''). Note that the definitions in the CRA statute apply only to the activities referenced in 12 U.S.C. 2907.

or (iii) is considered to be a MDI by the appropriate Federal banking agency. The agencies based the second part of the definition on 12 U.S.C. 4703a(a)(6).[112]

By recognizing these two contexts, the proposal both ensures consistency with the CRA statute and provides flexibility for each agency to define MDI as it determines appropriate. Specifically, the proposal limits the definition of MDI to the definition in 12 U.S.C. 2907 where required by the CRA statute and includes a broader definition where legally permissible, namely for other activities conducted in cooperation with ''minority- and women-owned financial institutions'' (as described in 12 U.S.C. 2903(b)). By including both parts of the definition, the proposal would ensure that activities conducted in cooperation with banks owned by minority individuals receive consideration and provide consideration for activities conducted in cooperation with banks that the agencies have long considered to be MDIs.[113] Although 12 U.S.C. 2903(b) only references banks owned by minority individuals, the agencies believe including other banks designated by the agencies as MDIs in the definition is appropriate in light of the characteristics of these banks and the communities they serve. In addition, including all banks designated by the agencies as MDIs in the proposed definition would provide consistency between the CRA regulatory framework and the agencies' other policies and initiatives.

The proposal defines WDI by cross-reference to the definition of the term in 12 U.S.C. 2907(b)(2) (a depository institution (as defined in 12 U.S.C. 1813(c)) in which (i) more than 50 percent of the ownership or control is held by one or more women; (ii) more than 50 percent of the net profit or loss of which accrues to one or more women; and (iii) a significant percentage of senior management positions are held by women). An alternative definition option is unnecessary because none of the agencies define the WDI in a way that differs from the 12 U.S.C. 2907(b)(2) definition. For example, in SR 21–6 (Highlighting the Federal Reserve System's Partnership for Progress Program for Minority Depository Institutions and Women's Depository Institutions), the Board defines WDI by cross-reference to the 12 U.S.C. 2907(b)(2) definition.[114]

The agencies propose two other changes to the regulation involving MDIs, WDIs, LICUs, and CDFIs. First, investments, loan participations, and other ventures undertaken by any bank, including by MDIs and WDIs, in cooperation with other MDIs, other WDIs, or LICUs, would be considered.

The agencies also seek feedback on whether activities undertaken by an MDI or WDI to promote its own sustainability and profitability should qualify for consideration. Under this approach, eligibility could be limited to activities that demonstrate meaningful investment in the MDI or WDI's business, such as improving internal technology and systems, hiring new staff, opening a new branch, or expanding product offerings. Allowing these activities to qualify could encourage new investments to bolster the financial positions of these banks, allowing them to deploy additional resources to help meet the credit needs of their communities. Under this alternative, the agencies also seek feedback on specific eligibility criteria to ensure investments by MDIs or WDIs in themselves would ultimately benefit low- or moderate-income and other underserved communities.

Second, regarding CDFIs, the agencies propose that all activities with Treasury Department-certified CDFIs would be eligible CRA activities. Specifically, lending, investment, and service activities by any bank undertaken in connection with a Treasury Department-certified CDFI, at the time of the activity, would be presumed to qualify for CRA credit given these organizations would need to meet specific criteria to prove that they have a mission of promoting community development and provide financial products and services to low- or moderate-income individuals and communities. The agencies propose that activities undertaken by any bank in connection with a non-Treasury Department-certified CDFI could also qualify for CRA consideration if the activity separately met the defined eligibility criteria of a different prong of the community development definition. For example, a bank activity with a non-Treasury Department-certified CDFI to finance a rental housing project that serves low- or moderate-income individuals using a state subsidy program would qualify by meeting a prong of the affordable housing definition.

Request for Feedback

Question 25. Should the agencies also include in the MDI definition insured credit unions considered to be MDIs by the National Credit Union Administration?

Question 26. Should the agencies consider activities undertaken by an MDI or WDI to promote its own sustainability and profitability? If so, should additional eligibility criteria be considered to ensure investments will more directly benefit low- and moderate-income and other underserved communities?

G. Financial Literacy

The agencies propose a separate definition for activities that assist individuals and families, including low- and moderate-income individuals and families, to make informed financial decisions regarding managing income, savings, credit, and expenses, including with respect to homeownership. Under the proposed rule, a bank would receive consideration for these activities without regard to the income level of the beneficiaries.

[112] Under 12 U.S.C. 4703a(a)(6), the term ''minority depository institution'' means an entity that is (1) an MDI, as defined in section 308 of the FIRREA (12 U.S.C. 1463 note); (2) considered to be an MDI by (i) the appropriate Federal banking agency or (ii) the National Credit Union Administration, in the case of an insured credit union; or (3) listed in the FDIC's Minority Depository Institutions List published for the Third Quarter 2020. In this proposal, the agencies did not include insured credit unions designated by the National Credit Union Administration as MDIs but are seeking feedback on whether they should be included. In addition, the proposal does not include the FDIC's Minority Depository Institutions List published for the third quarter of 2020 because it reflects a point in time and the list is updated regularly.

[113] *See* OCC, News Release 2013–94, ''Comptroller Curry Tells Minority Depository Institutions OCC Rules Make It Easier for Minority Institutions to Raise Capital,'' Policy Statement on Minority National Banks and Federal Savings Associations (June 13, 2013), *https://www.occ.gov/news-issuances/news-releases/2013/nr-occ-2013-94.html* (permits banks that no longer meet the minority ownership requirement to continue to be considered minority depository institutions if they serve a predominantly minority community); Board, SR 21–6/CA 21–4: ''Highlighting the Federal Reserve System's Partnership for Progress Program for Minority Depository Institutions and Women's Depository Institutions'' (Mar, 5, 2021), *https://www.federalreserve.gov/supervisionreg/srletters/SR2106.htm* (permits designation as a minority depository institution if the majority of a bank's board of directors consists of minority individuals and the community that the bank serves is predominantly minority); and FDIC, Statement of Policy Regarding Minority Depository Institutions (June 15, 2021), *https://www.fdic.gov/regulations/laws/rules/5000-2600.html#fdic5000policyso* (permits designation as a minority depository institution if a majority of the bank's board of directors consists of minority individuals and the community that the bank serves is predominantly minority).

[114] SR 21–6/CA 21–4 (Mar. 5, 2021), *https://www.federalreserve.gov/supervisionreg/srletters/SR2106.htm. See also* FDIC (June 15, 2021), *https://www.fdic.gov/regulations/laws/rules/5000-2600.html#fdic5000policyso*; OCC, News Release 2013–94 (June 11, 2013), *https://www.occ.treas.gov/static/licensing/form-minority-owned-policy.pdf* (including depository institutions that are owned by women in the OCC's definition of MDI but not specifically defining WDI in its Policy Statement on Minority National Banks and Federal Savings Associations).

1. Background

Current Approach. Under current guidance, eligible financial services, education, and housing counseling activities are included as examples of community development services.[115] These activities must be targeted to low- or moderate-income individuals, such as financial education in a school where the majority of students receive free or reduced-price lunch or a housing counseling program in a low-income neighborhood.[116]

Stakeholder Feedback. Many industry stakeholders have expressed support for expanding consideration of financial education and housing counseling to include activities that benefit all income levels, as these activities can provide benefit to the financial well-being of an entire community. These stakeholders have noted that the need for financial education also exists for seniors, veterans, rural communities, and other groups of people of all income levels, including low- or moderate-income individuals. In addition, because financial literacy and housing counseling are, in practice, primarily delivered to low- or moderate-income individuals, some stakeholders have stated that the need to obtain income documentation may be less important.

Alternatively, many community group stakeholders have opposed expanding consideration of financial education and housing counseling to include activities that benefit all income levels. Some of these stakeholders have expressed concern that expanding financial education and housing counseling activities to recipients of all income levels will result in a reduction in programs directly benefiting low- or moderate-income individuals and communities.

2. Activities Related to Financial Literacy

The agencies propose to recognize financial literacy activities that assist individuals and families, including low- or moderate-income individuals and families, to make informed financial decisions regarding managing income, savings, credit, and expenses, including with respect to homeownership.[117] This expansion would limit the need to track income levels of participants taking part in financial literacy activities, which is sometimes difficult to obtain for persons who are not already loan customers of banks.

Under this proposal, for example, a financial planning seminar with senior citizens or a financial education program for children in a middle-income school district would qualify for consideration. However, qualifying activities could not be targeted to, or solely benefit, middle- and upper-income individuals or families in order to be consistent with the intent of CRA to serve the credit needs of all communities, including low- and moderate-income communities. Therefore, these activities would need to benefit and provide needed services to the entire community, including low- or moderate-income individuals and families.

Request for Feedback

Question 27. Should consideration of financial literacy activities expand to include activities that benefit individuals and families of all income levels, including low- and moderate-income, or should consideration be limited to activities that have a primary purpose of benefiting low- or moderate-income individuals or families?

H. Activities in Native Land Areas

The agencies propose a new definition of qualifying activities in Native Land Areas in § __.13(l) for community development activities related to revitalization, essential community facilities, essential community infrastructure, and disaster preparedness and climate resiliency that are specifically targeted to and conducted in Native Land Areas (which is separately defined in proposed § __.12). The Native Land Areas proposed definition in § __.12 leverages other Federal and state designations of Native and tribal lands.

1. Background

Available data indicate that Native and tribal communities face significant and unique community development challenges. For example, the poverty rate among Native individuals on reservations is 36 percent, and exceeds 50 percent in some communities.[118] Basic infrastructure in tribal communities significantly lags the rest of the country, with over one-third of Native households in tribal areas affected by significant physical problems with their housing, including deficiencies with plumbing, heating, or electric—a share nearly five times greater than for the United States population as a whole.[119] In addition, there are low rates of broadband and cellular access in many tribal communities, with 28 percent of all tribal lands and 47 percent of rural tribal lands lacking broadband and cellular access.[120]

Current Approach. The current CRA regulations do not include a specific definition for certain community development activities in Native Land Areas, although current guidance encompasses activities consistent with a tribal government plan if the activities are located in low- or moderate-income census tracts.[121] The rescinded OCC 2020 CRA final rule adopted definitions of both ''Indian country'' and ''other tribal and Native lands,'' and designated certain activities as being eligible in these geographic areas.[122]

Stakeholder Feedback. Some community group stakeholders have supported establishing a clear geographic definition of tribal areas where banks may receive CRA consideration for certain qualifying activities under the agencies' CRA regulations. Several stakeholders have indicated support for a geographic definition that is broader than the statutory definition for Indian country under 18 U.S.C. 1151. These stakeholders note that only using this statutory definition of Indian country would exclude lands that are also typically thought of as Native and tribal lands. Additional geographic options suggested by stakeholders include Hawaiian Home Lands,[123] state-recognized and tribally-defined U.S. Census Bureau Tribal Statistical Areas, and certain other U.S. Census Bureau statistical areas.

[115] *See* Q&A § __.12(i)–3.

[116] *See* Q&A § __.12(h)–8.

[117] *See* Marina L. Myhre and Nicole Elsasser Watson, ''Housing Counseling Works,'' HUD, Office of Policy Development and Research (Sept. 2017), *https://www.huduser.gov/portal/sites/default/files/pdf/Housing-Counseling-Works.pdf.*

[118] The Federal Reserve Bank of Minneapolis's Center for Indian Country Development calculated poverty rates for the American Indian and Alaska Native population living on federally recognized reservations and off-reservation trust lands using the U.S. Census Bureau's American Community Survey 5-Year 2015–2019 data. Thirty of these land units had American Indian and Alaska Native poverty rates above 50 percent. Under the more expansive U.S. Census Bureau definition of Native lands, this number grows to 56.

[119] HUD, ''Housing Needs of American Indians and Alaska Natives in Tribal Areas: A Report From the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs'' (2017), *https://www.huduser.gov/portal/publications/HNAIHousingNeeds.html.*

[120] Federal Communications Commission, 2020 Broadband Deployment Report, p. 29 (2020), *https://www.fcc.gov/reports-research/reports/broadband-progress-reports/2020-broadband-deployment-report.*

[121] *See* Q&A § __.12(g)(4)(i)–2 and Q&A § __.12(g)(4)(iii)–3.

[122] *See* 85 FR 34734 (June 5, 2020).

[123] ''Hawaiian home lands'' are areas held in trust for Native Hawaiians by the State of Hawaii under the Hawaiian Homes Commission Act of 1920. *See* Hawaiian Homes Commission Act, 1920, ch. 42, 42 Stat. 108 (July 9, 1921).

2. Native Land Areas Definition

Under § __.12, the agencies propose to define ''Native Land Areas'' to include the following geographic areas: Indian country, land held in trust by the United States for Native Americans, state American Indian reservations, Alaska Native villages, Hawaiian Home Lands, Alaska Native Village Statistical Areas, Oklahoma Tribal Statistical Areas, Tribal Designated Statistical Areas, American Indian Joint-Use Areas, and state-designated Tribal Statistical Areas. More specifically, the following components are reflected in the proposed definition:

- *Indian country* means, as defined in 18 U.S.C. 1151: (i) All land within the limits of any Indian reservation under the jurisdiction of the U.S. Government; (ii) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and (iii) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.
- *Land held in trust by the United States for Native Americans,* as described in 38 U.S.C. 3765(1)(A).
- *State American Indian reservations* means those reservations established by a state government for tribes recognized by the state.[124]
- *Alaska Native village* means, as defined in 43 U.S.C. 1602(c), any tribe, band, clan, group, village, community, or association in Alaska that is recognized pursuant to the Alaska Native Claims Settlement Act of 1972.
- *Hawaiian Home Lands* means lands that have the status of Hawaiian Home Lands as defined in section 204 of the state of Hawaii's Hawaiian Homes Commission Act.[125]
- *Alaska Native Village Statistical Area* means the more densely settled portion of Alaska Native villages, as presented in statistical data by the Census Bureau.[126]
- *Oklahoma Tribal Statistical Area* means statistical areas identified and delineated by the U.S. Census Bureau in consultation with federally recognized American Indian tribes based in Oklahoma.[127]
- *Tribal-Designated Statistical Areas* means areas identified and delineated for the U.S. Census Bureau by American Indian tribes that do not currently have a reservation or off-reservation trust land.[128]
- *American Indian Joint Use Areas* means a statistical area defined by the U.S. Census Bureau that is administered jointly and/or claimed by two or more American Indian tribes.[129]
- *State-designated Tribal Statistical Areas* means the land areas of Indian tribes and heritage groups that are recognized by individual states as defined and identified by the U.S. Census Bureau's annual Boundary and Annexation Survey.[130]

Under the agencies' proposal, Native Land Areas would be comprised of a very similar list of categories to those included in the rescinded OCC 2020 CRA final rule. This reflects stakeholder feedback supporting comprehensive incorporation of Native geographies. The proposal would include the definition of Indian country under 18 U.S.C. 1151, which includes all land within the limits of any Indian reservation under the jurisdiction of the U.S. Government, whether created by statute or executive order.

The proposed definition of Native Land Areas also includes areas typically considered by the Bureau of Indian Affairs (BIA) and the U.S. Census Bureau as Native geographies. Accordingly, Native Land Areas would include all geographic areas delineated as U.S. Census Bureau American Indian/Alaska Native/Native Hawaiian (AIANNH) Areas and/or BIA Land Area Representations. Robust, publicly available data files (''shapefiles''), defining the boundaries of these geographies are actively maintained by the U.S. Census Bureau and BIA, respectively.[131]

3. Qualifying Activities in Native Land Areas

To help address the challenges specific to Native Land Areas, the agencies propose creating a definition for qualifying community development activities targeted to and conducted in these geographic areas to include:

- Revitalization activities in Native Land Areas;
- Essential community facilities in Native Land Areas;
- Essential community infrastructure in Native Land Areas; and
- Disaster preparedness and climate resiliency activities in Native Land Areas.[132]

The agencies propose that essential community facilities, eligible community infrastructure, and disaster preparedness and climate resiliency activities in Native Land Areas must benefit or serve residents, including low- or moderate-income residents of Native Land Areas, without displacing or excluding low- or moderate-income residents. In addition, these activities would need to be conducted in conjunction with a Federal, state, local, or tribal government plan, program, or initiative that benefits or serves residents of Native Land Areas, without displacing or excluding low- or moderate-income residents of such geographic areas.

Separately, the agencies are proposing that revitalization activities in Native Land Areas have a more specific focus on low- and moderate-income individuals. Specifically, the agencies are proposing that under this definition revitalization activities must benefit or serve residents of Native Land Areas and must include substantial benefits for low- or moderate-income residents. For example, a bank's purchase of a bond to fund an industrial revitalization project in a Native Land Area would qualify for consideration if a majority of the employment opportunities created by the project benefitted low- or moderate-income residents, and the activity met other required criteria. Revitalization activities in Native Land Areas also would need to be undertaken in conjunction with a Federal, state, local, or tribal government plan,

[124] *See* U.S. Census Bureau, State American Indian Reservations, *https://www.census.gov/programs-surveys/geography/about/glossary/aian-definitions.html.*

[125] *See* U.S. Census Bureau, TIGERweb: Hawaiian Home Lands, *https://tigerweb.geo.census.gov/tigerwebmain/TIGERweb_geography_details.html#HHL.*

[126] *See* U.S. Census Bureau, TIGERweb: Alaska Native Village Statistical Areas, *https://tigerweb.geo.census.gov/tigerwebmain/TIGERweb_geography_details.html#ANVSA.*

[127] *See* U.S. Census Bureau, TIGERweb: Oklahoma Tribal Statistical Area, *https://tigerweb.geo.census.gov/tigerwebmain/TIGERweb_geography_details.html#OTSA.*

[128] *See* U.S. Census Bureau, Tribal Designated Statistical Areas, *https://tigerweb.geo.census.gov/tigerwebmain/TIGERweb_geography_details.html#TDSA.*

[129] *See* U.S. Census Bureau, TIGERweb: American Indian Joint Use Areas, *https://tigerweb.geo.census.gov/tigerwebmain/TIGERweb_geography_details.html#:~:text=Joint%2DUse%20Areas%2C%20as%20applied,purpose%20of%20presenting%20statistical%20data.*

[130] *See* U.S. Census Bureau, State-designated Tribal Statistical Areas, *https://tigerweb.geo.census.gov/tigerwebmain/TIGERweb_geography_details.html#SDTSA.*

[131] *See* U.S. Census Bureau, AIANNH shapefile, *https://www2.census.gov/geo/tiger/TIGER2021/AIANNH/,* and Bureau of Indian Affairs, U.S. Department of the Interior, Land Area Representation shapefile, *https://biamaps.doi.gov/bogs/datadownload.html.*

[132] The agencies note that in addition to the place-based community development activities described in this section, other community development activities (*i.e.,* affordable housing or economic development) could also qualify for consideration in Native Land Areas provided that they otherwise meet the eligibility standards for that particular activity.

program, or initiative with explicit focus on revitalizing or stabilizing Native Land Areas and a particular focus on low- or moderate-income households. The agencies propose this more targeted standard because these areas include some middle- and upper-income census tracts. The agencies believe that it is therefore important to establish a stronger nexus between these activities and the low- and moderate-income residents who reside in these areas to ensure that activities provide community benefit.

The agencies seek feedback on whether to consider activities in Native Land Areas undertaken in conjunction with plans, programs, or initiatives through designees of tribal governments in addition to those with Federal, state, local, or tribal governments. Tribal government designees such as tribal housing authorities, tribal associations and intertribal consortiums are central to economic development and community planning efforts in many Native Land Areas. For example, in Alaska and California, tribal associations or consortiums play a significant role in the delivery of government services to tribal communities. The Federal Government sometimes also contracts directly with these types of intertribal associations to deliver public health and other services to meet its trust obligations to these tribes.[133] Stakeholders also note that some tribal governments have limited administrative capacity to develop or execute formal plans. Expanding this criterion to include other types of tribal designees would therefore serve to expand place-based community development activity eligibility for Native communities where tribal governments are not the primary or only entities that deliver government services.

As part of the proposal, the agencies considered adding a requirement that tribal governments be consulted for an activity to be eligible under this definition. However, the agencies believe that such a requirement could be overly restrictive and impractical to implement. Instead of focusing only on tribal governments, the proposed definition would allow an activity to qualify if it is undertaken in conjunction with a Federal, state, local, or tribal government plan, program, or initiative. The agencies were concerned that limiting eligibility to only those activities where tribal governments had been consulted could diminish the scope of the activities eligible under the definition due to the time and resource constraints of tribal governments.[134] The agencies seek comment on appropriate criteria to tailor the proposed definition to activities benefiting residents of Native Land Areas, including low- or moderate-income individuals, and meeting revitalization, essential community facility, essential community infrastructure, or climate resiliency needs.

Request for Feedback

Question 28. To what extent is the proposed definition of Native Land Areas inclusive of geographic areas with Native and tribal community development needs?

Question 29. In addition to the proposed criteria, should the agencies consider additional eligibility requirements for activities in Native Land Areas to ensure a community development activity benefits low- or moderate-income residents who reside in Native Land Areas?

Question 30. Should the agencies also consider activities in Native Land Areas undertaken in conjunction with tribal association or tribal designee plans, programs, or initiatives, in addition to the proposed criteria to consider activities in conjunction with Federal, state, local, or tribal government plans, programs, or initiatives?

IV. Qualifying Activities Confirmation and Illustrative List of Activities

To provide stakeholders with additional certainty in determining what community development activities qualify, the agencies propose maintaining a publicly available illustrative, non-exhaustive list of activities eligible for CRA consideration. The agencies also propose including a process for modifying the illustrative list of activities periodically. In addition, the agencies are proposing a process, open to banks, for confirming eligibility of qualifying community development activities.

A. Current Approaches To Confirming Eligibility of Qualifying Community Development Activities

Currently, as part of their CRA examinations, banks submit community development activities that were undertaken without an assurance these activities are eligible. Knowing that an activity previously qualified can frequently provide banks with some confidence that the same types of activities are likely to receive consideration in the future. However, new, less common, more complex, or innovative activities might require examiner judgment and the use of performance context to determine whether an activity qualifies for CRA purposes. For these activities, stakeholders might know only at the end of an examination—and after a loan or investment has been made or a service provided—whether an activity will receive CRA credit. Stakeholders strongly support incorporating additional methods into CRA for improving upfront certainty related to what community development activities qualify for consideration.[135]

B. Stakeholder Feedback on Confirmation and Illustrative List

Stakeholders have indicated broad support for a non-exhaustive, illustrative list of qualifying activities similar to the list required by and implemented in accordance with the rescinded OCC 2020 CRA final rule. Some stakeholders have expressed that the illustrative list ensured more flexibility in engaging in new and innovative activity. Stakeholders noted that the list should be specific and include the examples of qualified activities from the current Interagency Questions and Answers. Some stakeholders suggested a searchable list,

[133] Federal programs such as the Indian Community Development Block Grant define eligible applicants using 25 U.S.C. 5304, a portion of the Indian Self Determination and Education Act. Under this definition, eligible applicants or recipients for programs serving Native Americans are not strictly limited to tribal governments. Other examples of this practice include a 2021 expansion of eligible Native American groups related to the Public Works and Economic Development Act of 1965 (86 FR 52957 (Sept. 24, 2021)), and the Indian Energy Tribal Development and Self-determination Act Amendments of 2017, which expanded the groups eligible to apply for the Indian Tribal Energy Development and Self Determination Act to include intertribal organizations and tribal energy development organizations. *See* Public Law 115–325, 132 Stat. 4445 (Dec. 18, 2018).

[134] *See* Board, ''Growing Economies in Indian Country: Taking Stock of Progress and Partnerships: A Summary of Challenges, Recommendations, and Promising Efforts,'' (May 1, 2012), *https://www.federalreserve.gov/newsevents/conferences/indian-country-publication.htm.*

[135] The OCC maintains a confirmation process that is not codified in the CRA regulations in which national banks, savings associations, and other interested parties may request confirmation that a loan, investment, or service is consistent with existing CRA regulations. The OCC also maintains an illustrative list on its website as a reference for national banks, savings associations, and other interested parties to determine whether activities that they conducted while the OCC 2020 CRA final rule was in effect were eligible for CRA consideration; however, activities included on that illustrative list may not receive consideration if conducted after January 1, 2022, when the rescission of the OCC 2020 CRA final rule became effective. *See* OCC, CRA Qualifying Activities and Confirmation Request, *https://www.occ.gov/topics/consumers-and-communities/cra/qualifying-activity-confirmation-request/index-cra-qualifying-activities-confirmation-request.html.*

and others suggested that the list identify activities that do not qualify.

Stakeholders also expressed support for a confirmation process for determining, in a timely manner, if an activity qualifies as a community development activity in order to provide greater certainty.

C. Qualifying Activities Confirmation and Illustrative List of Activities

To provide additional upfront certainty, in § __.14, the agencies propose the maintenance of an illustrative list of qualifying activities and a method to confirm eligibility of activities.

First, the agencies propose to establish a publicly available illustrative, non-exhaustive list of activities eligible for CRA community development consideration. Stakeholders have supported this approach as a way to illustrate loans, investments, and services that meet the CRA community development criteria while retaining those criteria as the determinative factors in eligibility for qualifying community development activities. Under this approach, the list would provide examples that help clarify the regulatory meaning of key community development terms. Although some stakeholders have expressed concern that a list may serve to limit innovation by leading banks to focus primarily on activities found on the list, the agencies seek feedback on whether the benefit of greater certainty outweighs this potential concern.

The agencies are also proposing a formal mechanism for banks to receive feedback in advance or after the fact on whether proposed community development activities would be considered eligible for CRA. This approach would allow a bank evaluated under CRA to request that the agencies confirm that an activity is eligible for CRA community development consideration. Although some stakeholders wanted the confirmation process to be open to all stakeholders, including community groups, as is the case for the process implemented by the OCC, the agencies believe that the proposal to limit the requestors to banks evaluated under CRA would accomplish the desired goal of increased certainty of eligibility. While other stakeholders may have an interest in ensuring certain activities qualify for community development consideration, ultimately, these stakeholders are not subject to CRA examinations. Banks evaluated under CRA may request confirmation of activities under consideration, including activities that may have been presented to them by other stakeholders. When the agencies confirm that an activity is or is not eligible for CRA community development consideration, the requestor would be notified, and the agencies may add the activity to the publicly available list. Instead of being static, the periodic update to the list would allow it to be flexible and incorporate new activities.

Request for Feedback

Question 31. Should the agencies also maintain a non-exhaustive list of activities that *do not* qualify for CRA consideration as a community development activity?

Question 32. What procedures should the agencies develop for accepting submissions and establishing a timeline for review?

Question 33. Various processes and actions under the proposed rule, such as the process for confirming qualifying community development activities in § __.14, the designation of census tracts in § __.12, and, with respect to recovery activities in designated disaster areas, the determination of temporary exception or an extension of the period of eligibility of activities under § __.13(h)(1), would involve joint action by the agencies. The agencies invite comment on these proposed joint processes and actions, as well as alternative processes and actions, such as consultation among the agencies, that would be consistent with the purposes of the Community Reinvestment Act.

V. Impact Review of Community Development Activities

The agencies propose to conduct an impact review of community development activities under the Community Development Financing Test, the Community Development Financing Test for Wholesale or Limited Purpose Banks, and the Community Development Services Test. The impact review would qualitatively evaluate the impact and responsiveness of qualifying activities with respect to community credit needs and opportunities.

In § __.15, the agencies propose specific impact review factors that would inform the evaluation. A greater volume of activities aligning with the impact review factors would positively impact conclusions for each test. The approach of incorporating specific impact review factors into the qualitative evaluation is intended to promote clear and consistent procedures, which would result in a more standardized application of qualitative factors compared with current practices. In addition, this approach encourages banks to pursue activities with a high degree of impact on and responsiveness to the needs of low- or moderate-income communities.

The evaluation of impact and responsiveness would include, but would not be limited to, a set of specific factors provided in the regulation. In addition, the agencies may consider information that demonstrates an activity's significant impact on and responsiveness to local community development needs, such as detailed information about a bank's activities, local data regarding community needs, and input from community stakeholders.

A. Background

1. Current Approach to Qualitative Review

Currently, the agencies' qualitative assessment of a bank's community development performance takes into account the extent to which a bank's community development activities are innovative and complex. In addition, the agencies consider whether a bank's activities reflect leadership and are responsive to community needs.[136] These terms are generally defined in the Interagency Questions and Answers, and guidance explains that an examiner will consider both quantitative and qualitative aspects of a bank's community development activities.[137] Certain activities may be considered more responsive than others if those activities effectively meet an identified community development need.[138] Innovativeness takes into account whether a bank implements meaningful improvements to products, services, or delivery systems to respond to community needs.[139] The qualitative aspects of the bank's community development activities are assessed based on information provided by the bank and in light of performance context and other information about credit and community development needs in the local community.

While current guidance emphasizes the importance of a qualitative review of a bank's community development activities and recognizes that certain activities are more responsive than others, there are no clear standards for how these factors are measured. As a result, the evaluation relies heavily on examiner judgment.

2. Stakeholder Feedback

Stakeholders have suggested that the current approach for the qualitative evaluation of community development

[136] *See* Q&A § __.21(a)–2.

[137] *See* Q&A § __.21(a)–3.

[138] *Id.*

[139] *See* Q&A § __.21(a)–4.

activities could be more transparent and consistent. For example, determining whether an activity is innovative is reliant on examiner judgment. In addition, stakeholders have expressed that the qualitative assessment could have a stronger focus on the impact and responsiveness of a bank's community development activities and, relatedly, that it could be more clearly linked to CRA's core purpose of serving low- and moderate-income individuals and communities. For example, stakeholders have noted that the criteria of ''innovative'' and ''complex'' are not necessarily targeted toward the ultimate impact of the activity; an activity might be highly complex without being highly impactful or responsive to low- and moderate-income communities. Lastly, stakeholders have noted that more clarity is needed to better understand which activities have been deemed more responsive or innovative by examiners as this information is not consistently presented in performance evaluations.

B. Impact Review Factors

In § __.15, the agencies propose the following impact review factors for the qualitative evaluation of community development activities under the Community Development Financing Test, the Community Development Financing Test for Wholesale or Limited Purpose Banks, and the Community Development Services Test.

1. Activities Serving Persistent Poverty Counties and Geographies With Low Levels of Community Development Financing

The agencies propose several impact review factors for activities in specific geographic areas with significant community development needs. Serving these geographies would reflect a high level of responsiveness because the activities could increase economic opportunity where it is needed most and may involve a high degree of complexity and effort on the part of the bank. First, the agencies are proposing activities serving persistent poverty counties as one impact review factor. The agencies are seeking feedback on whether activities serving high poverty census tracts should be included in this impact review factor. Second, the agencies are also proposing to include activities serving areas with low levels of community development financing as an impact review factor.

Persistent Poverty Counties. The agencies are proposing to identify activities in persistent poverty counties, defined as counties with a poverty rate of at least 20 percent over each of the past three decades, as an impact review factor.[140] The agencies estimate that 5.3 percent of the U.S. population lives in persistent poverty counties, using population estimates from the 2015–2019 American Community Survey.[141] A focus on persistent poverty counties would highlight activities serving areas with longstanding economic challenges where community development needs are significant. For example, the agencies analyzed economic data to estimate which counties would be identified under this approach and found a large concentration of counties located in the Mississippi Delta, Appalachia, and Colonias regions, and in Native Land Areas. Congress has directed other agencies, including the Treasury Department's Community Development Financial Institutions Fund, the U.S. Economic Development Administration, the U.S. Department of Agriculture, and the U.S. Environmental Protection Agency, to allocate program funding specifically to regions meeting the definition of persistent poverty.[142] In addition, designating geographic areas at the county level offers a high degree of clarity and simplicity regarding which qualifying activities would meet the criterion. Banks that seek out qualifying activities that serve an entire county, as well as qualifying activities that serve only a specific portion of the county, would have certainty that the activities meet the impact review factor.

The agencies are also seeking feedback on including activities in census tracts with a current poverty rate of at least 40 percent as an impact review factor. The agencies estimate that 3.5 percent of the U.S. population lives in census tracts where the poverty rate exceeds 40 percent, according to the 2015–2019 American Community Survey. Accounting for overlap between persistent poverty counties and census tracts that meet this threshold, approximately 8.1 percent of the U.S. population lives in either a persistent poverty county or a high poverty census tract, according to the 2015–2019 American Community Survey. This approach would draw attention to economically distressed geographies that are smaller than an entire county, such as a high poverty neighborhood in a densely populated urban area. A census tract approach would offer the advantage of emphasizing activities that specifically serve communities, including individual neighborhoods, with significant community development needs, and where barriers to credit access and opportunity are often the greatest. In addition, the designation of census tracts, as opposed to counties, emphasizes activities serving communities in urban areas, including communities that are located in a county that is not a persistent poverty county.

Areas with Low Levels of Community Development Financing. The agencies propose an impact factor for activities serving areas with low levels of community development financing, based on data collected and reported under a revised CRA regulation. By incorporating local community development financing data into the designation, this approach would highlight areas where CRA capital is most limited. Because comprehensive CRA community development financing data is not currently available at local levels, the agencies would first collect and analyze data under a revised CRA regulation and would then determine the appropriate approach for identifying areas with low levels of qualified community development activities.

The agencies seek feedback on the different options for impact review factors for activities that serve geographies with significant community development needs, and whether to include high poverty census tracts along with persistent poverty counties and areas with low levels of community development financing. The agencies have considered that expressly highlighting both persistent poverty counties and high poverty census tracts may be appropriate to capture a balance of high needs areas in both metropolitan and nonmetropolitan areas.

2. Activities Supporting MDIs, WDIs, LICUs, and Treasury Department-Certified CDFIs

The agencies propose an impact review factor for activities that support or are conducted in partnership with MDIs, WDIs, LICUs, and Treasury

[140] The Congressional Research Service identifies 407 counties that meet the criteria for persistent poverty using poverty rate estimates from the 1990 Census, the 2000 Census, and the 2019 Small Area Income and Poverty Estimates (See ''The 10–20–30 Provision: Defining Persistent Poverty Counties'' *https://sgp.fas.org/crs/misc/R45100.pdf.*).

[141] The agencies apply population estimates from the 2015–2019 American Community Survey to estimate population of persistent poverty counties. *See* U.S. Census Bureau, American Community Survey 2015–2019 5-Year Data Release (Dec. 10, 2020), *https://www.census.gov/newsroom/press-kits/2020/acs-5-year.html.*

[142] For a description of statutory requirements related to the allocation of funds to persistent-poverty counties, see Government Accountability Office, ''Areas with High Poverty: Changing How the 10–20–30 Funding Formula Is Applied Could Increase Impact in Persistent Poverty Counties,'' *https://www.gao.gov/assets/gao-21-470.pdf.*

Department-certified CDFIs.[143] In general, these organizations have a mission of meeting the credit needs of low- and moderate-income and other underserved individuals, communities, and small businesses, which is highly aligned with CRA's core purpose.[144] In addition, these organizations often have intimate knowledge of local community development needs and opportunities, allowing them to conduct highly responsive activities. Furthermore, emphasizing partnership with these organizations is aligned with current practices and with the CRA statute, reflecting the impact and responsiveness of these activities.

The agencies are considering whether this impact review factor should cover only certain types of activities conducted in support of these organizations. One option would be for this impact review factor to include equity investments, long-term debt financing, donations, and services, and not to include short term deposits placed in an MDI. The goal of this alternative approach would be to encourage activities that stakeholders have noted are most effective in helping to advance the mission of these organizations.

3. Activities Serving Low-Income Individuals

The agencies propose an impact review factor for activities that serve low-income individuals and families, defined as those with an income of less than 50 percent of the area median income. This factor is intended to be consistent with the proposed Retail Lending Test approach, which includes separate metrics to assess lending to low-income and to moderate-income individuals. Low-income individuals have high community development needs and experience challenges with obtaining basic financial products and services, securing stable employment opportunities, finding affordable housing, and accessing digital infrastructure.[145] For these reasons, the agencies consider activities serving low-income individuals and families to have a high degree of impact and responsiveness and recognize that they often entail a high level of effort and complexity on the part of the bank and community partners.

The agencies are considering an alternative approach of defining this factor to include only those activities that serve individuals with an income of less than 30 percent of the area median income. This would ensure that the focus of this factor is on activities that serve the individuals that are most vulnerable to the challenges described above, such as housing instability and unemployment. However, there may be comparatively fewer community development opportunities for banks to take part in that would primarily serve individuals in this income category.

4. Activities that Support Small Businesses or Farms With Gross Annual Revenues of $250,000 or Less

The agencies propose an impact review factor for activities that support small businesses or farms with gross annual revenues of $250,000 or less. This factor is intended to align treatment of these activities with the proposed retail lending approach, which separately evaluates a bank's distribution of loans to small businesses and small farms with gross annual revenues of $250,000 or less, as well as the bank's loans to small businesses and small farms with gross annual revenue of greater than $250,000. The Retail Lending Test approach, as well as a discussion of the proposed gross annual revenue threshold of $250,000, is described further in Section IX.

The agencies seek feedback on whether this impact review factor should instead be set at a higher threshold of gross annual revenue, for example at $500,000. The agencies also seek feedback on whether this threshold should instead be set lower, for example at $100,000. These alternatives are also discussed in Section IX. In seeking feedback on these alternatives, the agencies also seek feedback on how to weigh the importance of using a consistent threshold for identifying smaller businesses and smaller farms both for the Retail Lending Test and for this impact review factor.

5. Activities That Support Affordable Housing in High Opportunity Areas

The agencies propose an impact review factor for activities that support the acquisition, development, construction, preservation, or improvement of affordable housing in *high opportunity areas.* The agencies would define *high opportunity areas* to align with the FHFA definition of High Opportunity Areas, including: (i) Areas designated by HUD as a ''Difficult Development Area'' (DDA); or (ii) areas designated by a state or local Qualified Allocation Plan as a *high opportunity area,* and where the poverty rate falls below 10 percent (for metropolitan areas) or 15 percent (for nonmetropolitan areas).[146]

The agencies consider affordable housing in *high opportunity areas* to have a high level of impact and responsiveness. First, geographic areas meeting this definition include areas where the cost of residential development is high[147] and affordable housing opportunities can be limited. Efforts to support affordable housing can be especially impactful where affordable housing needs are heightened in this manner. Second, as defined by FHFA, these areas are intended to describe areas that provide strong opportunities for low- and moderate-income individuals; increasing affordable housing opportunities in these areas helps to provide low- and moderate-income individuals with more choices of neighborhoods with strong economic opportunities.[148]

6. Activities Benefitting Native Communities

The agencies propose to designate activities benefitting or serving Native communities, including but not limited to those qualifying activities in Native Land Areas under proposed § __.13(l) as an impact review factor. This factor would recognize the unique status and credit and community development needs of Native and tribal communities as discussed above, which make bank activities that do serve these communities especially responsive.

The proposal would include all eligible community development activities taking place in Native Land Areas under this impact review factor. This includes activities as defined under proposed § __.13(l). In addition,

[143] This is consistent with 12 U.S.C. 2903(b).

[144] *See, e.g.,* Brett Theodos and Eric Hangen, Urban Institute, ''Expanding Community Development Financial Institutions'' (2017), *https://www.urban.org/research/publication/expanding-community-development-financial-institutions.*

[145] *See* FDIC, ''How America Banks: Household Use of Banking and Financial Services, 2019 FDIC Survey'' (Oct. 2020) (hereinafter ''How America Banks''), *https://www.fdic.gov/analysis/household-survey/2019report.pdf;* Federal Reserve Bank of Dallas, ''Closing the Digital Divide: A Framework for Meeting CRA Obligations'' (July 2016, revised Dec. 2016), *https://www.dallasfed.org/~/media/documents/cd/pubs/digitaldivide.pdf;* and Joint Center for Housing Studies of Harvard University, ''America's Rental Housing 2022'' (2022), *https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2022.pdf.*

[146] *See* Overview of the 2020 High Opportunity Areas File (2020), *https://www.fhfa.gov/DataTools/Downloads/Documents/Enterprise-PUDB/DTS_Residential-Economic-Diversity-Areas/DTS_High%20Opportunity_Areas_2020_README.pdf.*

[147] *See, e.g.,* HUD's Office of Policy Development and Research (PD&R), ''Qualified Census Tracts and Difficult Development Areas,'' *https://www.huduser.gov/portal/datasets/qct.html.*

[148] *See* FHFA DTS High Opportunity Areas, *https://www.fhfa.gov/DataTools/Downloads/Documents/Enterprise-PUDB/DTS_Residential-Economic-Diversity-Areas/DTS_High%20Opportunity_Areas_2020_README.pdf.*

the agencies propose to consider eligible community development activities that benefit Native Land Areas and meet other eligibility criteria under this impact review factor. For example, an affordable housing project that serves a Native Land Area or an activity in a Native Land Area undertaken with a CDFI would be included under this impact review factor.

The agencies also seek feedback on whether this proposed impact review factor should be defined to include activities benefitting Native communities but not located in Native Land Areas. Such an approach would recognize that many tribal members reside in areas outside of the proposed definition of Native Land Areas, as a result of a number of factors, including past Federal policies. Some past Federal Government policies, such as the policy of allotment, have had the effect of reducing the amount of land recognized as a reservation or as trust land. Additionally, some past Federal Government policies have relocated individual tribal members from reservation communities to cities and, as a result, away from tribal lands.[149] The Federal Government's trust obligation applies to not only tribes but also their citizens regardless of residency on tribal lands given their unique political status.[150]

7. Activities That Are a Qualifying Grant or Contribution

The agencies propose to include community development financing activities that are a qualifying grant or contribution as a separate impact review factor. The agencies recognize that the proposed community development financing metric provides these activities with comparatively little emphasis on its own, because the metric is based on the dollar amount of activities relative to deposits, and does not account for the fact that a grant has no repayment obligation, unlike a typical community development loan or qualifying investment. As a result, the agencies propose including these activities as an impact review factor so that they receive appropriate emphasis when assessing the metrics and impact review together.

8. Activities That Reflect Bank Leadership Through Multi-Faceted or Instrumental Support

The agencies propose an impact review factor for activities that involve a high degree of leadership on the part of the bank, as demonstrated by multi-faceted or instrumental support. This prong is intended to capture the factors of complexity and leadership used under the current CRA regulations, but with greater specificity and a more direct tie to impact and responsiveness.

Multi-faceted support includes activities that entail multiple forms of support provided by the bank for a particular program or initiative, such as a loan to a community-based organization that serves low- or moderate-income individuals, coupled with a service supporting that organization in the form of technical assistance that leverages the bank's financial expertise. Instrumental support may include activities that involve a level of support or engagement on the part of the bank such that a program or project would not have come to fruition, or the intended outcomes would not have occurred, without the bank's involvement. The agencies recognize that activities involving multifaceted or instrumental support often require significant efforts by the bank, reflect a high degree of engagement with community partners, and are highly responsive to community needs.

9. Activities That Result in a New Community Development Financing Product or Service

The agencies propose an impact review factor for activities that result in a new community development financing product or service that addresses community development needs for low- or moderate-income individuals and communities as well as small businesses and small farms. This factor builds upon the emphasis on innovative activities under the current approach and is intended to ensure a strong connection to impact and responsiveness. This factor encourages banks and community partners to conceive of new strategies for addressing community development needs, especially those needs which existing products and services do not adequately address. For example, an activity that provides financing for the acquisition of land for a shared equity housing project that brings permanent affordable housing to a community could meet this impact review factor, to the extent that it involves a new strategy to meet a community development need. The proposed emphasis on activities that support developing new products and services helps to ensure that the CRA continually improves the landscape of product offerings for low- or moderate-income individuals, communities and small businesses and small farms.

Request for Feedback

Question 34. For the proposed impact review factors for activities serving geographic areas with high community development needs, should the agencies include persistent poverty counties, high poverty census tracts, or areas with low levels of community development financing? Should all geographic designations be included or some combination? What considerations should the agencies take in defining these categories and updating a list of geographies for these categories?

Question 35. For the proposed factor focused on activities supporting MDIs, WDIs, LICUs, and Treasury Department-certified CDFIs, should the factor exclude placements of short-term deposits, and should any other activities be excluded? Should the criterion specifically emphasize equity investments, long-term debt financing, donations, and services, and should other activities be emphasized?

Question 36. Which of the thresholds discussed would be appropriate to classify smaller businesses and farms for the impact review factor relating to community development activities that support smaller businesses and farms: The proposed standard of gross annual revenue of $250,000 or less, or an alternative gross annual revenue threshold of $100,000 or less, or $500,000 or less?

Question 37. For the proposed factor of activities that support affordable housing in *high opportunity areas,* is the proposed approach to use the FHFA definition of *high opportunity areas* appropriate? Are there other options for defining *high opportunity areas*?

Question 38. For the proposed factor to designate activities benefitting or serving Native communities, should the factor be defined to include activities benefitting Native and tribal communities that are not located in Native Land Areas? If so, how should the agencies consider defining activities that benefit Native and tribal communities outside of Native Land Areas?

VI. Assessment Areas and Areas for Eligible Community Development Activity

The agencies propose to update the CRA assessment area approach to

[149] *See, e.g.,* The Indian Relocation Act of 1956, *https://www.govinfo.gov/content/pkg/STATUTE-70/pdf/STATUTE-70-Pg986.pdf* and National Archives, ''American Indian Urban Relocation,'' *https://www.archives.gov/education/lessons/indian-relocation.html.*

[150] *See, e.g.,* U.S. Department of the Interior, ORDER NO. 3335, ''Reaffirmation of the Federal Trust Responsibility to Federally Recognized Indian Tribes and Individual Indian Beneficiaries,'' *https://www.doi.gov/sites/doi.gov/files/migrated/news/pressreleases/upload/Signed-SO-3335.pdf.*

evaluate performance in facility-based assessment areas for all banks, and in retail lending assessment areas for large banks. These updates are intended to comprehensively establish the local communities in which a bank is evaluated for its CRA performance and to reflect ongoing changes to the banking industry. In addition, the agencies propose to consider qualifying community development activities outside of a bank's assessment areas at the state, multistate MSA, and institution levels to add certainty and to encourage qualifying activities in areas with high community development needs. Section X also discusses the agencies' proposal to evaluate large banks and certain intermediate banks on their retail loans that are outside of both retail lending assessment areas and facility-based assessment areas, to ensure that retail lending evaluations for these banks are comprehensive.

First, in § __.16, the agencies propose that facility-based assessment areas would remain a cornerstone of the proposed evaluation framework. The agencies propose to update how these areas are defined and to affirm that assessment areas may not reflect illegal discrimination or arbitrarily exclude low- or moderate-income census tracts. Recognizing the importance of the local communities served by a bank's facilities, the agencies propose to evaluate a bank on all applicable performance tests [151] within each facility-based assessment area, and to incorporate these performance conclusions into the bank's overall rating.

Second, in § __.17 for large banks only, the agencies propose establishing retail lending assessment areas to provide a means for evaluating lending that occurs outside of facility-based assessment areas. The agencies propose that a large bank would delineate a retail lending assessment area where it has a concentration of retail loan originations outside of its facility-based assessment areas, and the agencies propose applying only the Retail Lending Test in these areas. In proposing this approach, the agencies recognize that changes in technology and in bank business models have resulted in banks serving local communities that may extend beyond the geographic footprint of the bank's main office, branches, and other deposit-taking facilities. Consistent with the CRA's focus on a bank's local performance in meeting community credit needs, the agencies believe that it is appropriate to evaluate a large bank's retail lending under the Retail Lending Test as described in Section IX, in a community where it has a concentration of loans, even if it does not operate a facility there. In addition, as discussed in § __.22, for large banks and certain intermediate banks, the agencies propose evaluating a bank's retail lending performance on an aggregate basis outside retail lending areas, which include areas outside of facility-based or retail lending assessment areas.

Third, the agencies propose to evaluate any qualifying community development financing and services activities that banks elect to conduct in broader areas beyond their facility-based assessment areas. Banks would receive consideration for qualifying activities anywhere in a state or multistate MSA in which they maintain a facility-based assessment area, when determining the conclusion for that state or multistate MSA. In addition, banks would receive consideration at the institution level for any qualifying activities conducted nationwide. For purposes of the Community Development Financing Test and Community Development Services Test, these areas outside of facility-based assessment areas are referred to as areas for eligible community development activity as specified in § __.18.

The agencies believe this approach is preferable to an alternative approach that would require evaluating community development activities specifically within retail lending assessment areas. Building on the current practice of considering qualifying activities in broader statewide and regional areas, the agencies recognize that community development activities often benefit broader geographies, such as an entire state or region, which may not align with the geography of retail lending assessment areas. Furthermore, areas in greatest need of community development activities may not align with concentrations of bank lending where retail lending assessment areas are delineated. As a result, affording some additional flexibility may allow for community development activities that are higher in impact and responsiveness.

A. Background

1. Current Approach

Pursuant to the CRA statute, banks have a continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered. In their current CRA regulations, the agencies have interpreted local communities to include the areas surrounding a bank's main office, branches, and deposit-taking ATMs, given the linkage between physical facilities and a bank's customer base. Accordingly, one of the CRA regulations' core requirements is that each bank delineate areas in which their CRA performance will be assessed, referred to in the CRA regulations as assessment areas.

The current CRA regulations require that assessment areas not reflect illegal discrimination and not arbitrarily exclude low- or moderate-income census tracts. These provisions work congruently with ECOA and the FHA, to combat redlining. Consequently, it is crucial that banks appropriately delineate their assessment areas.

The CRA regulations currently define assessment areas for retail banks in connection with a bank's main office, branches, and deposit-taking ATMs and the surrounding areas in which it has originated or purchased a substantial portion of its loans. Assessment areas are generally composed of one or more counties, and in some cases, smaller political subdivisions. While a bank may currently adjust the boundaries of an assessment area to include only the portion of a political subdivision that it reasonably can be expected to serve, an assessment area must be composed of at least whole census tracts. Assessment areas for wholesale and limited purpose banks consist generally of one or more MSAs or metropolitan divisions or one or more contiguous political subdivisions, such as counties, cities, or towns in which the bank has its main office, branches, and deposit-taking ATMs. Banks whose business models predominantly focus on serving the needs of military personnel or their dependents who are not located within a defined geographic area may delineate their entire deposit customer base as their assessment area.

Assessment areas are used in different ways for the current evaluation of retail lending, community development loans and investments, and retail and community development services. Examiners evaluate a bank's retail lending and retail services performance within assessment areas, and retail lending outside of its assessment areas is generally not currently part of a bank's CRA evaluation. Conversely, the current evaluation of community development performance—including community development loans, investments, and services—considers activities within assessment areas as well as broader statewide or regional areas that include the assessment areas.

[151] Application of the performance tests and standards would be determined by bank size, as specified in proposed § __.21(b).

The agencies recognize that community development organizations and programs are efficient and effective ways for banks to promote community development. These organizations and programs often operate on a statewide or even multistate basis. Therefore, a bank's activity is considered a community development loan or service or a qualified investment if it supports an organization or activity that covers an area that is larger than, but includes, the bank's assessment areas. The bank's assessment areas need not receive an immediate or direct benefit from the bank's participation in the organization or activity, provided that the purpose, mandate, or function of the organization or activity includes serving geographies or individuals located within the bank's assessment areas. In addition, activities in broader statewide or regional areas that do not benefit the assessment area may be considered if the bank has first met the needs of its assessment areas.

2. Stakeholder Feedback

Many stakeholders have expressed that the current CRA regulations define assessment areas too narrowly, considering how banking is conducted today. Some stakeholders have pointed out that banks now use new kinds of facilities to collect deposits, such as remotely staffed virtual or interactive teller machines and other staffed physical facilities that are not referred to as branches. Stakeholders have expressed the importance of appropriately defining assessment areas to include locations where banks are collecting deposits to ensure that banks are evaluated on serving low- and moderate-income individuals and low- and moderate-income communities.

Stakeholders differ on how much flexibility to give banks in delineating the size of a facility-based assessment area. For example, some industry stakeholders note that the ability to designate an assessment area that contains only part of a county, rather than an entire county, may allow a bank to achieve better alignment between its business strategy, capacity, and CRA activities. As a result, a number of industry stakeholders have supported continuing flexibility for small banks to delineate partial county assessment areas, and there is some support for also continuing to provide this flexibility to large banks. Community group stakeholders generally have not supported partial county assessment areas, and some have the view that partial county assessment areas may raise redlining risks and reduce incentives to lend and invest in low- and moderate-income communities.

Stakeholders have generally supported the objective of revising the assessment area approach to include an evaluation of retail lending outside of assessment areas but have offered different recommendations on how to address this issue. Some stakeholders have favored approaches that would designate local assessment areas, akin to current assessment areas, in areas where a bank's level of business activity exceeded a certain threshold, such as in lending volume or market share. Others have preferred that retail lending performance outside of assessment areas be evaluated only on an aggregate basis, while others have opposed any changes to the current assessment area framework for retail lending. Stakeholders generally agree that any assessment area approach should confer a strong CRA obligation for all banks, regardless of business model.

Stakeholders have also noted challenges with the current assessment area approach for evaluating community development financing activity. Some stakeholders have noted that there is a high degree of uncertainty regarding CRA consideration for community development activities outside of assessment areas. Stakeholders have stated that this uncertainty has contributed to low levels of community development financing in areas where few banks maintain an assessment area. In addition, stakeholders have expressed that the assessment area framework leads to high levels of competition for limited community development opportunities in some markets, especially those where banks that operate more broadly claim only a single main office assessment area. At the same time, stakeholders have also expressed that any updates to the approach should maintain a strong emphasis on community development financing and services within facility-based assessment areas.

B. Facility-Based Assessment Areas

With certain changes discussed below, the agencies propose to maintain assessment areas where a bank has its main office, branches, and deposit-taking remote service facilities. As discussed further below, the agencies propose replacing the current term ''deposit-taking ATM'' with ''deposit-taking remote service facility.'' The agencies would refer to assessment areas for a bank's main office, branches, and deposit-taking remote service facilities as ''facility-based assessment areas'' in order to differentiate them from the new proposal for retail lending assessment areas, discussed below under proposed § __.17. The agencies propose retaining the practice that the facility-based assessment area delineated by a bank would be used to assess the bank's CRA performance, provided that the facility-based assessment area does not reflect illegal discrimination or arbitrarily exclude low- or moderate-income census tracts.

1. Facility-Based Assessment Area Requirements for a Bank's Main Office, Branches, and Deposit-Taking Remote Service Facilities

Under the proposal, banks would continue to delineate assessment areas where they have their main office, branches, and deposit-taking remote service facilities. While the number of bank branches has declined in recent years,[152] the agencies believe that branches remain an essential way of defining a bank's local communities. The definition of *branch* in proposed § __.12 would retain the existing regulatory language making it clear that staffed physical locations are deemed to constitute a branch, regardless of whether the physical location is a shared or unshared space.

The agencies are proposing to remove the examples of shared physical locations in the definition but do not intend for this removal to change or narrow the meaning of the regulation. Although the examples are illustrative only, the agencies believe they do not fully reflect the breadth of shared space locations that might exist under the proposed definition, particularly as new bank business models emerge in the future. The agencies intend that the examples provided in the current regulation of a mini-branch in a grocery store or a branch operated in conjunction with a local business or non-profit organization, as well as other staffed physical locations in shared spaces, would continue to require delineating a facility-based assessment area.

In addition, the agencies propose adding the language ''open to, and accepts deposits from, the general public'' to the definition of branch in § __.12 to underscore that this definition would capture new bank business models, with different types of names for staffed physical locations, when those locations are open to the public and collect deposits from customers. The agencies do not view this as a change from current standards, but wish to emphasize that staffed physical locations open to the general public and

[152] *See* Table 8 and Table 12 of Harris, et al. (2020), ''2020 Summary of Deposits Highlights.'' FDIC Quarterly, Vol. 15, Issue 1, *https://www.fdic.gov/analysis/quarterly-banking-profile/fdic-quarterly/2021-vol15-1/article2.pdf.*

that collect deposits from customers constitute a branch under the proposed CRA regulations regardless of whether the location is referred to as a ''branch'' by the bank. By using the word ''public,'' the agencies intend for this proposed definition to also encompass any staffed physical location that is open to bank customers by appointment only. The proposed language ''open to the general public'' would also clarify that certain staffed physical locations that are only open to bank employees would not meet the definition of a branch. In addition, the agencies seek feedback on the treatment of business models where staff assist customers with making deposits on their phones or mobile devices while customers are onsite at staffed physical locations.

As proposed, the updated CRA regulation would require facility-based assessment areas for deposit-taking ''remote service facilities,'' defined in proposed § __.12. The proposed definition of remote service facilities would capture not only deposit-taking ATMs, but other deposit-taking facilities as well, such as interactive or virtual ATMs where customers can connect with bank staff through a terminal. The agencies believe that the term remote service facility, as proposed, appropriately captures a range of non-branch facilities, and the agencies propose using this term instead of ATM throughout the regulation.

The agencies considered, but are not proposing, that a bank's loan production offices (LPOs) should automatically constitute a facility-based assessment area, given the variety of ways LPOs are used by banks.

2. Geographic Standards for Facility-Based Assessment Areas

The agencies propose that for large banks (including those that elect evaluation under an approved strategic plan) and wholesale or limited purpose banks, facility-based assessment areas would be required to consist of one or more MSAs or metropolitan divisions or one or more contiguous counties within an MSA, a metropolitan division, or the nonmetropolitan area of a state.[153]

Consistent with current regulations and guidance, a facility-based assessment area may not extend substantially beyond an MSA or state boundary unless the assessment area is located in a multistate MSA[154] or a combined statistical area.[155] As a result, these banks would no longer be allowed to delineate a partial county for facility-based assessment areas.

Compared to the current regulations (which allow assessment areas composed of partial political subdivisions, provided they include at least whole census tracts), the proposed requirement would create a more consistent standard for the delineation of assessment areas for large banks, wholesale or limited purpose banks, and large banks that elect to be evaluated pursuant to an approved strategic plan. This change also would encourage these banks to serve low- and moderate-income individuals and census tracts in counties where their deposit-taking facilities are located, and would help to safeguard and support fair lending. The proposed requirement for these banks to construct facility-based assessment areas out of whole counties also would support the proposed use of metrics and associated data to evaluate bank performance because this allows for data collection and reporting at the county level rather than at the census tract level.

The agencies propose continuing to allow small and intermediate banks to delineate facility-based assessment areas that include a partial county. However, a facility-based assessment area that includes a partial county would continue to be required to consist of whole census tracts. The agencies believe this flexibility would be appropriate for small and intermediate banks, because it reflects these banks' lower asset levels and capacities.

The agencies propose keeping the flexibility afforded a military bank to be able to delineate its customer base as its assessment area rather than a geographic delineation, consistent with the current CRA statute.[156]

In all cases and for all bank categories, the agencies propose retaining the prohibition that assessment areas may not reflect illegal discrimination or arbitrarily exclude low- or moderate-income census tracts. Arbitrarily excluding certain census tracts from an assessment area would reduce a bank's CRA obligation to serve its entire community, including low- or moderate-income individuals and census tracts, and the agencies consider this prohibition to be a vital component of the assessment area framework. Moreover, the agencies continue to recognize the importance of coordinating fair lending examinations with CRA examinations where feasible to ensure assessment areas do not reflect illegal discrimination.

Request for Feedback

Question 39. Should both small and intermediate banks continue to have the option of delineating partial counties, or should they be required to delineate whole counties as facility-based assessment areas to increase consistency across banks?

Question 40. Do the proposed definitions of ''remote service facility'' and ''branch'' include sufficient specificity for the types of facilities and circumstances under which banks would be required to delineate facility-based assessment areas, or are other changes to the CRA regulations necessary to better clarify when the delineation of facility-based assessment areas would be required?

Question 41. How should the agencies treat bank business models where staff assist customers to make deposits on their phone or mobile device while the customer is onsite.

Question 42. Should the proposed ''accepts deposits'' language be included in the definition of a branch?

C. Retail Lending Assessment Areas

In § __.17, the agencies are proposing an approach for large banks that would establish retail lending assessment areas where a bank has concentrations of home mortgage or small business lending outside of its facility-based assessment areas. Large banks would be evaluated under the Retail Lending Test, and not under other performance tests, in these areas.

The agencies consider it appropriate to evaluate large banks' retail lending in retail lending assessment areas on a local basis because it accords with CRA's focus on a bank's local performance in meeting community credit needs. A local evaluation promotes transparency by providing useful information to the public and banks regarding their performance in specific markets. The proposed approach of designating retail lending assessment areas is designed to provide a pathway to evaluate banks in a way that provides parity between banks that lend primarily through branches and those banks with different business models. Designating new retail lending assessment areas would ensure that, regardless of delivery channel, large banks would have evaluations of their retail lending in the local markets where they conduct significant retail lending business. In addition, as discussed in § __.22, for large banks, the agencies propose evaluating a bank's retail lending performance on an aggregate

[153] The agencies propose a definition of county in § __.12 that means any county or statistically equivalent entity as defined by the U.S. Census Bureau.

[154] 12 CFR __.41(e)(4); *see also* Q&A § __.41(e)(4)–1.

[155] Q&A § __.41(e)(4)–1.

[156] 12 U.S.C. 2902(4).

basis in areas outside of facility-based and retail lending assessment areas. This is intended to ensure that bank lending that is too geographically dispersed to be evaluated on a local basis is still considered in the bank's evaluation.

The agencies do not propose applying retail lending assessment area requirements to intermediate or small banks. For small banks, the agencies propose maintaining the status quo approach of evaluating a small bank in its facility-based assessment areas. For intermediate banks with more than 50 percent of lending outside of facility-based assessment areas, the agencies propose evaluating a bank's retail lending performance on an aggregate basis in areas outside of its facility-based assessment areas, rather than evaluating outside assessment area performance in specific MSAs or non-MSA portions of states where there are concentrations of lending. As discussed further in Section X, the agencies propose tailoring this approach so it applies to the subset of intermediate banks doing the most lending outside of facility-based assessment areas.

1. Overview of Requirements for Retail Lending Assessment Areas

Under this proposal, large banks would be required to designate retail lending assessment areas that would consist of either: (i) The entirety of a single MSA excluding counties inside their facility-based assessment areas; or (ii) all of the nonmetropolitan counties in a single state, excluding counties inside their facility-based assessment areas, aggregated into a single retail lending assessment area. A large bank would be required to delineate a retail lending assessment area in any MSA or the combined non-MSA areas of a state, respectively, in which it originated in that geographic area, as of December 31 of each of the two preceding calendar years: (i) At least 100 home mortgage loans outside of its facility-based assessment areas; or (ii) at least 250 small business loans outside of its facility-based assessment areas.

The agencies believe retail lending assessment areas composed of MSAs and non-MSAs provide a way to evaluate retail lending that occurs outside of facility-based assessment areas on a local basis. In establishing a bank's retail lending assessment areas in non-MSAs, the agencies would combine all loans in nonmetropolitan counties within a state that are not part of a bank's facility-based assessment areas to determine whether the bank's lending levels in those areas are sufficient to trigger a retail lending assessment area, using the 100 home mortgage loan or 250 small business loan thresholds. The agencies recognize that in many nonmetropolitan areas, retail lending is dispersed due to low population density and few bank branches. Combining non-MSA areas within a state is intended to ensure a sufficient volume of lending to require the delineation of retail lending assessment areas and ensure appropriate emphasis on these areas.[157]

Two Years of Data. With the objective of providing greater stability and certainty regarding the use of retail lending assessment areas over time, the agencies propose using two years of data to determine the need to establish retail lending assessment areas. Specifically, the proposal would be based on a bank's number of loans meeting the thresholds in both of the previous two calendar years before retail lending assessment areas would be required. This approach is intended to mitigate uncertainty for banks about when a retail lending assessment area could be designated and make retail lending assessment areas more durable over time. Furthermore, the agencies are considering publishing data, for example via an online dashboard, that would allow banks to assess how their current performance compares with relevant benchmarks in both facility-based assessment areas and retail lending assessment areas.

Thresholds. The agencies propose thresholds of 100 home mortgage loans and 250 small business loans in two consecutive years to require the delineation of retail lending assessment areas. To determine these thresholds, the agencies considered what levels would appropriately align with the amount of lending typically evaluated in a facility-based assessment area. The agencies also considered what threshold levels would result in a substantial percentage of loans that are outside of facility-based assessment areas being evaluated within a retail lending assessment area, as the agencies believe retail lending should be evaluated within a local context wherever feasible, based on a sufficient volume of loans and the size and business model of the bank.

For the mortgage loan threshold, the agencies found that the median number of home mortgage loans within a facility-based assessment area by a large bank in 2019, defined using the asset threshold proposed in § __.12, was 114.[158] The proposed threshold of 100 home mortgage loans would therefore establish a retail lending assessment area based on a similar level of lending present in a typical facility-based assessment area. In addition, as shown in Table 1, the proposed threshold of 100 home mortgage loans would result in approximately 50 percent of bank home mortgage loans that are currently outside of facility-based assessment areas being evaluated within a retail lending assessment area, based on analysis of 2017–2019 lending data from the CRA Analytics Data Tables.[159]

For small business lending, the agencies found that the median number of small business loans within a facility-based assessment area by a large bank in 2019, defined using the asset threshold proposed in § __.12, was 101. The agencies considered it appropriate to propose a higher threshold of 250 small business loans for the requirement to establish retail lending assessment areas because this level would result in a large share (62 percent) of bank loans that are currently outside of facility-based assessment areas being evaluated within a retail lending assessment area.

Table 1 also shows, under different threshold options for home mortgage loans and small business loans, respectively: (i) The number of banks that would be affected by the delineation of a new retail lending assessment area; (ii) the number of retail lending assessment areas that would be delineated; (iii) the percentage of outside facility-based assessment area lending that would be included in retail lending assessment areas; and (iv) the percentage of lending overall that would be captured under either facility-based

[157] The agencies' analysis of home mortgage loan and small business loan data from 2017–2019 indicates that the share of bank loans in non-MSA areas that would be evaluated at the local level would have increased from 67 percent to 83 percent for home mortgage loans, and from 38 percent to 80 percent for small business loans in 2019 under the proposed approach, due to adding retail lending assessment areas to existing facility-based assessment areas.

[158] The median number of home mortgage loans and small business loans for facility-based assessment areas includes the banks' total inside assessment area loans for each whole MSA or state non-MSA area that contains at least one facility-based assessment area. For example, if a bank has two facility-based assessment areas in one MSA, the loan count for those two areas was summed and treated as one facility-based assessment area. The median number of loans in facility-based assessment areas without combining those in the same MSA or non-MSA area was smaller. This analysis included single-family and multifamily loan originations; however, the proposed rule would include only single-family (*i.e.,* 1- to 4-unit) originations.

[159] The CRA Analytics Data Tables combine HMDA data, CRA small business and small farm data, and manually extracted data from CRA performance evaluations. Bank and community attributes (*e.g.,* assets, deposits, branching, and information about communities, such as percentage of low- and moderate-income households) and other third-party vendor data supplement the data tables. *See https://www.federalreserve.gov/consumerscommunities/data_tables.htm.*

assessment areas or retail lending assessment areas, on a combined basis.

TABLE 1 TO SECTION __.17—SUMMARY OF POTENTIAL EFFECT OF DIFFERENT RETAIL LENDING THRESHOLDS ON LARGE BANKS

	Number of affected banks (% of all)		Number of retail lending assessment areas (MSAs or state nonmetropolitan areas)			Outside-facility-based assessment area lending covered by retail lending assessment areas (%)	Lending covered by facility-based and retail lending assessment areas (% of total loans)
			All banks	Median	Max		
Mortgage Loans:							
-50 loans	148	46%	1,201	2	167	62%	92%
-100 loans (proposed)	91	28	641	2	123	50	90
-250 loans	38	12	204	2	59	32	86
Small business loans:							
-50 loans	103	31	2,676	1	386	76	90
-100 loans	48	15	1,771	5	337	72	88
-250 loans (proposed)	26	8	877	9.5	233	62	84
-500 loans	18	5	488	7	158	54	81
Total (meeting either mortgage or small business thresholds)	104	31	1,382	6	233	60	86

Note: The Retail Lending Assessment Areas are areas that would have been delineated in 2019 based on 2017 and 2018 data (two-year lending thresholds) using the CRA Analytics Data Tables. The bank lending volume was calculated using the 2017–2019 data. The sample includes banks with total assets of at least $2 billion in both 2017 and 2018. Wholesale banks, limited purpose banks, and military banks were excluded from this analysis.

Major Product Line. To provide a consistent evaluation of large banks' retail lending across different types of assessment areas, the agencies would use the major product line standard, discussed in Section VIII, to determine which retail lending product lines would be evaluated in a retail lending assessment area. As with facility-based assessment areas, the major product line standard is intended to ensure that a bank's performance in retail lending assessment areas reflects performance over whichever of a bank's retail lending products it specializes in locally.

The agencies seek feedback on an alternative approach to identifying major product lines in retail lending assessment areas. Under the alternative approach, rather than evaluating all of a bank's major product lines in a retail lending assessment area, the agencies would evaluate only home mortgage and small business lending. In addition, under the alternative approach, the agencies would only evaluate home mortgage lending if the bank surpassed the proposed 100 home mortgage loans threshold in the retail lending assessment area and would only evaluate small business lending if the bank surpassed the proposed 250 small business loans threshold. This is in contrast to the proposed approach, which would evaluate all major product lines whether the bank surpasses either or both of the proposed retail lending assessment area thresholds. The agencies considered that this alternative would more narrowly tailor the evaluation approach in retail lending assessment areas.

Option for Additional Tailoring. The agencies seek feedback on an alternative approach that would tailor the retail lending assessment area approach to exempt certain large banks that have a significant majority, such as at least 80 or 90 percent, of their retail loans inside their facility-based assessment areas. This exemption could tailor the retail lending assessment area approach so it does not include banks that are primarily branch-based, and therefore, the bank's overall Retail Lending Test conclusion could be reasonably derived by focusing on the activity within its facility-based assessment areas. A trade-off of this alternative is that it could exempt large banks which, despite having made a relatively low share of their loans outside of their facility-based assessment areas, have a large volume of such loans. As a result, these loans would be exempt from local evaluation, especially in smaller MSAs and rural areas. Under such an alternative, the agencies would evaluate the outside lending under the outside retail lending area approach described below.

2. Evaluation of Outside Lending of Large Banks and Certain Intermediate Banks

The agencies propose that retail loans that are located outside of any facility-based assessment areas or retail lending assessment areas for a large bank, including a large bank that elects evaluation under an approved strategic plan, and outside of any facility-based assessment areas for intermediate banks with substantial outside assessment area lending, would be evaluated on an aggregate basis at the institution level, as discussed in Section X.[160] The agencies considered that the inclusion of lending outside a bank's facility-based assessment areas or retail lending assessment areas in the evaluation framework would allow for a comprehensive assessment of a bank's lending to low- and moderate-income individuals and communities. This approach is also intended to ensure that a large bank's lending that is too geographically dispersed to be examined within an assessment area would still be evaluated.

3. Descriptive Analysis of Lending to Low- and Moderate-Income Borrowers or Smaller Businesses, and in Low- and Moderate-Income Census Tracts

As reflected in Table 2, the agencies conducted a descriptive analysis showing the levels of lending to low- and moderate-income borrowers and small businesses or in low- and moderate-income census tracts as compared across facility-based assessment areas, retail lending assessment areas, and outside of any assessment area. This analysis does not account for underlying differences between a bank's facility-based assessment areas and other areas that could affect low- and moderate-income lending levels, including the percentage of low- and moderate-income individuals and census tracts. The

[160] Under the proposed approach, approximately 10 percent of large banks' home mortgage loans and 16 percent of small business loans during 2017–2019 would not be captured by facility-based or retail lending assessment areas.

percentage of bank home mortgage loans to low- and moderate-income borrowers was slightly higher in facility-based assessment areas (21 percent) than in areas that would have been delineated as retail lending assessment areas (19 percent). The share of bank home mortgage loans in low- and moderate-income census tracts showed a similar pattern. For bank small business loans, the gap was greater in terms of the share of loans to smaller businesses in facility-based assessment areas (62 percent) and in retail lending assessment areas (46 percent). The gap in terms of the share of loans to small businesses in low- and moderate-income census tracts was modest, at 24 percent for facility-based assessment areas and 22 percent for retail lending assessment areas.

TABLE 2 TO SECTION __.17—LARGE BANK LOW- AND MODERATE-INCOME LENDING IN FACILITY-BASED ASSESSMENT AREAS, RETAIL LENDING ASSESSMENT AREAS, AND OTHER AREAS

	Total number of loans (2017–2019)	Share of loans to low- and moderate-income borrowers or smaller businesses (%)	Share of loans in low- and moderate-income census tracts (%)
Mortgage Loans:			
Facility-based Assessment Areas	4,777,269	21%	15%
Retail Lending Assessment Areas	634,258	19	14
Areas outside Bank Assessment Areas	631,062	17	13
Total	6,042,589	20	14
Small Business Loans:			
Facility-based Assessment Areas	7,848,271	62	24
Retail Lending Assessment Areas	3,490,558	46	22
Areas outside Bank Assessment Areas	2,097,510	40	21
Total	13,436,339	54	23

Note: The Retail Lending Assessment Areas are areas that would have been delineated in 2019 based on the 2017 and 2018 data (two-year lending thresholds) from CRA Analytics Data Tables. The bank lending volume was calculated using the 2017–2019 data. The sample includes banks with total assets of at least $2 billion in both 2017 and 2018. Wholesale banks, limited purpose banks, and military banks were excluded.

Request for Feedback

Question 43. If a bank's retail lending assessment area is located in the same MSA (or state non-MSA area) where a smaller facility-based assessment area is located, should the bank be required to expand its facility-based assessment area to the whole MSA (or non-MSA area) or should it have the option to designate the portion of the MSA that excludes the facility-based assessment area as a new retail lending assessment area?

Question 44. Should a bank be evaluated for all of its major product lines in each retail lending assessment area? In the alternative, should the agencies evaluate home mortgage product lines only when the number of home mortgage loans exceeds the proposed threshold of 100 loans, and evaluate small business loans only when the number of small business loans exceeds the proposed threshold of 250 loans?

Question 45. The agencies' proposals for delineating retail lending assessment areas and evaluating remaining outside lending at the institution level for large banks are intended to meet the objectives of reflecting changes in banking over time while retaining a local focus to CRA evaluations. What alternative methods should the agencies consider for evaluating outside lending that would preserve a bank's obligation to meet the needs of its local communities?

Question 46. The proposed approach for delineating retail lending assessment areas would apply to all large banks with the goal of providing an equitable framework for banks with different business models. Should a large bank with a significant majority of its retail loans inside of its facility-based assessment areas be exempted from delineating retail lending assessment areas? If so, how should an exemption be defined for a large bank that lends primarily inside its facility-based assessment area?

D. Areas for Eligible Community Development Activity

The agencies propose to evaluate the community development performance of a large bank, including a large bank that elects evaluation under an approved strategic plan, a wholesale or limited purpose bank, or an intermediate bank that elects evaluation under the Community Development Financing Test within each facility-based assessment area, and also to consider any additional qualifying activities that the banks elect to conduct outside of their facility-based assessment areas, referred to as ''areas for eligible community development activity'' in § __.18. The community development activities outside of a bank's facility-based assessment areas would not be required to serve the bank's retail lending assessment areas or any other specific geographies, and would be considered to inform state, multistate MSA, and institution level conclusions. This approach is intended to achieve a careful balance between emphasizing a bank's performance in its facility-based assessment areas, while also allowing banks the option of conducting qualifying community development activities outside of their facility-based assessment areas in broader geographic areas. The approach is described in detail in §§ __.24 and __.26.

The agencies recognize that the current approach to considering activities in broader statewide and regional areas has been beneficial from the standpoint of allowing a degree of flexibility but has also contributed to uncertainty about whether activities will qualify. For example, under the current approach, if a bank has conducted an activity in a broader statewide or regional area that examiners determine does not benefit an assessment area and the examiners determine that the bank has not already met the needs of its assessment areas, the bank may not receive consideration for that activity. In addition, banks may receive consideration at the assessment area level for an activity that serves a broader statewide or regional area provided that the assessment area is within the scope of the activity, even if the activity cannot be shown to have an immediate benefit to assessment area.

Under the proposed approach, the agencies would consider all qualifying activities, regardless of the geographies served. The agencies would clearly distinguish between qualifying activities that serve a facility-based assessment area and those that serve other areas and would establish clear standards for performance for facility-based assessment areas, states, multistate MSAs, and at the institution level. This approach is intended to create additional flexibility for banks to conduct qualifying activities outside of facility-based assessment areas, while also more directly emphasizing facility-based assessment area performance.

In determining the proposed assessment area approach for evaluating community development activities, the agencies considered the benefits of additional flexibility and certainty relative to the current approach. Granting additional flexibility may allow banks to identify impactful community development opportunities that serve geographies with high unmet community development needs, including geographies where few banks currently have facility-based assessment areas or concentrations of retail loans. Flexibility would also allow banks to identify those opportunities where the bank's business model, strategy, and expertise are well aligned with a community need.

While the agencies consider the option of flexibility to be beneficial for all banks' community development activities, it may be especially beneficial for the community development activities that are conducted by banks that operate primarily or entirely without branches. Under the proposed approach, these banks would continue to be evaluated in their facility-based assessment areas, but would also have the ability to conduct activities that receive CRA consideration in other markets. The agencies consider that the additional flexibility and certainty of this change could help to address a stakeholder concern regarding high concentrations of community development activities in some markets, including those where the main offices of internet and wholesale banks are located, and where there are significant unmet needs in other markets.

To affirm the current obligation that large, intermediate, and wholesale and limited purpose banks must meet the community development needs of their facility-based assessment areas, the agencies propose a number of provisions for the performance tests and overall ratings approach that emphasize assessment area performance, discussed in §§ __.24 and __.26. For example, the agencies would develop a conclusion in each facility-based assessment area for the applicable community development tests, which would be incorporated directly into institution ratings.

Request for Feedback

Question 47. The agencies propose to give CRA consideration for community development financing activities that are outside of facility-based assessment areas. What alternative approaches would encourage banks that choose to do so to conduct effective community development activities outside of their facility-based assessment areas? For example, should banks be required to delineate specific geographies where they will focus their outside facility-based assessment area community development financing activity?

Question 48. Should all banks have the option to have community development activities outside of facility-based assessment areas considered, including all intermediate banks, small banks, and banks that elect to be evaluated under a strategic plan?

VII. Performance Tests, Standards, and Ratings in General

The agencies propose to tailor the evaluation framework based on three bank size categories, revised from the current bank size categories used in CRA evaluations. The agencies also propose a tailored approach for wholesale banks, limited purpose banks, and banks that are approved to be evaluated under a strategic plan. The agencies recognize the importance of an evaluation framework that reflects differences in bank capacities, business models, and strategies. In addition, the agencies also recognize the importance of ensuring that banks meet their affirmative obligation under the CRA to meet the credit needs of their communities, which may encompass a wide range of retail lending products, services, and community development activities.

Proposed § __.21 details the proposed evaluation framework for each bank category and describes the treatment of bank subsidiaries, affiliates, consortiums, and third parties. In addition, this section of the proposed regulation provides performance context information considered, describes the categories for bank ratings, and outlines the requirement that bank CRA activities be conducted in a safe and sound manner.

A. Performance Tests, Tailoring to Bank Size, and Asset Thresholds

1. Current Approach

The current evaluation approach includes different examination processes for banks of different sizes and business models. Large banks are evaluated under three performance tests: The lending test, which assesses retail and community development loans; the investment test, which assesses qualified investments; and the service test, which assesses retail services and community development services. Intermediate small banks are evaluated under a lending test and a community development test, which assesses community development loans, qualified investments, and community development services. Small banks are evaluated under a single lending test. Wholesale and limited purpose banks are evaluated under a single community development test which assesses community development loans, qualified investments, and community development services. In addition, any bank may seek approval to be evaluated under a strategic plan.

2. Proposed Bank Categories and Evaluation Framework

The agencies propose an evaluation framework that is tailored based on bank size and business model, with different performance tests applied to banks of different sizes and to wholesale and limited purpose banks. The agencies are proposing updates to certain performance tests to incorporate standardized metrics and benchmarks. The agencies would assign conclusions for each performance test for each of a bank's facility-based assessment areas, states and multistate MSAs and at the institution level, as applicable. For large banks, the agencies would also assign Retail Lending Test conclusions for each retail lending assessment area. For large banks and certain intermediate banks, the agencies would also assign Retail Lending Test conclusions for outside retail lending areas.

Large Banks. The agencies propose four performance tests for large banks: A Retail Lending Test, a Retail Services and Products Test, a Community Development Financing Test, and a Community Development Services Test. Each of the four tests measures a different aspect of how responsive a bank's retail and community development activities are to the credit needs of its local communities. This proposed approach reflects a similar breadth of evaluation approaches as compared to the current framework that applies to large banks. Given their financial resources and market position, these banks collectively play a significant role in serving low- and moderate-income individuals and communities. Furthermore, banks in this category generally have the capacity to deliver a range of credit products and

services that are covered under the four performance tests.

The agencies propose that some new requirements would apply only to large banks with assets of over $10 billion, reflecting the increased resources of these institutions. For example, the agencies propose that only large banks with assets of over $10 billion would have requirements for deposits data, retail services data on digital delivery systems, retail services data on responsive deposit products, and community development services data. In addition, the agencies propose that banks with assets of over $10 billion, including wholesale and limited purpose banks, would have automobile lending data requirements.

The proposed Retail Lending Test would measure how well a bank's retail lending meets the credit needs of low- and moderate-income individuals, small businesses and farms, and low- and moderate-income geographies through analysis of lending volume and lending distribution. To increase consistency in evaluations, the agencies propose that the Retail Lending Test rely on a set of metrics and community and market benchmarks that are grounded in local data. A bank's retail lending distribution metrics, calculated using the bank's number of loans, would be compared to local community and market benchmarks as proposed in § __.22 and discussed in Section IX. The agencies also propose that additional factors discussed in § __.22(e) be considered when evaluating a bank's retail lending performance. Retail Lending Test conclusions would be assigned for each of a large bank's facility-based assessment areas, retail lending assessment areas, and outside retail lending area, as well as at the state, multistate MSA, and institution levels, as applicable.

The proposed Community Development Financing Test would assess how well a bank meets community development financing needs. As proposed, the Community Development Financing Test would use metrics and benchmarks to standardize the review of community development loans and investments, while also incorporating a qualitative impact review of community development financing activities to complement the dollar-based community development financing metric and benchmarks. As proposed in § __.24 and discussed in Section XII, conclusions would reflect the agencies' qualitative assessments of a bank's metric relative to the benchmarks and impact review. Conclusions would be assigned for each of a bank's facility-based assessment areas, states, and multistate MSAs, and at the institution level, as applicable.

The proposed Retail Services and Products Test and Community Development Services Test would evaluate how well a bank's products and services meet community credit and community development needs, respectively. The agencies propose revised standards for these tests to reflect changes in banking over time and to introduce standard metrics, as well as benchmarks for the Retail Services and Products Test, to allow a more consistent evaluation approach.

The agencies propose additional tailoring of the Retail Services and Products Test, as well as the Community Development Services Test, reflecting the increased resources of large banks with assets of over $10 billion. Under the Retail Services and Products Test, the agencies propose that all large banks would be evaluated on their branch and remote service facility availability, as well as responsive credit products. The agencies propose that the following parts of this evaluation, as well as the associated data requirements, would be required only for large banks with assets of over $10 billion: (i) Digital and other delivery systems; and (ii) responsive deposit products. For large banks with assets of $10 billion or less, these components would be optional.

Under the Community Development Services Test, the agencies propose that only large banks with assets of over $10 billion would be required to collect, maintain, or report community development services data in a standardized format.

Section __.23 addresses the proposed Retail Services and Products Test and is discussed in Section XI. Section __.25 addresses the proposed Community Development Services Test and is discussed in Section XIII. Conclusions for the Retail Services and Products Test and Community Development Services Test would be assigned for each of a bank's facility-based assessment areas, states, and multistate MSAs, and at the institution level, as applicable.

Intermediate Banks. The agencies propose to evaluate intermediate banks under the proposed Retail Lending Test in § __.22 and the current intermediate small bank community development test as described in § __.29 or, at the bank's option, evaluation under the proposed Community Development Financing Test as described in § __.24. If an intermediate bank opts to be evaluated under the proposed Community Development Financing Test, the bank may request additional consideration at the institution level for community development services activities as described in § __.25 and for any retail services activities that serve low- or moderate-income individuals or communities (*i.e.,* activities covered under the proposed Retail Services and Products Test in proposed § __.23) when bank performance is at least satisfactory without consideration of such activities.

The agencies would tailor certain features of the Retail Lending Test and Community Development Financing Test for intermediate banks, including by maintaining current data collection, maintenance, and reporting requirements for intermediate banks that do not elect to be evaluated under the Community Development Financing Test, as discussed in § __42. By applying the Retail Lending Test to banks of this size, the proposal is intended to improve the clarity, consistency, and transparency of the evaluation of retail lending. The agencies believe retail lending remains a core part of a bank's affirmative obligation under the CRA to meet the credit needs of their entire communities. At the same time, the agencies recognize that, compared to large banks, intermediate banks might not offer as wide a range of retail products and services, have a more limited capacity to conduct community development activities, and may focus on the local communities where their branches are located.

Small Banks. The agencies propose to evaluate small banks under the current lending test as the default evaluation method. However, small banks would have the ability to opt into the proposed Retail Lending Test. Consistent with the current approach, small banks would continue to have the ability to request additional consideration at the institution level for qualifying community development activities or retail services activities that serve low- or moderate-income individuals and communities, when bank performance is at least satisfactory without consideration of such activities.

Allowing small banks the option of being evaluated under the proposed Retail Lending Test is intended to ensure that small banks have available a metrics-based approach to increase the clarity, consistency, and transparency of how their retail loans are evaluated. The agencies recognize the capacity constraints of these banks, and their more targeted focus on retail lending as opposed to the types of activities evaluated by other performance tests. To tailor the test to small banks' more limited capacities, the agencies propose to evaluate a small bank that opts into the Retail Lending Test under the provisions that pertain to an

intermediate bank, with the exception that no small bank would be evaluated on its retail lending outside of its assessment areas, regardless of the percentage of the bank's overall retail lending it comprises.

Wholesale and Limited Purpose Banks. As proposed in § __.26 and discussed further in Section XIV, the agencies propose evaluating wholesale and limited purpose banks under only the Community Development Financing Test for Wholesale and Limited Purpose Banks, which would retain much of the current qualitative approach for this evaluation, with the addition of a quantitative metric at the institution level to improve consistency. The agencies also propose giving wholesale and limited purpose banks the option to have community development service activities in § __.25 considered to inform a bank's overall institution rating when bank performance is at least satisfactory without consideration of community development service activities.

3. Alternative Evaluation Under a CRA Strategic Plan

The agencies propose retaining the option for any bank to elect evaluation under an approved CRA strategic plan as discussed in § __.27 and in Section XV. The agencies propose to retain this alternative evaluation method to give banks flexibility to meet their CRA obligations in a manner that is tailored to community needs and opportunities as well as their own capacities, business strategies, and expertise. To ensure that banks evaluated under a strategic plan meet their CRA obligations, the agencies propose that strategic plans incorporate a metrics-based analysis of a bank's lending to low- or moderate-income individuals and communities. In addition, large banks evaluated under an approved strategic plan would be expected to delineate both facility-based and retail lending assessment areas, as applicable. For purposes of data collection, maintenance, and reporting requirements under proposed § __.42, the agencies believe that a bank evaluated under an approved strategic plan should have the same requirements as another bank of the same asset sizes. For example, a bank evaluated under an approved strategic plan with assets of over $10 billion would have the same data collection, maintenance, and reporting requirements of a large bank with assets of over $10 billion.

Conclusions for Tests

Under the proposal, the agencies would assign conclusions on each performance test in facility-based assessment areas, states, multistate MSAs, and at the institution level, as applicable. In addition, Retail Lending Test conclusions would also be assigned to retail lending assessment areas and outside retail lending areas, as applicable. The agencies propose retaining the five categories for conclusions composed of ''Outstanding,'' ''High Satisfactory,'' ''Low Satisfactory,'' ''Needs to Improve,'' and ''Substantial Noncompliance.'' The proposed ''High Satisfactory'' and ''Low Satisfactory'' conclusions allow the agencies to better differentiate very good performance from performance at the lower end of the satisfactory range as compared to developing conclusions with only four categories including a single satisfactory category.

4. Asset Thresholds

As defined in proposed § __.12, the agencies propose to raise the asset threshold for each bank category. The agencies intend to balance the goals of providing more clarity, consistency, and transparency in the evaluation process, with minimizing the associated data requirements for smaller banks. Specifically, the proposal would modify the definition of a small bank to increase the asset threshold from $346 million to $600 million in assets. The proposal would create a new intermediate bank category that would include banks of at least $600 million and not more than $2 billion. The proposed intermediate bank threshold would be higher than the current intermediate small bank category, which currently includes banks with assets between $346 million and $1.384 billion. Large banks would be defined as banks with assets of at least $2 billion, which is higher than the current large bank threshold of $1.384 billion. A calculation of a bank's assets would be based on its average assets over four quarters of the calendar year, for two consecutive calendar years. If a bank's average assets correspond to two different bank size categories in two consecutive years, the bank would be considered to belong to the smaller of the two size categories. The agencies would also use this approach for calculating a bank's assets for purposes of distinguishing between large banks with assets of $10 billion or less from large banks with assets of over $10 billion for purposes of further tailoring certain elements of the proposal, as discussed in each respective section. As also specified in proposed § __.12, the agencies propose that both the $600 million asset size threshold and the $2 billion asset size threshold would be adjusted annually for inflation (based on the annual percentage change in a measure of the Consumer Price Index).

The agencies are proposing changes to the definition of a small bank in recognition of the potential challenges associated with regulatory changes for banks with more limited capacity. The agencies are in the process of seeking approval from the SBA to use the proposed $600 million threshold, adjusted annually for inflation, rather than the SBA's recently updated size standards, which include a $750 million threshold for small banks.[161] In requesting this approval, the agencies believe that it is appropriate to evaluate banks with assets of between $600 million and $750 million under the proposed intermediate banks standards, and that these banks have the capacity to conduct community development activities, as would be a required component of the evaluation for intermediate, but not small banks. Based on an analysis of current bank size characteristics, the agencies estimate that the proposed change to the small bank asset threshold would result in approximately 778 banks, representing 2 percent of all deposits, transitioning from the current intermediate-small bank category to the proposed small bank category.[162]

At the same time, by replacing the current intermediate small bank category with a new intermediate bank category that starts at a higher asset size threshold, the proposal reflects the agencies' view that banks of this size should have meaningful capacity to conduct community development financing, as they do under the current approach.

In proposing to increase the threshold for large banks, the agencies considered that banks of this size generally have the capacity to conduct the range of activities that would be evaluated under each of the four applicable performance tests. The agencies also recognize that the proposed Retail Lending Test and Community Development Financing test would require new data collection and reporting and propose a higher asset threshold because smaller large banks may have more limited capacity. The agencies estimate that the proposed increase in the large bank threshold would result in approximately 216

[161] 87 FR 18627, 18830 (Mar. 31, 2022). The SBA revised the size standards applicable to small commercial banks and savings institutions, respectively, from $600 million to $750 million, based upon the average assets reported on such a financial institution's four quarterly financial statements for the preceding year. The final rule has a May 2, 2022, effective date.

[162] Estimates are based on average assets from 2020 and 2021 Call Report data and the 2021 FDIC's Summary of Deposits.

banks representing approximately 2 percent of all deposits transitioning from the current large bank category to the proposed intermediate bank category. The agencies considered that increasing the large bank asset threshold beyond the proposed $2 billion level would remove a greater share of banks that play a significant role in fulfilling low- and moderate-income credit needs in local areas from the more comprehensive evaluation included in the proposed large bank evaluation approach.

Request for Feedback

Question 49. The agencies' proposed approach to tailoring the performance tests that pertain to each bank category aims to appropriately balance the objectives of maintaining strong CRA obligations and recognizing differences in bank capacity. What adjustments to the proposed evaluation framework should be considered to better achieve this balance?

Question 50. The proposed asset thresholds consider the associated burden related to new regulatory changes and their larger impact on smaller banks, and it balances this with their obligations to meet community credit needs. Are there other asset thresholds that should be considered that strike the appropriate balance of these objectives?

Question 51. Should the agencies adopt an asset threshold for small banks that differs from the SBA's size standards of $750 million for purposes of CRA regulations? Is the proposed asset threshold of $600 million appropriate?

B. Affiliate and Other Considerations

1. Current Approach for Evaluating Affiliate Activities

Under the current CRA regulations, banks are not required to include the activities of their affiliates in the evaluation of their CRA performance. Instead, any bank may elect to include affiliate lending,[163] community development investments,[164] and community development services,[165] as applicable, in the bank's evaluation. A bank provides the data necessary for evaluation if it elects to have the CRA activities of its affiliates considered.

Affiliate activities evaluated under the current CRA framework are subject to certain constraints.[166] In general, an affiliate may not claim a loan origination or purchase claimed by another affiliate; however, a bank may count as a purchase a loan originated by an affiliate that the bank subsequently purchases (even if the affiliate claimed the origination for CRA purposes), or count as an origination a loan later sold to an affiliate (even if the affiliate also claims the purchase for CRA purposes), provided the same loans are not sold several times to inflate their value for CRA purposes.[167] In addition, if a bank elects to have a particular category of affiliate lending in a particular assessment area considered, all loans of that type made by all of its affiliates in that particular assessment area must be considered.[168] For example, the bank cannot elect to include only home mortgage loans to low- or moderate-income individuals or in low- or moderate-income areas made by its affiliates and not include home mortgage loans to middle- and upper-income individuals or in middle- and upper-income areas.[169]

There are differing views among stakeholders on how to evaluate a bank's affiliates' activities. Some stakeholders have expressed support for permitting banks to have the option to have their affiliates' activities considered in their CRA evaluations. These stakeholders maintain that activities of bank affiliates are important in the overall strategy of a bank to meet the needs of the communities it serves. Other stakeholders have disagreed with the optionality of including affiliate activities, particularly affiliate lending, stating that doing so creates deficiencies in the examination process of a bank and could lead to abuse, because there are no consequences for affiliates that do not address the credit needs of low- and moderate-income individuals and in low- and moderate-income communities.

2. Treatment of Certain Bank Subsidiaries

Regarding the treatment of certain bank subsidiaries described below, the agencies propose: (i) Requiring the inclusion of relevant activities of a state member bank's ''operations subsidiaries'' and a national bank's, Federal savings association's, state non-member bank's, and state savings association's ''operating subsidiaries'' (referred to collectively as ''bank subsidiaries'' in this **SUPPLEMENTARY INFORMATION**) in the evaluation of the relevant bank's CRA performance; and (ii) maintaining the current flexibility for banks to choose to include or exclude the relevant activities of other bank affiliates.[170]

The agencies believe that where banks exercise a high level of ownership, control, and management of their subsidiaries, the activities of those subsidiaries should reasonably be attributable to the bank. Moreover, the agencies believe that evidence of discriminatory or illegal practices by these bank subsidiaries should be factored into a bank's performance evaluation, because their activities would be considered to be a component of the bank's own operations.

In this regard, the agencies are proposing to add a definition of ''operations subsidiary'' to the Board's CRA regulation and a definition of ''operating subsidiary'' to the FDIC's and OCC's CRA regulations to identify those bank affiliates whose activities would be required to be attributed to a bank's CRA performance.

Specifically, as defined in proposed § __.12 of the Board's CRA regulation, an ''operations subsidiary'' would mean an organization designed to serve, in effect, as a separately incorporated department of the bank, performing functions that the bank is empowered to perform directly at locations at which the bank is authorized to engage in business. As defined in proposed § 25.12 of the OCC's CRA regulation, an ''operating subsidiary'' would mean an operating subsidiary as described in: (i) 12 CFR 5.34 in the case of an operating subsidiary of a national bank; and (ii) 12 CFR 5.38 in the case of an operating subsidiary of a Federal or state savings association. As defined in proposed § 345.12 of the FDIC's CRA regulation, ''operating subsidiary'' for state non-member banks would have the same meaning as given to the term in 12 CFR 5.34 of the OCC's regulations.

Although the FDIC's regulations define ''subsidiary'' under 12 CFR 362.2(r), the definition includes all subsidiaries, not just operating subsidiaries. Neither the FDIC's regulations nor its implementing statute defines an ''operating'' or ''operations'' subsidiary. The FDIC and OCC, therefore, seek comment on whether, for purposes of CRA, the proposed definition of ''operating subsidiary'' for

[163] 12 CFR __.22(c). A bank may elect to have only a particular category of its affiliate's lending considered. The basic categories of loans that can be considered are home mortgage loans, small business loans, small farm loans, community development loans and the five categories of consumer loans (automobile loans, credit card loans, home equity loans, other secured loans, and other unsecured loans). *See* Q&A § __.22(c)(1)–1.

[164] 12 CFR __.23(c).

[165] 12 CFR __.24(c).

[166] 12 CFR __.22(c); __.23(c); and __.24(c).

[167] *See* Q&A § __.22(c)(2)(i)–1.

[168] 12 CFR __.22(c)(2)(ii).

[169] *See* Q&A § __.22(c)(2)(i)–1.

[170] The proposed rule defines these terms in proposed § __.12.

state non-member banks and state savings associations would be the best approach, or whether the FDIC and OCC should consider alternative definitions of operating subsidiary for FDIC-regulated entities for purposes of their CRA regulations. For example, the FDIC seeks feedback regarding whether, for purposes of CRA, the FDIC should develop its own definition of operating subsidiary or, alternatively, adopt the Board's proposed definition of ''operations subsidiary.''

Similarly, the Board requests comment on the advantages and disadvantages of the proposed definition of ''operations subsidiary.'' For example, to make the definitions among the agencies more uniform, should the Board, for purposes of CRA, adopt the OCC's definition of ''operating subsidiary''? Would it be more appropriate for the Board to define, for purposes of CRA, an ''operations subsidiary'' to be a company that: (i) Is domiciled in a state of the United States or in the District of Columbia; (ii) engages solely in activities in which the parent state member bank may engage, at locations at which the state member bank may engage in the activity, and subject to the same limitations as if the state member bank were engaging in the activity directly; and (iii) is controlled (as defined in 12 CFR 225.2(e)) by the parent state member bank? What other criteria should the Board include in the definition of ''operations subsidiary'' for purposes of CRA?

3. Treatment of Other Bank Affiliates

The agencies propose that the current flexibilities that allow a bank to choose to include or exclude the activities of other bank affiliates that are not considered ''bank subsidiaries'' would be maintained. Thus, under the proposed Retail Lending Test, if a bank chooses to have the agencies consider retail loans within a retail loan category that are made or purchased by one or more of the bank's affiliates in a particular assessment area, provided those loans are not claimed for purposes of CRA by any other bank, the agencies would consider all of the retail loans within that retail loan category made by all of the bank's affiliates in that particular assessment area. The agencies are also considering an alternative approach when a bank chooses to have the agencies consider retail loans within a retail loan category that are made or purchased by one or more of the bank's affiliates in a particular assessment area. Under the alternative approach, the agencies would consider all of the retail loans within that retail loan category made by all of the bank's affiliates in all assessment areas.

Also similar to current practice, the agencies propose to retain the provision that discriminatory practices by a bank's affiliates could adversely affect a bank's CRA performance if those bank affiliates' loans were submitted by the bank for CRA consideration as part of the bank's lending activity. In addition, the agencies propose to expand the current provision that provides that other illegal credit practice by a bank's affiliates could adversely affect a bank's CRA performance to include all illegal practices.[171]

Thus, proposed § __.21(c) would provide that the agencies would consider retail loans by a bank subsidiary unless the bank subsidiary is subject to its own CRA requirements. Additionally, at a bank's option, the agencies would consider retail loans by other affiliates of the bank, if those activities are not claimed for purposes of CRA by any other bank. With respect to bank subsidiaries, and other affiliates the bank elects to include in its retail lending performance evaluation, the proposal would require that: (i) The bank provide data on the retail loans of those subsidiaries' and affiliates' pursuant to proposed § __.42; (ii) no affiliate may claim a retail loan origination or purchase if another bank claims, for purposes of CRA, the same retail loan origination or purchase; and (iii) if a bank elects to have the agencies consider retail loans within a particular retail loan category made by one or more of the bank's affiliates in a particular facility-based assessment area, retail lending assessment area, or outside retail lending areas (*i.e.,* outside of its facility-based assessment areas and retail lending assessment areas), the bank must elect to have the agencies consider all of the retail loans within that loan category made by all of the bank's affiliates in that particular facility-based assessment area, retail lending assessment area, or outside retail lending area (*i.e.,* nationwide), provided those loans are not claimed for purposes of CRA by any other bank.

Regarding retail services and products activities, community development financing activities, and community development services activities, the proposal provides that the agencies would consider the activities conducted by a bank subsidiary unless the bank subsidiary is subject to its own CRA requirements. Additionally, at a bank's option, the agencies would consider the activities of other affiliates of the bank, if those activities are not claimed for purposes of CRA by any other bank. With respect to bank subsidiaries and other affiliates that the bank elects to include in its retail services and products and community development activities performance evaluation, the bank would be required to provide data on the bank subsidiaries' and affiliates' activities, as applicable, pursuant to § __.42. Further, a bank would not be able to claim an affiliate's activity if any other bank claims, for purposes of CRA, the same activity.

4. Community Development Financing by a Consortium or a Third Party

Currently, community development loans and community development investments by a consortium in which the bank participates or by a third party in which the bank has invested are considered at the bank's option.[172] If the bank requests consideration for these activities, the bank must report the data pertaining to these loans or investments. Although the current CRA regulations permit participants or investors to choose the allocation of qualifying loans or investments among themselves for consideration, no participant or investor may claim a loan origination or loan purchase or investment if another participant or investor claims the same loan origination or purchase.[173] In addition, the bank may not claim loans accounting for more than its percentage share (based on the level of its participation or investment) of the total qualifying loans or investments made by the consortium or third party.[174]

As specified in proposed § __.21(d), the agencies propose to retain the current flexibility with respect to consideration for community development loans and investments by a consortium in which the bank participates or by a third party in which the bank has invested. Consistent with current regulations, under the proposal, a bank that requests to have these activities considered may not claim an activity claimed by another participant or investor and may not claim more than its percentage share of the total activity made by the consortium or third party. In addition, a bank that requests consideration for these activities would be required to collect and report the data on loans or investments for which it seeks consideration under the Community Development Financing Test pursuant to § __.42.

[171] *See* 12 CFR __.28(c) and proposed § __.28(d).

[172] *See* 12 CFR __.22(d) and __.25(d)(2).

[173] *See id.*

[174] *See id.*

Request for Feedback

Question 52. The agencies propose to require that the activities of a bank's operations and operating subsidiaries be included as part of its CRA evaluation, as banks exercise a high level of ownership, control, and management of their subsidiaries, such that the activities of these subsidiaries could reasonably be attributable directly to the bank. What, if any, other factors should be taken into account with regard to this requirement?

Question 53. As discussed above, what factors and criteria should the agencies consider in adopting definitions of ''operating subsidiary'' for state non-member banks and state savings associations, and ''operations subsidiary'' for state member banks, for purposes of this proposed requirement?

Question 54. When a bank chooses to have the agencies consider retail loans within a retail loan category that are made or purchased by one or more of the bank's affiliates in a particular assessment area, should the agencies consider all of the retail loans within that retail loan category made by all of the bank's affiliates only in that particular assessment area, or should the agencies then consider all of the retail loans made by all of the bank's affiliates within that retail loan category in all of the bank's assessment areas?

C. Performance Context Information Considered

The agencies propose that each performance test would be applied to a bank in light of the relevant performance context information. Under the current CRA regulations, examiners rely on a broad range of economic, demographic, and bank- and community-specific information to understand the context in which a bank's record of performance should be evaluated. In order to fairly evaluate the responsiveness of a bank's activities, the agencies propose that consideration would be given to performance context information, including the bank's capacity and constraints, its business strategy, the needs of the community, and the opportunities for lending, investments, and services in the community.

The proposed § __.21(e) provides that the agencies could consider performance context information to the extent it is not otherwise considered as part of a proposed performance test. This reference is intended to acknowledge that the proposed performance tests incorporate aspects of performance context in different ways. The agencies propose using benchmarks for the performance tests that would help inform and tailor CRA evaluations to the local communities being served by banks. The agencies considered ways in which these proposed metrics, benchmarks, and approaches would directly capture many aspects of performance context. For example, the proposed community benchmarks for the Retail Lending Test metrics, as described in Section X, would reflect information about an assessment area, such as the percentage of owner-occupied residential units, the percentage of low-income families, or the percentage of small businesses or small farms. The market benchmark of the Retail Lending Test, as described in Section X, would reflect the aggregate lending to targeted areas or targeted borrowers by all lenders operating in the same assessment area. The use of these two kinds of benchmarks is intended to tailor the Retail Lending Test to the lending opportunities and needs that are unique to each assessment area. While some aspects of performance context are already embedded into the proposed metrics evaluation approach for the Retail Lending Test and Community Development Financing Test, there are some aspects that are unique to each bank that examiners would consider as outlined in § __.21(e). For example, this would include bank-specific factors such as a bank's past performance, size and financial condition, and safety and soundness limitations, as well any other information provided by the bank about community credit and development needs of the bank's local communities.

As a complement to the proposed performance context factors in § __ .21(e), the agencies intend to explore ways to provide more information to banks and the public on factors impacting community credit needs. The agencies believe that this could provide greater consistency and transparency, while also enhancing public participation in the identification of community credit needs through both quantitative and qualitative information.

Request for Feedback

Question 55. The agencies request feedback on the proposed performance context factors in § __.21(e). Are there other ways to bring greater clarity to the use of performance context factors as applied to different performance tests?

D. Institution Performance Score and Assigned Ratings

As discussed in each performance test section and in § __.28, the agencies propose to assign conclusions for each applicable performance test at each applicable level (*e.g.,* facility-based assessment areas). The agencies propose to retain the five conclusions used in current practice: ''Outstanding, ''High Satisfactory,'' ''Low Satisfactory,'' ''Needs to Improve,'' and ''Substantial Noncompliance.''

In proposed § __.21(f)(2), the agencies are proposing to retain existing language regarding assigning ratings in current § _ _.21(c), indicating that the four performance ratings that can be assigned a bank are ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' and ''Substantial Noncompliance.'' The agencies have also retained language indicating that ratings reflect a bank's record of helping to meet the credit needs of its community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of a bank. The agencies are proposing to add language referencing requirements in the CRA statute [175] to provide greater clarity regarding which geographic areas receive a rating in addition to an institution-level rating. Specifically, the agencies propose to include language indicating that they assign to a bank a rating regarding its CRA performance overall, across performance tests under which the bank is evaluated, and for its performance in, as applicable, each state, and multistate MSA (for any multistate MSA in which a bank maintains a branch in two or more states within that multistate MSA). As is further discussed in Section XVI, the agencies provide the methodology for assigning conclusions and ratings in more detail in the performance test sections of the proposed regulation; in the assigned conclusions and ratings section in § __.28, and in Appendices C and D of the proposed regulations.

For banks other than a small bank or a bank evaluated based on a strategic plan, the agencies would assign a performance score at the state, multistate MSA, as applicable, and institution level that reflects the precise numeric value on a ten-point scale that was derived to determine the overall rating category, as proposed in § __.28 and discussed in Section XVI. The agencies intend for the performance score to provide greater transparency regarding a bank's overall performance, such as whether a bank that earned a particular rating was close to the numeric threshold for a rating that was either higher or lower than the rating it ultimately received.

E. Safe and Sound Operations

In proposed § __.21(g), the agencies would retain the requirement, based in

[175] 12 U.S.C. 2906.

the CRA statute,[176] that a bank's CRA lending, investment, and service activities must be consistent with safe and sound banking practices, including underwriting standards. The agencies would also retain the statement that, although banks may employ flexible underwriting standards for lending that benefits low- or moderate-income individuals and low- or moderate-income census tracts, they must also be consistent with safe and sound operations. The agencies are proposing certain revisions to the language in this section for clarity, including by expressly stating that banks may employ flexible underwriting standards for small business and small farm lending, if consistent with safe and sound operations.

VIII. Retail Lending Test Product Categories and Major Product Lines

The agencies propose to update the definitions for certain retail lending products, to clarify the evaluation of automobile lending, to aggregate certain retail loan types for evaluation, and to develop a clear quantitative threshold for determining when to evaluate a retail product line under the Retail Lending Test. Specifically, the agencies seek to improve transparency and streamline retail lending evaluations by:

- Aggregating, respectively, all closed-end home mortgage loans, all open-end home mortgage loans, and all multifamily loans as separate product lines for the purposes of evaluation under the Retail Lending Test.
- Adding definitions of small business and small farm that align with the CFPB's proposed small business definition in its current rulemaking pursuant to section 1071 of the Dodd-Frank Act to minimize burden.
- Evaluating automobile lending using metrics in recognition of its importance to low- and moderate-income borrowers and communities.
- Establishing a clear major product line threshold of 15 percent of the dollar value of a bank's retail lending in each facility-based assessment area (and, as applicable, in each retail lending assessment area and in its outside retail lending area) to determine whether to evaluate, respectively, closed-end home mortgage, open-end home mortgage, multifamily, small business, and small farm lending under the Retail Lending Test.
- Establishing a major product line threshold for automobile lending of 15 percent based on the average of the percentage of automobile lending retail lending dollars out of total retail lending dollars and percentage of automobile loans by loan volume out of total retail lending by loan volume.

A. Background

1. Current Approach to Retail Lending Product Lines

The CRA regulations do not currently define major product line. Large banks are generally evaluated on all home mortgage, small business, and small farm loans. Additionally, a large bank's consumer loans are currently considered at its option or if these loans constitute a substantial majority of the bank's business.[177] There is currently no established threshold for determining whether consumer loans constitute a substantial majority of a bank's business, meaning examiner judgment is used to determine whether consumer loans meet the standard.

In contrast, small banks, including intermediate small banks, are evaluated only with respect to those retail lending categories that are considered primary products or major product lines (''major product lines''). Examiners select small bank major product lines for evaluation based on a review of relevant information, including the bank's business strategy and its areas of expertise. Examiners may evaluate all of a small bank's consumer loans taken together or select a category of consumer lending (*e.g.,* credit card, automobile) if those consumer loans are deemed to constitute a major product line.

2. Stakeholder Feedback on Retail Lending Product Lines

Stakeholders have expressed varying opinions on setting a threshold amount for determining major product lines in individual assessment areas. They have also diverged on whether a major product line designation should be based upon a percentage threshold of total loans, a certain level of lending volume by dollar amount, or a combination of the two. For example, some community group stakeholders have suggested that the retail lending threshold should be based on number of loans, rather than the dollar amount of loans, to emphasize the importance of smaller value loans to low- and moderate-income borrowers.

Stakeholders generally supported aligning the definitions of small business and small farm used for CRA purposes to the CFPB proposed definition of small business in its proposal to effect changes required by section 1071 of the Dodd-Frank Act. Stakeholders noted that harmonizing the definitions across the two rulemakings would bring more certainty in measuring CRA performance. It would also reduce burden related to data collection and reporting, particularly if institutions could submit data for CRA purposes under the format of the CFPB's Section 1071 Rulemaking.

For consumer lending, industry groups generally preferred to retain the current approach of having consumer loans considered at a bank's option and when such loans amount to a substantial majority of a bank's business. Community groups instead favored requiring consideration where consumer lending amounts reach a significant quantitative threshold and emphasized that predatory products should not receive CRA credit. Most stakeholders favored evaluating consumer loans as separate categories rather than as a single category considered in the aggregate.

B. Retail Lending Test Product Categories

In § __.22(a)(4), the agencies propose the following categories of retail lending for evaluation under the Retail Lending Test's metrics-based approach described in Section IX: Closed-end home mortgage loans, open-end home mortgage loans, multifamily loans, small business loans, small farm loans, and automobile loans.

1. Aggregating Closed-End Home Mortgage Loans

The agencies propose to analyze all closed-end home mortgage loans secured by a one-to-four unit dwelling as a single major product line under the Retail Lending Test. The approach streamlines the evaluation process for retail lending by consolidating several related mortgage loan purposes. The agencies propose to use metrics to evaluate all closed-end home mortgage loans under the approach described in Section IX. Multifamily loans would be evaluated as a product line separate from aggregated closed-end or aggregated open-end home mortgage loans.

Given the different credit needs that these loan purposes fulfill for low- and moderate-income borrowers and communities, the agencies seek feedback on whether to evaluate home purchase and home refinance loans separately. In general, the agencies also request feedback on whether aggregation may lead to less transparency in the

[176] 12 U.S.C. 2901.

[177] Current interagency guidance on when to consider large banks' consumer lending states, ''[t]he Agencies interpret 'substantial majority' to be so significant a portion of the institution's lending activity by number and dollar volume of loans that the lending test evaluation would not meaningfully reflect its lending performance if consumer loans were excluded.'' *See* Q&A § __.22(a)(1)–2.

reported metrics when one loan purpose takes prominence over another. For example, a bank's home purchase lending performance could be obscured during periods of high home mortgage refinance lending, and a bank's mortgage refinance performance could be similarly obscured during periods of high home purchase activity. The agencies seek feedback on the magnitude of this risk, and whether it outweighs the efficiency gained from more streamlined closed-end home mortgage lending evaluations.

Similarly, the agencies also seek feedback on whether to evaluate home improvement loans and ''other purpose'' loans reported under HMDA only under the Retail Services and Products Test described in Section XI. Because home purchase and refinance mortgages significantly outnumber home improvement mortgages, aggregating these categories would give less emphasis to a bank's home improvement lending to low- or moderate-income individuals.

The agencies also propose to continue the current practice of aggregating home mortgage loans for owner-occupied units and non-owner-occupied properties together under the appropriate major product line, for example within closed-end home mortgage loans. This approach provides a fuller picture of the bank's total engagement in home mortgage lending across different borrower types and geographies.

The agencies also recognize that home mortgage loans for non-owner-occupied properties can facilitate the provision of affordable housing. As such, the proposal considers this aspect of a bank's home mortgage lending, along with other qualitative aspects of retail lending, under the Retail Services and Products Test.

2. Aggregating Open-End Home Mortgage Loans

The agencies propose to aggregate all open-end home mortgage loans secured by a one-to-four unit dwelling as a separate product line under the Retail Lending Test. This category would include home equity lines of credit loans and other open-end lines of credit secured by a dwelling. The proposal recognizes that open-end home mortgage loans and closed-end home mortgage loans serve distinct purposes to low- and moderate-income borrowers and communities that are different enough to warrant separate evaluation.

The agencies propose to use metrics to evaluate all open-end home mortgage loans under the approach described in Section IX. However, the agencies seek feedback on whether to instead evaluate open-end home mortgage loans qualitatively under the Retail Services and Products Test described in Section XI. A qualitative review would focus on the responsiveness of open-end home mortgage loans, which may be appropriate given the range of uses that an open-end home mortgage loan can have. Relatedly, lower lending volumes for open-end home mortgage loans may limit the usefulness of market benchmarks under the Retail Lending Test, particularly in assessment areas with very little open-end home mortgage lending.

3. Multifamily Loans

The agencies propose to evaluate multifamily loans as a separate product line under the Retail Lending Test. The approach recognizes the role of multifamily loans in helping to meet community credit needs by financing housing in different geographies and for tenants of different income levels. Consistent with the current approach, the proposal also considers the subset of multifamily loans that provide affordable housing to low- or moderate-income individuals under the Community Development Financing Test.

As with other home mortgage loan purposes under the Retail Lending Test, a bank's multifamily lending performance would be evaluated using loan count rather than the dollar amount. The agencies also propose to evaluate multifamily loans under only the geographic distribution test which would not consider the income of borrowers. Given that few multifamily loans are made to low- or moderate-income borrowers, borrower income would not meaningfully measure whether multifamily loans met community credit needs. And solely evaluating geographic distributions for multifamily loans would account for banks that are primarily multifamily lenders and might otherwise fail the borrower distribution test because they do not lend directly to low- or moderate-income individuals.

Alternatively, the agencies seek feedback on whether to evaluate multifamily loans only under the Community Development Financing Test, because a bank's record of serving the credit needs of its community through multifamily loans may not be effectively measured with only geographic distributions. For example, the geographic distribution of a bank's multifamily loans does not indicate whether low- or moderate-income individuals benefit from the loans. The location of the housing is likely a less significant indicator of serving local low- or moderate-income needs than its affordability to low- and moderate-income residents, which would be reviewed under the Community Development Financing Test. Relatedly, the number of multifamily loans made in low- and moderate-income census tracts may not adequately reflect its value to the community. Unlike home mortgages, one multifamily loan could represent housing for anywhere from five households to hundreds of households, which makes loan count a poor measure for how multifamily loans benefit local communities.

Under the Community Development Financing Test, examiners could alternately account for the affordability and degree to which multifamily loans serve low- or moderate-income tenants. This approach would also avoid double-counting of multifamily lending under retail lending and community development performance tests. The agencies also seek feedback on whether an alternative measure of geographic loan distribution for multifamily lending under the Retail Lending Test would be preferable. For example, the agencies could evaluate the number of units a bank's multifamily lending financed in low- or moderate-income census tracts. This measure may better accord with the benefit the bank's lending brought to its community.

4. Small Business and Small Farm Loans

The agencies propose to define ''small business'' and ''small farm'' in the CRA regulations in alignment with the CFPB's proposed definition of small business in its Section 1071 Rulemaking.[178] As such, the agencies propose to define ''small business'' as a business having gross annual revenues of $5 million or less for its preceding fiscal year.[179] The agencies propose to

[178] *See* 86 FR 56356 (Oct. 8, 2021), as corrected by 86 FR 70771 (Dec. 13, 2021). The CFPB proposed the following definition in its Section 1071 Rulemaking: ''Small business has the same meaning as the term 'small business concern' in 15 U.S.C. 632(a), as implemented in 13 CFR 121.101 through 121.107. Notwithstanding the size standards set forth in 13 CFR 121.201, for purposes of this subpart, a business is a small business if and only if its gross annual revenue, as defined in § 1002.107(a)(14) of this part, for its preceding fiscal year is $5 million or less.'' 86 FR at 56577.

[179] Under the CRA regulations, and as proposed until the agencies transition to using the CFPB's proposed data collection, a ''small business loan'' means a loan included in ''loans to small businesses'' as defined in the instructions for preparation of Call Report. *See* 12 CFR __.12(v) and proposed § __.12. Under the Call Report, a small business loan is defined as a loan made to a business in an amount of $1 million or less that is secured by nonfarm nonresidential properties or

Continued

define ''small farm'' as a farm having gross annual revenues of $5 million or less for its preceding fiscal year. Further, when these small business and small farm definitions become effective, the agencies would use updated definitions for ''small business loan'' and ''small farm loan.'' Specifically, a small business loan would be updated to mean a loan to a business with gross annual revenues of $5 million or less, and a small farm loan would be a loan to a farm with gross annual revenues of $5 million or less. The current definition of ''small business loan'' and ''small farm loan'' would remain in effect until the new definitions become effective.

The agencies expect the small business lending data proposed to be collected by the CFPB would be more comprehensive than the data currently collected and reported by large banks, and used by the agencies, under the current interagency CRA regulations. The CFPB's proposed data collection would represent an improvement over small business lending and small farm lending data currently captured under CRA in two ways, because the CFPB's small business definition would be based on the revenue size of the business or farm rather than loan size as is the case under the current CRA regulations.[180] First, the CFPB data would capture all lending, including larger loans, to small businesses and small farms meeting the CFPB's proposed definition. Second, the CFPB data would exclude loans made to large businesses and large farms.

The agencies are in the process of seeking approval from the SBA to use the proposed standard of gross annual revenues of $5 million or less, consistent with the size proposed by the CFPB in its Section 1071 Rulemaking, rather than the SBA's size standards.[181] The proposed CRA definitions of ''small business'' and ''small farm'' would enable the agencies to expand and improve the current analysis of CRA small business and small farm lending. The agencies' proposal to leverage the CFPB small business loan definition and associated data reporting would enable the agencies to use borrower and geographic distribution metrics that provide more insight into banks' performance relative to the demand for small business loans in a given geographic area. It would also allow for an analysis that uses an expanded data set measuring loans to small businesses of different revenue sizes, including—importantly—to the businesses and farms with gross annual revenues of $250,000 or less, as discussed in Section IX.

Importantly, the agencies' proposal to leverage the CFPB's definitions would reduce bank data collection and reporting burden under CRA regulations. The agencies would intend to eliminate the current CRA small business and small farm data collection and reporting and replace it with the CFPB's section 1071 data, once available, which covered banks would be required to collect and report under section 1071. The proposed approach is responsive to various stakeholders' request that the agencies coordinate the small business and small farm definitions across the two rulemakings. Should both rulemakings be finalized, the agencies anticipate making the compliance date similar to the compliance date in a final rulemaking by the CFPB.

5. Purchased Loans

The agencies propose to evaluate a bank's record of helping to meet community credit needs through the origination and purchase of retail loans under the Retail Lending Test by counting an examined bank's purchased retail loans as equivalent to its retail loan originations. The market for purchased loans can provide liquidity to banks and other lenders, such as CDFIs, and extend their capability to originate loans to low- and moderate-income individuals and in low- and moderate-income areas. Banks may also purchase loans to develop business opportunities in markets where they otherwise lack the on-the-ground ability to originate loans.

On the other hand, some stakeholders have argued that purchased loans should not receive the same consideration as originated loans for CRA credit because they require fewer business development and borrower outreach resources than originating loans. And generally, despite their potential value in increasing secondary-market liquidity, purchases of loans may do less to extend the availability of credit than new originations. This concern is particularly acute where loan purchases do not directly provide liquidity to the originator, such as with purchases of seasoned loans that have been sold once or more in the past.

In response, the agencies propose to adjust a retail lending conclusion where an examiner determines that loan purchases reflect loan churning, after conducting the retail lending volume and distribution analyses. Loan churning would occur where loans to targeted borrowers or census tracts were purchased and sold repeatedly by different banks, with the possibility of each bank receiving CRA credit equivalent to the banks that originated the loans. In such cases, the re-purchase of loans does not provide additional liquidity to the originating banks nor additional benefit for low- and moderate-income borrowers and areas.

The agencies' analysis of historical data suggests that some CRA-motivated repeat purchases of home mortgage loans may be occurring. A review of 2017 HMDA data found that bank purchased low- and moderate-income loans are over five times as likely to be repurchased by another bank within a year as other purchased home mortgage loans. The analysis found that 0.6 percent of home mortgage loans to non-low- and moderate-income borrowers purchased by commercial banks were sold to another commercial bank within the same year, whereas the share was 3.3 percent for low- and moderate-income borrower loans.

The agencies seek feedback on whether only loans purchased from the loan originator should be eligible for CRA consideration. The agencies also seek feedback on whether to engage in ongoing analysis of HMDA data to identify institutions that appear to engage in significant churning of mortgage loans, with proposed § __.22 describing this as the purchase of home mortgage loans for the sole or primary

categorized as a commercial or industrial loan. Also, under the CRA regulations, and as proposed until the agencies transition to using the CFPB's proposed data collection, ''small farm loan'' means a loan included in ''loans to small farms'' as defined in the instructions for preparation of the Call Report. See 12 CFR __.12(w) and proposed § __.12. Under the Call Report, a small farm loan is defined as a loan to a farm in an amount of $500,000 or less that is secured by farmland (including farm residential and other improvements) or categorized as a loan to finance agricultural production or other loan to farmers.

[180] The agencies estimated the percentage of large banks that would have passed various potential retail lending volume thresholds at the assessment area level based on historical lending and deposits data. Comparing those that received ''very good'' or ''excellent'' conclusions (or ''High Satisfactory'' or ''Outstanding'' ratings if applicable) on the lending test in the assessment area to those that received ''poor'' conclusions (or ''Needs to Improve'' ratings), the agencies found that the largest difference in the estimated pass rate occurred at 30 percent of the market volume benchmark. As a caveat, note that these lending test conclusions were based on many factors in addition to the volume of retail lending, such as loan distributions and (for large banks) community development lending. Furthermore, examinations under current procedures do not use the retail lending volume screen the agencies are proposing to evaluate the amount of retail lending a bank engages in. These data can be referenced in the CRA Analytics Data Tables.

[181] This assumes the CFPB's section 1071 rulemaking is finalized as proposed with a ''small business'' defined as having gross annual revenues of $5 million or less.

purpose of inappropriately influencing their retail lending performance evaluation. Examiners could use such analysis to inform their review of a bank's retail lending for potential loan churning.

6. Treatment of Consumer Loans

Consumer lending can be important for fulfilling the credit needs of low- and moderate-income borrowers. The agencies propose to define a consumer loan as an automobile loan, credit card loan, or other secured or unsecured loan to one or more individuals for household, family, or other personal expenditures. However, apart from automobile loans, this category spans several product categories that are heterogeneous in meeting low- and moderate-income credit needs and are difficult to evaluate on a consistent quantitative basis. Therefore, the agencies propose to treat automobile lending as the sole consumer loan type evaluated under the metrics-based Retail Lending Test. The agencies propose to consider the qualitative aspects of all other consumer loans, including credit card loans, only under the Retail Services and Products Test.

Automobile Loans. The agencies propose to evaluate automobile lending under the Retail Lending Test. Under proposed § __.12, the agencies propose defining an automobile loan as a consumer loan extended for the purchase of and secured by a new or used passenger car or other vehicle, for personal use, as defined in Schedule RC–C of the Call Report. Automobile loans can be important in areas where jobs are a significant distance from where people reside and where public transportation is not readily available. Safe and sound automobile loans can also serve as a means of building a credit history.

As discussed further in Section XIX, the agencies propose requiring new automobile lending data collection and reporting by banks with assets of over $10 billion because the agencies recognize that credit reporting agency data and other existing market sources lack the comprehensiveness required to construct the necessary metrics to evaluate automobile lending. Collecting and maintaining automobile lending data would be optional for small banks that elect evaluation under the Retail Lending Test, for intermediate banks, and for banks with assets of $10 billion or less. Although limiting data collection and reporting requirements for automobile lending to only banks with assets of over $10 billion would have the benefit of tailoring these requirements such that they do not apply to banks under this asset level, it would also lead to less comprehensive metrics for all banks, particularly in areas where banks with assets of over $10 billion have a low market share of bank automobile lending.

Credit Card Loans and Other Consumer Loan Categories. The agencies propose to evaluate other consumer loan categories, including credit cards, qualitatively under the Retail Services and Products Test. The agencies define a credit card loan as a line of credit for household, family, or other personal expenditures that is accessed by a borrower's use of a credit card. A bank's record of serving the credit needs of its community through credit card lending may not be effectively measured under the Retail Lending Test. Credit card lending is concentrated among a relatively small number of lenders, with many designated as limited purpose banks for which credit card lending is a large share of their overall lending activity. While some banks issue credit card loans as a small share of their business, most of these business lines would not meet a major product line threshold for inclusion in a CRA evaluation. Further, banks may not currently retain or have the capability to capture borrower income at origination or subsequently as cardholders maintain their accounts, location, or other data fields relevant to constructing appropriate benchmarks for credit card lending. As such, credit card-specific retail lending metrics would likely require new data collection and reporting from large banks.

Instead, the agencies propose to qualitatively review whether credit cards and other consumer loan categories meet low- or moderate-income credit needs under the Retail Services and Products Test. Under this approach examiners would review the responsiveness of these credit products by considering the number of low- and moderate-income customers using each selected product and how they use the product, including rates of successful repayment under the original loan terms. Other aspects of responsiveness could include the loan terms, underwriting, pricing, and safeguards that minimize adverse borrower outcomes.

The agencies' overall approach to consumer loans recognizes that with the exception of automobile lending, consumer products are originated, structured, and maintained differently than home mortgage, small business, and small farm loans. Accordingly, the agencies seek feedback on whether evaluating all consumer lending products, including automobile loans, qualitatively under the Retail Services and Products Test would better meet the overarching goals of CRA modernization.

Request for Feedback

Question 56. Should the agencies aggregate closed-end home mortgage loans of all purposes? Or should the agencies evaluate loans with different purposes separately given that the factors driving demand for home purchase, home refinance, and other purpose home mortgage loans vary over time and meet different credit needs?

Question 57. Should the agencies exclude home improvement and other purpose closed-end home mortgage loans from the closed-end home mortgage loan product category to emphasize home purchase and refinance lending? If so, should home improvement and other purpose closed-end home mortgage loans be evaluated under the Retail Lending Test as a distinct product category or qualitatively under the Retail Services and Products Test?

Question 58. Should the agencies include closed-end non-owner-occupied housing lending in the closed-end home mortgage loan product category?

Question 59. Should open-end home mortgage loans be evaluated qualitatively under the Retail Services and Products Test rather than with metrics under the Retail Lending Test?

Question 60. Should multifamily lending be evaluated under the Retail Lending Test and the Community Development Financing Test (or the Community Development Test for Wholesale or Limited Purpose Banks)? Or should multifamily lending be instead evaluated only under the Community Development Financing Test?

Question 61. Should banks that are primarily multifamily lenders be designated as limited purpose banks and have their multifamily lending evaluated only under the Community Development Financing Test?

Question 62. Should the agencies adopt a size standard for small business loans and small farm loans that differs from the SBA's size standards for purposes of the CRA? Is the proposed size standard of gross annual revenues of $5 million or less, which is consistent with the size standard proposed by the CFPB in its Section 1071 Rulemaking, appropriate? Should the CRA compliance date for updated ''small business,'' ''small business loan,'' ''small farm,'' and ''small farm loan'' definitions be directly aligned with a future compliance date in the CFPB's Section 1071 Rulemaking, or should the

agencies provide an additional year after the proposed updated CRA definitions become effective?

Question 63. Should the agencies' current small business loan and small farm loan definitions sunset on the compliance date of the definitions proposed by the agencies?

Question 64. Should retail loan purchases be treated as equivalent to loan originations? If so, should consideration be limited to certain purchases—such as from a CDFI or directly from the originator? What, if any, other restrictions should be placed on the consideration of purchased loans?

Question 65. Would it be appropriate to consider information indicating that retail loan purchases were made for the sole or primary purpose of inappropriately influencing the bank's retail lending performance evaluation as an additional factor in considering the bank's performance under the metrics or should such purchased loans be removed from the bank's metrics?

Question 66. Do the benefits of evaluating automobile lending under the metrics-based Retail Lending Test outweigh the potential downsides, particularly related to data collection and reporting burden? In the alternative, should the agencies adopt a qualitative approach to evaluate automobile lending for all banks under the proposed Retail Lending Test?

Question 67. Should credit cards be included in CRA evaluations? If so, when credit card loans constitute a major project line, should they be evaluated quantitatively under the proposed Retail Lending Test or qualitatively under the proposed Retail Services and Products Test?

Question 68. What data collection and reporting challenges, if any, for credit card loans could adversely affect the accuracy of metrics?

Question 69. Should the agencies adopt a qualitative approach to evaluate consumer loans? Should qualitative evaluation be limited to certain consumer loan categories or types?

C. Major Product Line Approach

For banks evaluated under the Retail Lending Test, the agencies propose using a major product line standard for determining when to evaluate a bank's closed-end home mortgage, open-end home mortgage, multifamily, small business, small farm, and automobile lending. The agencies propose to use a different standard for automobile loans than the other product lines to account for the generally lower dollar value of automobile loans.

1. Closed-End Home Mortgage, Open-End Home Mortgage, Multifamily, Small Business, and Small Farm Major Product Line Standard

The agencies propose to define major product lines for each of a bank's facility-based assessment areas and, as applicable, for each of its retail lending assessment areas and the outside retail lending area as a retail lending product line constituting 15 percent or more of the dollar value of the bank's retail lending in the respective geography.

The proposal focuses on evaluating the retail lending products with the biggest impact at each bank and within its community. For large banks, the proposal would remove less significant, incidental home mortgage, small business, and small farm product lines currently evaluated by default in CRA examinations. Small banks that opt into the Retail Lending Test would benefit from the predictability associated with operating under a single defined standard for identifying major product lines. And all banks would benefit from more streamlined retail lending evaluations that focus only on their most significant retail lending products.

The proposed definition also ties the major product line designation to a bank's retail lending focus in individual markets. For example, by focusing on major product lines at the assessment area or geographical level, a bank that primarily extends home mortgage and small business loans, but also specializes in small farm lending in a handful of rural assessment areas would have its small farm lending considered in those rural assessment areas, but not in assessment areas where the bank makes few or no small farm loans. Lastly, by using a standard specific to each facility-based assessment area and retail lending assessment area, the approach captures lending that affects local communities even if it might not meet a 15 percent standard at the institution level.

The agencies propose to divide retail lending into six distinct categories (closed-end home mortgage, open-end home mortgage, multifamily, small business, small farm, and automobile lending). As such, every assessment area in which a bank conducts any retail lending would have at least one product that represents at least 16.6 percent of the dollar volume of its total retail lending. The agencies propose to set the major product line threshold below that number at 15 percent to preclude the possibility of a bank having no major product lines to evaluate.

The agencies request feedback on different standards for determining when to evaluate multifamily loans under the Retail Lending Test. For example, multifamily lending could be considered a major product line only where the bank is a monoline multifamily lender or is predominantly a multifamily lender within the applicable geographic area (*i.e.,* facility-based assessment area, retail lending assessment area, or outside of facility-based assessment areas and retail lending areas, as applicable, at the institution level). The ''predominantly'' standard could mean either that multifamily lending ranks first in the dollar amount of the bank's retail lending in an assessment area or that it accounts for a significant percentage of the dollar volume of a bank's retail lending, for example 50 percent. This approach helps ensure that the agencies assess a bank's relevant multifamily lending performance with respect to meeting community credit needs using the proposed Retail Lending Test's retail lending volume screen and geographic distribution measures.

2. Automobile Loan Major Product Line Standard

The agencies propose to use both the dollar volume and loan count of a bank's automobile lending to determine when to evaluate it as a major product line under the Retail Lending Test. Specifically, the agencies propose a 15 percent threshold based on the average of the percentage of automobile lending dollars out of total retail lending dollars, and the percentage of automobile loans by loan count out of total retail loan count in the relevant area. For example, if a bank's automobile lending accounts for 10 percent of its total retail lending dollars and 22 percent of its total retail loans by loan count in an applicable geographic area (facility-based assessment area, retail lending assessment area, or outside of facility-based assessment areas and retail lending assessment areas at the institution level), its combined percentage would be 16 percent, and automobile lending would be evaluated as a major product line.

As automobile loans generally have a lower dollar value than the other products considered under the Retail Lending Test, automobile loans would be rarely evaluated under the 15 percent dollar volume-only threshold applicable to the other product lines. Instead, by considering both the average of dollar volume and loan count percentage, the agencies' approach would treat automobile loans as a major product line for banks that would not otherwise meet a standard that considers only dollar volume. This approach would

help account for the lower dollar value of automobile loans while also recognizing that among other categories of consumer loans, automobile loans can fulfill unique and important credit needs for low- and moderate-income borrowers and communities.

Request for Feedback

Question 70. Should the agencies use a different standard for determining when to evaluate closed-end home mortgage, open-end home mortgage, multifamily, small business, and small farm lending? If so, what methodology should the agencies use and why? Should the agencies use a different standard for determining when to evaluate automobile loans?

Question 71. Should the agencies use a different standard for determining when to evaluate multifamily loans under the Retail Lending Test? If so, should the standard be dependent on whether the lender is a monoline multifamily lender or is predominantly a multifamily lender within the geographic area? Relatedly, what should a ''predominantly'' standard be for determining whether multifamily loans constitute a major product line entail?

IX. Retail Lending Test Evaluation Framework for Facility-Based Assessment Areas and Retail Lending Assessment Areas

A. Overview of Proposed Retail Lending Test Approach

The agencies propose to use metrics and performance standards to evaluate a bank's lending to low-income and moderate-income borrowers, small businesses and small farms, and low-income and moderate-income neighborhoods in its assessment areas. The metrics and performance standards would apply to all large banks and intermediate banks. The approach is intended to make a bank's retail lending evaluation more transparent and predictable by specifying quantitative standards for lending consistent with achieving, for example, a ''Low Satisfactory'' or ''Outstanding'' conclusion in an assessment area.

The agencies propose two sets of metrics for this test. First, the agencies propose to use a retail lending volume screen that would assess a bank's volume of retail lending relative to its deposit base, compared to other banks in each facility-based assessment area. Second, the agencies propose a series of distribution metrics and dynamic thresholds to individually evaluate each of a bank's major product lines, in each facility-based assessment area, and, as applicable, in each retail lending assessment area and outside retail lending area. These metrics would separately evaluate the geographic distribution and borrower distribution of a bank's lending for each product line. As part of this evaluation, the metrics would distinguish between different income levels and business and farm sizes, with separate metrics for lending to low- and to moderate-income census tracts; to low- and to moderate-income borrowers; and to different sizes of small businesses and small farms. Each metric would be compared to thresholds that would differ across assessment areas and across different business cycles based on local data that reflects credit demand and lending opportunities, with the intent of incorporating performance context information directly into the metric-based approach.

Through these metrics and thresholds, the agencies propose to assign a score reflecting performance on each of a bank's major product lines in each assessment area and outside retail lending area, as applicable. For example, under the proposal, a bank may receive a score reflecting its closed-end home mortgage lending performance and a different score for its small business lending performance in a facility-based assessment area, providing transparency at the product-line level and showing more granularly how a bank is serving the credit needs of its communities. The scores across the various major product lines would be combined to determine a recommended Retail Lending Test conclusion for each assessment area, weighted by the dollar volume associated with each product line. This aggregation would allow strong performance in one product line to potentially offset weaker performance in another product line. The agencies also propose to consider specific additional factors discussed in § __.22(e) that would allow for adjusting a bank's recommended conclusion, such as the bank's dispersion of loans to different geographies in the assessment area, or missing or faulty data that affects the accuracy of the metrics or thresholds.

B. Background

1. Current Approach to Retail Lending Evaluations

Under the current CRA regulations, the lending test includes quantitative and qualitative criteria, but does not specify what level of lending is needed to achieve ''Satisfactory'' or ''Outstanding'' performance. Large banks are evaluated based on the volume of retail lending activity, in number and dollars, within their assessment areas as well as the geographic distribution and borrower distribution of retail lending.

Large bank lending activity is evaluated to determine whether the bank has a sufficient aggregate value of lending in its assessment areas given its performance context, including its capacity and the lending opportunities available in its assessment areas. Examiners consider the number and dollar amount of loans in assessment areas and the number of loans inside and outside of assessment areas. These approaches rely on examiner judgment to draw a conclusion about a bank's level of lending.

For the geographic distribution analysis, examiners evaluate the distribution of a bank's retail loans in low-income, moderate-income, middle-income, and upper-income census tracts. Examiners review the geographic distribution of home mortgage loans by income category and compare the percentage distribution of lending to the percentage of owner-occupied housing units in the census tracts. Similarly, in each income category of census tract, examiners compare small business lending to the percentage distribution of businesses; small farm lending to the percentage distribution of farms; and consumer lending to the percentage distribution of households in each category of census tract, as applicable.

For the borrower distribution analysis, examiners evaluate the distribution of a bank's retail loans based on specified borrower characteristics, such as the income level of borrowers for home mortgage lending. The comparators used to inform the borrower distribution analysis are families by income level for home mortgage lending; businesses with gross annual revenues of $1 million or less for small business lending; farms with gross annual revenues of $1 million or less for small farm lending; and households by income level for consumer lending. Examiners supplement these distribution analyses by also reviewing the dispersion of a bank's loans throughout census tracts of different income levels in its assessment areas to determine if there are conspicuous lending gaps.

Small banks are evaluated using similar, but simplified standards that do not rely on data collection or reporting. Instead of the lending activity criteria, a small bank is evaluated based on its loan-to-deposit ratio and the portion of its lending within its assessment areas. Performance for the loan-to-deposit calculation is based on the balance sheet dollar values at the institution level, and

a review of the number of loans made inside and outside of assessment areas to determine whether a bank's lending activity is sufficient. The geographic and borrower distribution for small banks is similar to that for large banks but uses bank data collected in the normal course of business. The purpose of evaluating lending activity for both small and large banks is the same—to determine whether a bank has a sufficient aggregate value of lending in its assessment areas in light of a bank's performance context, including its capacity and the lending opportunities available in its assessment areas.

2. Stakeholder Feedback on Retail Lending Evaluations

Stakeholders generally supported using metrics to increase the clarity and transparency of retail lending evaluations. However, community stakeholders emphasized that the performance measures and thresholds should be sufficiently rigorous to ensure that banks help to meet credit needs in their communities. Stakeholders were mixed on whether the low- income and moderate-income categories of borrowers should be combined when calculating the distribution metrics, but many recommended analyzing them separately. And most stakeholders agreed that performance context and qualitative aspects of performance should continue as an important dimension of evaluations.

C. Retail Lending Volume Screen

In § __.22(c), the agencies propose a retail lending volume screen that measures the total dollar volume of a bank's retail lending relative to its presence and capacity to lend in a facility-based assessment area compared to peer lenders. Large banks that underperform on the retail lending volume screen would have, as applicable, a recommended ''Needs to Improve'' or ''Substantial Noncompliance'' Retail Lending Test conclusion in a facility-based assessment area.

The screen serves to ensure that a bank's performance evaluation reflects the amount of a bank's retail lending relative to its presence and lending capacity in an assessment area. A bank fails to meet the credit needs of its entire community if it makes too few loans relative to its community presence, capacity, and local opportunities, even if those loans happened to be concentrated among, for example, low- and moderate-income borrowers and low- and moderate-income census tracts.

1. Bank Volume Metric

In each facility-based assessment area, the agencies propose using a bank volume metric as the measure of how much of a bank's local capacity has been oriented toward retail lending. This measure is calculated as a ratio, with the average annual dollar amount of a bank's originations and purchases of all retail loans in the numerator—including home mortgage, multifamily, small business, small farm, and automobile loans. This overall retail lending amount would be divided by the annual average amount of its deposits collected from that assessment area in the denominator, if the bank collects and maintains this data.

As proposed in § __.42, collecting and maintaining deposits data would be required for large banks with assets of over $10 billion, and would be optional for small banks that elect evaluation under the Retail Lending Test, for intermediate banks, and for large banks with assets of $10 billion or less. For any bank evaluated under the Retail Lending Test that did not collect deposits data, the agencies propose to use the deposits assigned to the banks' branches in each assessment area as reported in the FDIC's Summary of Deposits to calculate the local deposit base in the denominator. As discussed elsewhere in this **SUPPLEMENTARY INFORMATION**, deposits data that are collected and reported as proposed in § __.42 would facilitate metrics that accurately reflect a bank's deposits inside and outside of its assessment areas. By contrast, the FDIC's Summary of Deposits data necessarily assigns all deposits to bank branch locations and does not identify the amount or percentage of deposits sourced from outside of a bank's facility-based assessment areas. As a result, for a bank with assets of $10 billion or less that, in fact, sources deposits from outside of its facility-based assessment areas, electing to collect and maintain deposits data could meaningfully increase the bank volume metric in a facility-based assessment area by decreasing the amount of deposits included in the denominator of that metric. Conversely, electing not to collect and maintain deposits for such a bank may result in a lower bank volume metric, because deposits sourced from outside of the assessment area would then be included in the denominator of the metric.

The proposed retail lending volume screen uses the dollar amount of a bank's retail lending instead of the number of loans. Although this approach gives more credit to larger loans, the agencies propose to use total dollar amount to measure how fully a bank has utilized its capacity, as measured using total deposit dollars. The dollars of deposits also serves as a measure of the extent of a bank's local presence.

2. Assessing Performance Using Market Volume Benchmark and Threshold

To assess the level of a bank's retail lending volume, as measured by the *bank volume metric,* relative to local opportunities, the agencies propose using a market volume benchmark that reflects the level of lending by all large banks in the facility-based assessment area. The market volume benchmark would measure the average annual dollar amount of retail originations in the assessment area by all large banks that operate a branch in the assessment area in the numerator, divided by the annual average amount of deposits collected by those same banks from that assessment area in the denominator. The dollars of deposits in the denominator would be based on reported data for large banks with assets of over $10 billion, and on the FDIC's Summary of Deposits for large banks with assets of $10 billion or less, using the deposits assigned to branches located in each assessment area for which the benchmark is calculated.

Under the proposal, the denominator of the market volume benchmark would not include deposits data voluntarily collected and maintained by a large bank with assets of $10 billion or less, because the agencies would not require a large bank of this size to also report that deposits data. Instead, the agencies would continue using FDIC's Summary of Deposits data for the market volume benchmark, even when a bank voluntarily collects and maintains more specific information for its own examination. The agencies acknowledge that there are tradeoffs to this approach. On the one hand, this approach reduces the burden of a bank that chooses to voluntarily collect and maintain deposits data by not also having to report that data. On the other hand, the agencies would not be able to use that collected and maintained deposits data to construct more accurate market volume benchmarks. This downside would be most pronounced in markets where banks with assets of $10 billion or less have a large market share. The agencies seek feedback about these tradeoffs and the alternative approach of requiring a large bank with assets of $10 billion or less to also report deposits data if it wants to voluntarily collect and maintain deposits data for use in its own examination.

The agencies also seek feedback on whether assigning FDIC's Summary of Deposits data to the county in which a bank has a branch, as provided in § __ .12, is the best way to allocate these deposits for purposes of constructing the market volume benchmark. An alternative approach to incorporating Summary of Deposits data into the market volume benchmark could be proportionately allocating the deposits associated with a branch of a large bank with assets of $10 billion or less to each of the counties of that bank's assessment area where the branch is located. However, without more data about the location of deposits, it is hard for the agencies to determine whether this method would be more or less accurate than assigning deposits to a single county.

Under the proposal, banks would pass the retail lending volume screen with a bank volume metric of at least 30 percent of the market volume benchmark. If a bank meets or exceeds this threshold, the agencies would evaluate the bank's major product lines under the distribution metrics approach, described in Sections IX.D and IX.E, and the bank would be eligible for any recommended performance conclusion.

The relatively low threshold set at 30 percent of the market volume benchmark helps ensure that passing the screen would not be onerous for banks with different business strategies. In particular, banks that generally hold loans on their balance sheet may have substantially lower bank volume metrics than banks that generally sell them on the secondary market. The agencies therefore propose to set the threshold at a level that is well below local averages, so banks with various business strategies could meet the threshold.

Based on an analysis of historical lending data and assessment area level conclusions on the Retail Lending Test, the agencies found that a threshold set at 30 percent of the market volume benchmark created the largest distinction in passing rates between banks whose performance was judged by their examiner to be poor from those whose performance was judged to be very good or excellent.[182] Barring additional mitigating information, banks that fail to meet 30 percent or more of the market volume benchmark are substantially underperforming their peers in terms of meeting the credit needs of their communities.

3. Additional Review

The proposal recognizes that not all performance context factors are captured in the metrics. Therefore, the proposal requires a review of specific performance context factors to determine whether there is an acceptable basis for a bank failing to meet the threshold for the retail lending volume screen in a facility-based assessment area. In particular, institutional capacity and constraints would be considered to determine if a bank's lending volume is sufficient. Institutional capacity and constraints may include the financial condition of a bank, the presence or lack thereof of other lenders in the geographic area, safety and soundness limitations, the bank's business strategy (for example if it holds loans in portfolio or sells them into the secondary market), or other factors that limit the bank's ability to lend in the assessment area. If the performance context assessment concludes that the bank failed to meet the threshold for the retail lending volume screen due to institutional capacity or other constraints, the bank would pass the retail lending volume screen and the agencies would then consider the retail loan distribution of its major product lines. If such capacity and constraints issues do not account for the bank's insufficient volume of bank retail lending in the assessment area, the agencies propose to consider the bank to have failed the retail lending volume screen.

Where a large bank fails the retail lending volume screen, barring the performance context assessment described above, the agencies propose to assign that bank either a ''Needs to Improve'' or ''Substantial Noncompliance'' conclusion on the Retail Lending Test in the assessment area. Which of these two conclusions the large bank receives would be determined by a consideration of additional factors, such as the margin by which the bank volume metric fell short of the threshold, and the bank's performance on the retail distribution metrics described in Sections IX.D and IX.E, below. The agencies propose that this approach would apply to both large banks with assets of over $10 billion and large banks with assets of $10 billion or less.

Where an intermediate bank or a small bank opting to be evaluated under the Retail Lending Test fails the retail lending volume screen, the agencies propose that the bank would not be limited to receiving only a conclusion of ''Needs to Improve'' or ''Substantial Noncompliance'' on the Retail Lending Test in that assessment area. Instead, the bank's outcome on the retail lending volume screen would be reviewed as an additional factor indicative of its lending performance and considered when reaching Retail Lending Test conclusions for facility-based assessment areas as discussed in Section IX.H.

This manual review accounts for the lower capacity of intermediate and small banks to ensure that their lending is commensurate with their deposits. In addition, this approach would account for the proposed use of FDIC's Summary of Deposits data to calculate the bank volume metric for intermediate banks and for small banks that opt into the Retail Lending Test (if the bank does not voluntarily collect and maintain deposits data under proposed § __.42). Specifically, the agencies have considered that the FDIC's Summary of Deposits data may not always accurately reflect the location of depositors, which could affect whether these banks underperform on the retail lending volume screen. As such, a manual review by examiners could account for factors related to a bank's performance, including the degree to which a bank gathers deposits and make loans outside of its facility-based assessment areas.

The agencies considered whether this approach of reviewing an intermediate or small bank's outcome on the retail lending volume screen as an additional factor, but not limiting the Retail Lending Test conclusion the bank could receive in an assessment area in which it failed the screen, should also be extended to large banks with assets of $10 billion or less. However, the agencies believe that these large banks have greater capacity to ensure their lending is commensurate with their deposits, and to voluntarily collect and maintain deposits data in cases where the bank's FDIC's Summary of Deposits data do not accurately reflect the location of the bank's depositors.

Request for Feedback

Question 72. For calculating the bank volume metric, what alternatives should

[182] The agencies estimated the percentage of large banks that would have passed various potential retail lending volume thresholds at the assessment area level based on historical lending and deposits data. Comparing those that received ''very good'' or ''excellent'' conclusions (or ''High Satisfactory'' or ''Outstanding'' ratings if applicable) on the lending test in the assessment area to those that received ''poor'' conclusions (or ''Needs to Improve'' ratings), the agencies found that the largest difference in the estimated pass rate occurred at 30 percent of the *market volume benchmark*. These lending test conclusions were based on many factors in addition to the volume of retail lending, such as loan distributions and (for large banks) community development lending. Furthermore, examinations under current procedures do not use the retail lending volume screen the agencies are proposing to evaluate the amount of retail lending a bank engages in. These data can be referenced in the CRA Analytics Data Tables.

the agencies consider to the proposed approach of using collected deposits data for large banks with assets of over $10 billion and for other banks that elect to collect this data, and using the FDIC's Summary of Deposits data for other banks that do not collect this data? For calculating the market volume benchmark, what alternatives should the agencies consider to the proposed approach of using reported deposits data for large banks with assets of over $10 billion, and using the FDIC's Summary of Deposits data for large banks with assets of $10 billion or less?

Question 73. Should large banks receive a recommended Retail Lending Test conclusion of ''Substantial Noncompliance'' for performance below a threshold lower than 30 percent (*e.g.,* 15 percent of the market volume benchmark) on the retail lending volume screen?

D. Bank Geographic Distribution Metrics and Borrower Distribution Metrics

In § __.22(d), the agencies propose to use a set of geographic distribution and borrower distribution metrics to measure bank performance for each major product line. The geographic distribution metrics measure the level of bank lending in low-income and moderate-income census tracts in an assessment area. The borrower distribution metrics measure the level of lending to low-income borrowers, moderate-income borrowers, small businesses or small farms with gross annual revenues of $250,000 or less, and small businesses or small farms with gross annual revenues greater than $250,000 but less than or equal to $1 million, depending on the product line being evaluated. The agencies would calculate these distribution metrics for each major product line evaluated under the Retail Lending Test in a facility-based assessment area or retail lending assessment area, as applicable.

1. Overview

To calculate these distribution metrics, the agencies propose using the number of a bank's loans, not the dollar amount of those loans. For example, under the proposed approach, one $250,000 home mortgage would count the same as one $80,000 home mortgage. This approach emphasizes the number of households, small businesses, and small farms served within each product line, and avoids weighting larger loans (and hence higher-income borrowers) more heavily than smaller loans, as would occur if the metrics instead used dollar amounts. As a result, the proposed approach reflects the importance and responsiveness of smaller value loans to meet the needs of lower-income borrowers, smaller businesses, and smaller farms. An approach that encouraged larger retail loans over smaller ones would not appropriately emphasize smaller-value loans that meet the credit needs of low- and moderate-income communities.

Table 3 shows the specific distribution metric components the agencies propose calculating for each product line evaluated under the Retail Lending Test.

TABLE 3 TO SECTION __.22—LENDING DISTRIBUTIONS CONSIDERED IN THE BANK METRICS

Retail lending product line	Geographic distribution metrics (percentage of bank loans for the following categories)	Borrower distribution metrics (percentage of bank loans for the following categories)
Closed-End Home Mortgage Lending	Low-Income Census Tracts	Low-Income Borrowers.
	Moderate-Income Census Tracts	Moderate-Income Borrowers.
Open-End Home Mortgage Lending	Low-Income Census Tracts	Low-Income Borrowers.
	Moderate-Income Census Tracts	Moderate-Income Borrowers.
Multifamily Lending	Low-Income Census Tracts Moderate-Income Census Tracts.	N/A.
Small Business Lending	Low-Income Census Tracts	Small businesses with gross annual revenues of $250,000 or less.
	Moderate-Income Census Tracts	Small businesses with gross annual revenues of more than $250,000 but less than or equal to $1 million.
Small Farm Lending	Low-Income Census Tracts	Small farms with gross annual revenues of $250,000 or less.
	Moderate-Income Census Tracts	Small farms with gross annual revenues of more than $250,000 but less than or equal to $1 million.
Automobile Lending	Low-Income Census Tracts	Low-Income Borrowers.
	Moderate-Income Census Tracts	Moderate-Income Borrowers.

The proposed distribution metrics draw upon measures that the agencies currently use as part of CRA evaluations. The agencies have historically evaluated both a bank's geographic and borrower distributions, and the proposal would both update and standardize these metrics. The agencies have long considered, and propose to continue considering, a bank's record of providing credit both to borrowers of different income or revenue levels as well as neighborhoods of different income levels to be important determinants of its overall record of helping to meet the credit needs of its entire community. This approach recognizes the importance of lending that benefits low-income and moderate-income communities, regardless of the income or revenue size of the particular borrower, and lending that benefits low-income and moderate-income individuals and smaller farms and businesses, regardless of where they are located.

2. Geographic Distribution Metrics

The agencies propose using two geographic distribution components/metrics for each product line:

- Loans in low-income census tracts; and
- Loans in moderate-income census tracts.

These components are reflected above in Table 3.

The proposed regulation refers to these geographic distribution metrics as geographic bank metrics. For each product line, the geographic bank

metrics measure the number of a bank's loans located in low-income and moderate-income census tracts, respectively, relative to the total number of the bank's loans in the assessment area. For example, if Bank A originated 25 total closed-end home mortgage loans in an assessment area, and made 5 of those loans in low-income census tracts, then it has a low-income geographic bank metric of 0.2 because 20 percent of its total loans were made in low-income census tracts.

$$\frac{Bank\ Loans\ in\ Low\text{–}Income\ Tracts\ (5)}{Bank\ Loans\ (25)} = Geographic\ Bank\ Metric\ (20\%)$$

The agencies propose separately calculating a bank's record of lending in low-income census tracts and moderate-income census tracts, respectively. This approach recognizes the importance of evaluating lending performance in each census tract category. The agencies considered using a metric that combined performance in low-income census tracts and moderate-income census tracts in order to simplify the metrics approach. However, the agencies recognize that this could have the unintended effect of concealing poor performance for an income group. For example, a bank practice of avoiding lending in low-income census tracts in favor of moderate-income census tracts may not be apparent in the bank's performance evaluation when using only a combined income category. Such an outcome would be at odds with the objective of evaluating bank performance in *both* low-income and moderate-income census tracts, as befits a bank's obligation under the CRA to help meet the credit needs of its *entire* community.

For closed-end home mortgage, open-end home mortgage, and automobile loans, the agencies propose that loans to borrowers of any income would be included in the geographic distribution metrics if they are in low-income census tracts and moderate-income census tracts. The evaluation of the borrower income distribution of the bank's lending, described below, would ensure that a bank would not receive a positive rating by solely lending to middle- or upper-income borrowers in low- and moderate-income neighborhoods.

Certain assessment areas, particularly in rural areas, may have few or no low- or moderate-income census tracts within their boundaries. However, they may contain geographies with acute credit needs. The agencies seek feedback on whether the geographic distribution metrics described previously should be expanded to include bank performance in distressed and underserved middle-income census tracts in assessment areas with few or no low- or moderate-income census tracts.

3. Borrower Distribution Metrics

With the exception of multifamily lending, the agencies propose using two borrower distribution components for each product line. These components are reflected above in Table 3:

- For closed-end home mortgage loans, open-end home mortgage loans, and automobile lending, the two borrower distribution components would be:
  - Loans to low-income borrowers; and
  - Loans to moderate-income borrowers.
- For small businesses, the two borrower distribution components would be:
  - Loans to small businesses with gross annual revenues of $250,000 or less; and
  - Loans to small businesses with gross annual revenues above $250,000 and less than or equal to $1 million.
- For small farms, the two borrower distribution components would be:
  - Loans to small farms with gross annual revenues of $250,000 or less; and
  - Loans to small farms with gross annual revenues above $250,000 and less than or equal to $1 million.

The proposed regulation refers to these borrower distribution metrics as borrower bank metrics. For each product line, the borrower bank metrics measure the number of a bank's loans in each of the categories outlined above relative to the total number of the bank's loans in the assessment area. For example, if Bank A originated 100 total closed-end home mortgage loans in an assessment area, and made 20 of those loans to low-income borrowers, it has a low-income borrower bank metric of 0.2 because 20 percent of its total loans were made to low-income borrowers.

$$\frac{Bank\ Loans\ to\ Low\text{–}Income\ Borrowers\ (20)}{Bank\ Loans\ (100)} = Borrower\ Bank\ Metric\ (20\%)$$

For closed-end home mortgages, open-end home mortgages, and automobile lending, the agencies propose to separately calculate a bank's record of lending to low-income borrowers and moderate-income borrowers, respectively. Similar to the considerations for separately evaluating performance in low-income census tracts and moderate-income census tracts, this approach recognizes the importance of evaluating lending to individuals in both income categories. As noted with the proposal for geographic distribution metrics, the agencies have similar concerns about using a metric that combines performance for low-income borrowers and moderate-income borrowers because it could fail to identify banks that do not lend to low-income borrowers, despite available opportunities to do so. Such an outcome would be at odds with the objective of evaluating bank performance to *both* low-income and moderate-income borrowers.

The agencies propose to evaluate the geographic distribution of multifamily lending under the Retail Lending Test, but not the borrower distribution. Multifamily loans can help meet the credit needs of their communities by financing housing in different geographies and for tenants of different income levels. However, the income of the borrower—often a corporate entity—is less meaningful for evaluating the loans' benefit to the community. As discussed in Section XII, the agencies propose to evaluate the provision of affordable housing through multifamily lending under the Community Development Financing Test.

For small business and small farm loans, the agencies propose to separately calculate the bank's record of lending to small businesses or small farms with gross annual revenues of $250,000 or less, and those with gross annual revenues greater than $250,000 but less than or equal to $1 million, respectively. The agencies propose retaining the $1 million gross annual revenue threshold from the current regulation to identify smaller businesses and farms and adding an evaluation of lending to even smaller businesses and farms with gross annual revenue of $250,000 or less whose access to credit may be lacking. According to the 2022 Small Business Credit Survey on employer firms, employer firms with total annual revenues less than $1 million were substantially more likely to experience difficulties obtaining financing than employer firms with total annual revenues between $1 million and $5 million.[183] Furthermore, employer firms with total annual revenues less than $500,000, and particularly those with total annual revenues less than $100,000, were even more likely to report financing challenges.[184] The agencies therefore believe that making small business loans available to these very low-revenue firms is an important marker of a bank meeting the credit needs of its entire community. The agencies propose to evaluate bank lending to small businesses and small farms with gross annual revenues of $250,000 or less to maintain focus on the borrowers with the greatest need, while still capturing a large enough population of firms, particularly employer firms. The agencies seek feedback on whether this threshold should instead be set higher, for example at $500,000. A higher threshold would capture more firms, particularly employer firms. However, these somewhat higher-revenue small businesses and farms may not have very different credit needs than those with gross annual revenues between $500,000 and $1 million. The agencies also seek feedback on whether this threshold should instead be set lower, for example at $100,000. A lower threshold would tighten focus on the businesses and farms with the greatest unmet credit needs. However, these businesses and farms may be less likely to be employers and, as a result, this alternative may detract focus from small local employers also in need of credit.

For both the geographic distribution metric and the borrower distribution metric, the agencies propose using all loans to businesses or farms with gross annual revenues of $5 million or below, respectively, as the denominator for these calculations when measuring small business loan or small farm loan product lines. This approach would establish an appropriately comprehensive measure of overall bank lending to small businesses and farms. As explained above, the agencies propose to align the CRA's small business and small farm definitions with the CFPB's proposed ''small business'' definition under its Section 1071 Rulemaking using a $5 million gross annual revenue threshold. As described in Section XXI and proposed in appendix A, until the data reported under the Section 1071 Rulemaking is available, the agencies propose to calculate a borrower bank metric for only a single revenue category for small business lending and small farm lending: The percentage of a bank's small business or small farm loans that went to a business or farm with gross annual revenues less than $1 million. As discussed in Section XIX, the agencies seek feedback on whether to require banks, as applicable, to collect and report an indicator of whether a loan is to a business or farm with gross annual revenues of $250,000 or less prior to the use of section 1071 data.

Request for Feedback

Question 74. Should the geographic distribution evaluations of banks with few or no low- and moderate-income census tracts in their assessment areas include the distribution of lending to distressed and underserved census tracts? Alternatively, should the distribution of lending in distressed and underserved census tracts be considered qualitatively?

Question 75. Is the choice of $250,000 gross annual revenue an appropriate threshold to distinguish whether a business or farm may be particularly likely to have unmet credit needs, or should the threshold be lower (*e.g.,* $100,000) or higher (*e.g.,* $500,000)?

E. Methodology for Setting Performance Ranges

For each of a bank's distribution metrics described above, the agencies propose comparing a bank's level of lending to specific quantitative standards. These standards would be set using a methodology that leverages local data and existing CRA examination practices. As a result, the performance expectations established under this proposal would be tailored and, as a result, would vary from product-to-product and assessment area-to-assessment area.

While the proposal maintains some key parts of how examiners carry out examinations under the status quo, the proposal would set standardized and transparent performance expectations for the first time. This differs from current practice in CRA examinations, which does not specify how much lending is necessary to achieve, for example, a ''Low Satisfactory'' or ''Outstanding'' performance conclusion.

Under the proposed approach, the bank distribution metric for each distribution test, income category, and major product line would be compared to a set of ''performance ranges'' that would correspond to the following conclusion categories: ''Outstanding,'' ''High Satisfactory,'' ''Low Satisfactory,'' ''Needs to Improve,'' and ''Substantial Noncompliance.'' As a result, the performance ranges approach would comprehensively assess bank performance across all five conclusion categories. The proposed approach would produce separate assessments for each component described above in Table 3. For example, if a bank had a major product line for closed-end home mortgages, the proposed approach would separately assess the bank's closed-end home mortgage performance to low-income borrowers and moderate-income borrowers and in low-income census tracts and moderate-income census tracts in an assessment area.

1. Thresholds and Performance Ranges

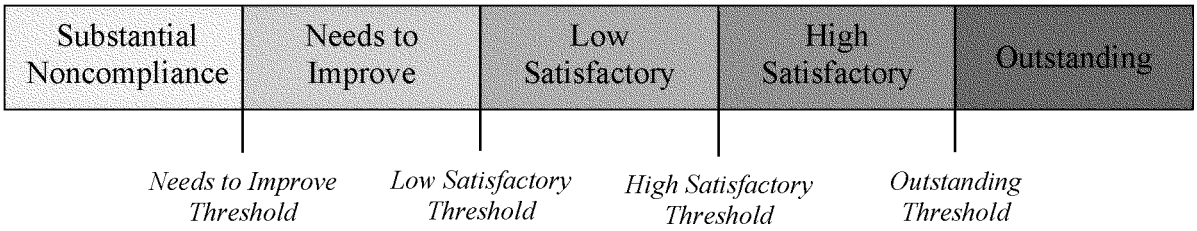
The agencies propose a transparent set of steps, set forth in § __.22 and appendix A of the proposed regulations, to define performance ranges for evaluating a bank's retail lending performance in each of its assessment areas. A consistent methodology would be used to establish thresholds and resulting performance ranges for each bank distribution metric in different product lines and income categories, and in different local markets. Yet, because the methodology relies on local data points, the resulting performance ranges are tailored to each local market and product line.

At its most basic level, the proposal involves defining four thresholds that would set the boundaries for each performance range. The four thresholds are represented below in Figure 1.

[183] Federal Reserve System, Small Business Credit Survey 2022. Data is available at *https://www.fedsmallbusiness.org/survey/2022/report-on-employer-firms.*

[184] *Id.*

Figure 1: Illustration of thresholds and performance ranges



- The ''Outstanding'' performance range would be set at or above the ''Outstanding'' threshold level.
- The ''High Satisfactory'' performance range would be set at or above the ''High Satisfactory'' threshold and below the ''Outstanding'' threshold.
- The ''Low Satisfactory'' performance range would be set at or above the ''Low Satisfactory'' threshold and below the ''High Satisfactory'' threshold.
- The ''Needs to Improve'' performance range would be set at or above the ''Needs to Improve'' threshold and below the ''Low Satisfactory'' threshold.
- The ''Substantial Noncompliance'' performance range would be set below the ''Needs to Improve'' threshold.

2. Using Local Data for Benchmarks

Under the proposal, the four thresholds are calculated using local data points referred to as benchmarks. By leveraging local data in the form of the proposed benchmarks, the approach seeks to tailor the CRA retail lending expectations to the assessment areas in which a bank lends. The benchmarks include both community benchmarks and market benchmarks. Community benchmarks reflect the demographics of an assessment area, such as the percentage of owner-occupied units that are in census tracts of different income levels, the percentage of families that are low-income, and the percentage of small businesses or small farms of different levels of revenue in an assessment area. Market benchmarks reflect the aggregate lending to targeted areas or targeted borrowers in an assessment area by all reporting lenders. Unlike the bank metrics, which include both loan purchases and originations, the market benchmarks are based only on originations by reporting lenders. While loan purchases can help improve the credit environment for borrowers and thus represent a way in which banks can help meet the credit needs of their community, the agencies do not consider the aggregate level of loan purchases to reflect the extent of local lending opportunities. Aggregate loan originations, in contrast, are directly tied to these opportunities.

The two sets of benchmarks provide complementary information about local lending opportunities. The community benchmarks measure the presence of potential borrowers but lack other information about local factors that might influence the local lending environment (such as an economic shock that causes local credit demand to be higher or lower than expected). The market benchmarks more closely reflect local demand by measuring the actual loan distribution resulting from aggregate lending in the area; however, they lack information about how well that aggregate lending actually serves all potential borrowers.

The proposed benchmarks and data sources used to measure them (described below) generally align with what examiners use today to evaluate bank retail lending performance, with some differences. Current CRA examinations use local data as points of comparison prescribed in the interagency examination procedures to aid examiners in assessing bank performance. However, the current CRA regulations and examination procedures give examiners discretion when evaluating bank lending in comparison to the local data points. While examiner judgment allows for tailoring to reflect local community needs, some stakeholders have noted that it can also lead to inconsistent outcomes.

The agencies considered several benefits of the proposed approach to setting quantitative thresholds for performance ranges based on local data. One benefit is that this approach would provide a bank with greater certainty about CRA performance expectations in an assessment area because the performance ranges are based on a consistent formula and set of data points. The agencies contemplate providing banks and the public with a means (*e.g.,* an online dashboard) to track bank performance over time. Another benefit of the proposal is that it would consistently tailor expectations to the unique conditions in different local communities across the country. For example, expectations for mortgage lending to low-income borrowers would be higher in markets that have proportionately more potential, and actual, low-income borrowers.

A third benefit of the proposed approach is that the threshold levels also automatically adjust over time in a way that can reflect changes in the business cycle because the market benchmarks follow overall lending activity in each assessment area. This approach reduces the need for the agencies to adjust the threshold levels and performance ranges through a rulemaking or other regulatory action, or for examiners to make a subjective adjustment. If, for example, a market downturn affected an assessment area by making low- and moderate-income lending relatively more difficult, the market benchmark would decrease, causing thresholds for the performance ranges (described below in Section IX.E.3) to adjust downward. Conversely, if overall low- and moderate-income lending opportunities expanded, the market benchmark would rise, creating greater expectations of local banks to make loans in low- and moderate-income census tracts, to low- and moderate-income borrowers, and to small businesses and small farms.

Closed-End and Open-End Home Mortgage Lending Benchmarks. For closed-end and open-end home mortgages, the proposed benchmarks and data sources are provided in Table 4 and are the same as examiners generally use today.

TABLE 4 TO SECTION __.22—BENCHMARKS FOR CLOSED-END HOME MORTGAGE AND OPEN-END HOME MORTGAGE LOANS

Distribution metric	Community benchmark	Market benchmark
Closed-End Home Mortgage, Open-End Home Mortgage		
Geographic Distribution Metric:		
Data Point	Percentage of owner-occupied residential units in low-income census tracts or moderate-income census tracts, as applicable, in assessment area.	Percentage of home mortgages in low-income census tracts or moderate-income census tracts in assessment area, as applicable, by all lender-reporters.
Data Source	American Community Survey (Census)	HMDA Data.
Borrower Distribution Metric:		
Data Point	Percentage of low-income families or moderate-income families, as applicable, in assessment area.	Percentage of home mortgages to low-income borrowers or moderate-income borrowers in assessment area, as applicable, by all lender-reporters.
Data Source	American Community Survey (Census)	HMDA Data.

For the geographic distribution metric, the proposed community benchmark is intended to measure the opportunities for home mortgage lending in the low-income and moderate-income census tracts of an assessment area. The proposed market benchmark is intended to show the overall level of mortgage lending taking place in the assessment area's low-income and moderate-income census tracts by all HMDA reporting lenders.

For the borrower distribution metric, the proposed community benchmark is intended to measure the opportunities for banks to lend to low-income or moderate-income families in a specific assessment area. The proposed market benchmark is intended to show the overall level of mortgage lending by all HMDA reporting lenders to low-income and moderate-income borrowers in the assessment area. The agencies propose to continue the practice commonly used by examiners under current procedures of using family counts to measure lending opportunities.

For the borrower distribution metric, the agencies also seek feedback on alternative community benchmark options. For example, one option could measure the share of low-income or moderate-income households in owner-occupied housing units in an assessment area. This alternative approximates the level of existing homeowners at these income levels, including households that recently became homeowners. A potential downside of this alternative is that it could be seen as failing to reflect the full level of opportunity for lending to low-income or moderate-income households.

For both of the home mortgage market benchmarks, the agencies propose using benchmarks that capture mortgage lending by all reporting lenders, not just mortgage lending by banks. Using HMDA reporter data enables this benchmark to reflect a larger percentage of the mortgage market, including bank and non-bank mortgage lending. The agencies propose to set bank performance expectations relative to all mortgage lending, as captured in HMDA data, in a community, rather than just to mortgage lending by banks. This measure is a more complete reflection of a community's total credit needs than is a measure that only captures those met by bank lenders.

Multifamily Mortgage Lending Benchmarks. For multifamily mortgage lending, the proposed benchmarks are in Table 5. The proposed community benchmarks and data sources would be comparable to what is used in evaluations today.

For the geographic distribution metric, the proposed community benchmark is intended to measure the opportunities for multifamily mortgage lending in the low-income or moderate-income census tracts of an assessment area; the proposed market benchmark is intended to show the overall level of mortgage lending taking place in low- and moderate-income census tracts by all HMDA reporting lenders.

TABLE 5 TO SECTION __.22—BENCHMARKS FOR MULTIFAMILY LOANS

Distribution metric	Community benchmark	Market benchmark
Multifamily		
Geographic Distribution Metric:		
Data Point	Percentage of multifamily units in low-income census tracts or moderate-income census tracts as applicable, in assessment area.	Percentage of multifamily mortgages in low-income census tracts or moderate-income census tracts in assessment area, as applicable, by all lender-reporters.
Data Source	American Community Survey (Census)	HMDA Data.

Small Business and Small Farm Lending Benchmarks. For small business and small farm lending, the proposed benchmarks are in Table 6. The proposed community benchmarks and data sources would be comparable to what is used in evaluations today, and the agencies propose using section 1071 data, once available, to develop market benchmarks.

TABLE 6 TO SECTION __.22—BENCHMARKS FOR SMALL BUSINESS AND SMALL FARM LOANS

Distribution metric	Community benchmark	Market benchmark
Small Business		
Geographic Distribution Metric:		
Data Point	Percentage of small businesses with gross annual revenue less than $5M in low income or moderate-income census tracts, as applicable, in assessment area.	Percentage of small business loans in low- income or moderate-income census tracts in assessment area, as applicable, by all lender-reporters.
Data Source	Third-party data provider	CFPB section 1071 data.*
Borrower Distribution Metric:		
Data Point	Percentage of small businesses with gross annual revenue more than $250K and less than or equal to $1M or $250K or less, as applicable, in assessment area.	Percentage of small business loans to small businesses with gross annual revenue more than $250K and less than or equal to $1M or $250K or less in assessment area, as applicable, by all lender-reporters.
Data Source	Third-party data provider	CFPB section 1071 data.*
Small Farm		
Geographic Distribution Metric:		
Data Point	Percentage of small farms with gross annual revenue less than $5M in low income or moderate-income census tracts, as applicable, in assessment area.	Percentage of small farms loans in low- income or moderate-income census tracts in assessment area, as applicable, by all lender-reporters.
Data Source	Third-party data provider	CFPB section 1071 data.*
Borrower Distribution Metric:		
Data Point	Percentage of small farms with gross annual revenue of more than $250K and less than or equal to $1M or $250K or less, as applicable, in assessment area.	Percentage of small farms loans to small farms with gross annual revenue or more than $250K and less than or equal to $1M or $250K or less in assessment area, as applicable, by all lender-reporters.
Data Source	Third-party data provider	CFPB section 1071 data.*

* As proposed in § __.51 and discussed in Section XXI, the agencies would continue to maintain the current definitions related to small business loans and small farm loans until, and subject to a transition period, such time as the CFPB finalizes and implements its Section 1071 Rulemaking and section 1071 data becomes available.

For the geographic distribution metric, the proposed community benchmark is intended to measure the opportunities for small business lending in, respectively, the low-income and moderate-income census tracts of an assessment area. The proposed market benchmark is intended to show the overall level of small bank or small farm lending taking place in low-income and moderate-income census tracts in the assessment area by all section 1071 reporting lenders.

For the borrower distribution metric, the proposed community benchmark is intended to measure the opportunities for banks to lend to small businesses or small farms with gross annual revenues of $250,000 or less and gross annual revenues more than $250,000 and less than or equal to $1 million in an assessment area. The proposed market benchmark is intended to show the overall level of small business or small farm lending to businesses or farms using the same gross annual revenue thresholds. As described in Section XXI, until the data reported under the Section 1071 Rulemaking is available, the agencies propose to calculate a borrower market benchmark for only a single revenue category for small business lending and small farm lending: The percentage of all reporter banks' small business or small farm loans that went to a business or farm with gross annual revenues of less than $1 million. Likewise, the agencies propose to calculate a borrower community benchmark for only a single revenue category: The percentage of all small businesses or farms with gross annual revenues of less than $1 million—until the data reported under the Section 1071 Rulemaking is available.

Automobile Lending Benchmarks. For automobile lending, the proposed benchmarks are in Table 7. The proposed community benchmarks and data sources would be comparable to what is currently used in evaluations, and the agencies propose using new data collection and reporting for large banks with assets of over $10 billion, once available, to develop market benchmarks.

TABLE 7 TO SECTION __.22—BENCHMARKS FOR AUTOMOBILE LOANS

Distribution metric	Community benchmark	Market benchmark
Automobile		
Geographic Distribution Metric:		
Data Point	Percentage of households in low-income or moderate-income census tracts, as applicable, in assessment area.	Percentage of automobile loans in low-income or moderate-income census tracts in assessment area, as applicable, by all lender-reporters.
Data Source	American Community Survey (Census)	CRA reported data.
Borrower Distribution Metric:		

TABLE 7 TO SECTION __.22—BENCHMARKS FOR AUTOMOBILE LOANS—Continued

Distribution metric	Community benchmark	Market benchmark
Data Point	Percentage of low-income or moderate-income households, as applicable in assessment area.	Percentage of automobile loans to low-income, or moderate-income borrowers, in assessment area as applicable, by all lender-reporters.
Data Source	American Community Survey (Census)	CRA reported data.

For the geographic distribution metric, the proposed community benchmark is intended to measure the opportunities for automobile lending in the low-income or moderate-income census tracts of an assessment area. The proposed market benchmark is intended to show the overall level of automobile lending taking place in low-income and moderate-income census tracts in an assessment area by banks with assets of over $10 billion. For the borrower distribution metric, the proposed community benchmark is intended to measure the opportunities for automobile lending to low-income or moderate-income households in an assessment area. The proposed market benchmark is intended to show the overall level of automobile lending by all large banks to low-income or moderate-income borrowers in an assessment area.

For both the geographic and borrower community benchmarks, the agencies propose to use household counts to measure lending opportunities. The market benchmark would involve comparing a bank's automobile lending only to the automobile lending by banks with assets of over $10 billion. This reflects that only banks with assets of over $10 billion evaluated under CRA would be required to report automobile lending data under this proposal.

The agencies considered not developing market benchmarks for automobile lending to avoid introducing an additional data collection and reporting requirement for banks with assets of over $10 billion, but believe that a lack of benchmarks would diminish the value in adopting a metrics-based approach to evaluating a bank's automobile lending. Without a market benchmark, a bank's automobile lending could only be compared to the community benchmark, which could lead to performance expectations that are too high in some markets, such as metropolitan areas with accessible public transportation.

The agencies also considered whether credit bureau data could be used as a data source for creating market benchmarks for automobile lending. However, the agencies found that credit bureau data could not be used to construct a market benchmark for the borrower distribution metric since sufficiently accurate borrower income information is not available from the credit bureaus. The agencies instead propose to require data collection and reporting in order to construct market benchmarks for both distribution metrics—geographic distribution metric and borrower distribution metric—rather than pursuing an incomplete metrics approach using credit bureau data.

Timing Issues for Using Benchmarks. For all the community benchmarks described in this section, the agencies are considering whether to calculate them using the most recent data available as of the first day of a bank's CRA examination. This would provide the most accurate possible picture of the potential borrowers in the bank's community during an evaluation period. However, under this approach, the values of the community benchmarks may not be known at the outset of the evaluation period if additional data subsequently becomes available in later years, which may result in the benchmarks changing. The agencies seek feedback on alternative methods to set the community benchmark. An alternative approach would be to lock in the community benchmarks at the outset of the evaluation period, using the most recent data available at that time. This approach would provide more certainty to banks, but the thresholds in place could be out-of-date by the end of a performance evaluation period.

Another approach would be to lock in the community benchmark at the outset of the evaluation period using data available then, but let the benchmark decrease if demographic data collected during the evaluation period would lead to a lower benchmark. This ''float down'' approach has the advantage of both giving banks a pre-specified bar to clear, while also providing leniency if lending opportunities worsen during their evaluation period. However, the agencies have also considered that this alternative may reduce the expectations for banks to meet the credit needs of their communities under certain market conditions.

For all the market benchmarks, the agencies are considering measuring the benchmarks using all the available reported data from the years of the bank's evaluation period, recognizing that some evaluation periods could include a year for which reported data is not yet available. Similarly, the market volume benchmark described in Section IX.C and proposed appendix A would be calculated using reported lending data from the bank's evaluation period. In some cases, this approach has the potential to create a mismatch between the economic conditions described by the market benchmarks and those faced by the bank during the full course of its evaluation period. The agencies seek feedback on whether this approach to comparing bank metrics to market benchmarks is appropriate. An alternative approach would be to only include in the bank distribution metrics and bank volume metrics data from the same years that the market distribution benchmarks and market volume benchmarks are able to be measured over. This approach would have the advantage of setting performance standards for banks that correspond to the period (and the economic conditions during that period) over which an agency is evaluating a bank's performance. However, this approach has the disadvantage of, in some circumstances, not fully covering the recent lending a bank has done.

3. Setting Thresholds Using Benchmarks

The agencies propose to translate the proposed benchmarks into the four thresholds. First, the community benchmark and market benchmark would each be calibrated using defined percentages, referred to in proposed appendix A as a community multiplier and a market multiplier. The multipliers are proposed as follows, with the objective of aligning the benchmarks with the agencies' performance expectations:

- 33 percent of the market benchmark and 33 percent of the community benchmark are intended to reflect performance expectations for the ''Needs to Improve'' threshold.
- 80 percent of the market benchmark and 65 percent of the community benchmark are intended to reflect performance expectations for the ''Low Satisfactory'' threshold.

• 110 percent of the market benchmark and 90 percent of the community benchmark are intended to reflect performance expectations for the ''High Satisfactory'' threshold.

• 125 percent of the market benchmark and 100 percent of the community benchmark are intended to reflect performance expectations for the ''Outstanding'' threshold.

Second, the four thresholds would be set by selecting, for each conclusion category, the lesser of the calibrated market benchmark (the product of the market multiplier times the market benchmark) and calibrated community benchmark (the product of the community multiplier and the community benchmark). This proposed approach is reflected in Table 8.

TABLE 8 TO SECTION __.22—THRESHOLDS FOR DEFINING PERFORMANCE RANGES

	Market multiplier and market benchmark		Community multiplier and community benchmark
Select the Lesser of the Two Values			
''Needs to Improve'' Threshold	33% of the Market Benchmark	OR	33% of the Community Benchmark.
''Low Satisfactory'' Threshold	80% of the Market Benchmark	OR	65% of the Community Benchmark.
''High Satisfactory'' Threshold	110% of the Market Benchmark	OR	90% of the Community Benchmark.
''Outstanding'' Threshold	125% of the Market Benchmark	OR	100% of the Community Benchmark.

The agencies propose to set thresholds as the lesser of the two calibrated benchmarks because, as described below, this establishes standards that are achievable everywhere, while still ensuring that the performance standards are set appropriately in markets in which low- and moderate-income individuals and census tracts, and small businesses and small farms may be underserved. Specifically, the agencies' proposal would tend to assign better ratings in markets where more banks were meeting the credit needs of the community. At the same time, it would also prevent thresholds from becoming too stringent in markets with fewer opportunities to lend to lower-income communities or smaller establishments.

To demonstrate the importance of using both benchmarks in this manner, the agencies outline a hypothetical assessment area in which the market benchmark is close to or above the community benchmark and one in which the market benchmark is well below the community benchmark. First, in the area with a higher market benchmark, lower-income communities or smaller establishments are receiving loans at close to the same rate as higher income or larger establishments. The calibrated community benchmark, with its lower multipliers, would set the threshold for performance ranges there. Local lenders—whose strong performance is the reason for the high market benchmark—would generally perform well on the performance ranges set by the community benchmark. The proposal would therefore reward more banks for contributing to the overall strong distribution of credit in such a market.

In the second area, the low level of the market benchmark may be due to reduced lending opportunities not reflected in the community benchmark, so basing performance ranges on the community benchmark there could set thresholds unattainably high. However, the low level of the market benchmark could also reflect local lenders failing to meet their community's credit needs. By setting thresholds based on the calibrated market benchmark with its higher multipliers, the proposal would assign lower conclusions to more banks in these potentially underserved markets, while ensuring that satisfactory or better conclusions are attainable by the better local performers.

The agencies also seek feedback on an alternative approach to determining the thresholds based on the market and community benchmarks to address potential concerns that the proposed approach may set performance expectations too low in places where all lenders, or a significant share of lenders, are underserving the market and failing to meet community credit needs. In cases where the calibrated community benchmark is higher than the calibrated market benchmark, instead of using the lower of the calibrated community and market benchmark as proposed, an alternative approach could instead calculate a weighted average of the calibrated benchmarks for each threshold. The agencies are considering applying a weight ranging between 10 percent and 30 percent to the calibrated community benchmark, and a weight of 70 percent to 90 percent to the calibrated market benchmark, for purposes of computing the weighted average. However, in cases in which the calibrated community benchmark is lower than the calibrated market benchmark, the calibrated community benchmark alone would be used to set the threshold.

In places where all lenders, or a significant fraction of lenders, are underserving the market and failing to meet community credit needs, this weighted average approach would ensure that in such a community, the performance ranges are based on a combination of community characteristics and market lending patterns, both of which reflect local credit needs and opportunities. However, for components of the retail lending distribution metrics in which the calibrated community benchmark is much higher than the calibrated market benchmark due to limited lending opportunities (such as low demand), this alternative approach could set thresholds higher in some areas than may be desirable.

Under this alternative, the agencies would apply more weight to the calibrated market benchmark than to the calibrated community benchmark. This is intended to adequately reflect changes in credit demand and lending opportunities over time that are not reflected in the community benchmark, such as the emergence of new products and services, or economic shocks that affect the level of low- and moderate-income credit needs and opportunities. Furthermore, a lower weight on the community benchmark lessens the risk of setting the effective thresholds unattainably high in circumstances in which the calibrated community benchmark is much higher than the calibrated market benchmark. In determining the exact weighting that would be used under this alternative approach, the agencies consider a weight on the calibrated community benchmark as high as 30 percent may give a strong emphasis on local demographic factors and to aim towards equitable lending outcomes for

individuals and communities of all income levels. However, a lower weight on the community benchmark of 10 percent may make the resulting thresholds more responsive to changes in lending conditions over time and would capture more information about credit demand that is better reflected by the market benchmark than the community benchmark.

4. Proposed Multiplier Levels

The agencies have proposed threshold levels—using the proposed multipliers identified in Table 8—that recognize the existing strong retail lending performance of many banks while also seeking to appropriately strengthen performance expectations for a ''Satisfactory'' Retail Lending Test conclusion. The agencies analyzed historical bank lending data under the proposed metrics-based approach with these multipliers. The analysis, and the estimated conclusions banks would have received, are presented in Section X.E. The implied outcomes, as measured by the distribution of conclusions that would have been assigned under the proposed approach historically, indicate that the proposed multipliers are producing a level of stringency that the agencies believe to be appropriate.

A discussion of each set of proposed multipliers follows:

Proposed Multipliers for ''Needs to Improve'' Threshold. The agencies propose multipliers for the needs to improve threshold as shown in Table 8.

	Market multiplier and market benchmark		Community multiplier and community benchmark
Select the Lesser of the Two Values			
''Needs to Improve'' Threshold	33% of the Market Benchmark	OR	33% of the Community Benchmark.

The agencies propose setting both the market multiplier and the community multiplier at 33 percent for the ''Needs to Improve'' threshold, reflecting bank performance that is extremely poor relative to opportunities. Performance that falls below this threshold would be in the ''Substantial Noncompliance'' performance range.

The agencies propose that performance serving less than 33 percent of the market average is an appropriate dividing line between performance low enough to warrant the lowest conclusion category and performance that is not satisfactory but is more appropriately recognized as needing improvement. Similarly, the agencies propose that 33 percent of the community benchmark is also appropriate for distinguishing between ''Substantial Noncompliance'' performance and ''Needs to Improve'' performance.

The agencies considered setting both of these multipliers at 25 percent but considered that this would set standards that may be too narrow for ''Substantial Noncompliance'' performance. Similarly, the agencies considered that setting a higher set of percentages for these multipliers, such as 50 percent, may be too wide for ''Substantial Noncompliance'' performance and may reduce the effectiveness of the ''Needs to Improve'' category.

Proposed Multipliers for ''Low Satisfactory'' Threshold. The agencies propose multipliers for the ''Low Satisfactory'' threshold as shown in Table 8.

	Market multiplier and market benchmark		Community multiplier and community benchmark
Select the Lesser of the Two Values			
''Low Satisfactory'' Threshold	80% of the Market Benchmark	OR	65% of the Community Benchmark.

The agencies propose setting the market multiplier at 80 percent and the community multiplier at 65 percent for the ''Low Satisfactory'' threshold, reflecting performance that is adequate relative to opportunities. Performance that falls below this threshold would be in the ''Needs to Improve'' performance range.

The agencies consider the industry's performance to be broadly, although not universally, satisfactory and, as such, the proposed 80 percent market multiplier is meaningfully below the average performance of banks in an assessment area. This would provide banks with average performance—100 percent of the market benchmark—with a passing conclusion on a distribution metric in the ''Low Satisfactory'' performance range.

While the agencies consider that this proposed market multiplier would appropriately calibrate the ''Low Satisfactory'' threshold to capture some performance below the market average, this proposal is also intended to set strong performance expectations necessary to achieve a ''Low Satisfactory'' conclusion. The agencies considered alternative market multipliers of 75 percent and 70 percent, but considered that these levels may be too far below average for performance necessary to demonstrate adequately meeting community credit needs.

For the proposed community multiplier, the agencies propose to select a percentage below the market multiplier to account for the fact that the community benchmark figures are generally higher, and therefore more difficult to achieve. While the agencies believe that it is appropriate to raise standards for the market multiplier, the agencies believe that 65 percent for the community multiplier is more appropriate for the ''Low Satisfactory'' threshold. The agencies considered a community multiplier of 55 percent for the ''Low Satisfactory'' threshold. However, the agencies considered that performance just above 50 percent of the community benchmark—reflecting, for example, the percentage of low-income or moderate-income families in an assessment area—may be too low for performance necessary to demonstrate adequately meeting community credit needs.

Proposed Multipliers for ''High Satisfactory'' Threshold. The agencies propose multipliers for the ''High

Satisfactory'' threshold as shown in Table 8.

	Market multiplier and market benchmark		Community multiplier and community benchmark
Select the Lesser of the Two Values			
''High Satisfactory'' Threshold	110% of the Market Benchmark	OR	90% of the Community Benchmark.

The agencies propose setting the market multiplier for a ''High Satisfactory'' conclusion at 110 percent. This reserves the ''High Satisfactory'' conclusion for banks that are not just average, but a meaningful increment above the average of local lenders. A community multiplier of 90 percent would establish a recommended ''High Satisfactory'' conclusion if a bank achieved close to per-capita parity in its lending across different income groups.

Proposed Multipliers for ''Outstanding'' Threshold. The agencies propose multipliers for the ''Outstanding'' threshold as shown in Table 8.

	Market multiplier and market benchmark		Community multiplier and community benchmark
Select the Lesser of the Two Values			
''Outstanding'' Threshold	125% of the Market Benchmark	OR	100% of the Community Benchmark.

The agencies propose to set the market multiplier at 125 percent for an ''Outstanding'' conclusion. This sets a threshold well in excess of the average of local lenders, while still being an attainable target for many better performers. The agencies recognize that many banks, especially large banks, frequently employ dedicated CRA teams with strong relationships to the community to ensure that the bank appropriately identifies and helps to meet community credit and community development needs. Thus, the agencies propose to set the threshold for an ''Outstanding'' conclusion at a point that is attainable for banks that are actively working and making choices to be leaders in helping to meet community credit and community development needs. At the same time, the agencies propose not to set the ''Outstanding'' conclusion threshold too low to ensure that an ''Outstanding'' conclusion is awarded only to banks that have demonstrated an exceptional level of performance.

The agencies propose to set the community multiplier at 100 percent. As bank metrics and market benchmarks are usually substantially below the community benchmark, the agencies considered that a 100 percent multiplier represents an aspirational goal. Furthermore, it represents equal per-capita lending to communities of different income levels.

Example of Performance Ranges Methodology. For example, in an assessment area with 30 percent of owner-occupied housing units and where 25 percent of all closed-end home mortgage loans were in moderate-income census tracts, the closed-end home mortgage moderate-income geographic community and market benchmarks would be 30 percent and 25 percent, respectively.

A bank making 18 loans in moderate-income census tracts out of 100 total closed-end home mortgage loans in the assessment area would have a bank metric of 18 percent for this component of lending. The bank metric would fall into the ''Needs to Improve'' performance range because it is between the threshold (8.25 percent and 19.5 percent) for the ''Needs to Improve'' conclusion.

Thresholds for the relevant performance ranges are calculated using the multipliers in Table 8 as follows:

- For the ''Low Satisfactory'' category: the calibrated market benchmark is 80 percent of the market benchmark (0.8×25 percent = 20 percent), and the calibrated community benchmark is 65 percent of the community benchmark (0.65×30 percent = 19.5 percent). The threshold for a ''Low Satisfactory'' conclusion would be 19.5 percent, the lesser of these two calibrated benchmarks.
- For the ''Needs to Improve'' category: the calibrated market benchmark is 33 percent of the market benchmark (0.33×25 percent = 8.25 percent), and the calibrated community benchmark is 33 percent of the Community Benchmark (0.33×30 percent = 9.9 percent). The threshold for a ''Needs to Improve'' conclusion would be 8.25 percent, the lesser of these two calibrated benchmarks.

The Board has developed a search tool, which includes illustrative examples of the thresholds and performance ranges in a given geography, using past lending data. Specifically, this tool provides illustrative examples of the thresholds for the relevant performance ranges in each MSA, metropolitan division, and county based on historical lending from 2017–2019. This tool can be found on the Board's website at *https://www.federalreserve.gov/consumers communities/performance-thresholds-search-tool.htm.*

Request for Feedback

Question 76. Should the community benchmarks be set using the most recent data available at the time of the examination? Would an alternative method that establishes benchmarks earlier be preferable?

Question 77. Should the bank volume metric and distribution bank metrics use all data from the bank's evaluation period, while the market volume benchmark and distribution market benchmarks use only reported data available at the time of the exam? Would an alternative in which the bank volume metrics and distribution bank metrics were calculated from bank data

covering only the same years for which that reported data was available be preferable?

Question 78. Are the proposed community benchmarks appropriate, including the use of low-income and moderate-income family counts for the borrower distribution of home mortgage lending? Would alternative benchmarks be preferable? If so, which ones?

Question 79. Should automobile lending for all banks be evaluated using benchmarks developed only from the lending of banks with assets of over $10 billion?

Question 80. Are the proposed market and community multipliers for each conclusion category set at appropriate levels? If not, what other set of multipliers would be preferable? In general, are the resulting thresholds set at an appropriate level for each conclusion category?

Question 81. How should the agencies use the calibrated market benchmark and calibrated community benchmark to set performance thresholds? Should the agencies set thresholds based on the lower of the calibrated market benchmark or calibrated community benchmark?

Question 82. How should the agencies address the potential concern that the proposed approach may set performance expectations too low in places where all lenders, or a significant share of lenders, are underserving the market and failing to meet community credit needs? Should the agencies consider an alternative approach to setting the performance thresholds that would use a weighted average of the calibrated market benchmark and calibrated community benchmark?

F. Developing Product Line Scores in Each Assessment Area

For each major product line in an assessment area, the agencies propose to use a product line score to synthesize lending performance in the geographic and borrower distribution metrics. For example, a bank's closed-end home mortgage product line score in an assessment area would encompass its lending within four categories: (i) In low-income census tracts and (ii) in moderate-income census tracts (both are geographic distribution metrics); and (iii) to low-income borrowers and (iv) to moderate-income borrowers (both are borrower distribution metrics). The agencies propose combining the conclusions into a product line score for each major product to enable stakeholders to better understand performance by providing greater transparency and to differentiate lending performance for each major product line in the same assessment area. The approach could also highlight exemplary performance in a product line and provide context for why a bank received a particular recommended Retail Lending Test conclusion.

Scoring Approach. The agencies propose that the two income categories within each distribution test receive a conclusion ranging from ''Outstanding'' to ''Substantial Noncompliance,'' associated with a point value as follows: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points). As a result, each major product line in an assessment area would receive four scores, except that multifamily lending would receive two scores for the geographic distribution metrics only.

This proposed mapping between conclusion categories and point values fulfills two purposes. First, it creates a meaningful difference between each category, including between the ''Low Satisfactory'' and ''High Satisfactory'' categories. Second, it makes the difference between ''Low Satisfactory'' and ''High Satisfactory'' less than the differences between the other categories. This choice emphasizes that ''Low Satisfactory'' and ''High Satisfactory'' represent different degrees of performance within the broader ''Satisfactory'' range.

The agencies also considered an alternate mapping that would use a four-point scale with uniform spacing of point values between the conclusion categories (*i.e.,* each category would be assigned an integer from 0 through 4). However, under the method of deriving assessment area, state, multistate MSA, and institution-level conclusions described below and in Section X.D, this four-point scale would have the tendency to cause more banks to receive one of the ''Satisfactory'' conclusions, as these two categories would cover a greater fraction of the range of possible scores. The agencies found that the proposed 10-point scale better allowed a distinction between the strongest- and weakest-performing banks and those with closer to average performance.

Combining Income Categories. After assigning each category a score, a weighted average of the scores for the two income categories (or revenue categories for small business and small farm borrower distribution metrics) would then be taken to produce a geographic income average for the geographic distribution metrics scores and a borrower income average for the borrower distribution metrics scores for that product line within each assessment area.

The agencies propose to weight these two scores by the community benchmark to make the scores proportional to the population of potential borrowers in the assessment area. For example, for the closed-end home mortgage borrower distribution metrics, the weights are based on the percentage of families in the assessment area that are either low-income or moderate-income. In a hypothetical assessment area in which twice as many low-income families as moderate-income families resided, the low-income borrower score would carry twice the weight of the moderate-income borrower score in forming the borrower income average for closed-end home mortgage lending.

Combining Borrower Distribution and Geographic Distribution Averages. For each major product line, the two distribution income averages (geographic income average and borrower income average) are then averaged to arrive at the product line average. The scores from the two distribution metrics are weighted equally to ensure parity between the borrower and geographic distribution metrics. The agencies believe that both geographic and borrower distributions are important measures of how a bank is meeting its community's credit needs, and an equal weighting ensures that both distributions are important to overall conclusions and ratings. The agencies seek feedback on whether the equal weighting approach is appropriate or if the geographic distribution score should be weighted less heavily than the borrower distribution, and whether this would account for banks operating in rural areas, or other areas with few low- and moderate-income census tracts. In assessment areas with no low- and moderate-income census tracts, and hence no geographic distribution scores, the agencies propose to set the product line average equal to the borrower income average.

Request for Feedback

Question 83. Should the agencies weight the two distribution results equally? Should the borrower distribution conclusion be weighted more heavily than the geographic distribution conclusion to provide an additional incentive for lending to low- and moderate-income borrowers in certain areas? Are there circumstances under which the geographic distribution conclusion should be weighed less heavily, such as in rural areas with few low- and moderate-income census tracts

or where the number of investor loans is increasing rapidly?

G. Using Weighted Average of Product Line Scores To Create Recommended Retail Lending Test Conclusion

The agencies propose to develop a recommended conclusion on the Retail Lending Test for each assessment area by combining the scores the bank received on each of its major product lines in that assessment area. The proposal recognizes the importance of using a clear and transparent method that appropriately weights product lines when creating a recommended Retail Lending Test conclusion for each assessment area. The agencies propose weighting each product by the dollar volume of lending the bank engaged in for that product line within that assessment area, so that assessment area conclusions reflect performance in each of a bank's major product lines, with more weight assigned to a bank's larger major product lines.

The recommended Retail Lending Test conclusion for an assessment area would be derived by taking a weighted average of all the product line scores, weighting each product by the dollar volume of lending the bank engaged in each product line in that assessment area. The resulting score would be rounded to the nearest conclusion category using the same point value correspondence as before: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points). This would be the recommended conclusion on the Retail Lending Test for the assessment area. The examiner would determine a final conclusion based on this metric-derived recommendation, as well as a consideration of additional factors described in Section IX.H.

This approach would give proportionate weight to a bank's product offerings so that more prominent product lines, as measured in dollars, have more weight on the bank's overall conclusion in an assessment area. The test is, thus, tailored to individual bank business model, as evaluations are based on the lending a bank specializes in locally. Moreover, weighing product lines by dollar recognizes the continued importance of home mortgage and small business lending to low- and moderate-income communities, which have been a focus of the CRA, while also accounting for the importance of consumer loans to low- and moderate-income individuals.

Considering the role of consumer loans to low- and moderate-income communities, the agencies seek feedback on alternatives to the proposed weighting approach, including incorporating loan count with dollar volume. For example, averaging the percentage by dollar volume and the percentage by number of loans would give consumer lending more weight than under an approach that only considers dollar volume. This alternative recognizes that loan size can vary among different product lines (*e.g.,* automobile loans versus home mortgage loans) and seeks to balance the value of dollars invested in a community with the number of borrowers served.

Request for Feedback

Question 84. Should the agencies use loan count in conjunction with, or in place of, dollar volume in weighting product line conclusions to determine the overall Retail Lending Test conclusion in an assessment area?

H. Additional Factors Considered for Retail Lending Test Conclusion

While the proposed metrics and benchmarks are calibrated to reflect differences in local market conditions, bank capacities, business models and strategies, there are a limited number of additional factors that would not be captured in the proposed metrics and benchmarks that the agencies believe should be considered when evaluating a bank's retail lending performance. Therefore, the agencies propose to consider additional factors that are indicative of a bank's lending performance or lending opportunities, but are not captured in the metrics, when reaching Retail Lending Test conclusions for facility-based assessment areas. The agencies propose to limit this consideration to a prescribed set of factors to create more certainty regarding when to depart from a recommended conclusion derived from the metrics and performance ranges. The agencies seek feedback on whether the agencies should consider a different or broader set of additional factors. For example, the agencies seek feedback on whether oral or written comments about a bank's retail lending performance, as well as the bank's responses to those comments, should be considered by the agencies in developing Retail Lending Test conclusions.

Specifically, under the proposal, performance context related to a bank's retail lending performance that is not reflected in the metrics, such as information related to the bank's capacity and constraints, could raise the assigned conclusion under the ranges approach. The proposal also recognizes that lowering an assigned conclusion may be warranted in other situations as provided in proposed § __.22(e). For example, an assigned conclusion could be lowered where a bank manipulated loan data to obtain better scores under the distribution tests. Examples of manipulation could include loan churning, defined as the purchase of loans for the sole or primary purpose of influencing a bank's retail lending performance evaluation, as evidenced by the subsequent resale of some or all of those loans within a short time period, or when some or all of the loans were considered in multiple banks' CRA evaluations.

The geographic dispersion of loans is another aspect of performance not captured in the retail lending measures. For example, an assigned conclusion may be lowered where geographic lending patterns exhibit gaps in census tracts served that cannot be explained by performance context.

Further, the proposal allows for consideration of data anomalies that could produce an inappropriate recommended conclusion. For example, where there are very few banks reporting retail lending and deposits data, or where one bank has an outsized market share, the proposed benchmarks may not provide an accurate measure of local opportunities. Measurement errors in the data could also cause issues: For example, due to sampling noise, the American Community Survey might indicate a particular assessment area had zero owner-occupied units in low- or moderate-income census tracts (and hence no *geographic income average*) in an assessment area that the bank did do some mortgage lending in low- or moderate-income census tracts. Another problem could occur if a monoline multifamily lender were evaluated in an assessment area with no low- or moderate-income census tracts. The metric approach would not be appropriate in such a situation, as the bank would have neither a geographic nor a borrower distribution conclusion.

An additional approach that the agencies are considering is to use data to identify assessment areas in which lenders may be underperforming in the aggregate and the credit needs of substantial parts of the community are not being met. This information about the assessment area could be used as an additional factor to consider when assigning Retail Lending Test conclusions. In such an assessment area, the agencies may consider that the market benchmark is not an accurate measure of the credit needs and opportunities of low- and moderate-income communities, small businesses,

or small farms, because lenders as a whole are not meeting their obligations. The agencies would apply additional qualitative review of retail lending in these assessment areas, the results of which could be used to adjust the recommended conclusion produced by the bank metrics and performance ranges.

One way the agencies could implement such an approach would be by developing statistical models that predict the level of the market benchmark that would have been expected in each assessment area based on its demographics (*e.g.,* income distributions, household compositions), housing market conditions (*e.g.,* housing affordability, the share of housing units that are rentals), and economic activity (*e.g.,* employment growth, cost of living). A model could be estimated using data at the census tract or county level that are collected nationwide. An assessment area in which market benchmarks fell significantly below their expected levels would be considered underperforming for the relevant product line, distribution test, and income level.

The agencies could identify underperforming markets using a relative standard—for example, assessment areas in which the difference between the market benchmark and its expected value was two standard deviations below average. They could also identify underperforming markets using an absolute standard—for example, assessment areas in which the market benchmark was less than 75 percent of its expected value. Alternatively, rather than designate a specific set of underperforming markets, the agencies could use the difference between the actual and expected market benchmarks as an additional factor to consider in every assessment area.

Request for Feedback

Question 85. Would identifying underperforming markets appropriately counter the possibility that the market benchmarks might be set too low in some assessment areas? If so, what data points should be used to set expectations for the market benchmark? How far below this expectation should an observed market benchmark be allowed to fall before the market is designated as underperforming?

Question 86. Should the agencies consider other factors, such as oral or written comments about a bank's retail lending performance, as well as the bank's responses to those comments, in developing Retail Lending Test conclusions?

X. Retail Lending Test: Evaluation Framework for Retail Lending Test Conclusions at the State, Multistate MSA, and Institution Level

The agencies propose a transparent and standardized approach to determining Retail Lending Test conclusions at the state, multistate MSA, and institution level. The proposed approach would leverage performance in a bank's local assessment areas. In addition, the agencies also propose evaluating a large bank's retail lending performance in areas outside of its assessment areas, referred to as the outside retail lending area. This approach is intended to complement the proposed retail lending assessment areas, as described in Section VI. The agencies propose a tailored application of this approach for intermediate banks. Specifically, the agencies propose evaluating an intermediate bank's retail lending performance outside of its facility-based assessment areas only if it does more than 50 percent of its lending outside of its facility-based assessment areas.

As discussed in Section VI, the agencies recognize that changing technology increasingly allows banks to reach consumers with loans and deposit products without any in-person contact at a branch office. As a result, a bank's lending may be geographically dispersed, without concentrations in particular local markets that would be captured by the proposed retail lending assessment areas. As shown in Table 1 in Section VI, the agencies estimate that approximately 11 percent of home mortgage loans and 16 percent of small business loans originated by large banks would fall outside of facility-based assessment areas or the proposed retail lending assessment areas.

A. Background

Under the current CRA regulations, lending test ratings are assigned at the state, multistate MSA, and institution levels using conclusions reached about performance on the various performance criteria in a bank's assessment areas. Retail lending conducted outside of assessment areas is not evaluated using the Lending Test criteria. However, the Interagency Questions and Answers do allow for consideration of loans to low- or moderate-income persons, and small business and small farm loans outside of a bank's assessment areas.[185]

The current process relies on examiner judgment to reach conclusions (inside assessment areas and outside when applicable), using the descriptions of performance under each of the criteria and ratings categories.[186] Conclusions are then aggregated to reach lending test ratings at each of the rated areas—state and multistate MSA levels. Examiners aggregate conclusions considering the significance of the bank's lending in the area compared to the bank's overall activities as well as information about the number and activities of other banks, lending opportunities, and demographic and economic conditions in the rated areas.

B. Overview

The agencies propose to assign conclusions on the Retail Lending Test at the state and multistate MSA levels based on the conclusions reached at individual facility-based and retail lending assessment areas, as applicable. The weight assigned to each assessment area level conclusion in determining the state or multistate MSA rating would be measured as a combination of the percentage of the banks' retail loans made in that assessment area, and the percentage of the banks' deposits sourced from that assessment area. The use of the combination of retail lending and deposits is intended to ensure that a bank's ratings reflect its performance in the communities where most of its borrowers and depositors live.

The agencies also propose to assign conclusions on the Retail Lending Test at the institution level by similarly combining conclusions from a bank's facility-based and retail lending assessment areas, as applicable. In addition, large banks and certain intermediate banks would be assigned a conclusion on their retail lending performance in outside retail lending areas, which are the areas outside of a bank's facility-based and retail lending assessment areas, as defined in proposed § __.12. This conclusion would factor into the institution-level Retail Lending Test conclusion for these banks just as assessment area conclusions do, with a weight measured as a combination of the percentage of the banks' retail loans made, and the percentage of the banks' deposits sourced from, outside any facility-based or retail lending assessment area.

For intermediate banks, the agencies propose to perform an evaluation of outside-assessment area retail lending only if greater than 50 percent of the bank's retail lending, by dollar volume, occurred outside its assessment areas during the evaluation period. The agencies recognize that most intermediate banks perform the bulk of their lending within their assessment

[185] See Q&A § __.22(b)(2) and § __.22(b)(3)–4.

[186] *See* Appendix A to part __—Ratings.

areas.[187] Tailoring the evaluation approach for these banks is intended to reflect the more limited capacity of intermediate banks relative to large banks, and to reflect that their business models are generally focused on their facility-based assessment areas.

The agencies seek feedback on whether all large banks should be evaluated on their retail lending outside of facility-based and retail lending assessment areas, as applicable. An alternative option would be to evaluate outside-assessment area retail lending only for large banks for which outside-assessment area lending met some minimum threshold. For example, large banks that originated or purchased more than 80 percent of their retail loans, by dollar amount, within their facility-based and retail lending assessment areas could be exempted from an evaluation of their outside-assessment area retail lending.

To develop conclusions for a bank's outside retail lending area performance, the agencies propose to use distribution metrics to evaluate each of a bank's major product lines. As with the procedure for developing a recommended conclusion for each assessment area, the bank's outside retail lending area metrics would be compared to a set of benchmarks. These benchmarks, described below in Section X.C, would be established as tailored combinations of the market and community benchmarks from the outside retail lending area geographies in which the bank was engaged in retail lending. As in the bank's assessment areas, focusing on major product lines tailors the evaluation to the bank's business model by assessing how it met the credit needs of its community in the products it specializes in.

Request for Feedback

Question 87. Should all large banks have their retail lending in their outside retail lending areas evaluated? Should the agencies exempt banks that make more than a certain percentage, such as 80 percent, of their retail loans within facility-based assessment areas and retail lending assessment areas? At what percentage should this exemption threshold be set?

[187] Using data from the CRA Analytics Data Tables, the agencies found that the median bank with assets greater than $600 million evaluated under the intermediate small bank exam procedures conducted almost 80 percent of its retail lending, by dollar volume, within its assessment areas. Additionally, over 90 percent of the sampled banks conducted the majority of their retail lending within their assessment areas.

C. Outside Assessment Area Lending

For the reasons described in Section VIII, the agencies propose using the same major product line standards and bank geographic and borrower distribution metrics to evaluate a bank's retail lending activity in an outside retail lending area. In addition, the agencies propose only performing this evaluation at the institution level. This means that retail lending activity outside a bank's assessment areas would only be evaluated if that lending meets the major product line standard. Because this retail lending activity would be aggregated nationwide, the agencies propose a modified approach to setting performance expectations that draws on the approach used for assessment areas but reflects the larger geographic area.

1. Establishing Performance Expectations for Bank Distribution Metrics

Similar to the proposed method for reaching recommended conclusions in individual assessment areas, the agencies propose to set expectations for bank performance via a standardized methodology as described in Section IX.E.1. The bank distribution metrics for each income level, distribution test (geographic or borrower), and major product line would be compared to a set of performance ranges that correspond to the different conclusion categories.

a. Tailoring Benchmarks To Match the Bank's Geographic Footprint

Banks that engage in retail lending outside of their assessment areas do not all have the same regional distributions of lending across the country. As such, the lending opportunities in the communities served by different banks in outside retail lending areas are not the same. The agencies propose to tailor performance expectations for outside retail lending areas to match the opportunities in the regions in which the bank lends.

The agencies propose to tailor performance expectations by setting performance ranges relative to bank-specific tailored benchmarks. These tailored benchmarks are calculated as the average of local market and community benchmarks across the country, weighted by the retail lending the bank does in each region. Specifically:

- For each major product line, the agencies would calculate market benchmarks and community benchmarks for the geographic and borrower distribution tests for every MSA, and the non-MSA portion of every state, in the country. Calculations of these benchmarks would follow the method described in Section IX.E.2.
- Each MSA and the non-MSA portion of each state is assigned a weight, calculated as the percentage, by dollar volume, of the bank's outside retail lending that was in that MSA or non-MSA portion of a state.
- Tailored community benchmarks and tailored market benchmarks are then calculated as the weighted average of the community benchmarks and market benchmarks in every MSA and the non-MSA portion of every state, weighted by the percentage of the bank's outside retail lending in that region.

For example, suppose that 75 percent of a particular bank's outside-assessment area retail lending, by dollar amount, occurred in an MSA that had a closed-end home mortgage moderate-income borrower market benchmark of 10 percent. Suppose that the remaining 25 percent of the bank's outside-assessment area retail lending took place in the non-MSA portion of a state, in which the same market benchmark was 8 percent. The bank's tailored market benchmark for closed-end home mortgage lending to moderate-income borrowers would then be $(0.75 \times 0.1) + (0.25 \times 0.08) = 0.095$, or 9.5 percent.

Performance ranges for the bank's outside retail lending area would be established following the method described in Section IX.E.2, with the tailored community benchmark and the tailored market benchmark substituted for the community benchmark and market benchmark. A comparison of the outside-assessment area bank metric to these performance ranges produces a recommended conclusion for each major product line, distribution test, and income level.

This proposed tailored benchmark approach would set expectations for a bank's outside-assessment area retail lending to match the opportunities in the markets it lends in. The weighting by the volume of the bank's lending ensures that the more of a bank's lending occurs in a particular market, the more the agencies' performance expectations for the bank mirror opportunities in that market. Markets in which the bank did zero lending would get zero weight, and hence have no influence on the performance ranges.

The agencies seek feedback on whether the tailored benchmarks described above appropriately set performance standards for outside retail lending areas. An alternative proposal would be to create nationwide market and community benchmarks that apply to all banks, regardless of where their lending is concentrated. These

nationwide benchmarks could be calculated as the benchmarks described in Section IX.E.2, using all census tracts in the nation as the geographic base. Another alternative would be to tailor benchmarks using weights that are individualized by the dollar amount of lending specific to each major product line, rather than the sum of all of a bank's outside-assessment area retail lending. For example, if a bank did a majority of its outside-assessment area closed-end home mortgage lending in MSA A, and a majority of its outside-assessment area small business lending in MSA B, the closed-end home mortgage tailored benchmarks would be weighted towards the benchmarks from MSA A, while the small business tailored benchmarks would be weighted toward MSA B. These alternatives trade off the degree of tailoring performance expectations to the bank's opportunities against their level of complexity, with the agencies' proposed approach striking a balance between the two.

2. Creating Recommended Retail Lending Test Conclusions

Similar to individual assessment areas, the agencies propose to calculate a metrics-based recommended conclusion for overall outside-assessment area retail lending by developing and averaging product line scores, following the method described in Sections IX.F and IX.G.

Request for Feedback

Question 88. Does the tailored benchmark method proposed above for setting performance ranges for outside retail lending areas achieve a balance between matching expectations to a bank's lending opportunities, limiting complexity, and setting appropriate performance standards? Should the agencies instead use less tailored benchmarks by setting a uniform outside retail lending areas benchmarks for every bank? Or should the agencies use a more tailored benchmarks by setting weights on geographies by individual product line?

D. Calculating Retail Lending Test Conclusions at the State, Multistate MSA, and Institution Level

1. Scoring Performance in Facility-Based Assessment Areas, Retail Lending Assessment Areas, and Outside Lending

Each facility-based assessment area, retail lending assessment area, and the outside retail lending area, if applicable, would be assigned a Retail Lending Test conclusion. The agencies propose to assign a numerical performance score to the bank's performance in each of these areas using the following mapping: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); or ''Substantial Noncompliance'' (0 points). As described in Section IX.F.1, this mapping would provide a distinction between all conclusion categories, while recognizing that ''Low Satisfactory'' and ''High Satisfactory'' reflect degrees of difference within a more comprehensive ''Satisfactory'' category.

To produce Retail Lending Test conclusions at the state, multistate MSA, and institution level, the agencies propose to combine the performance scores for facility-based assessment areas, retail lending assessment areas, and outside retail lending areas, as applicable, using a standardized weighted average approach, as described in the following sections. The proposed approach would ensure that the bank's retail lending performance in every one of its markets would influence Retail Lending Test conclusions at the state, multistate MSA, and institution level conclusions.

2. State and Multistate MSA Retail Lending Test Conclusions

The agencies propose to assign Retail Lending Test conclusions for states and multistate MSAs based on a weighted average of conclusions from facility-based assessment areas and retail lending assessment areas within each respective state and multistate MSA. The agencies propose that the weights would be calculated as the simple average of:

- The dollars of deposits the bank sourced from an assessment area, as a percentage of all the bank's deposits sourced from facility-based assessment areas or retail lending assessment areas in the state or multistate MSA; and
- The dollars of retail lending the bank made in an assessment area, as a percentage of all the bank's retail loans in facility-based assessment areas or retail lending assessment areas in the state or multistate MSA.

The agencies believe that a bank's presence in a particular community, and hence the importance of its performance there in an overall evaluation of its retail lending, depends on its customer bases for both deposits and loans. Basing weights purely on deposits, for example, would mean that if a bank did a very large amount of its lending in a market from which it drew few deposits, its lending performance there would have only a small influence on its overall conclusion. In an extreme case, most of a bank's lending might effectively get ignored under such a weighting approach. Alternatively, basing weights purely on lending would mean that a bank's record of serving the credit needs of the communities from which it draws deposits would have little bearing on its overall conclusion. For example, if a bank failed the retail lending volume screen in a facility-based assessment area due to making very few loans there, its low level of retail lending would mean that the resulting assessment area conclusion carries little weight in its institution-level conclusion for the Retail Lending Test. Therefore, the agencies believe weighting performance based on a combination of loans and deposits is more appropriate.[188]

For deposits data, the agencies propose to use the annual average amount of a bank's deposits collected from each assessment area averaged over the years of the relevant evaluation period, if the bank collects and maintains this data. As proposed in § _ _.42, collecting and maintaining deposits data would be required for large banks with assets of over $10 billion. Collecting and maintaining deposits data would be optional for small banks that elect evaluation under the Retail Lending Test, for intermediate banks, and for large banks with assets of $10 billion or less. For any banks evaluated under the Retail Lending Test that do not collect deposits data, the agencies propose to use the deposits assigned to the banks' branches in each assessment area, as reported in the FDIC's Summary of Deposits, averaged over the years of the relevant evaluation period.

Because the FDIC's Summary of Deposits data assigns all deposits to branch locations, and all branches would be located in a facility-based assessment area, the deposits assigned to retail lending assessment area performance scores for banks that do not collect and maintain deposits data would always be zero. The weight on the retail lending assessment area performance score for such a bank would, therefore, be one half of the percentage of dollars of retail lending the bank made outside its facility-based assessment areas. For example, if a bank conducted 50 percent of the dollar

[188] The agencies propose to also use the same weighting methodology discussed above—a simple average of a bank's share of deposits and share of lending—to weight facility-based assessment area performance, and other geographic areas as applicable, when developing state, multistate, and institution conclusions for the Retail Services and Products Test, Community Development Financing Test, and Community Development Services Test. The details of how this weighting methodology is used for these other performance tests are discussed in Sections XI, XII, and XIII.

amount of its retail lending in a single retail lending assessment area and did not collect and maintain deposits data under § __.42 of the proposal, then the weight for that retail lending assessment area would be 25 percent. As a result, for a large bank with assets of $10 billion or less or an intermediate bank that obtains deposits from outside of its facility-based assessment areas, electing to collect and maintain deposits data could meaningfully increase the weight placed on the bank's performance in its retail lending assessment areas and outside retail lending area, as applicable, and decrease the weight placed on its facility-based assessment areas. As noted earlier, the agencies believe that using an average of a bank's share of lending and share of deposits remains a preferable weighting approach to only using a bank's share of lending to weight performance across different geographic areas, which could result in areas with high amounts of deposits but low levels of lending being overlooked in a bank's Retail Lending Test conclusion. The agencies seek feedback on the tradeoffs involved with tailoring deposits data requirements, particularly regarding the impact of using the FDIC's Summary of Deposits data, on the proposed weighting methodology and other aspects of the proposal.

Using the weights described above, a weighted average of the performance scores from each assessment area in the state or multistate MSA would be calculated, and a corresponding conclusion would be assigned by rounding to the nearest point value of a conclusion category. For example, a bank with an averaged performance score in a particular state of 4.7 would fall between a ''Needs to Improve'' (3) and ''Low Satisfactory'' (6). Because the averaged performance score is closer to 6 than to 3, the bank would fall into the ''Low Satisfactory'' conclusion category.

Along with the conclusion category, the agencies are proposing to report the averaged performance score in the bank's performance evaluation. This score would provide more information as to which end of the performance range a bank receiving a particular conclusion fell. In the example above, the bank with a 4.7 averaged performance score is toward the lower end of the ''Low Satisfactory'' range. In contrast, a bank with, for example, a 6.3 averaged performance score would be on the higher end of the ''Low Satisfactory'' range. Both banks would receive the same conclusion, but the second bank's performance was stronger. By publishing the averaged performance score, the agencies would provide the public with more detailed information about how well the bank performed on the Retail Lending Test in each of its states and multistate MSAs.

In the following example of the proposed approach to assigning conclusions, suppose a bank had one facility-based assessment area and one retail lending assessment area in a state.

- In the facility-based assessment area, the bank made $10 million in retail loans and collected $90 million in deposits, and
- In the retail lending assessment area, the bank made $10 million in retail loans and collected $10 million in deposits.
- The bank receives an ''Outstanding'' conclusion (10 points) in its facility-based assessment area, and
- The bank receives a ''Needs to Improve'' conclusion (3 points) in its retail lending assessment area.

Calculating Weights

- Facility-based assessment area: the bank collects 90 percent of its assessment area deposits ($\frac{\$90M}{\$90M+\$10M}$) and makes 50 percent of its assessment area retail loans ($\frac{\$10M}{\$10M+\$10M}$) in the facility-based assessment area, so the weight on that assessment area's conclusion would be $\frac{90+50}{2} = 70$ percent.
- Retail lending assessment area: the bank collects 10 percent of its assessment area deposits ($\frac{\$10M}{\$90M+\$10M}$) and makes 50 percent of its assessment area retail loans ($\frac{\$10M}{\$10M+\$10M}$) in the retail lending assessment area, so the weight on that assessment area's conclusion would be $\frac{10+50}{2} = 30$ percent.

Retail Lending Test conclusion for the state: The state average performance score would then be $(0.7 \times 10) + (0.3 \times 3) = 7.9$. This score is closer to the ''High Satisfactory'' value (7 points) than the ''Outstanding'' value (10) points, so the bank would be within the ''High Satisfactory'' conclusion category for its Retail Lending Test conclusion in the state.

3. Institution Retail Lending Test Conclusions

The agencies propose to assign institution-level conclusions similarly to state and multistate MSA level ratings by taking a weighted average of the conclusions from individual assessment areas. In addition, the agencies propose that the institution-level weighted average for large banks and certain intermediate banks would incorporate

the Retail Lending Test conclusion for outside assessment area lending.

As described above in Section X.D.1, the agencies propose to assign performance scores to each facility-based assessment area and retail lending assessment area according to the Retail Lending Test conclusion reached in each specific assessment area. The same mapping would be used to assign a performance score in an outside retail lending area, depending on the conclusion this lending received: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); or ''Substantial Noncompliance'' (0 points).

To develop the Retail Lending Test conclusion for the institution, the agencies propose calculating a weighted average of a bank's facility-based assessment area, retail lending assessment area, and outside retail lending area performance scores. The weights for assessment areas and the outside assessment area lending would be calculated analogously to the assessment area weights for the state and multistate MSA conclusions. Accordingly, the agencies propose to weight each assessment area and outside retail lending area performance score calculated as the simple average of:

- The dollars of deposits the bank sourced from an assessment area, or outside retail lending area, as applicable, as a percentage of all the bank's deposits; and
- The dollars of retail lending the bank made in an assessment area, or outside retail lending area, as applicable, as a percentage of all the bank's retail loans.

As under the proposed approach for developing state and multistate MSA Retail Lending Test conclusions, the share of deposits used to calculate these weights would be assigned to geographies according to the reported deposits data for large banks with assets of over $10 billion, and according to collected deposits data for other banks evaluated under the Retail Lending Test that elect to collect and maintain the data. For banks that are evaluated under the Retail Lending Test that do not collect and maintain deposits data, the FDIC's Summary of Deposits data would be used to measure dollars of deposits by location. Because the Summary of Deposits data assigns all deposits to branch locations, and all branches would be located in a facility-based assessment area by rule, the deposits assigned to a retail lending assessment area and outside retail lending area performance scores for banks that do not collect and maintain deposits data would always be zero. The weight on the retail lending assessment area and outside retail lending area performance scores for such a bank would therefore be one half of the percentage of dollars of retail lending the bank made outside its facility-based assessment areas. The agencies seek feedback on the tradeoffs involved with tailoring deposits data requirements, particularly regarding the impact of using the FDIC's Summary of Deposits data, on the proposed weighting methodology and other aspects of the proposal.

Using the above weights, a weighted average of the performance scores from each assessment area and outside retail lending area, as applicable, would be calculated. This averaged performance score would also be paired with the appropriate conclusion category (*e.g.,* ''Low Satisfactory'') by rounding the performance score to the nearest point value of a conclusion category. Just as for Retail Lending Test conclusions at the state and multistate MSA level, the agencies are proposing to report the average performance score at the institution level. This would provide more detailed information about how well the bank performed on the Retail Lending Test overall.

For example, consider the same example bank described above in Section X.D.2 with the following performance:

- The bank made $5 million in retail loans in its outside retail lending area but drew no additional deposits.
- The bank received an ''Outstanding'' conclusion (10 points) for its outside retail lending area.

As before, under this example, the bank did $10 million in retail lending, and collected $90 million in deposits from its facility-based assessment area, which received an ''Outstanding'' conclusion (10 points). The bank also made $10 million in retail loans and collected $10 million in deposits from its retail lending assessment area, which received a ''Needs to Improve'' (3 points) conclusion.

Calculating Weights

- Facility-based assessment area: this assessment area accounts for 90 percent of institution-level deposits and 40 percent of institution-level retail loans $\left(\frac{\$10M}{\$10M+\$10M+\$5M}\right)$, so the weight on that assessment area's conclusion would be $\frac{90+40}{2} = 65\%$.
- Retail lending assessment area: this assessment accounts for 10 percent of institution-level deposits and 40 percent of institution-level retail loans $\left(\frac{\$10M}{\$10M+\$10M+\$5M}\right)$, so the weight on that assessment area's conclusion would be $\frac{10+40}{2} = 25$ percent .
- Outside retail lending area: the bank made 20 percent of institution-level retail loans $\left(\frac{\$5M}{\$10M+\$10M+\$5M}\right)$ outside of its assessment areas and collected 0 percent of its deposits there, so the weight on the outside retail lending area would be $\frac{0+20}{2} = 10$ percent

Retail Lending Test conclusion for the bank: The bank's average performance score would then be (0.65 × 10) + (0.25 × 3) + (0.1 × 10) = 8.25. This score is closer to the ''High Satisfactory'' value (7 points) than the ''Outstanding'' value (10) points, so the bank falls into the ''High Satisfactory'' conclusion category for its institution-level Retail Lending Test conclusion.

The agencies seek feedback on whether weighting facility-based assessment area, retail lending assessment area, and outside retail lending area performance scores by the average of the percentage of a bank's retail lending and deposit dollars from each of those geographies is the best way to combine local-level retail lending performance conclusions to the state, multistate MSA, and institution levels.

Request for Feedback

Question 89. Should assessment area and outside retail lending area conclusions be weighted by the average of a bank's percentage of loans and deposits there? Is the proposed approach for using FDIC's Summary of Deposits data for banks that do not collect and maintain deposits data appropriate? Should the agencies use another method for choosing weights?

E. Analysis of Proposed Approach Using Historical CRA Performance Evaluation Data

To help inform certain aspects of the proposed Retail Lending Test approach, the agencies have analyzed historical bank lending performance under the proposed retail lending volume screen and metric-based performance ranges, using historical CRA performance evaluation data in the CRA Analytics Data Tables as well as other historical data. Where possible, this analysis approximates the recommended retail lending conclusion each assessment area would have received and the weights each assessment area would be assigned in computing the institution-level Retail Lending Test conclusion. This approximation does not take into account aspects of the proposal that would involve examiner judgment, such as the additional factors listed in proposed § __.22(e). The agencies also compared historical performance under the retail lending metrics across categories of bank asset size, assessment area location and type, and time period to evaluate how the proposal may affect banks or communities in particular circumstances.

While the agencies believe this analysis is informative, the agencies also recognize its limitations, including the fact that the analysis is backwards looking and, therefore, is not a prediction of future evaluation results. In addition, there are a number of data limitations that impact the analysis and, therefore, should be taken into consideration when interpreting the results. These include a number of differences between the proposed metrics and the historical lending analysis run by the agencies, due largely to data availability. For example, small business loans were identified in the analysis based on loan amount, as occurs under the status quo, rather than borrower revenue size, as is proposed by the agencies. In addition, no data on small business lending specifically to borrowers with gross annual revenues of $250,000 or less is available. On deposits data, deposit locations were approximated by the county of the bank branch they were assigned to in the FDIC's Summary of Deposits rather than based on the address of the depositor. In addition, the analysis combines all home mortgage loans together in a single category as distinctions between closed-end and open-end home mortgages were not available until the 2018 HMDA data. Finally, the analysis is based solely on mortgage and small business lending. The estimates shown here, therefore, should be understood only as approximations of how banks actually would have performed under the proposed retail lending metrics.

Bank Asset Size. The agencies propose using metrics and performance ranges to evaluate large and intermediate banks, with the denominators of the bank volume metric

and distributional bank metrics tailoring the metrics to account for institutional size and capacity.

Table 9 provides an analysis of mostly large bank performance under the proposed retail lending volume screen and performance ranges approach using existing and available data. The results reflect aggregated performance at the institution level, reflecting performance across facility-based assessment areas, retail lending assessment areas, and outside retail lending areas, as appropriate. The agencies used lending, deposits, and demographic data from 2017 through 2019 to estimate the percentage of banks whose historical performance in those years would have been associated with each Retail Lending Test conclusion category from ''Substantial Noncompliance'' to ''Outstanding.'' For data availability reasons, this analysis is restricted to banks that were both CRA and HMDA reporters and is thus primarily an analysis of large banks.[189] Wholesale, limited purpose, and strategic plan banks were also excluded from this analysis.

For purposes of this analysis, these banks, which were primarily large banks, were divided into three asset size categories: Assets less than $10 billion, assets between $10 billion and $50 billion, and assets above $50 billion. The various asset size groupings of banks appear to have roughly similar performance under the metrics, with the majority of banks falling into a ''Satisfactory'' category, and ''Low Satisfactory'' being somewhat more common than ''High Satisfactory.'' As shown in Table 9, those banks with assets under $10 billion had higher frequencies of both ''Outstanding'' and ''Needs to Improve'' Retail Lending Test conclusions. This result is due, in part, to these banks having fewer assessment areas, so a ''Needs to Improve'' or ''Outstanding'' performance conclusion in an individual assessment area tends to have a greater impact when averaging performances across all assessment areas. Larger banks typically have many more assessment areas, so very good or very poor performances in a few assessment areas can have less impact overall when averaged with stronger performance in other assessment areas, leading to more conclusions in the ''Low Satisfactory'' or ''High Satisfactory'' categories.

TABLE 9 TO SECTION __.22—DISTRIBUTION OF REPORTER BANKS ESTIMATED RETAIL LENDING TEST CONCLUSIONS, BY BANK ASSETS

Bank assets	<$10B		$10B–$50B		>$50B	
	Freq.	Percent	Freq.	Percent	Freq.	Percent
''Substantial Noncompliance''	0	0	0	0	0	0
''Needs to Improve''	52	10	6	9	1	4
''Low Satisfactory''	235	46	31	48	15	58
''High Satisfactory''	189	37	24	37	10	38
''Outstanding''	39	8	4	6	0	0

Notes: Table 9 shows the estimated distribution of Retail Lending Test conclusions based on agency analysis of home mortgage and small business lending, deposits, and demographic data from the CRA Analytics Data Tables, over the years 2017–2019. Institution-level conclusions were derived from the weighted average of assessment area level recommended conclusions. The boundaries of facility-based assessment areas were estimated using reported assessment areas, along with the restrictions that assessment areas must generally lie entirely within a single MSA or the non-MSA portion of a single state, and generally consist of (at least portions of) a contiguous set of counties. Analysis included banks that were both CRA and HMDA reporters, and excluded wholesale, limited purpose, and strategic plan banks. Bank asset categories were assigned using the annual average of the prior two years of quarterly assets relative to the exam year. Percentages were rounded to the nearest whole number.

Table 10 reflects performance for small, intermediate, and large banks, as defined in the proposal, on aspects of the proposed Retail Lending Test approach. The agencies propose to evaluate intermediate banks under the same retail lending volume screen, as well as retail lending distribution metrics and performance ranges as large banks (although with different rules for evaluating lending volume and lending outside of facility-based assessment areas). However, the agencies propose to continue evaluating small banks under current procedures unless they opt into the proposed Retail Lending Test.

Table 10 provides an analysis of small, intermediate, and large bank performance at the institution level under the performance ranges portion of the proposed Retail Lending Test. Because the bank volume metric could not be calculated for some banks included in this analysis, the analysis in Table 10 omits the retail lending volume screen for every bank, and simulated conclusions are based solely on the geographic and borrower distributions of their retail lending. As shown in Table 10, intermediate bank performance under the performance ranges appears similar to large bank performance. Small banks were notably more likely to end up with either a ''Needs to Improve'' or ''Outstanding'' conclusion. However, as noted earlier, small banks would only be evaluated under the proposed Retail Lending Test at their option and could otherwise remain under the status quo small bank lending test.

TABLE 10 TO SECTION __.22—DISTRIBUTION OF ESTIMATED RETAIL LENDING CONCLUSIONS AMONG BANKS BY ASSET SIZE, WITHOUT APPLYING THE RETAIL LENDING VOLUME SCREEN

	Assets <$600m		Assets $600M–$2B		Assets >$2B	
	Freq.	Percent	Freq.	Percent	Freq.	Percent
''Substantial Noncompliance''	1	1	0	0	0	0
''Needs to Improve''	27	14	5	7	3	7
''Low Satisfactory''	48	24	28	38	17	40

[189] Some banks voluntarily report CRA data, despite not reaching the asset size threshold to be designated a large bank under current regulations. These banks were included in the analysis of CRA and HMDA reporter banks.

TABLE 10 TO SECTION __.22—DISTRIBUTION OF ESTIMATED RETAIL LENDING CONCLUSIONS AMONG BANKS BY ASSET SIZE, WITHOUT APPLYING THE RETAIL LENDING VOLUME SCREEN—Continued

	Assets <$600m		Assets $600M–$2B		Assets >$2B	
	Freq.	Percent	Freq.	Percent	Freq.	Percent
"High Satisfactory"	61	31	32	43	18	43
"Outstanding"	61	31	9	12	4	10

Notes: Table 10 shows the estimated distribution of Retail Lending Test conclusions based on agency analysis of home mortgage and small business lending, deposits, and demographic data from the CRA Analytics Data Tables. Institution-level conclusions were derived from the weighted average of assessment area level recommended conclusions. The boundaries of facility-based assessment areas for small and intermediate-small banks were derived from data collected from the bank's performance evaluation. The boundaries of facility-based assessment area for large banks were derived from a combination of the data collected from the bank's performance evaluation and its reported assessment area data. Analysis included banks that had a CRA examination begin in 2018 or 2019, and excluded wholesale, limited purpose, and strategic plan banks. Bank asset categories were assigned using the annual average of the prior two years of quarterly assets relative to the examination year. Percentages were rounded to the nearest whole number.

Assessment Area Location. The agencies propose to use the same metrics and performance ranges in different geographic markets, as the benchmarks are intended to adjust for differences in lending opportunities in different areas. Table 11 reflects an estimate of the percentage of bank facility-based assessment area performance broken out between assessment areas located in MSAs and assessment areas located in non-MSAs. This analysis uses 2017–2019 data for CRA and HMDA reporter banks, primarily reflecting large banks. As shown in Table 11, bank performance is fairly similar in MSA and non-MSA assessment areas.

TABLE 11 TO SECTION __.22—DISTRIBUTION OF REPORTER BANK ASSESSMENT AREA ESTIMATED RETAIL LENDING CONCLUSIONS, BY LOCATION

	MSA		Non-MSA	
	Freq.	Percent	Freq.	Percent
"Substantial Noncompliance"	46	1	33	2
"Needs to Improve"	796	16	284	16
"Low Satisfactory"	1669	33	484	27
"High Satisfactory"	1803	35	638	35
"Outstanding"	760	15	359	20

Notes: Table 11 shows the estimated distribution of Retail Lending Test conclusions based on agency analysis of home mortgage and small business lending, deposits, and demographic data from the CRA Analytics Data Tables, over the years 2017–2019. Assessment area-level recommended conclusions are shown. The boundaries of assessment areas were estimated using reported assessment areas, along with the restrictions that assessment areas must generally lie entirely within a single MSA or the non-MSA portion of a single state, and generally consist of (at least portions of) a contiguous set of counties. Analysis included 606 banks that were both CRA and HMDA reporters, and excluded wholesale, limited purpose, and strategic plan banks. Percentages were rounded to the nearest whole number.

Retail Lending Assessment Areas and Outside Retail Lending Areas. The agencies propose to evaluate the retail lending performance of large banks outside of facility-based assessment areas in retail lending assessment areas. The agencies also propose to evaluate the retail lending of large banks outside of any assessment area (as well as that of certain intermediate banks) in the overall outside retail lending area. To understand how banks may have performed, historically, in these areas, the agencies estimated the distribution of recommended Retail Lending Test conclusions that banks reporting both HMDA and CRA data would have received in areas they would have been required to designate as retail lending assessment areas, as well as in the outside retail lending areas. Results using 2017–2019 data are shown in Table 12. Compared to the facility-based assessment area results shown above, these mostly large banks were more likely to receive a ''Needs to Improve'' conclusion in retail lending assessment areas and outside retail lending areas. Under the proposal, intermediate banks would not be required to designate retail lending assessment areas. Additionally, an intermediate bank with more than 50 percent of lending outside of its facility-based assessment areas would be evaluated on outside retail lending area performance under the proposal, while other intermediate banks would only be evaluated on facility-based assessment area performance.

TABLE 12 TO SECTION __.22—DISTRIBUTION OF ESTIMATED REPORTER BANK RETAIL LENDING CONCLUSIONS, IN RETAIL LENDING ASSESSMENT AREAS AND OUTSIDE RETAIL LENDING AREAS

	Retail lending AA		Outside retail lending area	
	Freq.	Percent	Freq.	Percent
"Substantial Noncompliance"	37	2	11	2
"Needs to Improve"	531	32	175	29
"Low Satisfactory"	646	39	268	45
"High Satisfactory"	360	22	129	21

TABLE 12 TO SECTION __.22—DISTRIBUTION OF ESTIMATED REPORTER BANK RETAIL LENDING CONCLUSIONS, IN RETAIL LENDING ASSESSMENT AREAS AND OUTSIDE RETAIL LENDING AREAS—Continued

	Retail lending AA		Outside retail lending area	
	Freq.	Percent	Freq.	Percent
"Outstanding"	96	6	21	3

Notes: Table 12 shows the estimated distribution of Retail Lending Test conclusions based on agency analysis of home mortgage and small business lending, deposits, and demographic data from the CRA Analytics Data Tables, over the years 2017–2019. Assessment area-level and outside retail lending area recommended conclusions are shown. The boundaries of facility-based assessment areas were estimated using reported assessment areas, along with the restrictions that assessment areas must generally lie entirely within a single MSA or the non-MSA portion of a single state, and generally consist of at least a portion of a contiguous set of counties. Analysis included 604 banks engaged in retail lending outside any assessment area, and 147 that would have been designated based on the proposed retail lending assessment areas definition. Sample was limited to banks that were both CRA and HMDA reporters, and excluded wholesale, limited purpose, and strategic plan banks. Percentages were rounded to the nearest whole number.

Time Period. The agencies propose using a consistent set of retail lending metrics and multipliers over time, although the proposed approach is intended to be dynamic and set thresholds that adjust for changes in lending opportunities over time. Specifically, by using the market volume benchmark and distributional market benchmarks as the foundation for setting performance expectations, the agencies intend the resulting thresholds to adjust across communities and over time. Using further historical data from banks that report both HMDA and CRA data, Table 13 reflects an analysis of the percentage of banks that would have received a recommended Retail Lending Test conclusion in three different time periods: 2005–2007, 2009–2011, and 2017–2019. The percentage of banks that would have fallen below a ''Low Satisfactory'' is fairly stable over time, suggesting that the metrics are appropriately correcting for variation in loan demand over the business cycle. Notably, however, there is a clear trend of declining rates of ''Outstanding'' conclusions, and rising ''Low Satisfactory'' conclusions, in a way that does not align with the business cycle. Factors that shift the benchmarks relative to the lending by a typical bank—for example, if nonbank lenders capture a larger share of home mortgage lending to low-income borrowers—can lead to overall shifts in measured bank performance over time for reasons other than market downturns or changes in the business cycle.

TABLE 13 TO SECTION __.22—DISTRIBUTION OF REPORTER BANK ESTIMATED RETAIL LENDING CONCLUSIONS, BY TIME PERIOD

	2005–2007		2009–2011		2017–2019	
	Freq.	Percent	Freq.	Percent	Freq.	Percent
"Substantial Noncompliance"	5	1	0	0	0	0
"Needs to Improve"	68	8	93	12	59	10
"Low Satisfactory"	207	24	238	31	281	46
"High Satisfactory"	368	42	289	38	223	37
"Outstanding"	222	26	138	18	43	7

Notes: Table 13 shows the estimated distribution of Retail Lending Test conclusions based on agency analysis of home mortgage and small business lending, deposits, and demographic data from the CRA Analytics Data Tables, over the years 2005–2007, 2009–2011, and 2017–2019. Institution-level conclusions shown were derived from the weighted average of assessment area level recommended conclusions. The boundaries of facility-based assessment areas were estimated using reported assessment areas, along with the restrictions that assessment areas must generally lie entirely within a single MSA or the non-MSA portion of a single state, and generally consist of (at least portions of) a contiguous set of counties. Analysis included banks that were both CRA and HMDA reporters, and excluded wholesale, limited purpose, and strategic plan banks. Percentages were rounded to the nearest whole number.

XI. Retail Services and Products Test

In § __.23, the agencies propose a Retail Services and Products Test that would evaluate the following for large banks: (i) Delivery systems; and (ii) credit and deposit products responsive to low- and moderate-income communities' needs. The proposed Retail Services and Products Test would use a predominately qualitative approach while incorporating quantitative measures as guidelines. The delivery systems part of the proposal seeks to achieve a balanced evaluation framework that considers a bank's branch availability and services, remote service facility availability, and its digital and other delivery systems. The credit and deposit products part of the proposal aims to evaluate banks' efforts to offer products that are responsive to low- and moderate-income communities' needs. Overall, the agencies seek to draw on the existing approach to evaluate a bank's retail services, while also updating and standardizing the evaluation criteria and reflecting the now widespread use of mobile and online banking.

The agencies propose a tailored approach to the Retail Services and Products Test based on a large bank's asset size. For large banks with assets of $10 billion or less, the agencies propose making certain components optional in order to reduce the data burden of new data collection requirements for banks within this asset category. For large banks with assets of over $10 billion, the agencies propose requiring the full evaluation under the proposed Retail Services and Products Test.

A. Overview

1. Current Approach to Retail Services

The current service test, which only applies to large banks (currently defined as having assets of at least $1.384 billion as of December 31 of both of the prior two calendar years), establishes four criteria for evaluating retail services: (i)

The distribution of branches among low-, moderate-, middle-, and upper-income census tracts; (ii) a bank's record of opening and closing branches and its effects, particularly on low- and moderate-income census tracts or low- and moderate-income individuals; (iii) the availability and effectiveness of alternative systems for delivering retail banking services (or non-branch delivery systems) in low- and moderate-income census tracts and to low- and moderate-income individuals; [190] and (iv) the range of services provided in low-, moderate-, middle-, and upper-income census tracts and the degree to which the services are tailored to meet the needs of those census tracts, including the reasonableness of business hours and services offered at branches.[191]

The first two of these evaluation criteria involve reviewing a bank's branch locations, primarily from information gathered from a bank's public file. First, using varying methods, the agencies evaluate the distribution of branches across census tracts of different income levels relative to the percentages of census tracts by income level, households (or families), businesses and population in the census tracts. Next, the agencies evaluate a bank's branch openings and closings during the evaluation period relative to its current branch distribution and consider if any changes impacted low- or moderate-income census tracts and accessibility for low- or moderate-income individuals.[192]

For the third evaluation criterion, guidance includes a variety of factors to aid examiners in determining whether a bank's non-branch delivery systems, which includes ATMs, are available and effective in providing retail banking services in low- and moderate-income areas and to low- and moderate-income individuals.[193] This includes, for example, the ease of access and use, reliability of the system, range of services delivered, cost to consumers as compared with the bank's other delivery systems, and rate of adoption and use.[194] Guidance also advises examiners to consider any information a bank maintains and provides to examiners demonstrating that the bank's alternative delivery systems are available to, and used by, low- or moderate-income individuals, such as data on customer usage or transactions.[195] Although examiners may consider several factors, evaluations of non-branch delivery systems generally focus on the distribution of the bank's ATMs across low-, moderate-, middle-, and upper-income census tracts, and a comparison of that distribution to the percentage of census tracts by income level, households (or families), businesses or populations across these census tracts, particularly low- and moderate-income census tracts. Examiners also review the types of services offered by a bank's ATMs (*i.e.,* deposit-taking and cash-only) and consider other qualitative factors that improve access to ATMs in low- and moderate-income census tracts.

The fourth criterion—the range of services and degree to which the services are tailored to meet the needs of those geographies—is the primary consideration given to deposit products in the current retail service test. Examiners consider information from the bank's public file and other information provided by the bank related to the range of services generally offered at their branches, such as loan and deposit products, and the degree to which services are tailored to meet the needs of particular geographies. Current guidance explains that examiners will consider retail banking services that improve access to financial services or decrease costs for low- or moderate-income individuals.[196] Examiners also review data regarding the costs and features of deposit products, account usage and retention, geographic location of accountholders, and any other relevant information available demonstrating that a bank's services are tailored to meet the convenience and needs of its assessment areas, particularly low- and moderate-income geographies or low- and moderate-income individuals.[197]

2. Stakeholder Feedback

Delivery Systems. Community and consumer organizations generally favored the current evaluation approach to evaluating branch delivery systems but have suggested that the agencies place more focus on assessing branch closures in low- and moderate-income and other underserved areas, and enhanced branch-based services supporting financial inclusion. Industry stakeholders expressed support for greater flexibility in the analysis (*e.g.,* receiving credit for a branch outside of a low- and moderate-income census tract that is routinely accessed by low- and moderate-income individuals from outside of that tract). While there was divergence among the stakeholders regarding whether CRA examinations should credit branch presence and activities in middle- and upper-income census tracts, there was widespread support that areas without branches should also be defined and better reflected in the evaluation, including greater identification of how banks are serving these areas.

Stakeholders generally supported the evaluation of non-branch delivery systems but encouraged flexibility and the continued development of standards for evaluating and reporting. Industry stakeholders opposed the use of quantitative benchmarks to evaluate non-branch delivery systems, noting that these services are difficult to quantify and that there is lack of consistent available data. They instead favor the adoption of a flexible approach with optional data reporting and a qualitative review for CRA evaluations. In contrast, community and consumer group stakeholders suggested that the framework should provide standards for what banks may report to demonstrate the effectiveness of their non-branch delivery channels in reaching low- and moderate-income consumers. For example, these stakeholders suggested using rates of usage of online and mobile services by customers grouped by census tract. Overall, stakeholders noted that banks would need to provide more data for agencies and the public to adequately assess performance of banks' non-branch delivery systems.

Deposit Products. Stakeholders have broadly acknowledged the importance of banks offering low-cost transaction accounts that are responsive to the needs of the low- and moderate-income population but have had diverging opinions on whether available data could determine impact for low- and moderate-income customers. Community and consumer groups have supported a separate evaluation of deposit products at the assessment area level to ensure banks meet the needs of low- and moderate-income consumers. Some industry groups have supported the evaluation of deposit products as its own evaluation component. Other industry groups have not supported including a component to evaluate a bank's deposit products or have indicated support if the evaluation component were optional or used as performance context. Industry

[190] The agencies' current CRA regulations provide a non-exhaustive list of alternative systems for delivering retail banking services which include: ''ATMs, ATMs not owned or operated by or exclusively for the bank, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs.'' *See* 12 CFR __ .24(d)(3).

[191] *See* 12 CFR __.24(d).

[192] *See* 12 CFR __.24(d)(2); Q&A § __.24(d)–1.

[193] *See* Q&A § __.24(d)(3)–1.

[194] *Id.*

[195] *See* Q&A § __.24(d)(3)–1.

[196] *See* Q&A § __.24(a)–1.

[197] See Q&A § __.24(d)(4)–1.

stakeholders were also divided on what level to evaluate deposit products with some favoring at the institution-level and others at the assessment area level provided it is at the bank's option.

Stakeholders offered several suggestions concerning the types of data that would be beneficial and readily available for determining whether deposit products are responsive to the needs of low- and moderate-income consumers and used by low- and moderate-income consumers. Many stakeholders suggested incorporating data on usage by low- and moderate-income customers, such as the number of accounts with safe account features opened for low- and moderate-income consumers and comparing these numbers to a bank's other offerings.[198] This approach would involve an assessment of the types of products offered, including an assessment of the features and the costs. Stakeholders indicated that this approach could be accomplished by inquiring whether the bank has an account that meets the Bank On National Account Standards from the Cities for Financial Empowerment Fund and reviewing that data.[199] Greater consideration for impact of a deposit product on consumers was also suggested as measured by whether a consumer graduated from an entry-level product or eventually acquired credit or a wealth-building product. Lastly, many banks acknowledged the difficulty of measuring impact on low- and moderate-income deposit customers because stated income data, which would be necessary to determine low- and moderate-income status, is currently unavailable. Further, while some banks indicated such data would be difficult to collect, adding greater administrative burden in their view, other banks acknowledged that there are existing options to approximate low- and moderate-income status, such as using the census tract income level associated with an accountholder's address.

B. Delivery Systems Evaluation

For large banks with assets of over $10 billion, the agencies propose evaluating the full breadth of bank delivery systems by maintaining an emphasis on branches and increasing the focus on digital and other delivery channels. Specifically, the proposed approach for delivery systems would evaluate three components of the bank's performance: (i) Branch availability and services, (ii) remote service facility availability, and (iii) digital and other delivery systems. For large banks with assets of $10 billion or less, only the first two components would be evaluated, unless the bank requests additional consideration of its digital and other delivery systems and collects the requisite data. The proposed approach for evaluating a large bank's delivery systems would leverage quantitative benchmarks to inform the branch and remote service facility availability analysis and provide favorable qualitative consideration for branch locations in certain geographies. The agencies also propose more fully evaluating digital and other delivery systems, as applicable, in recognition of the trend toward greater use of online and mobile banking.

1. Branch Availability and Services

For the branch availability and services component, the agencies propose evaluating three factors: Branch distribution, branch openings and closings, and banking hours of operation and services responsive to low- or moderate-income individuals and in low- or moderate-income communities. Local branches remain important to communities for accessing credit,[200] and as such the availability of branches and services provided is important for the evaluation of retail services.

a. Branch Distribution and Use of Benchmarks

Building on current practice, the agencies propose to evaluate a bank's distribution of branches among low-, moderate-, middle-, and upper-income census tracts, compared to a series of quantitative benchmarks that reflect community and market characteristics. This approach would provide a more transparent, comprehensive assessment of the physical distribution of branches in facility-based assessment areas while maintaining the importance of branch locations in the assessment of retail services.

Building on a practice used currently in some evaluations, the agencies propose using data specific to individual, facility-based assessment areas, referred to as benchmarks, as points of comparison when evaluating a bank's branch distribution among low-, moderate-, middle-, and upper income geographies. The benchmarks would be based on the distribution of census tracts, households, businesses, and total bank branches by census tract income level. Each income level and data point (census tracts, households, businesses, and branches) would have a benchmark, specific to each assessment area. The benchmarks would be used in conjunction with examiner judgment and are intended to promote more transparency and consistency in the evaluation process.

Table 14 describes the proposed community benchmarks and their respective data sources. These benchmarks would allow examiners to compare a bank's branch distribution to local data to help determine whether branches are accessible in low- or moderate-income communities, to individuals of different income levels, and to businesses in the assessment area. The agencies considered it important to include three community benchmarks in order to provide additional context for each assessment area. The first proposed benchmark is the percentage of census tracts in a facility-based assessment area by income level. This benchmark enables the agencies to compare a bank's distribution of branches in census tracts of each income level, to the overall percentage of those census tracts in the assessment area. For example, if 20 percent of a bank's branches are located in low-income census tracts in an assessment area, and 10 percent of census tracts in the assessment area are low-income, the agencies may consider the bank to have a relatively high concentration of branches in low-income census tracts.

The second and third proposed community benchmarks are the percentage of households, as well as the percentage of total businesses and farms, in the facility-based assessment area by census tract income level. The agencies considered these benchmarks to be important complements to the first

[198] Safe account features are generally understood to mean features that conform to the Cities for Financial Empowerment Fund's Bank On National Account Standards or the FDIC's Model Safe Accounts Template. *See* Bank On National Account Standards at *https://cfefund.org/bank-on-national-account-standards-2021-2022/* and the FDIC Model Safe Accounts Template at *https://www.fdic.gov/consumers/template/*.

[199] *See* Cities for Financial Empowerment Fund, *Bank on National Account Standards (2021–2022), https://cfefund.org/bank-on-national-account-standards-2021-2022/*.

[200] *See, e.g.,* Hoai-Luu Q. Nguyen, ''Are Credit Markets Still Local? Evidence from Bank Branch Closings,'' American Economic Journal: Applied Economics, 11(1): 1–32 (2019), *http://faculty.haas.berkeley.edu/hqn/nguyen_aej_201901.pdf;* O. Ergungor, ''Bank Branch Presence and Access to Credit in Low- to Moderate-Income Neighborhoods,'' Journal of Money, Credit and Banking, 42(7), 1321–1349 (2010), *https://www.jstor.org/stable/40925690;* Robert M. Adams, Kenneth P. Brevoort, and John C. Driscoll, ''Is Lending Distance Really Changing? Distance Dynamics and Loan Composition in Small Business Lending,'' Board, Finance and Economics Discussion Series 2021–011 (Feb. 2021), *https://doi.org/10.17016/FEDS.2021.011;* Elliot Anenberg, Andrew C. Chang, Serafin Grundl, Kevin B. Moore, and Richard Windle, ''The Branch Puzzle: Why Are there Still Bank Branches?,'' Board, FEDS Notes (Aug. 20, 2018), *https://doi.org/10.17016/2380-7172.2206*.

benchmark, because households, businesses, and farms reflect a bank's potential customer base, and may not be distributed evenly across census tracts. For example, an assessment area with a relatively large concentration of households and businesses in low-income census tracts may have a higher low-income benchmark for households and businesses, and a relatively low low-income benchmark for census tracts. The agencies would thus consider the levels of all the benchmarks to inform a judgment about the bank's branch distribution in the market.

TABLE 14 TO SECTION __.23—COMMUNITY BENCHMARKS FOR RETAIL SERVICES—BRANCH DISTRIBUTION

Benchmark(s)	Data source
Percentage of census tracts in a facility-based assessment area by census tract income level	American Community Survey (Census).
Percentage of households in a facility-based assessment area by census tract income level	American Community Survey (Census).
Percentage of total businesses and farms in a facility-based assessment area by census tract income level.	Third-party data provider.

The agencies are also proposing a new aggregate measurement of branch distribution—referred to as a market benchmark—that would measure the distribution of all bank branches in the same facility-based assessment area by census tract income. Table 15 provides an overview of the proposed market benchmark and the associated data source.

TABLE 15 TO SECTION __.23—MARKET BENCHMARK FOR RETAIL SERVICES—BRANCH DISTRIBUTION

Benchmark(s)	Data source
Percentage of all bank branches [201] in a facility-based assessment area by census tract income level	FDIC Summary of Deposits Survey.

The use of a market benchmark would improve the branch distribution analysis in several ways. First, having such data would give examiners more information for determining how much opportunity or competition exists for providing retail services in census tracts of different income levels. Second, examiners would have market data on branch dispersion within facility-based assessment areas to identify areas with high or low branch concentration relative to community benchmarks. For example, if a bank has a branch in a low-income or moderate-income census tract where few other lenders have branches, this could indicate particularly responsive or meaningful branch activity for the bank.

Table 16 provides an example of the community and market benchmarks that could be used in evaluating a bank's branch distribution.

TABLE 16 TO SECTION __.23—GEOGRAPHIC BRANCH DISTRIBUTION

Tract income levels	Branches		Community benchmarks				Market benchmark	
	Total branches		Census tracts		Households	Businesses	Total branches from FDIC summary of deposits as of 6/30/2018	
	Number	Percent	Number	Percent	Percent	Percent	Number	Percent
Low	0	0.0	11	8.5	7.9	5.4	9	4.9
Moderate	2	25.0	30	23.3	25.7	20.1	40	22.0
Middle	4	50.0	53	41.1	40.0	43.1	91	50.0
Upper	2	25.0	35	27.1	26.3	31.4	42	23.1
Unknown	0	0.0	0	0.0	0.0	0.0	0	0.0
Totals	8	100.0	129	100.0	100.0	100	182	100.0

Along with performance context, examiners would use the bank's branch distribution and community benchmarks to draw conclusions on whether the bank's branches are accessible in low- and moderate-income communities, to individuals of different income levels, and to businesses in the assessment area.

In the example above, the bank has eight total branches in an assessment area with none of those branches in low-income census tracts and two in moderate-income census tracts. An examiner would compare the community benchmarks with the bank's lack of branches in low-income census tracts. Specifically, in the example above, 8.5 percent of all census tracts are low-income, and 7.9 percent of all households in the assessment area are in low-income census tracts. The examiner would also compare the bank's lack of branches in low-income census tracts with the market benchmark showing that 4.9 percent of branches for all banks in the assessment area are in low-income census tracts. These benchmarks would highlight that the bank's lack of branches in low-income census tracts lags the corresponding benchmarks, though the low-income benchmarks themselves are also low in this example.

[201] The aggregate number of branches in an assessment area figure is comprised of full-service and limited-service branch types as defined in the FDIC's Summary of Deposits.

Similarly, the examiner would also compare the percentage of the bank's branches located in moderate-income census tracts in the assessment area (25 percent) with the above community benchmarks. For example, 25.7 percent of all households are located in moderate-income census tracts, and 23.3 percent of all census tracts in the assessment area are moderate-income census tracts. The examiner would also compare the bank's distribution of branches in moderate-income census tracts with the market benchmark showing that 22.0 percent of branches for all banks in the assessment area are in moderate-income census tracts. From comparing the bank's share of branches in moderate-income census tracts to the moderate-income benchmarks, the benchmarks could help inform a conclusion that the bank's distribution of branches in moderate-income census tracts was strong.

An examiner could evaluate these data in different ways depending on performance context. For example, an examiner could consider performance context and the market benchmark in low-income census tracts indicating that existing bank branches are adequately serving the needs of low-income households. As part of this performance context, an examiner might also consider the proximity of the bank's branches in moderate-income census tracts to the low-income census tracts in the assessment area.

b. Considerations for Branch Availability: Approaches To Designating Low Branch Access and Very Low Branch Access Census Tracts

Delivery Systems in Low and Very Low Branch Access Geographies. The agencies propose providing favorable consideration for banks that operate branches within or nearby census tracts defined as having low or very low branch access. As branches continue to play a critical role in meeting the credit needs of low- and moderate-income individuals and communities, the agencies consider it important to evaluate the accessibility of banking services in a bank's assessment area.[202]

The agencies propose defining two categories for census tracts with limited access to bank branches: Low branch access and very low branch access. A census tract would qualify as low branch access or very low branch access based on the number of bank branches, including branches of commercial banks, savings and loan associations, and credit unions, found within a certain distance of the census tract's center of population.[203] Low branch access census tracts would be those in which there is only one branch within this distance or within the census tract itself, and very low branch access census tracts would be those in which there are zero branches within this distance or within the census tract itself. The agencies considered two approaches, one proposed (referred to in the **SUPPLEMENTARY INFORMATION** as the ''fixed distance approach'') and one alternative (referred to in the **SUPPLEMENTARY INFORMATION** as the ''local approach''), to determine the relevant distance threshold for each census tract. The agencies also considered a second alternative which does not set specific geographic distances in the identification of areas which may experience limited access to branches.

Proposed Approach to Low and Very Low Branch Access (Fixed Distance Approach). In the proposed approach, a fixed distance threshold would be established based on whether the census tract is in an urban, suburban, or rural area.[204] This approach reflects stakeholder feedback that distance thresholds for measuring branch access should account for variation in spatial density and transit modes across different geographies. Recognizing these differences, the agencies selected distance thresholds to reflect reasonably expected travel distances for urban, suburban, and rural geographies. Urban areas would have a distance threshold of two miles, suburban areas would have a distance threshold of five miles, and rural areas would have a distance threshold of 10 miles.

Alternative Approach to Low and Very Low Branch Access (Local Approach). In the alternative approach, a separate local area would be identified for each set of central counties of a metropolitan area and metropolitan division, the outlying counties of each metropolitan area and metropolitan division, and the nonmetropolitan counties of each state. Each of these areas are defined by the Office of Management and Budget through its delineations of metropolitan areas. This would result in the identification of over 650 distinct local areas. For each area, a locally-determined distance threshold would be computed based on the distance at which 90 percent of the local area's population encounters the nearest bank branch, traveling from the population center of their census tract. As a result, this alternative approach would determine the distance thresholds for defining low and very low branch access census tracts relative to local variation in population density and land-use patterns. The distance thresholds in this approach would also adjust over time as branches open and close. For example, a new branch opening in an area, and existing branches remaining open, may result in the distance thresholds that apply to all census tracts in the area becoming smaller. The agencies could update the local distances and identification of low branch access and very low branch access census tracts on a regular basis, such as annually, or every five years (along with the updates to low- and moderate-income census tract designations).

Using the current distribution of branches, the locally-determined distances identified using this approach vary from under one mile for a number of local areas with more dense concentrations of residents and bank branches to over ten miles for areas with more sparse distributions of residents and bank branches. Around two-thirds of local areas have locally-determined distances between one and five miles, which includes several of the nonmetropolitan areas of states. Over four-fifths of the metropolitan areas of

[202] FDIC, ''How America Banks,'' *supra* note 145.

[203] As used by the U.S. Census Bureau, ''The concept of the center of population . . . is that of a balance point. The center of population is the point at which an imaginary, weightless, rigid, and flat (no elevation effects) surface . . . would balance if weights of identical size were placed on it so that each weight represented the location of one person''; centers of population are periodically calculated for each census tract. *See https://www.census.gov/geographies/reference-files/time-series/geo/centers-population.2010.html.* Using centers of population, rather than geographic centers of census tracts, captures the average distance between bank branches and the people at the census-tract level as accurately as possible.

[204] The agencies are proposing that ''urban areas'' would refer to census tracts located primarily within the principal city components of MSAs. Under the proposal, ''suburban areas'' would refer to census tracts located primarily outside of the principal city components of MSAs and ''rural areas'' would refer to census tracts located in non-MSAs. Principal cities are defined by the U.S. Office of Management and Budget, ''2020 Standards for Delineating Core Based Statistical Areas'': ''The principal city (or cities) of a CBSA will include: (a) The largest incorporated place with a 2020 Census population of at least 10,000 in the CBSA or, if no incorporated place of at least 10,000 population is present in the CBSA, the largest incorporated place or census designated place in the CBSA; and (b) Any additional incorporated place or census designated place with a 2020 Census population of at least 250,000 or in which 100,000 or more persons work; and (c) Any additional incorporated place or census designated place with a 2020 Census population of at least 50,000, but less than 250,000, and in which the number of workers working in the place meets or exceeds the number of workers living in the place; and (d) Any additional incorporated place or census designated place with a 2020 Census population of at least 10,000, but less than 50,000, and at least one-third the population size of the largest place, and in which the number of workers working in the place meets or exceeds the number of workers living in the place.'' 86 FR 37770, 37776 (July 16, 2021).

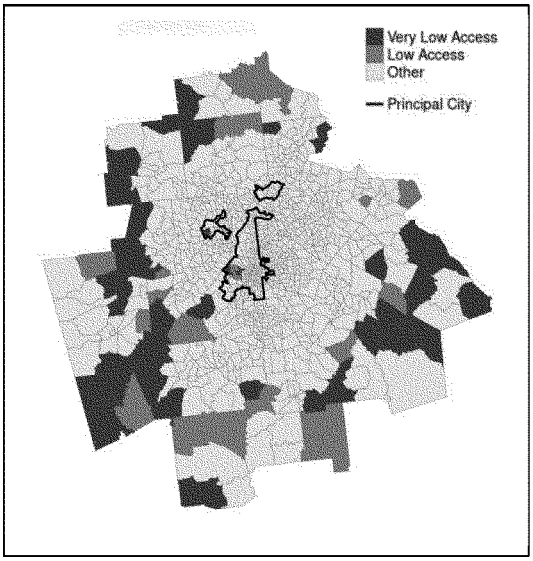
states have distances between five and ten miles.

While the proposed (fixed distance) and alternative (local) approaches would determine distance thresholds in different ways, both approaches would determine whether a census tract is a low or very low branch access census tract by assessing whether the census tract has either one or zero branches within the applicable distance threshold.

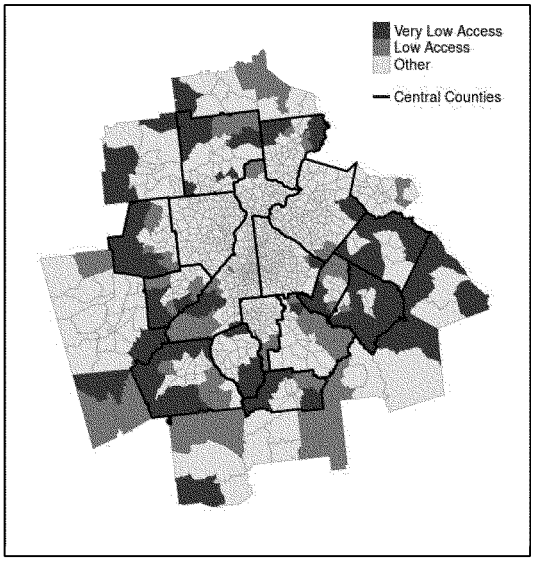
Illustration of Proposed and Alternative Approaches. In Figure 2, a case study of the Atlanta-Sandy Springs-Alpharetta, GA MSA highlights the areas of low and very low branch access identified by the proposed (fixed distance) approach on the left, and the areas identified by the alternative (local) approach on the right. There are distinct differences between the two approaches.

Figure 2 to Section __.23: Case study of low and very low branch access approaches in the Atlanta-Sandy Springs-Alpharetta, GA MSA

Panel A. Proposed (fixed distance) approach



Panel B. Alternative (local) approach



First, the fixed distance approach would encompass a varying portion of each region's population because branch and population densities vary across the country. In the case study above, 3.9 percent of the population lives in very low branch access census tracts, and an additional 2.6 percent live in low branch access census tracts. These areas are determined by two different distance thresholds: Two miles for census tracts primarily located in the principal cities of the MSA and five miles for census tracts outside of the principal cities in the MSA. For principal-city census tracts, 2.9 percent of the population lives in very low branch access census tracts and 3.0 percent lives in low branch access tracts. For census tracts outside the principal cities, 4.0 percent of the population lives in very low branch access census tracts and 2.5 percent lives in low branch access census tracts. These values vary across metropolitan areas and rural regions.

The alternative (local) approach would encompass a similar portion of each local area's population in very low branch access census tracts by design. In the illustrated case, the distance threshold for the central counties of the MSA is 2.77 miles, and the distance threshold for the outlying counties of the MSA is 6.1 miles. For census tracts in the central counties, 8.0 percent of the population lives in very low branch access census tracts and 5.9 percent lives in low branch access census tracts. For census tracts in outlying counties, 9.3 percent of the population lives in very low branch access census tracts and 11.8 percent lives in low branch access census tracts. By using the local distribution of bank branches to construct the distance threshold, nearly one tenth of each area's population would be considered to live in very low branch access census tracts using this approach.

Second, the geographic areas over which thresholds are applied differ between the two approaches. In the illustrated case, the fixed distance approach applies the urban threshold of 2 miles in principal-city census tracts, which encompass 12.3 percent of the MSA population, and the suburban threshold of 5 miles in non-principal-city census tracts, which encompass 87.7 percent of the MSA population. The local area approach applies a locally-determined threshold of 2.77 miles to the central counties of the MSA, which encompass 91.3 percent of the MSA population, and 6.1 miles in outlying counties, which encompass 8.7 percent of the MSA population in the case study. These patterns differ across MSAs and metropolitan divisions.

Table 17 below highlights information about areas across the United States identified as low and very low branch access under the proposed and alternative definitions.

TABLE 17 TO SECTION __.23—COVERAGE OF LOW AND VERY LOW BRANCH ACCESS CENSUS TRACTS

Description	Fixed distance approach		Local approach	
	Very low branch access	Low branch access	Very low branch access	Low branch access
Percentage of U.S. population	3.1	3.2	8.0	8.6
By census tract geography type—nationwide				
Percentage of urban/central county census tract population	1.8	2.1	8.0	7.9
Percentage of suburban/outlying county census tract population	4.1	3.7	8.6	12.7
Percentage of rural nonmetropolitan census tract population	2.6	3.7	7.7	10.1
By census tract income level—nationwide				
Percentage of low-income census tract population	3.2	3.3	7.1	8.1
Percentage of moderate-income census tract population	3.5	3.6	8.2	8.9
Percentage of middle-income census tract population	3.5	3.6	8.7	9.3
Percentage of upper-income census tract population	3.2	3.2	9.1	9.3

Source: Agencies' calculations using S&P Global Intelligence, SNL Banking Analytics; U.S. Census Bureau American Community Survey 5-year estimates (2015–2019); OMB Files (Sept. 2018).

Notes: (1) Census tracts are defined as either having low or very low branch access.

(2) Percentages indicate the share of the population meeting the condition indicated in the column.

(3) The Fixed Distance Approach and Local Approach use different strategies to divide metropolitan census tracts into categories: The Fixed Distance Approach identifies urban and suburban census tracts based on whether they are primarily inside or outside of principal cities; the Local Approach divides census tracts on the basis of whether they are in central or outlying counties of the metropolitan area.

Under the proposed (fixed distance) approach, 3.1 percent of the U.S. population lives in census tracts that are found to have very low branch access; another 3.2 percent of the population lives in census tracts that are found to have low branch access. Across geography types, concentrations of very low branch access census tracts are heaviest in suburban areas, in which 4.1 percent of the population lives in a very low branch access census tract, and are lowest in urban areas, where 1.8 percent of the population lives in a very low branch access census tract.

Under the alternative (local) approach, geographic and population coverage is broader: 8.0 percent of the U.S. population lives in census tracts that are found to have very low branch access, while another 8.6 percent of the population lives in census tracts that are found to have low branch access. Across geography types, concentrations of low branch access census tracts are heaviest in outlying counties of metropolitan areas, where 12.7 percent of the population lives in a low branch access census tract, and lowest in central counties of metropolitan areas, where 7.9 percent of the population lives in a low branch access census tract. Table 17 also shows the percentage of the population, by census tract income level, living in a low or very low branch access census tract under fixed distance and local approaches, respectively.

In general, defining a broader set of areas as low and very low branch access creates more opportunities for banks to receive qualitative consideration for branching activities. On the other hand, tailoring the areas considered low and very low branch access directs banks to focus more closely on the areas in greatest need of branch access.

Both the proposed and the alternative approaches are intended to address challenges that low- and moderate-income individuals and businesses can face in accessing retail products and services in communities that have few or no bank branches. The agencies propose providing the following scenarios with favorable consideration: (i) A bank opens a branch that alleviates one or more census tracts' very low branch access status; or (ii) a bank maintains a branch in one or more census tracts' low branch access status. In addition, the agencies propose assessing whether a bank provides effective alternatives for reaching low- and moderate-income individuals, communities and businesses when closing a branch that would lead to one or more census tracts being designated low or very low branch access.

Qualitative Approach to Evaluating Areas with Few or No Branches. Under a second, more qualitative alternative approach, the agencies would not define ''low branch access census tract,'' ''very low branch access census tract,'' or any similar term. Instead, in addition to considering the bank's branch distribution metrics compared to benchmarks and record of opening and closing branches for each facility-based assessment area, the agencies would undertake a qualitative consideration of certain factors related to low- and moderate-income census tracts with few or no branches. These factors may include considering the availability of a bank's branches; the bank's actions to maintain branches; the bank's actions to otherwise deliver banking services; and specific and concrete action by a bank to open branches in these areas. The agencies could also consider these factors, as appropriate, in: (i) Middle- and upper-income census tracts in which branches deliver services to low- or moderate-income individuals; (ii) distressed or underserved nonmetropolitan middle-income census tracts; (iii) distressed or underserved nonmetropolitan middle-income census tracts with few or no branches; and (iv) Native Land Areas. These additional geographic designations are further discussed below in Section XI.B.1.c.

The qualitative alternative is intended to address the same challenges as the proposed approach and the first alternative presented, without invoking specific distance thresholds. One benefit of this exclusively qualitative alternative is that it would provide the agencies with broad flexibility to consider a bank's actions to improve access to banking services in areas with limited branch access. However, because this second alternative does not clearly identify where banks would receive consideration, it leaves considerable discretion with the agencies' examiners.

c. Considerations for Branch Availability: Other Geographic Designations

In addition to designating low branch access census tracts and very low branch access census tracts, the agencies propose providing qualitative consideration for operating branches in other geographic areas as well. These areas would be favorably considered when evaluating overall accessibility of delivery systems, including to low- and moderate-income populations.

The agencies propose qualitatively considering retail branching in middle- and upper income census tracts if a bank can demonstrate that branch locations in these geographies deliver services to low- or moderate-income individuals. Low- and moderate-income families having access to retail services wherever they reside is integral to their financial well-being. While stakeholder feedback has varied on whether to provide qualitative consideration for branch presence and activities in middle- and upper-income census tracts, stakeholders generally suggested that the agencies should consider factors such as the geographic location of the branches and data provided by the bank to demonstrate low- or moderate-income usage of these branches.

In addition, the agencies are proposing to provide qualitative consideration for banks that operate branches in distressed or underserved nonmetropolitan middle-income geographies. The agencies have previously used the distressed and underserved definitions to qualify certain community development activities and have not used these definitions for purposes of evaluating a bank's retail services. As proposed, a geography is defined as a *distressed* nonmetropolitan middle-income area geography if it exhibits certain economic conditions such as high unemployment, excessive poverty rates, or severe population loss. Similarly, as proposed, a geography is defined as an *underserved* nonmetropolitan area if, due to its population size and density, securing financing for community needs is challenging. Residents, businesses, and farms in these geographies may have limited access to financial services given the economic characteristics of these areas. Additionally, in some of these areas there are few or no low- and moderate-income census tracts, and considering branch availability in distressed or underserved census tracts could provide examiners with additional insight into the bank's branch availability.

Lastly, the agencies propose providing positive qualitative consideration if banks operate branches in *Native Land Areas* as defined in proposed § __.12. The agencies recognize that branch access is limited for many Native communities,[205] and consider it appropriate to emphasize bank placement of branches and remote service facilities in Native Land Areas.

d. Branch Openings and Closings

In reviewing a bank's branch availability, the agencies propose reviewing a bank's record of opening and closing branch offices in facility-based assessment areas since the previous examination. This would build on current practice in which the evaluation includes an assessment of whether branch openings and closings improved or adversely affected the accessibility of its delivery systems, particularly to low- and moderate-income census tracts and low- and moderate-income individuals or whether alternative delivery systems are effective in providing needed services to low- and moderate-income census tracts and individuals.

e. Branch Hours of Operation and Services

As part of the third factor of branch availability and services, the agencies propose evaluating the reasonableness of branch hours in low- and moderate-income census tracts compared to middle- and upper-income census tracts, including whether branches offer extended and weekend hours; and the range of services provided at branches in low-, moderate-, middle-, and upper-income census tracts. Regarding the range of services, this includes services provided at branch locations discrete from the credit and deposit products discussed below in Section XI.C. that improve access to financial services or decrease costs for low- or moderate-income individuals. Examples of such services include, but are not limited to:

- Extended business hours, including weekends, evenings, or by appointment;
- Providing bilingual/translation services;
- Free or low-cost check cashing services, including government and payroll check cashing services;
- Reasonably priced international remittance services; and
- Electronic benefit transfer accounts

This part of the proposal would focus on the range of services exclusively offered in branch settings and represents a change in current practice for two reasons. First, current guidance looks at the range of services in its totality by the bank and does not distinguish between services offered in branches or via an alternative delivery system.[206] Second, the agencies propose separately evaluating the availability of deposit accounts, whereas in current practice the availability of low-cost deposit products is considered as part of the evaluation of a bank's range of services. The proposed approach focuses on the importance of branch-based services by directing examiners to conduct a more focused examination of whether services offered in branches are tailored to meet the particular needs of low- and moderate-income individuals in a bank's facility-based assessment areas.

In addition to the examples listed, the agencies seek feedback on whether there are other branch-based services that could be considered as responsive to low- and moderate-income needs.

2. Remote Service Facility Availability

The agencies propose evaluating remote service facility[207] availability as the second component of the delivery system evaluation. Under current guidance,[208] remote service facility availability is qualitatively evaluated as one of several non-branch delivery systems, so it can be unclear how much consideration and weight is given to a bank's remote service facility availability, its placement of various types of remote service facilities or its partnerships to improve access to remote service facilities in low- and moderate-income census tracts. The agencies' proposal would evaluate remote service facilities separately from digital and other delivery systems in order to focus on the availability of these facilities and leverage community benchmarks in the evaluation.

The agencies propose introducing three data points in the remote service facility availability analysis that would complement a qualitative evaluation. Like the branch distribution analysis, these data points, referred to as benchmarks, would be specific to individual, facility-based assessment

[205] *See* Miriam Jorgensen and Randall K.Q. Akee, ''Access to Capital and Credit in Native Communities: A Data Review, Native Nations Institute (Feb. 2017), *https://www.novoco.com/sites/default/files/atoms/files/nni_find_access_to_capital_and_credit_in_native_communities_020117.pdf.*

[206] *See* Q&A § __.24(d)(4)–1.

[207] In proposed § __.12 remote service facility means an automated, virtually staffed, or unstaffed banking facility owned or operated by, or operated exclusively for, the bank, such as an ATM, interactive teller machine, cash dispensing machine, or other remote electronic facility at which deposits are received, cash dispersed, or money lent.

[208] *See* Q&A § __.24(d)(3)–1.

areas and used as points of comparison when evaluating a bank's remote service facility availability among low-, moderate-, middle-, and upper income census tracts. The evaluation would also include an assessment of remote service facilities in low- and moderate-income census tracts and changes to the placement of remote service facilities since the previous examination.

Table 18 below describes the three proposed community benchmarks and their respective data sources. The use of benchmarks would allow for comparison of a bank's remote service facility availability to local data (*i.e.,* percentage of census tracts, households, and total businesses) to help determine whether remote service facilities are accessible in low- or moderate-income communities, to individuals of different income levels, and to businesses or farms in the assessment area.

TABLE 18 TO SECTION __.23—COMMUNITY BENCHMARKS FOR RETAIL SERVICES—REMOTE SERVICE FACILITY AVAILABILITY

Benchmark(s)	Data source
Percentage of census tracts in a facility-based assessment area by census tract income level	American Community Survey (Census).
Percentage of households in a facility-based assessment area by census tract income level	American Community Survey (Census).
Percentage of total businesses and farms in a facility-based assessment area by census tract income level.	Third-party data provider.

In addition to using the community benchmarks, the agencies propose evaluating bank remote service facility partnerships with retailers for expanded remote service facility access and participation in remote service facility fee-waiver alliances for out-of-network usage. These types of partnerships may contribute to expanded access to financial services and may assist with lowering access costs, which can be particularly important for a bank's low- and moderate-income individuals.

3. Digital and Other Delivery Systems

The agencies propose to evaluate the availability and responsiveness of a bank's digital delivery systems (*e.g.,* mobile and online banking services) and other delivery systems (*e.g.,* telephone banking, bank-by-mail, bank-at-work programs), including to low- and moderate-income individuals. This component of the delivery system evaluation would be required for large banks with assets of over $10 billion, and would be optional for large banks with assets of $10 billion or less in order to tailor the approach for banks that may have less capacity to meet new data collection requirements. The agencies seek feedback on whether the proposed approach appropriately tailors the evaluation for large banks with assets of $10 billion or less.

The agencies believe that it is important to evaluate a bank's retail banking services and products comprehensively and recognize that banks deliver services beyond branch and remote service facilities. According to the 2019 FDIC Survey of Household Use of Banking and Financial Services, the primary method that banked households used to access their accounts was through digital delivery systems, representing 34.0 percent and 22.8 percent for mobile banking and online banking, respectively.[209] The usage of online and mobile banking delivery systems is expected to continue to grow. These trends support renewed focus on the evaluation of digital and other delivery systems while also recognizing that many consumers continue to rely on branches.

Current guidance states that the agencies evaluate the availability and effectiveness of alternative systems for delivering retail banking services, which is defined to include the use of ATMs.[210] The agencies propose using the word ''responsiveness'' instead of ''effectiveness'' in order to use more consistent terminology throughout the regulation, and the agencies believe the meaning of both terms are comparable. To reflect more updated terminology, the agencies propose using the term ''digital and other delivery systems'' instead of ''alternative systems'' or ''non-branch delivery systems.'' Additionally, under the proposal, the digital and other delivery systems component would not include an evaluation of ATMs or other remote service facilities, since the agencies propose a separate review of remote service facilities for all large banks.

The agencies propose using three factors to evaluate the availability and responsiveness of a bank's digital and other delivery systems: (i) Digital activity by individuals in low-, moderate-, middle-, and upper-income census tracts, (ii) the range of digital and other delivery systems, and (iii) the bank's strategy and initiatives to serve low- and moderate-income individuals with digital and other delivery systems. The proposed factors would promote improved clarity and consistency in evaluating whether a bank's digital and other delivery systems are available and responsive in providing financial services to low- and moderate-income geographies and individuals.

With respect to the first factor, the agencies would measure digital activity by individuals in low-, moderate-, middle-, and upper-income census tracts, and proposed § __.23 provides examples of data that could be used to inform this analysis. Specifically, the examples in proposed § __.23 include the number of checking and savings accounts opened digitally, and accountholder usage data by type of digital and other delivery system. The agencies propose evaluating this data using census tract income level, which is an approach sometimes used in current practice, since banks have stated that they do not routinely collect customer income data at account opening. These data points would help the agencies better understand how banks continue to serve their communities as technology and bank business models evolve.

With respect to the second and third factors, the agencies would qualitatively consider the range of a bank's digital and other delivery systems, including but not limited to online banking, mobile banking, and telephone banking. In addition, the agencies would consider a bank's strategies and initiatives to meet low- and moderate-income consumer needs through digital and other delivery systems, such as marketing and outreach activities to increase uptake of these channels by low- and moderate-income individuals or partnerships with community-based organizations serving targeted populations.

The agencies are also considering appropriate comparators to help examiners assess the degree to which a bank is reaching consumers in low- or moderate-income census tracts through

[209] *See* FDIC, ''How America Banks,'' *supra* note 145.

[210] See Q&A § __.24(d)(3)–1.

digital and other delivery systems. For example, the agencies are considering a comparator evaluating the proportion of a bank's deposit accounts opened through online and mobile banking channels in low- or moderate-income census tracts. The agencies also seek feedback on whether a standardized template with defined data fields would capture alternative delivery systems more consistently.

Request for Feedback

Question 90. Should the agencies use the percentage of families and total population in an assessment area by census tract income level in addition to the other comparators listed (*i.e.,* census tracts, households, and businesses) for the assessment of branches and remote service facilities?

Question 91. Are there other alternative approaches or definitions the agencies should consider in designating places with limited branch access for communities, such as branch distance thresholds determined by census tract population densities, commuting patterns or some other metric? For example, should the agencies not divide geographies and use the more flexible, second alternative approach?

Question 92. How should geographies be divided to appropriately identify different distance thresholds? Should they be divided according to those in the proposed approach of urban, suburban, and rural areas; those in the alternative approach of central counties, outlying counties, and nonmetropolitan counties; or some other delineation?

Question 93. How narrowly should designations of low branch access and very low branch access be tailored so that banks may target additional retail services appropriately?

Question 94. Is a fixed distance standard that allows the concentration of low and very low branch access areas to vary across regions, such as that in the proposed approach, or a locally-determined distance threshold that identifies a similar concentration of low and very low branch access areas within each local area, such as that in the alternative approach, most appropriate when identifying areas with limited branch access?

Question 95. Should the agencies take into consideration credit union locations in any of the proposed approaches, or should the analysis be based solely on the distribution of bank branches? For example, in the proposed or local approach, having a credit union within the relevant distance of a census tract population center would mean that the census tract would not be a very low branch access census tract (if there were no bank branch present).

Question 96. If the local approach were adopted, how frequently should the local distances be updated?

Question 97. What other branch-based services could be considered as responsive to low- and moderate-income needs?

Question 98. Should branches in distressed or underserved middle-income nonmetropolitan census tracts receive qualitative consideration, without documenting that the branch provides services to low- or moderate-income individuals?

Question 99. Should the agencies provide favorable qualitative consideration for retail branching in middle-income and upper-income census tracts if a bank can demonstrate that branch locations in these geographies deliver services to low- or moderate-income individuals? What information should banks provide to demonstrate such service to low- or moderate-income individuals?

Question 100. How could the agencies further define ways to evaluate the digital activity by individuals in low-, moderate-, middle-, and upper-income census tracts, as part of a bank's digital and other delivery systems evaluation?

Question 101. Should affordability be one of the factors in evaluating digital and other delivery systems? If so, what data should the agencies consider?

Question 102. Are there comparators that the agencies should consider to assess the degree to which a bank is reaching individuals in low- or moderate-income census tracts through digital and other delivery systems?

Question 103. Should the evaluation of digital and other delivery systems be optional for banks with assets of $10 billion or less as proposed, or should this component be required for these banks? Alternatively, should the agencies maintain current evaluation standards for alternative delivery systems for banks within this tier?

D. Credit and Deposit Products Evaluation

The agencies propose a second part of the Retail Services and Products Test that would focus on the availability of credit and deposit products and the extent to which these products are responsive to the needs of low- and moderate-income individuals, small businesses, and small farms, as applicable. Evaluating credit and deposit products would incorporate important qualitative factors that capture a bank's commitment to serving low- and moderate-income individuals, small businesses, and small farms.

Under the proposal, the agencies would separately evaluate: (i) The responsiveness of credit products and programs to the needs of low- and moderate-income individuals, small businesses, and small farms; and (ii) deposit products responsive to the needs of low- and moderate-income individuals. Both the credit product and deposit product components would be assessed at the institution level and would be required for large banks with assets of over $10 billion. For banks with assets of $10 billion or less, only the first component—the responsiveness of credit products and programs—would be required. For large banks with assets of $10 billion or less, the deposit product component would not be required.

1. Responsiveness of Credit Products and Programs to the Needs of Low- and Moderate-Income Individuals, Small Businesses, and Small Farms

The agencies propose evaluating the responsiveness of a large bank's credit products and programs to the needs of low- and moderate-income individuals (including through low-cost education loans),[211] small businesses, and small farms under the Retail Services and Products Test. The agencies recognize that credit needs vary from community to community and that bank retail lending products and programs, as a result, can vary to meet these different needs. To that end, the proposal does not provide a specific list of retail lending products and programs that qualify under this provision. The agencies believe that such an approach could have the unintended consequence of constraining bank efforts to meet the credit needs of its communities.

Instead, the proposal states that responsive credit products and programs provided in a safe and sound manner may include, but are not limited to, the following three categories: (i) Credit products and programs that facilitate mortgage and consumer lending for low- or moderate-income borrowers in a safe and sound manner; (ii) Credit products and programs that meet the needs of small businesses and small farms, including to the smallest businesses and smallest farms, in a safe and sound manner; and (iii) Credit products and programs that are conducted in cooperation with MDIs, WDIs, LICUs,[212] or Treasury Department-certified CDFIs in a safe and sound manner.

The proposal focuses on evaluating the responsiveness of a bank's retail

[211] 12 U.S.C. 2903(d).

[212] This is consistent with 12 U.S.C. 2903(b).

lending products and programs. The agencies intend for this evaluation to emphasize the impact of the product or program in helping to meet the credit needs of low- and moderate-income individuals, small businesses, and small farms. The current regulation provides consideration for a bank's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- and moderate-income individuals or geographies.[213] The agencies believe that using *responsiveness* as part of the proposed evaluation standard instead of *innovative* and *flexible* would better capture the focus on community credit needs, though these terms are often used interchangeably. The agencies also believe that using the term *responsiveness* would also help improve consistency of terminology throughout the proposed regulation. In addition, the agencies recognize that examples of innovative and flexible retail lending products under existing guidance may also meet the responsiveness standard under this proposal.

The agencies propose considering responsive retail lending products and programs under the Retail Services and Products Test, rather than the Retail Lending Test, for several reasons. First, the proposed approach combines the review of responsive credit products and responsive deposit products into the same test. This is a change from the current regulations, which consider innovative and flexible retail lending practices under the lending test and deposit products under the service test. The agencies' proposal intends to provide a more holistic evaluation of credit and deposit products, which work in tandem to facilitate credit access for low- and moderate-income individuals. Second, the agencies considered that it may be preferable to pair a qualitative evaluation of the responsiveness of a bank's retail lending products and programs with other qualitative criteria under the Retail Services and Products Test rather than include it as part of the more metrics-based Retail Lending Test. The agencies seek feedback on whether decoupling qualitative consideration of retail lending credit products and programs from the Retail Lending Test is appropriate, and if not, how should the agencies incorporate qualitative performance into a metrics-driven approach for retail lending.

To qualify for qualitative consideration under the proposal, the agencies would consider relevant information about the retail lending products and programs, including information provided by the bank and from the public. Additionally, banks would have to demonstrate that their products or programs are provided in a safe and sound manner.

Credit Products and Programs that Facilitate Home Mortgage and Consumer Lending for Low- and Moderate-Income Borrowers. The proposal includes credit products and programs that facilitate mortgage and consumer lending targeted to low- or moderate-income borrowers as one category of responsive credit products or programs. Specific examples of responsive credit products or programs that could be considered under this category are described below.

First, small-dollar mortgages could be an example of a responsive home mortgage product in this category. Small-dollar mortgages are generally considered to be in the amount of $100,000 or less, although the agencies recognize that home prices can vary across different communities.[214] The agencies believe that small-dollar mortgages for lower-value properties can often be challenging for consumers to obtain, in part because originating these loans generally generates less revenue for a bank than originating larger loans. At the same time, small-dollar mortgages are especially important for low- and moderate-income first-time homebuyers, who may not be able to afford a down payment or monthly payments for a more expensive home. In addition, access to small-dollar mortgages is vital for individuals in areas where housing prices are generally lower, including many rural communities.

Second, consumer lending programs that utilize alternative credit histories in a manner that would benefit low- or moderate-income individuals, consistent with safe and sound underwriting practices, could be an example of a responsive credit product or program in this category. The agencies understand that low- or moderate-income individuals with limited conventional credit histories can face challenges in obtaining access to credit. For individuals who do not qualify for credit based on the use of conventional credit reports, alternative credit history with rent and utility payments, for example, may supplement an assessment of their credit profile. Under current guidance, the use of alternative credit histories, consistent with safe and sound lending practices, may be considered as an innovative or flexible lending practice.[215]

The agencies seek feedback on whether the regulation should list special purpose credit programs as an example of a responsive credit product or program that facilitates mortgage and consumer lending targeted to low- or moderate-income borrowers. Under ECOA and Regulation B, financial institutions can establish special purpose credit programs to meet special social needs.[216]

Credit Products and Programs that Meet Credit Needs of Small Businesses and Small Farms. The proposal includes credit products and programs that meet the needs of small businesses and small farms, including the smallest businesses and smallest farms, as another category of responsive credit products or programs. These credit product and programs might include microloans (such as loans of $50,000 or less), loans to businesses with gross annual revenues of $250,000 or less, and patient capital to entrepreneurs through longer-term loans.

Currently, the agencies consider lending practices in a safe and sound manner to address the credit needs of low- and moderate-income individuals or geographies, but the current regulation does not specifically mention the credit needs of small businesses and small farms. To recognize the unique credit needs of small businesses, including smaller businesses and smaller farms, and to align with the consideration of small business lending in other parts of the regulation, the agencies propose to specifically create this category focused on products and practices meeting the credit needs of small businesses and small farms.

Credit Products and Programs that are Conducted in Cooperation with MDIs, WDIs, LICUs, and Treasury Department-certified CDFIs. Finally, the proposal includes credit products and programs that are conducted in cooperation with MDIs, WDIs, LICUs, and Treasury Department-certified CDFIs as category of responsive credit products and programs.[217] [218] Under this category, the agencies would consider, for example, home mortgage loans and small

[213] 12 CFR __.22(b)(5).

[214] *See, e.g.,* Alanna McCargo, Bing Bai, Taz George, and Sarah Strochak, ''Small-Dollar Mortgages for Single-Family Residential Properties,'' Research Report, Urban Institute (April 2018), *https://www.urban.org/sites/default/files/publication/98261/small_dollar_mortgages_for_single_family_residential_properties_2.pdf.*

[215] *See* Q&A § __.22(b)(5)–1.

[216] 15 U.S.C. 1691(c).

[217] This is consistent with 12 U.S.C. 2903(b).

[218] *See* Investing in the Future of Mission-Driven Banks: A Guide to Facilitating New Partnerships, FDIC, Washington, DC (Oct. 2020), *https://www.fdic.gov/mdi.* For printable version, *https://www.fdic.gov/regulations/resources/minority/mission-driven/guide.pdf.*

business loans that banks purchase from MDIs, WDIs, LICUs, and Treasury Department-certified CDFIs. Bank purchases can provide necessary liquidity to these lenders and extend their capability to originate loans to low- and moderate-income individuals, low- and moderate-income areas, and to small businesses and farms. The agencies recognize the importance of supporting these institutions in their efforts to provide access to credit and other financial services in traditionally underserved communities.[219]

The agencies seek feedback on whether there are other categories of responsive credit products and programs, offered in a safe and sound manner, that the agencies should take into consideration when deciding whether to give qualitative consideration to credit products and programs.

2. Deposit Products Responsive to the Needs of Low- and Moderate-Income Individuals

The agencies considered several factors that suggest an emphasis on deposit products would be appropriate. Deposit products play a critical role in providing an entry point to the banking system for low- and moderate-income individuals.[220] Having a bank account provides the means to receive, transact, and safely save funds; it is also a pathway for a bank customer to establish an ongoing relationship with a bank. Moreover, a bank account provides the cash flow data that some financial companies use to underwrite credit.[221] For these reasons, the agencies propose modernizing the existing evaluation of a bank's products and services by adding a more explicit focus on the financial inclusion potential of these products and by adding specific measures for evaluation, such as availability and usage.

For large banks with assets of over $10 billion, the agencies would evaluate the availability and usage of a bank's deposit products responsive to the needs of low- and moderate-income individuals. This evaluation would be optional for large banks with assets of $10 billion or less.

a. Availability of Deposit Products Responsive to the Needs of Low- and Moderate-Income Individuals

In evaluating the availability of deposit products responsive to the needs of low- and moderate-income individuals, the agencies would evaluate whether the bank offers deposit products that have features and cost characteristics including but not limited to deposit products with the following types of features, consistent with safe and sound operations: (i) Low-cost features, (ii) features facilitating broad functionality and accessibility, and (iii) features facilitating inclusivity of access.

First, deposit products with low-cost features would be considered responsive deposit products. Examples of deposit products with low-cost features include but are not limited to: (i) Accounts with no overdraft or insufficient fund fees, (ii) accounts with no or low minimum opening balance, (iii) accounts with no or low monthly maintenance fees, and (iv) free or low-cost checking and bill payment services. These examples are consistent with current guidance, which includes low-cost transaction accounts among the examples of services that improve access to financial services and decrease costs for low- and moderate-income individuals.[222] Moreover, cost issues remain a prevalent reason cited by unbanked individuals as to why they do not have a bank account.[223]

Second, deposit products with features facilitating broad functionality and accessibility would be considered responsive deposit products. Examples of deposit products with such features could include deposit products with in-network ATM access, debit cards for point-of-sale and bill payments, and immediate access to funds for customers cashing government, payroll, or bank-issued checks. The ability to conduct transactions and access funds in a timely manner is highly relevant for lower-income individuals or unbanked and underserved individuals, who otherwise might acquire financial services at a higher cost from non-bank sources.

Third, deposit products with features facilitating inclusive access by persons without banking or credit histories, or with adverse banking histories, would be considered responsive deposit products. Regarding this proposal, the agencies have considered research indicating that former bank account problems remain barriers for consumers who are unbanked.[224]

The agencies propose taking these three types of features into consideration when evaluating whether a particular deposit product has met the ''responsiveness to low- and moderate-income needs'' standard.[225] The agencies seek feedback on the appropriateness of the features proposed to describe whether a deposit product is responsive to low- and moderate-income individuals. Additionally, to inform the assessment of the availability of responsive deposit products, the agencies are considering reviewing the locations where the responsive account can be acquired and assessing whether there is variation in the terms or features across facility-based assessment areas that would disadvantage low- and moderate-income individuals. The agencies seek feedback on whether to include in the evaluation a review of the locations where the responsive deposit product is made available.

b. Usage of Deposit Products Responsive to the Needs of Low- and Moderate-Income Individuals

The agencies also propose evaluating usage of responsive deposit products by considering, for example: (i) The number of responsive accounts opened and closed during each year of the evaluation period in low-, moderate-, middle-, and upper-income census tracts, respectively; (ii) the percentage of total responsive deposit accounts compared to total deposit accounts for each year of the evaluation period; and (iii) marketing, partnerships, and other activities that the bank has undertaken to promote awareness and use of responsive deposit accounts by low- and moderate-income individuals.

[219] *See* FDIC, ''2019 Minority Depository Institutions: Structure, Performance, and Social Impact'' (2019), *https://www.fdic.gov/regulations/resources/minority/2019-mdi-study/full.pdf.*

[220] *See, e.g.,* Ryan M. Goodstein, FDIC, Alicia Lloro, Board, Sherrie L. Rhine, FDIC, and Jeffrey M. Weinstein, FDIC, *Journal of Consumer Affairs 55,* ''What accounts for racial and ethnic differences in credit use?'' (2021); National Survey of Unbanked and Underbanked Households, 2017 FDIC Survey (October 2018); Michael Barr, University of Michigan Law School, Jane K. Dokko, Board, and Benjamin J. Keys, University of Michigan, ''And Banking for All?,'' Board, FEDS Series, Working Paper No. 2009–34 (2009), *https://www.federalreserve.gov/pubs/feds/2009/200934/200934pap.pdf.*

[221] *See, e.g.,* Kelly Thompson Cochran, Federal Reserve Bank of San Francisco, ''The Next Frontier: Expanding Credit Inclusion with New Data and Analytical Techniques,'' Federal Reserve Bank of San Francisco, Community Development Publications (Aug. 19, 2021), *https://www.frbsf.org/community-development/publications/community-development-investment-review/2021/august/the-next-frontier-expanding-credit-inclusion-with-new-data-and-analytical-techniques/*; CFPB, ''CFPB Data Point: Becoming Credit Visible,'' The CFPB Office of Research (June 2017), *https://files.consumerfinance.gov/f/documents/BecomingCreditVisible_Data_Point_Final.pdf.*

[222] *See* Q&A § __.24(a)–1.

[223] *See* FDIC, ''How America Banks,'' *supra* note 145.

[224] *See id.*

[225] Product examples that meet the responsiveness standard include accounts certified by the Cities for Financial Empowerment as meeting the Bank On National Account standard, and ''second-chance accounts.'' Savings accounts targeted towards low- or moderate-income individuals such as Individual Development Accounts, are another example of a product that would be considered responsive.

In evaluating the usage of responsive deposit accounts, proposed § __.23 provides as an example the number of responsive deposit accounts opened and closed, which would involve a bank providing the total number of responsive accounts opened and closed during each year of the evaluation period, aggregated by census tract income level (*e.g.,* all low-income census tracts in the bank's facility-based assessment areas). This information would be an approximate indicator of the extent to which the needs in low- or moderate-income areas are being met. Data on number of account openings could be used to measure the penetration of the responsive product in low- or moderate-income areas. The number of account closings, on the other hand, could reveal whether the product is actually meeting the needs of consumers. Account openings and closings data, when paired together, would better indicate the responsiveness of these accounts to consumers' needs, and the bank's effectiveness in meeting consumers' needs, than either of those numbers would indicate on their own.

Relatedly, the agencies also propose to consider the share of a bank's total account activity represented by responsive deposit products. This would be accomplished by comparing at the end of each year of the evaluation period, the total number of active *responsive* deposit accounts to *all* active consumer deposit accounts offered by the bank. The comparison is intended to give a sense of the magnitude of the commitment to broadening the customer base to include low- and moderate-income individuals.

The agencies also propose considering outreach activity undertaken to promote awareness and use of responsive deposit accounts by low- and moderate-income individuals. Bank outreach may contribute to the successful take-up of a deposit product targeted to low- and moderate-income individuals. Therefore, the agencies propose giving qualitative consideration to marketing, partnerships, and other activities to attract low- and moderate-income individuals.

Request for Feedback

Question 104. Are there additional categories of responsive credit products and programs that should be included in the regulation for qualitative consideration?

Question 105. Should the agencies provide more specific guidance regarding what credit products and programs may be considered especially responsive, or is it preferable to provide general criteria so as not to discourage a bank from pursuing impactful and responsive activities that may deviate from the specific examples?

Question 106. Should special purpose credit programs meeting the credit needs of a bank's assessment areas be included in the regulation as an example of loan product or program that facilitates home mortgage and consumer lending for low- and moderate-income individuals?

Question 107. Are the features of cost, functionality, and inclusion of access appropriate for establishing whether a deposit product is responsive to the needs of low- and moderate-income individuals? What other features or characteristics should be considered? Should a minimum number of features be met in order to be considered 'responsive'?

Question 108. The agencies wish to encourage retail banking activities that may increase access to credit. Aside from deposit accounts, are there other products or services that may increase credit access?

Question 109. Are the proposed usage factors appropriate for an evaluation of responsive deposit products? Should the agencies consider the total number of active *responsive* deposit products relative to *all* active consumer deposit accounts offered by the bank?

Question 110. Should the agencies take other information into consideration when evaluating the responsiveness of a bank's deposit products, such as the location where the responsive deposit products are made available?

Question 111. Should large banks with assets of $10 billion or less have the option of a responsive deposit products evaluation, as proposed, or should this component be required, as it is for large banks with assets of over $10 billion?

E. Retail Services and Products Test Performance Conclusions and Ratings

1. Facility-Based Assessment Area Retail Services and Products Test Conclusion

The agencies propose reaching a single Retail Services and Products Test conclusion for large banks in each of their facility-based assessment areas. For all large banks, the facility-based assessment area conclusions would be based on two of the three *delivery systems* components: (i) Branch availability and services, and (ii) remote services facilities availability. The agencies believe an assessment area level evaluation would be appropriate for branches and remote service facilities because their physical presence would have an impact on the availability of retail banking services to low- and moderate-income individuals.

For large banks with assets of over $10 billion, the agencies propose evaluating at the institution level a bank's digital and other delivery systems, and then integrating this into the *delivery systems* conclusion, as explained below. The agencies also propose evaluating a bank's *credit and deposit products* at the institution level and would be considered alongside the *delivery systems* conclusion when deriving an overall institution conclusion on the Retail Services and Products Test, as described further below. Large banks with assets of $10 billion or less would be evaluated only on credit products at the institution level unless they elect to have digital and other delivery systems and deposit products considered.

The evaluation of branch and remote service facility availability as proposed would remain qualitative with community and market benchmarks (as described in Section XI.C.) used to inform the conclusions along with performance context for each facility-based assessment area. Based on an assessment of the evaluation criteria associated with branch availability, branch-based services, and remote services facility availability, the bank would receive a conclusion with assigned point values as follows: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points) or ''Substantial Noncompliance'' (0 points).[226]

2. State and Multistate MSA Retail Services and Products Test Conclusions

State and multistate MSA level conclusions for the Retail Services and Products Test would be based exclusively on the bank's performance in its facility-based assessment areas and would involve averaging a bank's conclusions across its facility-based assessment areas in each state and multistate MSA. The point value assigned to each assessment area conclusion would be weighted by its average share of loans and share of deposits of the bank within the assessment area, out of all the bank's retail loans and deposits in facility-based assessment areas in the state or multistate MSA area, as applicable, to derive a state level score. Similar to the proposed weighting approach for assigning Retail Lending Test

[226] See Section IX.F for discussion of the proposed point scale.

conclusions, deposits would be based on collected and maintained deposits data for banks that collect this data, and on the FDIC's Summary of Deposits for banks that do not collect deposits data. The state level score is then rounded to the nearest conclusion category point value to determine the Retail Services and Products Test conclusion for the state or multistate MSA.

3. Retail Services and Products Test Institution Conclusion

The agencies propose assigning a Retail Services and Products Test conclusion for the institution based on the conclusions reached for both parts of the test: *Delivery systems* and *credit and deposit products.*

Delivery Systems Conclusion. A bank's *delivery systems* conclusion would be based on the conclusions for each of the three proposed parts of the delivery systems evaluation, as applicable: Branch availability and services, remote services facilities availability, and digital and other delivery systems. As noted earlier, the first two parts of the evaluation would apply for all large banks at the facility-based assessment area and aggregated to form a branch and remote service facilities subcomponent conclusion at the institution level. For large banks with assets of over $10 billion and large banks with assets of $10 billion or less electing to have digital and other delivery systems considered, the agencies propose evaluating digital and other delivery systems at the institution level, as the features of this component are not place-based and extend beyond facility-based assessment areas. For large banks with assets of $10 billion or less that do not elect to have their digital and other delivery systems considered, the institution-level delivery systems conclusion would be based exclusively on the evaluation of such bank's branch availability and services and remote services facility availability.

The agencies however seek feedback on whether the evaluation of digital and other delivery systems should occur at the assessment area level, rather than as proposed, and what approach the agencies should employ to determine how much weight this part of delivery systems represent given the various bank business models.

The agencies propose to derive the institution delivery systems conclusion by considering the conclusions on each of the three parts of the delivery system evaluation and allowing for examiner discretion to determine the appropriate weight that should be given to each part. This proposed approach for deriving delivery system conclusions is intended to allow for the agencies to take into account the unique business models and strategies of different institutions. For example, if a majority of the bank's new deposit accounts are opened via digital channels during the evaluation period, then the agencies may give more weight to the digital and other delivery systems conclusion. The agencies also seek feedback on more quantitative and standardized approaches to weighting the three parts of the delivery systems evaluation.

Credit and Deposit Products Conclusion. A bank's *credit and deposit products* conclusion would be based on the conclusions for the applicable parts of the credit and deposit products evaluation: (i) The responsiveness of credit products and programs, and (ii) deposit products responsive to the needs of low- and moderate-income individuals. As noted earlier, the first part of the evaluation applies for all large banks at the institution level. For large banks with assets of over $10 billion and for large banks with assets of $10 billion or less electing to have their responsive deposit products considered, the agencies propose evaluating the bank's deposit products at the institution level. For large banks with assets of $10 billion or less that do not elect to have their responsive deposit products considered, the institution-level credit and deposit products conclusion would be based exclusively on a bank's responsiveness of credit products and programs to the needs of low- and moderate-income individuals, small businesses, and small farms.

The agencies consider it appropriate to conduct an overall assessment of credit and deposit product offerings at the institution level, since products are often available across a wide range of a bank's footprint. Considering performance context, examiners would reach a conclusion at the institution level for the *credit and deposit products* evaluation of: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points) or ''Substantial Noncompliance'' (0 points).

The agencies propose to allow for examiner judgment to determine the appropriate weighting of credit products and deposit products for purposes of assigning the institution credit and deposit products conclusion. The agencies considered that a flexible approach would allow for tailoring based on local community credit needs, and on bank business model and strategy. For example, if the bank had several assessment areas with relatively high unbanked populations, and in these markets the bank offered several responsive deposit products, the agencies may apply a greater weight to the bank's deposit product conclusion. The agencies seek feedback on alternative approaches, such as assigning equal weights to both components.

Combined Conclusion. The agencies propose to derive the combined conclusion for the Retail Services and Products Test based on consideration of the bank's conclusions under the *delivery systems* evaluation and the *credit and deposit products* evaluation, as applicable. The agencies propose that examiner judgment would be used to determine the appropriate weight between these two parts of the Retail Services and Products Test, in recognition of the importance of local community credit needs and bank business model and strategy in determining the amount of emphasis to give *delivery systems* and *credit and deposit products,* respectively. Based on this consideration, the agencies would arrive at an institution-level conclusion on the Retail Services and Products Test. This conclusion would be translated into a performance score using the following mapping: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); or ''Substantial Noncompliance'' (0 points).

For example, assume at the institution level a bank receives a conclusion of ''Low-Satisfactory'' for its *delivery systems* conclusion and a conclusion of ''High Satisfactory'' for its *credit and deposit products* conclusion. If due to, for example, the bank's branch expansion during the evaluation period, the agencies weight delivery systems more heavily, then the agencies may assign an overall conclusion of ''Low Satisfactory'' on the Retail Services and Products Test, which would correspond to an institution performance score of 6.

The agencies seek feedback on whether the two parts of the Retail Services and Products Test should receive a fixed equal weighting, or should the weighting vary by community credit needs and bank business model and strategy. The agencies also seek feedback on whether to assign a conclusion for the *credit and deposit products* evaluation, or whether to consider the performance solely to upgrade the *delivery systems* conclusion.

Request for Feedback

Question 112. For all large banks, the agencies propose to evaluate the bank's

delivery systems (branches and remote service facilities) at the assessment area level, and the digital and other delivery systems at the institution level. Is this appropriate, or should both subcomponents be evaluated at the same level, and if so, which level?

Question 113. The agencies propose weighting the digital and other delivery systems component relative to the physical delivery systems according to the bank's business model, as demonstrated by the share of consumer accounts opened digitally. Is this an appropriate approach, or is there an alternative that could be implemented consistently? Or, should the weighting be determined based on performance context?

Question 114. How should the agencies weight the two subcomponents of the credit *and deposit products* evaluation? Should the two subcomponents receive equal weighting, or should examiner judgment and performance context determine the relative weighting?

Question 115. Should the *credit and deposit products* evaluation receive its own conclusion that is combined with the *delivery systems* evaluation for an overall institution conclusion? Or should favorable performance on the *credit and deposit products* evaluation be used solely to upgrade the *delivery systems* conclusion? For large banks with assets of $10 billion or less that elect to be evaluated on their digital delivery systems and deposit products, how should their performance in these areas be considered when determining the bank's overall Retail Services and Products Test conclusion?

Question 116. Should each part of the Retail Services and Products Test receive equal weighting to derive the institution conclusion, or should the weighting vary by a bank's business model and other performance context?

XII. Community Development Financing Test

In § __.24, the agencies propose a new Community Development Financing Test that would apply to large banks and any intermediate bank that opts to be evaluated under this test. The agencies would evaluate wholesale and limited purpose banks under a modified version of this test, as discussed in § __.26.

The Community Development Financing Test would consist of a community development financing metric and benchmarks and an impact review. These components would be assessed at the facility-based assessment area, state, multistate MSA, and institution levels, and would inform conclusions at each of those levels. The Community Development Financing Test would not be assessed for retail lending assessment areas.

The bank community development financing metrics would measure the dollar value of a bank's community development loans [227] and community development investments [228] together, relative to the bank's capacity, as reflected by the dollar value of deposits. The agencies are proposing to use the term ''community development investment'' in place of the current term ''qualifying investment'' for clarity and consistency purposes. The proposed benchmarks would reflect local context, including the amount of community development financing activities by other banks in the assessment area, and would be used in conjunction with the metrics to assess the bank's performance. The metrics and benchmarks would be consistent across banks and agencies and would provide additional clarity about the evaluation approach.

The impact review would evaluate the impact and responsiveness of a bank's community development loan and community development investment activities through the application of a series of specific qualitative factors described in more detail in Section V. The impact review would provide appropriate recognition under the Community Development Financing Test of activities that are considered to be especially impactful and responsive to community needs, including activities that may be relatively small in dollar amounts.

A. Background

1. Current Approach To Evaluating Community Development Financing

Under current CRA regulations and examination procedures, community development financing activities are assessed differently based on the asset size and business model of a bank. For small banks, community development investment activities are reviewed only at a bank's option for consideration for an ''Outstanding'' rating for the institution overall.[229] For intermediate small banks and wholesale and limited purpose banks, community development loans, qualified investments, and community development services are considered together under one community development test.[230]

For large banks, community development loans are considered as part of the lending test together with retail loans, while qualified investments are considered separately in the investment test.[231] A large bank receives consideration for both the number and dollar amount of community development loans originated and qualified investments made during the evaluation period, as well as the remaining book value of qualified investments made during a prior evaluation period. Banks do not receive consideration for community development loans that remain on a bank's balance sheet from a prior review period. The agencies also consider qualitative factors including the innovativeness and complexity of community development loans and the innovativeness of qualified investments, how responsive the bank has been to community needs in its assessment areas, and the degree of leadership a bank exhibits through its activities. The agencies assign conclusions at the assessment area level based on both the number and dollar amount of activities and the qualitative factors.

The current approach emphasizes qualifying activities that have a purpose, mandate, or function of serving one or more of a bank's assessment areas, but also allows for flexibility in the geographic scope and focus of activities, subject to certain conditions. A qualifying activity that specifically serves an assessment area receives consideration, as does a qualifying activity that serves a broader statewide or regional area containing one or more of a bank's assessment areas.[232] For a bank with a nationwide footprint, this could include qualifying activities that are nationwide in scope.[233] In addition, if a bank has met the community development needs of an assessment area, it may also receive consideration for a qualifying activity within a broader statewide or regional area that does not benefit its assessment area.[234]

2. Stakeholder Feedback on Evaluation of Community Development Loans and Investments

Many stakeholders have suggested using standard metrics to assess community development financing activities in order to establish consistent treatment of community development loans and qualifying investments and to achieve an appropriate balance between

[227] *See* proposed § __.12.

[228] *Id.*

[229] *See* Appendix A to part __—Ratings; Q&A § __.26(d)–1.

[230] 12 CFR __.25(c) and 12 CFR __.26(c).

[231] 12 CFR __.22 and 12 CFR __.23.

[232] 12 CFR __.12(h)(2)(ii); *see also* Q&A § __.12(h)–6.

[233] Q&A § __.23(a)–2.

[234] Q&A § __.12(h)–6.

emphasizing activities that serve assessment areas while also allowing banks the option to pursue activities beyond their assessment areas.

Stakeholders have noted that the largely qualitative nature of the current approach to evaluating community development financing results in uncertainty and inconsistency in the application of performance standards and procedures. For example, the agencies do not currently provide guidance on how the volume of a bank's community development financing activity will be measured, and what benchmarks may be used to compare bank performance. In response, stakeholders have expressed support for using standard metrics to measure the amount of activities a bank has conducted, and to measure the level of impact and responsiveness of those activities.

Stakeholders have also emphasized the importance of maintaining a degree of examiner judgment in evaluating community development financing activities to appropriately consider the impact of the activities and their responsiveness to community needs. Moreover, some stakeholders shared that any new metrics to evaluate performance should be introduced gradually and informed by data and analysis.

Some stakeholders have noted concerns with inconsistent treatment of community development loans and qualified investments under the current approach. First, the consideration of community development loans and qualified investments under separate tests for large banks may affect a bank's preference of whether to seek out opportunities to lend or invest. For example, a bank seeking to improve its investment test performance may prefer to invest in a qualifying community development fund for the purpose of receiving CRA credit instead of seeking out opportunities to lend a comparable dollar amount. Stakeholders have noted that the current practice of counting community development loans originated during the evaluation period, but not those held on balance sheet from prior evaluation periods, is inconsistent with the treatment of qualifying investments, and can discourage longer-term loans that stakeholders have cited as highly responsive.

Stakeholders have also expressed concerns about the current approach to considering community development activities that are not clearly tied to one or more of a bank's assessment areas. Banks indicate that there is inconsistency and a lack of clarity regarding how these activities are considered, particularly those that do not have a purpose, mandate, or function of serving an assessment area. This uncertainty does not encourage community development lending and investment in areas with few bank assessment areas. Stakeholders have indicated that reforms to the CRA regulations should appropriately balance community development in broader geographies with a clear emphasis on activities within assessment areas.

B. Combined Consideration of Community Development Loans and Investments

The agencies propose to evaluate community development loans and investments together in the community development financing metric, in contrast to the current approach for large banks that evaluates community development loans and investments separately. The proposed approach seeks to simplify the evaluation while addressing concerns from some stakeholders that the current approach favors one form of financing over another. Combining consideration of community development loans and investments into a single test would allow banks to engage in the activity best suited to their expertise and that is most needed for the community development project that the bank is financing. The agencies recognize that some stakeholders have expressed concerns that combining loans and investments would result in less emphasis on investment activities than the current approach, which evaluates investments separately. However, investments would be included in the proposed community development financing metric, and the agencies believe that the proposed metric appropriately measures both community development loans and community development investments. The impact and responsiveness of loans and investments would also be considered as part of a bank's impact review.

C. Allocation of Community Development Financing Activities

The agencies propose an approach to consistently allocate the dollar value of community development financing activities for the purpose of calculating metrics and benchmarks. The proposed approach accounts for the geographies served by a bank's activities and provides certainty that qualifying activities benefiting geographies outside of facility-based assessment areas would receive consideration.

Under the proposed approach, the dollar value of activities would be allocated to one or more counties, states, or to the institution level, depending on the geographic scope of the activity. At the assessment area level, the dollar value of activities assigned to the counties within the assessment area would count towards the bank assessment area community development financing metric and would inform assessment area conclusions. At the state level, the dollar value of activities assigned to the state and to any counties within the state would count towards the bank state community development financing metric. At the multistate MSA level, the dollar value of activities assigned to the multistate MSA and to any counties within the multistate MSA would count towards the bank multistate MSA community development financing metric. At the institution level, the dollar value of all a bank's qualifying activities—those allocated to counties, states, and to the institution—would count towards the bank nationwide community development financing metric.

This approach allows for metrics that measure performance at the different levels and is intended to support a balance between emphasizing facility-based assessment area performance and considering activities that benefit geographies outside of those assessment areas. The approach emphasizes facility-based assessment area performance because it allows the agencies to measure the amount of qualifying activities that specifically serve the assessment area, distinguished from those that serve a broader geography or that primarily serve other areas. At the same time, all qualifying activities would be considered in the nationwide metric, providing additional certainty and flexibility relative to the current approach, and allowing banks the opportunity to conduct impactful and responsive activities in areas that may have few assessment areas.

The agencies propose two options for allocating the dollar value of an activity that serves multiple counties, but not an entire statewide area. First, a bank may provide documentation specifying the locations and amounts of funds deployed for a qualifying activity, such as an affordable housing project funded by the bank's investment in a multi-county housing fund. The dollar value of the activity would then be allocated based on the proportion of funds associated with each location. If the bank was unable to identify specific locations, and did not provide documentation about the specific locations and amounts of funds deployed, the dollar value of the activity

would be allocated across the counties served, proportionate to the percentage distribution of low- and moderate-income families across those counties. The use of demographic data for allocating the dollar value of activities would provide certainty and consistency compared to the current approach and would reflect the population served by qualifying activities. The agencies seek feedback on other data points that could be used for allocating activities that may more appropriately reflect the population served by some activities, such as total population, or number of small businesses.

For an activity that serves an entire statewide area, the activity would be allocated to the state level, and not to specific counties within the state. If the activity serves one or more statewide areas or portions of a multistate MSA applicable to the bank, it would be allocated proportionate to the percentage distribution of all low- and moderate-income families in the states and portions of those states in a bank's multistate MSA, in each relevant state and multistate MSA. Alternatively, the value of the activity could be allocated to specific states or multistate MSAs based on documentation provided by the bank as described above. For an activity that is nationwide in scope, the activity would be allocated to the institution level and not to specific states or counties.

Request for Feedback

Question 117. Should activities that cannot be allocated to a specific county or state be considered at the highest level (at the state or institution level, as appropriate) instead of allocated to multiple counties or states based upon the distribution of all low- and moderate-income families across the counties or states?

Question 118. What methodology should be used to allocate the dollar value of activities to specific counties for activities that serve multiple counties? For example, should the agencies use the distribution of all low- and moderate-income families across the applicable counties? Or, should the agencies use an alternative approach, such as the distribution of the total population across the applicable counties? Should the agencies consider other measures that would reflect economic development activities that benefit small businesses and small farms or use a standardized approach to allocate activities?

D. Facility-Based Assessment Area Community Development Financing Evaluation

1. Bank Assessment Area Community Development Financing Metric

The agencies propose to measure the dollar amount of a bank's qualifying community development financing activities compared to its deposits, defined in § __.12 and discussed in Section XIX, within each facility-based assessment area. The agencies also propose using benchmarks for the community development financing metric for the purposes of informing assessments of bank performance. While the community development financing framework would continue to rely on examiner judgment to assess the volume of activities, the use of uniform metrics and benchmarks is intended to improve the consistency and clarity of evaluations relative to the current approach.

The bank assessment area community development financing metric would be the ratio of a bank's community development financing dollars (the numerator) relative to the dollar value of the deposits (the denominator) within a facility-based assessment area. For example, if a bank has maintained an average of $1 million in deposits from an assessment area and has conducted an average of $20,000 annually in qualifying community development financing activities in that assessment area, its bank assessment area community development financing metric would be 2.0 percent.

$$\frac{CD\ loans + CD\ investments\ (\$20{,}000)}{deposits\ (\$1{,}000{,}000)} =$$

Bank Assessment Area Community Development Financing Metric (2.0 percent)

The numerator of the bank assessment area community development financing metric would be a bank's annual average of dollars of community development financing activity loaned or invested in an assessment area. This includes the annual average of community development loans and community development investments originated or purchased over the course of the evaluation period. It also includes the annual quarterly average value of community development loans and community development investments originated or purchased in a prior year that remained on a bank's balance sheet on the last day of each quarter of the year during the evaluation period. For example, a community development loan that is originated in the first year of an evaluation period, and maintained on balance sheet through the end of the third year of the evaluation period, would count towards the annual average that is computed for the numerator three times: The origination value in year one, and the annual quarterly average value remaining on balance sheet in years two and three.

The agencies propose to count both new and prior activities remaining on the bank's balance sheet in the numerator of the metric in order to emphasize the provision of long-term capital. Under the current approach, community development loans are credited based on the origination balance value and the remaining balance sheet value of longer-term loans is not considered, unless the loans are renewed or refinanced. However, under the proposed approach, the outstanding balance of a loan or investment counts towards the bank's metric on an annual basis, which makes long-term financing beneficial to a bank's metric.

Activities that the agencies consider to be conducted purely for the purpose of artificially increasing a bank's metric, such as purchasing and then subsequently reselling a large investment in a short time frame near the end of an evaluation period, may result in quantitative adjustments to the bank's metric to discount activities. The agencies believe that the ability of examiners to discount such activities under specific circumstances supports the integrity of the metrics and examination process.

The proposed denominator of the metric would be a bank's annual average dollar amount of deposits sourced from an assessment area during the evaluation period. As proposed in § __.42, collecting and maintaining

deposits data would be required for large banks with assets of over $10 billion, and would be optional for large banks with assets of $10 billion or less and for intermediate banks that opt into the Community Development Financing Test. Banks that collect and maintain deposits data under proposed § __.42 would compute the average deposits (calculated based on average daily balances as provided in statements such as monthly or quarterly statements, as applicable) for depositors located in the assessment area. An annual average would then be computed across the years of the evaluation period. For banks that do not collect and maintain deposits data under proposed § __.42, the FDIC's Summary of Deposits data would be used, in order to tailor data requirements for these banks.

The agencies believe that this denominator is an indicator of a bank's financial capacity to conduct community development financing activity since deposits are a major source of bank funding for loans and investments. The agencies consider that the greater a bank's volume of deposits, the greater that bank's capacity and CRA obligation to lend and invest becomes.[235] Therefore, the proposed approach for the bank assessment area community development financing metric would establish a proportionately greater obligation to serve an assessment area for banks with a greater presence in that market. Stakeholders have also noted that deposits reflect a bank's financial capacity and align with the intent of CRA that encourages banks to help meet the credit needs of their communities.

An alternative considered by the agencies is to base the denominator of the metric on the share of the bank's depositors residing in the assessment area. The denominator would be calculated by multiplying the bank's institution level deposits by the percentage of the bank's depositors that reside in an assessment area. For example, under this alternative, if the bank has a total of $100,000,000 in deposits, and one percent of the bank's depositors reside in a given assessment area, then the denominator for that assessment area's metric would be $100,000,000 × .01 = $1,000,000. This alternative approach would have the objective of more evenly allocating a bank's CRA obligations across markets, including those less affluent markets in which the bank's depositors hold relatively small amounts of deposits, because deposits would be allocated to assessment areas proportionate to the number of depositors. The agencies have considered that this option would require all large banks and intermediate banks that decide to opt into the Community Development Financing Test to collect and maintain the number of depositors residing in each of their assessment areas and in other geographies, because existing data, such as the FDIC's Summary of Deposits data, does not include this information for individual banks.

2. Benchmarks

The agencies propose establishing one local and one national benchmark for each facility-based assessment area. To help inform facility-based assessment area conclusions, the agencies would compare the bank assessment area community development financing metric to both (i) an assessment area community development financing benchmark (local benchmark) and, as applicable, (ii) a metropolitan or a nonmetropolitan nationwide community development financing benchmark (nationwide benchmark). These benchmarks would enable the agencies to compare an individual bank's community development financing performance to other banks in a clear and consistent manner. Both benchmarks would be based on the aggregate amount of community development financing activity and the aggregate amounts of deposits in the bank's assessment area or nationwide, among all large banks.

The aggregate amounts of deposits for these benchmarks would be based on reported deposits data for large banks with assets of over $10 billion, and on the FDIC's Summary of Deposits data for large banks with assets of $10 billion or less, using the deposits assigned to branches located in each assessment area for which the benchmark is calculated.

As with the proposed market volume benchmark used in the proposed Retail Lending Test and discussed in Section IX, the agencies seek feedback on the proposed approach to using the FDIC's Summary of Deposits data for calculating community development financing benchmarks, the tradeoffs of the proposed approach, and on potential alternatives to the proposed approach.

The use of both local and nationwide benchmarks would provide the agencies, banks, and the public with additional context about the local level of community development activity that can help to interpret and set goals for performance. For example, a bank whose metric falls short of the local benchmark in an assessment area where the local benchmark is much lower than the nationwide benchmark could be considered to have conducted a relatively low volume of activities. The nationwide benchmarks also provide a baseline for evaluating the level of a particular bank's community development activity in an assessment area with few or no other large banks from which to calculate a local benchmark.

The benchmarks would be made publicly available (*e.g.,* in dashboards) and updated annually in order to provide the most transparency and clarity to allow banks and the public to track these benchmarks.

Assessment Area Community Development Financing Benchmark. As proposed, the numerator for the assessment area community development financing benchmark would be the annual average dollar amount of all large banks' qualifying community development financing activities (including both the annual average of originations and the annual quarterly average balance sheet holdings, as described above) in the assessment area during the evaluation period. The denominator for the assessment area community development financing benchmark would be the annual average of the total dollar amount of all deposits held by large banks in the assessment area. Under the proposal, the deposits in the facility-based assessment area would be the sum of: (i) The annual average of deposits in counties in the facility-based assessment area reported by all large banks with assets of over $10 billion over the evaluation period, as reported under proposed § __.42; and (ii) the annual average of deposits assigned to branches in the facility-based assessment area by all large banks with assets of $10 billion or less, according to the FDIC's Summary of Deposits, over the evaluation period.

[235] *See* 12 U.S.C. 2901; Section I of this **SUPPLEMENTARY INFORMATION**.

$$\text{Assessment Area Community Development Financing Benchmark} = \frac{\text{Annual average of local CD loans+CD investments}}{\text{Annual average of local deposits}}$$

The assessment area community development financing benchmark would reflect local conditions that vary across assessment areas, such as the level of competition from other banks and the availability of community development opportunities, which may contribute to differences in the level of community development activity across communities and within a community across time. The agencies consider that using a standard local benchmark would improve the consistency of the current evaluation approach, which does not include consistent data points that reflect local levels of qualifying activities.

Metropolitan and Nonmetropolitan Nationwide Community Development Financing Benchmarks. The agencies propose to develop a separate nationwide community development financing benchmark for all metropolitan areas and all nonmetropolitan areas, respectively. One of these nationwide benchmarks would be applied to each assessment area, depending on whether the assessment area was located in a metropolitan area or a nonmetropolitan area. Based on the agencies' analysis, the ratio of banks' community development loans and qualifying investments to deposits is higher in metropolitan assessment areas than in nonmetropolitan assessment areas.[236] Setting the nationwide benchmark separately for metropolitan and nonmetropolitan areas is intended to help account for differences in the level of community development opportunities in these areas.

The numerator for the nationwide community development financing benchmarks would be the annual average of the total dollar amount of all large banks' qualifying community development financing activities (in either metropolitan or nonmetropolitan areas, depending on the assessment area), and the denominator would be the annual average of the dollar amount of deposits (again, either in metropolitan or nonmetropolitan areas). Under the proposal, the deposits in the metropolitan or nonmetropolitan areas would be the sum of: (i) The annual average of deposits in counties in the metropolitan or nonmetropolitan areas reported by all large banks with assets of over $10 billion over the evaluation period (as reported under proposed § _ _.42; and (ii) the annual average of deposits assigned to branches in the metropolitan or nonmetropolitan areas by all large banks with assets of $10 billion or less, according to the FDIC's Summary of Deposits, over the evaluation period.

$$\text{Nationwide Community Development Financing Benchmark-Metropolitan} = \frac{\text{Annual average of nationwide metropolitan CD loans+CD investments}}{\text{Annual average of national metropolitan deposits}}$$

$$\text{Nationwide Community Development Financing Benchmark-Nonmetropolitan} = \frac{\text{Annual average of nationwide nonmetropolitan CD loans+CD investments}}{\text{Annual average of national nonmetropolitan deposits}}$$

Timing of Benchmark Data. In order to provide greater clarity to banks and communities regarding the benchmarks that would be used for each evaluation period, the agencies are considering whether the benchmarks should be calculated and fixed based on community development financing and deposits data that is available at least one year in advance of the end of the evaluation period. For example, for an evaluation period ending in January of 2025, the agencies could determine the benchmarks for that evaluation period using data over a three-year timeframe spanning from 2021 to 2023. This alternative would provide additional certainty that the benchmarks that a bank would be compared to would not change in the final year of an evaluation period. However, the agencies considered that under this alternative, the benchmarks that a bank is compared to may not as fully reflect the credit needs and opportunities in the assessment area to the same degree, especially if there are significant changes in community development opportunities during the final year of the evaluation period.

3. Impact Review

To complement the community development financing metrics and benchmarks, the agencies propose to evaluate the impact and responsiveness of a bank's community development activities. The qualitative evaluation would draw on the impact criteria defined in § __.15, and on any other information that the agencies consider to determine how the bank's activities

[236] The analysis used a sample of 5,735 assessment areas from large retail bank performance evaluation records from 2005 to 2017 in the Board's CRA Analytics Data Tables, which note the dollar amount of current period community development loan originations as well as current period and prior period qualifying investments in each assessment area. The total dollar amount of activities was divided by the length in years of each examination evaluation period, to produce an annual average for each assessment area evaluation. The FDIC Summary of Deposits data was used to identify the dollar amount of deposits associated with the corresponding bank's branches in the assessment area, which is the best available approach for estimating the amount of deposits associated with each of a bank's assessment areas. The aggregate ratio of annualized dollars of community development activities to dollars of deposits was computed separately for all metropolitan assessment areas and all nonmetropolitan assessment areas in the sample, respectively. Under this analysis, the metropolitan ratio was 1.4 percent, and the nonmetropolitan ratio was 0.9 percent, based on exams from 2014 to 2017. The metropolitan ratio remained significantly larger than the nonmetropolitan ratio when limiting the sample to only full-scope examinations, across different periods of the sample, and when computing the median ratio of all examinations, rather than a mean.

responded to community development needs and opportunities. This approach would advance the CRA's purpose by ensuring a strong emphasis on impact and responsiveness in meeting community credit needs; would increase consistency in the evaluation of qualitative factors relative to the current approach by creating clear criteria; and would foster transparency for banks and the public by providing information about the type and purpose of activities considered to be particularly impactful or responsive.

The consideration of qualitative factors as a supplement to the dollar-based metrics aligns with the CRA's purpose of strengthening low- and moderate-income communities by more fully accounting for factors that may reflect the overall impact of an activity. First, a qualitative review can consider the responsiveness of activities to local context, including community development needs and opportunities that vary from one community to another. Banks and their community partners may make great effort to design an activity to reflect this context, and to address specific credit needs of the community, which can further the activity's impact. Second, the qualitative evaluation is important for emphasizing relatively small-dollar activities that nonetheless have a significant positive impact on the communities served. For example, qualifying contributions and activities that support organizations that provide assistance to small businesses tend to have small dollar balances relative to loans to larger businesses, but are critically important for addressing small business credit needs. Third, the qualitative evaluation can emphasize activities that serve low- and moderate-income populations and census tracts that have especially high community development needs, which often entail greater complexity and effort on the part of the bank. This emphasis helps to encourage community development activities that reach a broad range of low- and moderate-income communities, including those that are more challenging to serve. Finally, the qualitative review can emphasize specific categories of activities aligned with the CRA's purpose of strengthening credit access for a bank's communities, including low- and moderate-income communities, such as activities that support specified mission-driven financial institutions.

To promote greater consistency and transparency in the evaluation approach, the agencies would examine the extent to which a bank's activities meet the impact factors defined in § __ .15 based on information provided by the bank, local community data, community feedback, and other performance context information.

Given the current lack of data, the agencies propose that this process would initially be primarily qualitative in nature. The agencies would consider the percentage of the bank's qualifying activities that meet each impact factor but would not use multipliers or specific thresholds to directly tie the impact review factors to specific conclusions. A more significant volume of activities that align with the impact review factors would positively impact conclusions. In the future, when additional community development data is reported and analyzed, the agencies would consider quantitative approaches to evaluate impact and responsiveness.

4. Facility-Based Assessment Area Conclusions

The agencies propose to assign a Community Development Financing Test conclusion in a facility-based assessment area by considering the bank assessment area community development financing metric relative to the local and nationwide benchmarks, in conjunction with the impact review of the bank's activities. Based on an assessment of these factors, the bank would receive a conclusion of ''Outstanding,'' ''High Satisfactory,'' ''Low Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance.''

The agencies also considered approaches that would automatically combine the metric, benchmarks, and impact review to assign conclusions in a standardized way. However, the CRA community development financing data that is currently available is not sufficient to determine an approach that includes specific thresholds and weights for different components. Instead, the agencies propose that the approach for combining these standardized factors would initially rely on examiners' judgment. Eventually, analysis of community development data collected under the new rule may allow for developing additional quantitative procedures for determining conclusions. For example, the agencies could use community development financing data to determine thresholds for the bank assessment area community development financing metric and impact criteria that correspond to each conclusion category.

Request for Feedback

Question 119. The agencies are seeking feedback on alternatives to determining the denominator of the bank assessment area community development financing metric. What are the benefits and drawbacks, including data challenges, of implementing an alternative approach that bases the denominator of the metric on the share of bank depositors residing in the assessment area (described above) in contrast to the proposed approach of relying on dollar amounts of deposits?

Question 120. For large banks with assets of $10 billion or less, under the proposed Community Development Financing Test, is it appropriate to use the FDIC's Summary of Deposits data instead of deposits data that is required to be collected and maintained by the bank to tailor new data requirements, or would it be preferable to require collected deposits data for all large banks?

Question 121. What is the appropriate method to using the local and nationwide benchmarks to assess performance? Should the agencies rely on examiner judgment on how to weigh the comparison of the two benchmarks, or should there be additional structure, such as calculating an average of the two benchmarks, or taking the minimum, or the maximum, of the two benchmarks?

Question 122. What other considerations should the agencies take to ensure greater clarity and consistency regarding the calculation of benchmarks? Should the benchmarks be calculated from data that is available prior to the end of the evaluation period, or is it preferable to align the benchmark data with the beginning and end of the evaluation period?

E. State Community Development Financing Evaluation

To evaluate a bank's state community development financing performance, the agencies propose to consider a weighted average of the bank's performance in facility-based assessment areas within the state area, as well as the bank's performance on a statewide basis, via a statewide score. The statewide score would account for the totality of the bank's activities in the state—combining activities that are inside and outside of facility-based assessment areas—relative to the bank's total deposits across the state. The combination of these two components would emphasize facility-based assessment area performance, while still allowing banks the option to conduct and receive consideration for activities outside of facility-based assessment areas in the state.

1. Weighted Average of Assessment Area Performance

The agencies propose averaging a bank's Community Development Financing Test conclusions across its facility-based assessment areas in each state, as one component of the bank's Community Development Financing Test conclusion at the state level. The conclusion assigned to each assessment area would be mapped to a point value, consistent with the approach explained for assigning Retail Lending Test conclusions: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points).[237] This resulting score for each assessment area would be assigned a weight, calculated as the average of the percentage of retail loans, and the percentage of deposits of the bank associated with the assessment area (both measured in dollars), out of all of the bank's retail loans and deposits in facility-based assessment areas in the state. Similar to the proposed weighting approach for assigning Retail Lending Test conclusions, deposits would be based on collected and maintained deposits data for banks that collect this data, and on the FDIC's Summary of Deposits for banks that do not collect deposits data. Using these weights and scores, the weighted average of the assessment area scores would then be taken and used as one component in determining the state-level conclusion.

The proposed approach would ensure that performance in all facility-based assessment areas is incorporated into the state conclusion, proportionate to the bank's amount of business activity in each assessment area. Incorporating conclusions for all assessment areas into the state conclusion creates a clear emphasis on assessment area performance, including smaller markets.

2. Statewide Score

Examiners would also assign a statewide score for each state in which a bank delineates a facility-based assessment area. The statewide score would be assigned based on a bank state community development financing metric and benchmark, and a statewide impact review.

a. Bank State Community Development Financing Metric

The *bank* state community development financing metric would be calculated using the same formula as the bank assessment area community development financing metric and would include all of a bank's community development activities and deposits in the state area (based on either collected deposits data, or Summary of Deposits data, as applicable), without distinguishing between those inside or outside of the bank's assessment areas.

For example, if a bank has conducted an annual average of $200,000 in qualifying community development financing activities and has an annual average of $10 million in deposits associated with a state during an evaluation period, the bank state community development financing metric for that evaluation period would be 2.0 percent.

$$\text{Nationwide Community Development Financing Benchmark-Metropolitan} = \frac{\text{Annual average of nationwide metropolitan CD loans+CD investments}}{\text{Annual average of national metropolitan deposits}}$$

$$\text{Nationwide Community Development Financing Benchmark-Nonmetropolitan} = \frac{\text{Annual average of nationwide nonmetropolitan CD loans+CD investments}}{\text{Annual average of national nonmetropolitan deposits}}$$

The inclusion of all activities and deposits reflects the expectation that a bank conduct a volume of activities that is commensurate with its total capacity in a state. In addition, this metric provides the option for, but would not require, banks to conduct and receive consideration for activities outside of assessment areas, but within the states that include those facility-based assessment areas. The metric would not distinguish between activity conducted inside and outside the assessment area. If a bank conducted sufficient activity within its facility-based assessment areas in the state compared to the state benchmarks, activity outside of the bank's assessment areas would not be needed. However, if a bank is unable to conduct sufficient activity within the assessment areas due to lack of opportunity or high competition, the metric allows for the bank to conduct activity within the state but outside of the assessment area and receive consideration.

b. State Community Development Financing Benchmarks

Similar to the assessment area approach described above, the agencies propose establishing benchmarks that would allow examiners to compare a bank's performance to other banks in comparable areas. These benchmarks would include: (i) A statewide benchmark for the state area called the state community development financing benchmark; and (ii) a benchmark that is tailored to each bank's facility-based assessment areas called the state weighted assessment area community development financing benchmark. The use of two benchmarks would provide examiners with additional context and points of comparison on which to base the statewide score. For example, for a bank that collects deposits or conducts activities outside of its assessment areas in a state, the agencies may rely primarily on the state community development financing benchmark. In contrast, for a bank that collects deposits and conducts activities primarily within its assessment areas, the agencies may rely more heavily on the state weighted assessment area community development financing

[237] See Section IX.F for discussion of the proposed point scale.

benchmark, which is tailored to the bank's assessment areas to account for the level of competition and amount of opportunities in those areas.

The first benchmark, the state community development financing benchmark, would be defined similarly to the local benchmark used for the assessment area evaluation and it would include all activities and deposits across the entire state area. The numerator would include the dollars of community development loans and investments by all large banks across the state, and the denominator would include the dollars of deposits held by all large banks across the state Under the proposal, the deposits in the state would be the sum of: (i) The annual average of deposits in counties in the state reported by all large banks with assets of over $10 billion over the evaluation period (as reported under proposed § __.42); and (ii) the annual average of deposits assigned to branches in the state by all large banks with assets of $10 billion or less, according to the FDIC's Summary of Deposits, over the evaluation period.

The state weighted assessment area community development financing benchmark would be defined as the weighted average of assessment area community development financing benchmarks across all of the bank's facility-based assessment areas in the state. Each local benchmark would be weighted based on the assessment area's percentage of retail loans and percentage of deposits (both measured in dollars) within the facility-based assessment areas of the state, the same weighting approach as described for the weighted average of the bank's facility-based assessment area conclusions.

c. Impact Review

The agencies propose to evaluate the impact and responsiveness of a bank's community development activities for each state at a statewide level, using the same impact review approach as described previously for facility-based assessment areas. This impact review would encompass all activities in the state, including those inside and outside of assessment areas. Examiners would consider the extent to which the bank's activities met the criteria, based on information provided by the bank, local community data, community feedback, and other performance context information.

d. Statewide Score Assignment

The agencies would assign a statewide score corresponding to the conclusion categories described above: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points). The statewide score would reflect a comparison of the bank state community development financing metric to the state community development financing benchmark and the state weighted average community development financing benchmark, as well as the impact review of the bank's activities.

3. State Community Development Financing Test Conclusion

The bank's weighted average assessment area performance score would be averaged with its statewide score to achieve a state performance score for the state, with weights on both components tailored to reflect the bank's business model. The amount of weight applied to the facility-based assessment area performance and to the statewide performance would depend on the bank's percentage of deposits (based on collected deposits data and on Summary of Deposits data, as applicable) and retail loans in the state that are within its facility-based assessment areas.

The agencies propose to tailor the weighting of the average assessment area performance and the statewide score to the individual bank's business model, while still preserving the option for every bank to be meaningfully credited for activities outside of its facility-based assessment areas. For a bank that does most of its retail lending and deposit collection within its facility-based assessment areas, for example, the agencies view those facility-based assessment areas as the primary community a bank serves. The agencies therefore believe that the average assessment area performance deserves a higher weight in the combined state performance score.

To ensure that any activities that a bank undertakes outside of its facility-based assessment areas also are meaningfully credited as well, the agencies propose to give equal weight to the average assessment area performance and statewide score for banks whose business model is strongly branch based. Because activities that serve facility-based assessment areas would contribute both to the statewide score as well as in the weighted average of facility-based assessment area conclusions, weighting these two components equally effectively gives a higher weight to assessment area performance.

On the other extreme, for banks whose retail lending and deposit collection occurs almost entirely outside of their facility-based assessment areas (such as primarily online lenders), those assessment areas largely do not represent the overall community the bank serves. The agencies therefore propose to weight the statewide score more heavily than the weighted average assessment area performance score for such a bank. Banks with business models in between these two extremes would use weights that are correspondingly in between.

Specifically, to determine the relative weighting as described in Table 19 below, the agencies propose to use the simple average of:

- The percentage of a bank's retail loans in a state, by dollar volume, that the bank made in its facility-based assessment areas in that state, and
- The percentage of a bank's deposits from a state, by dollar volume, that the bank sourced from its facility-based assessment areas in that state

TABLE 19 TO SECTION __.24—PROPOSED WEIGHTS FOR COMBINED COMMUNITY DEVELOPMENT FINANCING TEST STATE PERFORMANCE SCORE

Average of percentage of retail loans and deposits from facility-based assessment areas	Weight on average assessment area performance score (%)	Weight on statewide score (%)
80% or greater	50	50
Less than 80%, greater than or equal to 60%	40	60
Less than 60%, greater than or equal to 40%	30	70
Less than 40%, greater than or equal to 20%	20	80

TABLE 19 TO SECTION __.24—PROPOSED WEIGHTS FOR COMBINED COMMUNITY DEVELOPMENT FINANCING TEST STATE PERFORMANCE SCORE—Continued

Average of percentage of retail loans and deposits from facility-based assessment areas	Weight on average assessment area performance score (%)	Weight on statewide score (%)
Less than 20%	10	90

Banks that have a low percentage of deposits and retail loans within their facility-based assessment areas would have a stronger emphasis on their statewide score than on their weighted average of facility-based assessment area conclusions. Conversely, banks that have a high percentage of deposits and retail loans within their facility-based assessment areas would have approximately equal weight on their statewide score and their weighted average of facility-based assessment area conclusions. The state performance score is then rounded to the nearest point value corresponding to a conclusion category: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points) to derive the State Community Development Financing Test Conclusion.

Taking into account both the bank's assessment area performance and its statewide performance would build off of the current approach to considering activities in broader statewide and regional areas and aims to achieve a balance of objectives. First, considering assessment area performance encourages banks to serve the communities where they have a physical presence, and where their knowledge of local community development needs and opportunities is often strongest. Second, considering statewide performance allows banks the option to also pursue impactful community development opportunities that may be located partially or entirely outside of their facility-based assessment areas, without requiring them to do so. Third, because assessment area activities are considered in the *statewide score* as well, the approach gives greater emphasis to activities within facility-based assessment areas than to activities outside of assessment areas, but the amount of weight is tailored to each bank's business model in the state. As a result, banks that are primarily branch-based would be encouraged to focus on serving their facility-based assessment areas, while banks that have few loans and deposits in facility-based assessment areas, such as banks that operate primarily through online delivery channels, are evaluated mostly on a statewide basis.

As discussed in Section X, the percentage of deposits assigned to facility-based assessment areas for banks that do not collect and maintain deposits data would always be 100 percent, because Summary of Deposits data attributes all deposits to bank branches. The average of the percentage of retail loans and deposits in facility-based assessment areas for such a bank would therefore not account for the bank's depositors that are located outside of its facility-based assessment areas. This would generally result in a higher weight on the bank's assessment area performance score, and may provide less of an incentive for certain banks to conduct community development financing activities outside of their facility-based assessment areas.

F. Multistate MSA Community Development Financing Test Conclusions

The agencies propose to assign Community Development Financing Test conclusions for multistate MSAs in which a bank has branches in two or more states of the multistate MSA.[238] If the bank has delineated an entire multistate MSA as a single facility-based assessment area, the conclusion for the assessment area and for the multistate MSA would be the same.

If the bank delineates only part of a multistate MSA as a facility-based assessment area, or delineates multiple facility-based assessment areas within a multistate MSA, then the agencies would employ the same approach as for assigning conclusions for state areas, with the same components as the state evaluation, applied to the geography of the multistate MSA. The multistate MSA conclusion would reflect a weighted average of facility-based assessment area conclusions within the multistate MSA, and would also reflect: (i) A bank multistate MSA community development financing metric; (ii) a multistate MSA community development financing benchmark; (iii) a multistate MSA weighted assessment area community development financing benchmark; and (iv) an impact review.

2. Institution Community Development Financing Test Evaluation

The agencies propose to assign Community Development Financing Test conclusions for the institution level using a similar approach to that for assigning conclusions for state areas. The approach would use a combination of a weighted average of facility-based assessment area conclusions nationwide, and a nationwide score that reflects: (i) A bank nationwide community development financing metric; (ii) a nationwide community development financing benchmark; (iii) a nationwide weighted assessment area community development financing benchmark; and (iv) an impact review.

1. Weighted Average of Assessment Area Performance

The agencies propose averaging a bank's Community Development Financing Test conclusions across all of its facility-based assessment areas as one component of the bank's Community Development Financing Test conclusion at the institution level. As with the state evaluation approach, this is intended to emphasize facility-based assessment area performance by directly linking assessment area conclusions to the institution conclusion. The conclusion assigned to each assessment area would be mapped to a point value as follows: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points). This resulting score for each assessment area would be assigned a weight, calculated as the average of the percentage of retail loans, and the percentage of deposits of the bank within the assessment area (both measured in dollars), out of all of the bank's retail loans and deposits in facility-based assessment areas (based

[238] *See* proposed §§ __.12, __.28(c)(2).

on collected deposits data and on Summary of Deposits data, as applicable). Using these weights and scores, the weighted average of the assessment area scores would then be taken and used in determining the institution-level conclusion. The weighted average approach ensures that performance in each facility-based assessment area is incorporated into the institution conclusion, with greater emphasis given to areas where the bank is most active.

2. Nationwide Score

Examiners would assign a *nationwide score* for the institution, based on a bank nationwide community development financing metric and benchmarks, and a nationwide impact review.

a. Bank Nationwide Community Development Financing Metric

The bank nationwide community development financing metric would be calculated using the same formula for the state metrics, including all of a bank's community development activities and deposits in the numerator and denominator, respectively.

b. Nationwide Community Development Financing Benchmarks

The agencies propose establishing benchmarks that would allow examiners to compare a bank's performance to other banks in comparable areas. These benchmarks would include a single nationwide benchmark applied to all banks called the nationwide community development financing benchmark, and one benchmark that is tailored to each bank's facility-based assessment areas called the nationwide weighted assessment area community development financing benchmark. The use of two benchmarks is intended to provide additional context and points of comparison in order to develop the nationwide score. For example, for a bank that primarily collects deposits or conducts activities outside of its facility-based assessment areas, the agencies may rely heavily on a comparison of the bank nationwide community development financing metric to the nationwide community development financing benchmark. In contrast, for a bank that collects deposits and conducts activities primarily within its assessment areas, the agencies may rely more heavily on a comparison of the bank nationwide community development financing metric to the nationwide weighted assessment area community development financing benchmark, which is tailored to the bank's assessment areas.

The nationwide benchmarks would be defined analogously to the statewide benchmarks. The nationwide community development financing benchmark takes all community development financing activities reported by large banks in the numerator, and all deposits of those banks in the denominator. Under the proposal, the deposits in the nationwide area would be the sum of: (i) The annual average of deposits in counties in the nationwide area reported by all large banks with assets of over $10 billion over the evaluation period (as reported under proposed § __.42); and (ii) the annual average of deposits assigned to branches in the nationwide area by all large banks with assets of $10 billion or less, according to the FDIC's Summary of Deposits, over the evaluation period.

The nationwide weighted assessment area community development financing benchmark would be defined as the weighted average of the assessment area community development financing benchmarks across all of the bank's facility-based assessment areas and would be weighted based on the assessment area's percentage of retail loans and percentage of deposits (both measured in dollars) within the facility-based assessment areas of the state using the same weighting approach as described for the weighted average of the bank's facility-based assessment area conclusions.

c. Impact Review

Similar to the proposed statewide approach, the agencies propose to evaluate the impact and responsiveness of a bank's community development activities at an institution level, using the same impact review approach as described above for facility-based assessment areas and states. The agencies propose to conduct a bank level impact review in order to assess the impact and responsiveness of *all* of an institution's qualifying activities, including those inside and outside of facility-based assessment areas. The agencies consider this to be especially important for the evaluation of a bank that elects to conduct activities that serve areas outside of its facility-based assessment areas, so that the impact and responsiveness of those activities is considered. As described above, the agencies would consider the impact and responsiveness of the bank's activities to community needs, and would consider the impact review factors, among other information.

d. Nationwide Score Assignment

The agencies would assign a *nationwide score* that reflects the bank's overall volume of qualifying activities and overall impact and responsiveness of activities, corresponding to the conclusion categories as follows: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points). The nationwide score would reflect a comparison of the bank nationwide community development financing metric to the nationwide and weighted assessment area benchmarks, as well as the impact review of the bank's activities.

3. Institution Community Development Financing Test Conclusion

The bank's weighted average assessment area performance score would be averaged with its nationwide score to produce an institution performance score, with weights on both components tailored to reflect the bank's business model. As in the calculation of the state performance score, the amount of weight applied to the facility-based assessment area performance and to the nationwide performance would depend on the bank's percentage of deposits and retail loans that are within its facility-based assessment areas. Equivalent weights to those proposed for calculating the combined state performance score would be used, to tailor the weighting to the bank's business model while still allowing all banks to receive meaningful credit for activities outside their facility-based assessment areas. The proposed weights are described in Table 20 below:

TABLE 20 TO SECTION __.24—PROPOSED WEIGHTS FOR COMBINED COMMUNITY DEVELOPMENT FINANCING TEST BANK PERFORMANCE SCORE

Average of percentage of retail loans and deposits from facility-based assessment areas	Weight on average assessment area performance score (%)	Weight on nationwide score (%)
80% or greater	50	50
Less than 80%, greater than or equal to 60%	40	60
Less than 60%, greater than or equal to 40%	30	70
Less than 40%, greater than or equal to 20%	20	80
Less than 20%	10	90

The weighting approach is intended to achieve the same balance as the state weighting approach by emphasizing facility-based assessment area performance, allowing flexibility to receive consideration for activities outside of facility-based assessment areas, and tailoring the amount of weight on facility-based assessment area performance to bank business model. Banks that have a low percentage of deposits and retail loans within their facility-based assessment areas would have a stronger emphasis on their nationwide score than on their weighted average of facility-based assessment area conclusions. Conversely, banks that have a high percentage of deposits and retail loans within their facility-based assessment areas would have approximately equal weight on their nationwide score and on their weighted average of facility-based assessment area conclusions. The institution performance score is then rounded to the nearest point value corresponding to a conclusion category: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points) to derive the Institution Community Development Financing Test conclusion.

As discussed above, the agencies have considered that the FDIC's Summary of Deposits data may not reflect a bank's distribution of depositors inside and outside of its facility-based assessment areas, and that the use of this data may result in a greater weight on the bank's assessment area performance score. As a result, this approach may place less emphasis on community development financing activities outside of a bank's facility-based assessment areas. The agencies seek feedback on the tradeoffs of the proposed approach. On the one hand, the proposed approach seeks to limit new data requirements for large banks with assets of $10 billion or less. On the other hand, the use of the FDIC's Summary of Deposits data impacts the proposed weighting methodology and other aspects of the proposed approach. The agencies seek feedback on an alternative approach of requiring large banks with assets of $10 billion or less to collect and maintain deposits data.

Request for Feedback

Question 123. When calculating the weighted average of facility-based assessment area conclusions and assessment area community development financing benchmarks, is it appropriate to weight assessment area metrics and benchmarks by the average share of loans and deposits, as proposed?

Question 124. Is the proposed use of the FDIC's Summary of Deposits data for banks that do not collect and maintain deposits data appropriate, or should all large banks be required to collect and maintain deposits data, which would enable the metrics and benchmarks to be based on collected deposits data for all large banks?

Question 125. Considering current data limitations, what approaches would further enhance the clarity and consistency of the proposed approach for assigning community development financing conclusions, such as assigning separate conclusions for the metric and benchmarks component and the impact review component? To calculate an average of the conclusions on the two components, what would be the appropriate weighting for the metric and benchmarks component, and for the impact review component? For instance, should both components be weighted equally, or should the metric and benchmarks be weighted more than impact review component?

Question 126. How can the agencies encourage greater consistency and clarity for the impact review of bank activities? Should the agencies consider publishing standard metrics in performance evaluations, such as the percentage of a bank's activities that meet one or more impact criteria?

XIII. Community Development Services Test

The agencies propose a Community Development Services Test that would apply to large banks. Separately assessing a bank's community development services and assigning a Community Development Services Test conclusion would underscore the importance of these activities for fostering partnerships among different stakeholders, building capacity, and creating the conditions for effective community development, including in rural areas.

A. Background

1. Current Approach for Evaluating Community Development Services

Community development services generally include activities such as service on boards of directors for community development organizations or on loan committees for CDFIs, financial literacy activities targeting low- or moderate-income individuals, and technical assistance for small businesses. Current guidance advises that community development services should be tied to either financial services or to a bank employee's professional expertise (*e.g.,* human resources, legal). Under the current regulation, community development services are evaluated for large banks as part of the service test, along with retail services. For intermediate small banks and wholesale and limited purpose banks, community development services are considered along with community development loans and qualified investments under one community development test. Community development services are generally not considered for small banks.

Examiners consider the extent to which a bank provides community development services, as well as the innovativeness and responsiveness of the activities. Examiners may consider a variety of measures, such as: (i) The number of low- and moderate-income

participants; (ii) the number of organizations served; (iii) the number of sessions sponsored; and (iv) the bank staff hours dedicated. Additionally, the Interagency Questions and Answers provide some guidance on the qualitative evaluation of community development services, including whether the service activity required special expertise and effort on the part of the bank, the impact of a particular activity on community needs, and the benefits received by a community.[239]

2. Stakeholder Feedback

Currently, community development services are qualitatively reviewed, with limited use of metrics. Both industry and community stakeholders have acknowledged the value of community development services in establishing the partnerships needed to build capacity and foster the growth of the community development ecosystem. Stakeholders generally agree that developing quantitative metrics coupled with a strong qualitative analysis would enhance the community development evaluation process but have recognized certain tradeoffs. Some stakeholders note that the use of a consistent metric, such as service hours per employee would be beneficial. However, other stakeholders have noted that quantitative metrics alone cannot adequately capture the impact and importance of community development services, and the impact of these services on a community is often more than the value of the employee's time.

B. Defining Community Development Service Activities

In § __.25, the agencies propose to retain the current definition of community development services to include activities that have a primary purpose of community development and are related to the provision of financial services. In addition, activities that reflect other areas of expertise of a bank's employees, such as human resources, information technology, and legal services would also be considered to be related to the provision of financial services. Generally, community development services activities would be considered when performed by members of a bank's board or employees of the bank.

The agencies also propose that in nonmetropolitan areas, banks may receive community development services consideration for volunteer activities that meet an identified community development need, even if unrelated to the provision of financial services. The agencies recognize that banks operating in nonmetropolitan areas may have fewer opportunities to provide community development services related to the provision of financial services than in metropolitan areas but may have ample opportunities to volunteer for activities that meet a community development need not tied to the provision of financial services. The agencies propose that examples of qualifying activities in nonmetropolitan areas include, but are not limited to, (i) assisting an affordable housing organization to construct homes; (ii) volunteering to serve food at a soup kitchen, at a homeless shelter, or at a shelter for victims of domestic violence; or (iii) organizing and volunteering at a clothing drive or a food drive for a community service organization.

C. Community Development Services Test Evaluation

The agencies propose that the evaluation of community development services would assess a bank's record of helping to meet the community development services needs in the bank's facility-based assessment areas, states, multistate MSAs, and nationwide areas. The evaluation would include a review of the extent to which the bank provides community development services, as well as the impact and responsiveness of these activities to community needs. For large banks with average assets of over $10 billion, the evaluation would also use a standard metric based on a bank's community development service hours relative to its full-time equivalent employees in each facility-based assessment area.

1. Qualitative Review for the Community Development Services Test

For all large banks, the agencies are proposing a qualitative review of (i) the extent to which a bank provides community development services and (ii) the impact and responsiveness of these activities. The review would include consideration of any relevant information provided by the bank, including any information required to be collected under proposed § __.42, as applicable. Under the proposal, this review may include consideration of one or more of the following types of information: (i) The total number of community development service hours; (ii) the number and type of community development service activities; (iii) for nonmetropolitan areas, the number of activities related to the provision of financial services; (iv) the number and proportion of community development service hours completed by, respectively, executive and other employees of the bank; (v) the number of low- or moderate-income participants, organizations served, sessions sponsored; or (vi) other evidence that the bank's community development services benefit low- or moderate-income individuals or are otherwise responsive to a community development need. In addition, the evaluation would include a review of the impact and responsiveness of the bank's community development service activities, drawing on the applicable impact review criteria defined in proposed § __.15, and other information provided by the bank to help demonstrate the responsiveness of these activities.

The agencies' proposed approach of a qualitative assessment that incorporates different types of information provided by a large bank is responsive to feedback from stakeholders that it can be difficult to measure the impact of community development service activities with a quantitative analysis. However, integrating the types of information currently used to evaluate community development services into the regulation would help to standardize the criteria that inform the qualitative review of community development services, which would provide more consistency and transparency in the evaluation compared to the current approach.

2. Bank Assessment Area Community Development Service Hours Metric

For large banks with average assets of over $10 billion, the agencies propose to include a standard quantitative measure to inform the evaluation of a bank's community development services. The proposed metric would be used in conjunction with the qualitative evaluation framework the agencies propose to use for all large banks. Under the proposal, the bank assessment area community development service hours metric, would measure a bank's total hours of community development services activity in a facility-based assessment area during the evaluation period, divided by the total full-time equivalent employees in the facility-based assessment area. As a result, this metric would calculate the average number of community development service hours per full-time equivalent employee. Large banks with average assets of over $10 billion would collect community development services data, including the hours of community development service activities and full-time equivalent employees for each facility-based assessment area. This metric would provide a more transparent measure to consistently

[239] *See* Q&A § __.24(e)–2.

evaluate the extent to which these banks provide community development services activities.

The agencies considered whether the bank assessment area community development service hours metric should be used for all large banks, instead of only those with average assets of over $10 billion. However, the agencies believe that the approach of using the metric only for banks with average assets of over $10 billion appropriately tailors the proposal. These banks are more likely to engage in a higher volume of community development services activities across more facility-based assessment areas, and the use of a metric will help provide greater consistency for these evaluations. Additionally, the proposed tailoring would not establish community development services data requirements for large banks with average assets of $10 billion or less. The agencies believe community development services activities for these banks can be evaluated effectively with a qualitative review of the relevant information provided by a bank, in a format of the bank's choosing, as takes place under the *status quo.*

The agencies seek feedback on whether the bank assessment area community development service hours metric should, instead, be incorporated into the evaluation of community development services for all large banks, and whether the benefit of consistency provided by the use of the metric outweighs the additional data collection requirements for large banks with average assets of $10 billion or less.

3. Facility-Based Assessment Area Community Development Services Test Conclusion

The agencies propose that the evaluation of community development services in facility-based assessment areas for all large banks would remain qualitative, as described above. For large banks with assets of over $10 billion, the bank assessment area community development service hours metric would also be used to inform the conclusions for each facility-based assessment area. Based on an assessment of all applicable factors, the bank would receive a conclusion of ''Outstanding,'' ''High Satisfactory,'' ''Low Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance.''

While the bank assessment area community development service hours metric would be included for large banks with average assets of over $10 billion in each facility-based assessment area, the agencies are not proposing the use of additional benchmarks to standardize the quantitative review for these banks. In the future, analysis of community development service hours data collected under the new rule may allow for developing additional quantitative procedures for determining conclusions. For example, the agencies could use community development services data to develop appropriate benchmarks and thresholds for the bank assessment area community development service hours metric that correspond to each conclusion category.

4. State Community Development Services Test Conclusion

State level conclusions for the Community Development Services Test would be based on two components: A bank's performance in its facility-based assessment areas, and an evaluation of its community development services outside its facility-based assessment areas, but within the state. As described in proposed appendix C, the first component would be calculated by averaging a bank's Community Development Services Test conclusions across its facility-based assessment areas in each state. The conclusion assigned to each assessment area would be assigned a point value as follows: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points).[240] To derive a state level score, the point value assigned for each assessment area conclusion would be weighted by a bank's average share of loans and share of deposits within the assessment area, out of all of the bank's loans and deposits in facility-based assessment areas in the state (based on collected deposits data and on Summary of Deposits data, as applicable).

The second component of the state Community Development Services Test conclusion would be the evaluation of all community development service activities outside the bank's facility-based assessment areas and within the state. This component of the evaluation would include an analysis of information including, but not limited to, the number and hours of community development service activities, as well as the impact and responsiveness of these activities as previously described. To assign a final state conclusion, examiners would determine if the score derived from the weighted average of the facility-based assessment area performance should be adjusted upward based on an evaluation of the significance and impact of outside assessment area activities. The inclusion of both the facility-based assessment area component and the outside facility-based assessment area component is intended to emphasize bank performance within facility-based assessment areas, while also providing certainty that qualifying activities in other areas would also be considered to inform the conclusions.

5. Multistate MSA Community Development Services Test Conclusion

The agencies propose to assign Community Development Services Test conclusions for multistate MSAs in which a bank has a facility-based assessment area and branches in at least two states. The agencies would employ the same approach as for assigning conclusions for a state, using a combination of a weighted average of facility-based assessment area conclusions, and a qualitative review of the bank's community development service activities that occurred outside the facility-based assessment area, but within the multistate MSA.

6. Institution Community Development Services Test Conclusion

The agencies propose to assign a Community Development Services Test conclusion for the institution using the same approach as for assigning conclusions for a state. The approach would use a combination of a weighted average of facility-based assessment area conclusions nationwide and a qualitative review of all community development services that occurred outside the bank's facility-based assessment areas and within the nationwide area, to determine if the weighted average of the facility-based assessment area performance should be adjusted upward based on an evaluation of the significance and impact of outside assessment area activities. The inclusion of these two components is intended to achieve a balance of emphasis on facility-based assessment area performance and certainty that activities in other areas would also be considered.

Request for Feedback

Question 127. Should volunteer activities unrelated to the provision of financial services be considered in all areas or just in nonmetropolitan areas?

Question 128. For large banks with average assets of over $10 billion, does the benefit of using a metric of community development service hours per full time employee outweigh the burden of collecting and reporting additional data points? Should the

[240] See Section IX.F for discussion of the proposed point scale.

agencies consider other quantitative measures? Should the agencies consider using this metric for all large banks, including those with average assets of $10 billion or less, which would require that all large banks collect and report these data?

Question 129. How should the agencies define a full-time equivalent employee? Should this include bank executives and staff? For banks with average assets of over $10 billion, should the agencies consider an additional metric of community development service hours per executive to provide greater clarity in the evaluation of community development services?

Question 130. Once community development services data is available, should benchmarks and thresholds for the bank assessment area community development services hours metric be developed? Under such an approach, how should the metric and qualitative components be combined to derive Community Development Services Test conclusions?

XIV. Wholesale and Limited Purpose Banks

The agencies propose that wholesale and limited purpose banks would be evaluated under a modified Community Development Financing Test, which would include an institution level metric that measures a bank's volume of activities relative to its capacity. The agencies also propose giving wholesale and limited purpose banks the option to have community development service activities that would qualify under the Community Development Services Test (as described in Section XIII) considered qualitatively for a possible adjustment of an overall institution rating from ''Satisfactory'' to ''Outstanding.''

The proposed Community Development Financing Test for Wholesale or Limited Purpose Banks is intended to account for banks with unique business models. Consistent with the current CRA regulations, a bank would have to apply and be approved by its banking regulator to be designated as a wholesale or limited purpose bank. Under proposed § __.12 a wholesale bank would be defined as a bank that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers. A limited purpose bank would be defined under proposed § __.12 as a bank that offers only a narrow retail product line (such as credit cards, other revolving consumer credit plans, other consumer loans, or other non-reported commercial and farm loans) to a regional or broader market and for which a designation as a limited purpose bank is in effect, in accordance with § __.26.

A. Background

1. Current Evaluation Framework for Wholesale and Limited Purpose Banks

For wholesale and limited purpose banks, community development loans, qualified investments, and community development services are currently considered under one community development test. Consideration is given to the number and dollar amount of community development loans, qualified investments, and community development services, both inside and outside assessment areas if the needs of the assessment areas are adequately addressed. Examiners also consider qualitative factors, including the innovativeness or complexity of these activities, how responsive the bank has been to community development needs in its assessment areas, and the extent to which investments are not routinely provided by private investors. The evaluation of qualitative factors is currently based on information that a bank provides on the impact of its activities, along with an examiner review of performance context, which includes community needs and opportunities.

2. Stakeholder Feedback

Stakeholders have expressed support for keeping the wholesale and limited purpose bank designations. Stakeholders have also supported applying a modified Community Development Financing Test for these types of banks given their unique business models. These stakeholders have indicated that as an alternative to deposits, total assets or Tier 1 Capital could be a more appropriate measure of the capacity of a wholesale or limited purpose bank to engage in community development financing because banks designated as wholesale or limited purpose may have a smaller deposit base than banks without such a designation.

B. Community Development Financing Test for Wholesale or Limited Purpose Banks

The agencies propose to evaluate wholesale and limited purpose banks under a Community Development Financing Test, with modifications from the Community Development Financing Test that would apply to other large banks, as described in Section XII. The Community Development Financing Test for Wholesale or Limited Purpose Banks would employ qualitative and quantitative factors similar to current examination procedures at the assessment area, state, and multistate MSA levels. At the institution level, the evaluation would also employ a wholesale and limited purpose bank community development financing metric as a standard measurement of a bank's volume of activities relative to its capacity.

To compute the wholesale or limited purpose bank community development financing metric, the agencies would divide the annual average of the bank's nationwide community development financing activity by the quarterly average of the bank's total assets for the same years in which the annual average of the bank's activity is calculated. The annual average of community development financing activity would be calculated identically to the proposed metric for large banks, including both new activities and balance sheet holdings originated in a previous year. Because bank assets are used in the denominator and cannot be easily apportioned to assessment areas, multistate MSAs, or states, the proposed wholesale or limited purpose bank community development financing metric would be calculated only at the institution level.

By using assets as the denominator of the metric, the proposed metric for wholesale and limited purpose banks differs from the proposed community development financing metrics for large banks, which uses deposits as the denominator. This difference is intended to account for the unique business models of wholesale and limited purpose banks, which may not collect retail deposits. This approach was also informed by stakeholder feedback that assets are a better measure of the capacity of wholesale and limited purpose banks to make community development loans and investments.

C. Conclusions for Wholesale and Limited Purpose Bank Evaluations

1. Facility-Based Assessment Area Conclusions

The agencies propose that community development financing performance of a wholesale or limited purpose bank in a facility-based assessment area be based on consideration of the dollar value of a bank's community development loans and investments that serve the facility-based assessment area and a review of the impact of the bank's activities in the facility-based assessment area under § __.15. Examiners would review both to establish conclusions. The agencies are proposing to evaluate the volume, impact, and responsiveness of

community development financing activities, without a corresponding benchmark, given the business model of these banks and the proposed composition of the wholesale or limited purpose bank community development financing metric using assets as the denominator.

The agencies acknowledge that the proposed approach for evaluating community development financing activities at the assessment area level for wholesale and limited purpose banks may not provide the consistent standards achieved with the metrics-based approach for large banks. The agencies seek feedback on whether there are other ways to measure performance in facility-based assessment areas in order to bring greater consistency to the assessment area level evaluation, including whether a bank assessment area community development financing metric and corresponding benchmarks would be an appropriate.

2. State Conclusions

The agencies propose a similar approach for evaluating the community development financing performance of a wholesale or limited purpose bank at the state level. Conclusions would be based on consideration of the dollar value of a bank's community development loans and investments that serve the entire state and a review of the impact of the bank's activities in the state under § __.15, and consideration of performance in any facility-based assessment areas in the state. Examiners would review all components to establish conclusions. Similar to the discussion above, the agencies seek feedback on alternative approaches to provide more consistency to the state level performance evaluation.

3. Multistate MSA Conclusions

The agencies propose that conclusions would also be assigned for the Community Development Financing Test in each multistate MSA, as applicable. The agencies would employ the same approach used for assigning conclusions at the state level, using a combination of the dollar value of the bank's community development financing activities that serve the multistate MSA, an impact review of these activities, and performance in any facility-based assessment areas in the multistate MSA.

4. Institution Conclusions

The agencies propose that conclusions for a wholesale or limited purpose bank's Community Development Financing Test would be based on consideration of the wholesale or limited purpose bank community development financing metric, a review of the impact of the bank's nationwide activities, and the bank's performance in its facility-based assessment areas.

This approach is intended to achieve a number of objectives. First, the use of the metric for the institution evaluation would help to ensure that wholesale and limited purpose banks are conducting a volume of activity that is commensurate with their overall capacity. Second, the institution level impact review would ensure a bank's activities are responsive to community needs. Finally, performance in all of a bank's facility-based assessment areas would be considered, in order to ensure that the bank has met local community needs within these areas.

In addition, as indicated in the discussion of § __.21 (Section VII), the agencies propose that wholesale and limited purpose banks would have the option to request consideration for community development service activities that would qualify under the Community Development Services Test (as described in Section XIII). These activities would be considered qualitatively for possible adjustment of an overall institution rating from ''Satisfactory'' to ''Outstanding.''

The agencies seek feedback on whether a benchmark should be established for comparing community development financing performance of wholesale and limited purpose banks to other banks at the institution level. Specifically, the agencies are considering two options for a benchmark. First, the agencies could use the nationwide community development financing benchmark used to evaluate performance of large banks. This option would promote consistency in performance expectations across all bank types. Alternatively, the agencies could develop a nationwide community development financing benchmark tailored specifically to wholesale and limited purpose banks based on the aggregate community development financing activity and aggregate assets of all wholesale and limited purpose banks.

Request for Feedback

Question 131. How could the agencies provide more certainty in the evaluation of community development financing at the facility-based assessment area level? Should a bank assessment area community development financing metric be used to measure the amount of community development financing activities relative to a bank's capacity? If so, what is the appropriate denominator?

Question 132. Should a benchmark be established to evaluate community development financing performance for wholesale and limited purpose banks at the institution level? If so, should the nationwide community development financing benchmark for all large banks be used, or should the benchmark be tailored specifically to wholesale and limited purpose banks?

Question 133. For wholesale and limited purpose banks that wish to receive consideration for community development services, should these banks be required to opt into the proposed Community Development Services Test, or should they have the option to submit services to be reviewed on a qualitative basis at the institution level, without having to opt into the Community Development Services Test?

XV. Strategic Plans

The agencies propose to retain the strategic plan option as an alternative method for evaluation under the CRA. Banks that elect to be evaluated under a CRA strategic plan would continue to be required to request approval for the plan from the appropriate Federal banking agency. A bank's election for the strategic plan option would not affect the bank' obligation, if any, to report data as required by § __.42. The agencies also propose to introduce more specific criteria to ensure that all banks are meeting their CRA obligation to serve low- and moderate-income individuals and communities. This approach is intended to ensure that banks have a strong justification for why a strategic plan is necessary for their business model and strategy, and that banks evaluated under a strategic plan incorporate how the bank's retail lending and other activities help to meet the credit needs of low- and moderate-income individuals and communities whenever possible.

Under the proposal, a bank that elects evaluation under a CRA strategic plan would be required to include relevant activities of its bank subsidiaries and may continue to include relevant activities of other affiliates. A bank would continue to seek input from members of the public in its facility-based assessment areas covered by the plan and submit the plan for publication on its respective regulatory agency's website as well as publish the draft plan on their own website if the bank has a website. In addition, the agencies would require banks that elect strategic plan evaluation to provide a justification for why the applicable performance tests and standards are not appropriate for the bank.

A. Current Approach to Strategic Plans

Currently, the strategic plan option is available to all types of banks, although it has been used mainly by non-traditional banks [241] and banks that make a substantial portion of their loans beyond their branch-based assessment areas. The strategic plan option is intended to provide banks flexibility in meeting their CRA obligations in a manner that is responsive to community needs and opportunities and appropriate considering their capacities, business strategies, and expertise.

Banks that elect to be examined under strategic plans have a great deal of latitude in designing their strategic plans but are subject to several key requirements. Banks must seek approval from their regulatory agency and solicit community feedback prior to submitting a strategic plan for regulatory approval.[242] In addition, they are required to delineate assessment areas in the same manner as non-strategic plan banks, and large banks that elect to be evaluated under an approved strategic plan continue to be obligated to report relevant lending data.[243]

Banks must include measurable goals for helping to meet the credit needs in each assessment area, particularly the needs of low- and moderate-income census tracts and low- and moderate-income individuals, but they have flexibility in setting these goals. The current CRA regulations state that a bank's plan shall address all three performance categories (lending, investment, and services), but the regulation also provides flexibility for a bank to choose a different emphasis as long as the plan is responsive to the characteristics and credit needs of its assessment areas and takes into consideration public comment and the bank's capacity and constraints, product offerings, and business strategy.[244]

When reviewing a strategic plan, the agencies consider the public's involvement in formulating the plan, any written public comments on the plan, and the bank's response to any public comments.[245] A bank's engagement with its community is vital to the strategic plan process to develop the requisite information about community needs.

B. Stakeholder Feedback on Strategic Plans

Stakeholders have expressed that the strategic plan option should not be used to lower performance expectations for any type of bank and that there should be parity between strategic plan banks and traditional banks. Some stakeholders believe the key goal should be consistency and that the strategic plan option should be reserved for those few banks that are not able to successfully be evaluated under the otherwise applicable performance standards because of their business model. Other stakeholders have expressed that the CRA regulation should not force banks to change their business model and that the strategic plan option should be available for banks with business models that would not perform well under the otherwise applicable performance standards. For example, these stakeholders have indicated that banks that are not able to meet the credit needs of low- and moderate-income individuals or very small businesses through retail lending should have the option to meet those needs through other means, such as by supporting organizations or programs that serve those constituents through community development financing or community development services.

Stakeholders have indicated that the current assessment area requirements for strategic plans are too confining. As stated previously, many banks that elect the strategic plan option choose this option because they operate in larger geographic areas than their branch-based assessment areas. For example, some banks operate in several states, or even nationwide, but have much smaller assessment areas that surround their single headquarters or their limited number of branches. In these situations, there has been a disconnect with plans that cover geographic areas that are much smaller than the broader areas in which the bank operates. Stakeholders were generally supportive of banks sharing their draft strategic plans through digital platforms to increase public participation. Some commented that the role of the public input process should be better defined, specifically the extent to which a bank is required to respond to public comments from outside of its community.

Overall stakeholders were supportive of the agencies providing guidelines regarding what constitutes a material change that would require an amendment to a bank's CRA strategic plan. There were differences among stakeholders as to what the impact of a material change would be and wanted to distinguish the impact of a minor change versus a major change. For example, these stakeholders suggest minor changes should only require agency approval while a major change would require public comment in addition to agency approval. Stakeholders generally agreed that a non-exhaustive list of examples of what constitutes a material change would be helpful.

C. Strategic Plan Improvements

In § __.27, the agencies propose a number of provisions to provide more clarity about establishing strategic plans, the measurable goals established, and where performance is evaluated. The agencies also propose provisions to address concerns about parity expressed by some stakeholders as well as how to make it easier for the public to engage in the development of CRA strategic plans.

Establishing goals. The agencies propose that banks would incorporate performance standards and metrics appropriate for their size in setting their goals, to the extent that such performance standards are appropriate given the bank's capacity and constraints, product offerings, and business strategy. Banks would be given flexibility to set different metrics from those that would otherwise be applicable if a bank is substantially engaged in activities outside of the scope of the standard performance tests. For example, banks that do not extend home mortgage, small business, small farm, or automobile loans would not be expected to incorporate performance standards and metrics relevant to the Retail Lending Test in their plans. If a bank presents metrics or goals that are different from the otherwise applicable standards and metrics, the agencies would consider whether those metrics or goals are responsive to the characteristics and credit needs of its assessment areas and consider public comment and the bank's capacity and constraints. In addition, if a bank specifies goals that are different from the otherwise applicable performance tests and standards, the bank would be required to explain why those goals are appropriate.

Assessment Areas. The agencies propose that banks electing to be evaluated under a strategic plan should be required to delineate assessment areas in the same manner as non-strategic plan banks. The agencies believe the proposed approach to assessment areas for large banks is flexible enough such that no additional tailoring is necessary for establishing the assessment areas for large banks that

[241] For this purpose, non-traditional banks are those that do not extend retail loans (small business, small farm, home mortgage loans, and consumer loans) as major product lines or deliver banking services principally from branches.

[242] 12 CFR __.27(d) and (e).

[243] 12 CFR __.27(b).

[244] 12 CFR __.27(f)(1).

[245] 12 CFR __.27(g)(2).

are evaluated under an approved strategic plan. In addition to facility-based assessment areas, large banks electing to be evaluated under a strategic plan would be required to delineate retail lending assessment areas, consistent with the proposed approach specified in § __.17. The proposed CRA regulation would also allow for the consideration of retail lending and community development financing activities outside of assessment areas, which would allow banks electing to be evaluated under a strategic plan to establish goals for such activities. The agencies believe the proposal would provide parity among banks and address the disconnect between plan goals covering geographic areas that are much smaller than a bank's actual business footprint.

Plan Goals. The proposed rules would require strategic plans to include goals for each retail lending major product line, including those of a bank's subsidiaries. Banks currently have great latitude in designating plan goals, but it is not always clear what type of loans should be included in a strategic plan, or whether the activities of a bank's subsidiaries must be included in its strategic plan. The proposal would require evaluation of each major product line, including those of a bank's subsidiaries under the proposed Retail Lending Test that would be applied to non-strategic plan banks. To provide greater clarity and to ensure strategic plan banks are held to the same level of standards as non-strategic plan banks, the agencies' proposed rule would require plans to include relevant activity of a bank's subsidiaries as well as include goals for each major product line.

Encourage Public Participation. To encourage increased public participation, the agencies propose making CRA strategic plans as widely available and as easy to locate as possible by requiring banks to post draft CRA strategic plans on the appropriate Federal banking agency's website and the bank's website. If the bank does not maintain a website, the bank would be required to publish notice of the draft plan in at least one print newspaper or digital publication of general circulation in each facility-based assessment area covered by the plan (or for military banks in at least one print newspaper or digital publication of general circulation targeted to the members of the military) for a period of at least 30 days. The agencies also propose that a draft plan should include an electronic means by which, and a postal address where, members of the public can submit comments on the bank's plan. The proposal would require that, during the period of formal public comment, a bank would have to make copies of the draft plan available for review at no cost at all offices of the bank in any facility-based assessment area covered by the plan and provide copies of the draft plan upon request for a reasonable fee to cover copying and mailing, if applicable. In evaluating CRA strategic plans for the appropriateness of a bank's goals, the agencies rely heavily on the public input process to ensure plan goals align with and are responsive to community credit needs, particularly those for low- and moderate-income individuals and low- and moderate-income communities. Although banks are currently required to seek public input by publishing their draft plans in local newspapers, the plans rarely garner public comments through this method. The proposal aims to allow for greater public input.

The agencies propose to clarify how banks can demonstrate they have meaningfully engaged with their community in drafting their CRA strategic plans by clarifying expectations for the information submitted with the plan. Specific information would include what organizations or members of the public the bank engaged with in drafting their plan and a description of the process used to publicize its draft CRA strategic plan. In addition, the bank would provide information regarding the various methods employed to engage community stakeholders, including, but not limited to, establishing an advisory board comprised of local stakeholders, convening public meetings, or conducting community outreach sessions to gather public comments and recommendations about the local credit needs. The information would also include a comprehensive list of the comments and recommendations it received and the institution's response to this information.

Strategic Plan Amendments. The agencies propose to clarify what constitutes a material change in circumstance so a bank would know when it must amend its strategic plan under § __.27. The current CRA regulations specify that a bank may request an amendment to its plan if the plan goals are no longer appropriate due to a material change in circumstance. The agencies note that in certain circumstances, a plan's goals may no longer be appropriate because a bank's capacity has diminished, rendering the bank unable to meet the plan's goals. Conversely, a bank's capacity could increase and, therefore, would be underperforming compared to peer banks if it were to remain operating under the original strategic plan. The current regulation allows reliance on performance context to determine whether a bank has substantially met its plan goals.

The agencies propose to revise the CRA regulation to be more transparent about when plan amendments would be required. The agencies propose that during the term of a plan, a bank must amend its plan goals if a material change in circumstances impedes its ability to substantially meet approved plan goals, such as financial constraints caused by significant events that impact the local or national economy; or significantly increases its financial capacity and ability, such as through a merger or consolidation, to engage in retail lending, retail services, community development financing, or community development services activities referenced in an approved plan. A bank that requests an amendment to a plan in the absence of a material change in circumstances must provide an explanation regarding why it is necessary and appropriate to amend its plan goals.

Request for Feedback

Question 134. Should the strategic plan option continue to be available to all banks, or do changes in the proposed regulation's assessment area provisions and the metrics approach reduce the need for the strategic plan option for banks with specialized business strategies?

Question 135. Large banks electing to be evaluated under a strategic plan would have activities outside of facility-based assessment areas considered through retail lending assessment areas and then outside retail lending assessment areas. Should small and intermediate banks electing to be evaluated under a strategic plan be allowed to delineate the same types of assessment areas? What criteria should there be for choosing additional assessment areas? Could such banks have the ability to incorporate goals for facility-based assessment areas and goals for outside of assessment areas?

Question 136. In assessing performance under a strategic plan, the agencies determine whether a bank has ''substantially met'' its plan goals. Should the agencies continue to maintain the substantially met criteria? If so, should it be defined and how? For example, as a percentage (*e.g.,* 95 percent) of each measurable goal included in the plan, the percentage of goals met, or a combination of how many goals were not met and by how much?

Question 137. The agencies are considering announcing pending strategic plans using the same means used to announce upcoming examination schedules or completed CRA examinations and CRA ratings. What are the potential advantages or disadvantages to making the draft plans available on the regulators' websites?

Question 138. In addition to posting draft plans on a bank's website and the appropriate Federal banking agency's website, should approved strategic plans also be posted on a bank's website and the appropriate Federal banking agency's website?

XVI. Assigned Conclusions and Ratings

The agencies propose updating how conclusions and ratings, as described below, are assigned at the state, multistate MSA, and institution levels using a consistent, quantifiable approach. This proposed approach is intended to increase transparency and provide clarity on the assessment of a bank's overall CRA performance.

As an initial matter, the proposal would distinguish between *conclusions*—which generally refers to the bank's performance on a particular test at the assessment area, state, multistate MSA, or institution level [246]—and *ratings*—which refers to a bank's overall CRA performance across tests at the state, multistate MSA, and institution levels. With respect to conclusions, the agencies propose maintaining five categories of performance test conclusions, as described in § __.28, that splits the category of ''Satisfactory'' into ''High Satisfactory'' and ''Low Satisfactory'' to better differentiate between very good performance and performance on the lower end of the satisfactory range for each test-specific conclusion. With respect to ratings, the agencies would continue to use the four categories—''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' and ''Substantial Noncompliance''—as prescribed in the statute.[247]

The proposed ratings approach would combine a bank's *conclusions,* as described in proposed appendix C, for each applicable test according to a specified set of weights tailored to large banks, intermediate banks, and wholesale and limited purpose banks. The proposal would apply this weighting approach for ratings at the state, multistate MSA, and institution level as described in proposed appendix D. In addition, the agencies propose additional provisions intended to emphasize a bank's retail lending performance and the importance of assessing how a bank meets the credit needs of all the communities it serves without overlooking smaller or less populated assessment areas as specified in proposed appendix D.

For small banks evaluated under the small bank performance standards, the agencies would assign lending evaluation conclusions of ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance'' based on the bank's lending performance in each facility-based assessment area to arrive at the bank's overall rating assigned by the agencies as explained in Section XVII and in § __.29.

The agencies also propose updating the criteria on discriminatory and certain other illegal practices that could adversely affect a bank's CRA rating, as well as what rating level (state, multistate MSA, and institution) would be affected in § __.28(d)(1). Further, the agencies propose adding additional laws and regulations to the illustrative list of examples of practices that could impact a bank's CRA rating in § __.28(d)(2).

A. Background

1. Current Method for Assigning Conclusions and Ratings

Consistent with the CRA statute, the current CRA regulations provide that a bank is assigned an institution rating of ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' and ''Substantial Noncompliance'' in connection with a CRA examination.[248] Ratings are also assigned for a bank's performance within each state in which the bank maintains one or more branches, and for each multistate MSA for those banks that have branches in two or more states within a multistate MSA.[249] In addition to assigning an overall institution rating, examiners also assign state and multistate MSA ratings for each applicable performance test (lending, investment, and service tests) primarily based on the institution's performance in each assessment area within the state or multistate MSA examined using full-scope procedures.[250] Performance conclusions in assessment areas not examined using the full-scope procedures are expressed as exceeds, is consistent with, or is below performance (overall or in the state).

With one exception, the rating scale used for performance test ratings mirrors that of the aforementioned four statutory institution-level ratings. For large banks, however, the ''Satisfactory'' rating for each of the three performance tests is split into ''High Satisfactory'' and ''Low Satisfactory.'' [251] Under existing procedures for large banks, examiners use a rating scale in the Interagency Questions and Answers to convert ratings assigned for each test into point values; examiners then add those point values together to determine the overall institution rating.[252] The conclusions assigned by the examiner are presented in the bank's CRA performance evaluation. However, the points assigned to each test and the bank's overall points that correspond to the institution's overall rating are not included in the performance evaluation. With the exception of the rating scale, the process of combining performance test ratings to determine the state, multistate MSA, or institution ratings relies primarily on examiner judgment, guided by quantitative and qualitative factors outlined in the current regulation. The current rating system allows flexibility. For example, exceptionally strong performance in some aspects of a particular rating profile may compensate for weak performance in others.[253]

Current examination procedures also allow for assessment areas to be reviewed either for full-scope or limited-scope review. Full-scope reviews employ both quantitative and qualitative factors, while limited-scope reviews are assessed only quantitatively and, as noted previously, generally carry less weight in determining the overall state, multistate MSA, or institution rating.

Under current examination procedures, the agencies use a fact-specific review to determine whether an overall institution CRA rating should be downgraded due to discriminatory or other illegal credit practices.[254]

[246] In addition, as stated in proposed appendix D and discussed in Section XVI.C, the agencies would establish, for large banks only, an overall retail lending assessment area conclusion reflecting performance on the Retail Lending Test and an overall facility-based assessment area conclusion reflecting performance on all four performance tests applicable to large banks.

[247] 12 U.S.C. 2906(b)(2).

[248] 12 U.S.C. 2906(b), implemented by 12 CFR __.28(a). The narrative descriptions of the ratings for performance under each evaluation method are in appendix A to the CRA regulations. *See* Q&A appendix A to 12 __—Ratings.

[249] 12 U.S.C. 2906(d).

[250] Ratings are not required at the assessment area level. Therefore, examiners provide conclusions about a bank's performance at the assessment area level. If a bank operates in just one assessment area, however, the bank's institution-level rating is equivalent to the performance conclusion within that assessment area.

[251] *See* Q&A § __.28(a)–3.

[252] *Id.*

[253] *See* Q&A appendix A to 12 __—Ratings.

[254] 12 CFR __.28(c)(2).

Currently, the agencies consider the nature, extent, and strength of the evidence of any discriminatory or other illegal credit practices, as well as any policies and procedures in place, or lack thereof, to prevent these kinds of practices, and any corrective action that the bank has taken or has committed to take.[255]

1. Stakeholder Feedback on Conclusions and Ratings

Stakeholders generally agree that CRA ratings should reflect a bank's performance in the local communities they serve. Some stakeholders have expressed that the current process is overly subjective and relies too much on examiner judgment. Stakeholders have generally expressed support for more transparency about the levels of performance associated with different ratings and supported retaining the ''High Satisfactory'' and ''Low Satisfactory'' component ratings for large banks. Some stakeholders have expressed that the ratings process should be reformed to add more rigor and stricter standards.

B. Combining Test Performance Scores To Determine Overall Ratings

As reflected in § __.28, the agencies propose updating the rating system to reflect a bank's performance on each applicable performance test. For example, ratings for a large bank would reflect its performance on the Retail Lending Test, Retail Services and Products Test, Community Development Financing Test, and Community Development Services Test.

Appendix C of the proposal describes how performance conclusions for each applicable test would be developed, which reflects the specific proposals for each performance test as discussed in earlier sections of this **SUPPLEMENTARY INFORMATION**. Although there are test-specific nuances and variations, in general, the agencies would assign both a conclusion (*e.g.,* ''Low Satisfactory'') and performance score (*e.g.,* 5.7) based on the bank's performance under a particular test. As a result, the bank would have both a conclusion and a performance score for each test, as applicable, at the assessment area, state, multistate MSA, and institution level.

Appendix D of the proposal describes how overall performance ratings would be assigned. In general, to determine a bank's CRA rating at the state, multistate MSA, and institution levels, the agencies would aggregate a bank's performance scores for each applicable test, with specific weights assigned to the performance score of each test. The proposal would follow the same weighting approach to derive ratings at the state, multistate MSA, and institution level.

For large banks, the agencies propose to determine a bank's state, multistate MSA, and institution rating by combining the bank's performance scores across all four performance tests for the state, multistate MSA, or institution overall. In combining these raw performance scores, the Retail Lending Test would be given a weight of 45 percent, the Community Development Financing Test a weight of 30 percent, the Retail Service and Products Test a weight of 15 percent and the Community Development Services Test a weight of 10 percent as described in proposed appendix D.

The agencies propose to assign the largest weight to the Retail Lending Test, similar to the current approach, which assigns the lending test a weight of 50 percent. The agencies believe that it would be appropriate to somewhat reduce this weight, because the current Lending Test includes both retail lending and community development lending, while the proposed Retail Lending Test would include only retail lending. Further, the agencies believe that a weight of less than 45 percent for the Retail Lending Test would not be appropriate, in keeping with the CRA's longstanding emphasis on retail lending to low- and moderate-income individuals and communities.

The agencies propose giving the Community Development Financing Test a weight of 30 percent to recognize the importance of both community development loans and community development investments in helping to meet community development needs. This is comparatively higher than the current weight given to the investment test at 25 percent under the current regulation, which excludes community development loans. The agencies propose a weight of 15 percent for the Retail Services and Products Test and a weight of 10 percent for the Community Development Services Test. These weights are comparable to the existing service test weight of 25 percent, which includes both retail services and community development services. The agencies propose the four tests rather than three tests to more easily tailor examinations by bank size as explained in Section VII.

For intermediate banks, the agencies propose to weight the Retail Lending Test at 50 percent and the intermediate bank community development evaluation (or if the bank opts in, for the Community Development Financing Test) at 50 percent as described in proposed appendix D. Any optional information regarding eligible retail services or community development services activities, as applicable, that an intermediate bank elects to provide would be reviewed qualitatively and not impact the weighting of the Retail Lending Test or the intermediate bank community development evaluation. The agencies' proposed weighting reflects the CRA's traditional emphasis on retail lending as well as the importance of community development activities in meeting community credit needs as mentioned previously. This weighting is also consistent with the current practice for intermediate small banks which gives equal weight to retail lending and community development activities for intermediate banks.

Request for Feedback

Question 139. The agencies request feedback on whether it would be more appropriate to weight retail lending activity 60 percent and community development activity 40 percent in deriving the overall rating at the state, multistate MSA or institution level for an intermediate bank in order to maintain the CRA's focus on meeting community credit needs through small business loans, small farm loans, and home mortgage loans.

C. Limitations on Overall Ratings

In addition to the above weighting approach, the agencies also propose to retain the requirement that, as applicable, for each state and multistate MSA and at the institution level, an intermediate bank's or a large bank's Retail Lending Test conclusion needs to be at least ''Low Satisfactory'' in order for the bank's overall rating to be ''Satisfactory'' or higher as described in proposed appendix D. The objective of this requirement is to prevent a bank from receiving a ''Satisfactory'' or higher rating at the state, multistate MSA, or institution level if it failed to meet its community's credit needs for retail loans at that level. Consistent with current practice, the agencies propose this requirement to emphasize the importance of retail loans to low- and moderate-income communities.

However, the agencies propose not applying the current requirement that an intermediate bank must receive a ''Satisfactory'' rating in both the Retail Lending Test and intermediate bank community development evaluation (or if the bank opts in, for the Community Development Financing Test). The agencies believe eliminating this requirement for intermediate banks would allow intermediate banks to meet

[255] *Id.*

community credit needs consistent with their more limited capacity. An intermediate bank would, however, still need to receive at least a ''Low Satisfactory'' on the Retail Lending Test in order to receive an overall ''Satisfactory'' at the institution level as noted above.

The agencies also propose imposing additional restrictions on state, multistate MSA and institution-level ratings for large banks with ten or more assessment areas in a state, a multistate MSA, or overall, respectively. A large bank with ten or more assessment areas (facility-based assessment areas and retail lending assessment areas combined) at the relevant level would not be eligible to receive a ''Satisfactory'' or higher rating at that level unless it achieved an overall performance of ''Low Satisfactory'' or better in at least 60 percent of its assessment areas there, as described in proposed appendix D.

Overall performance in a facility-based assessment area would be based on the conclusions the large bank received on each test in that assessment area. For purposes of this restriction only, the agencies propose developing a combined assessment area conclusion and performance score as described in proposed appendix D. A weighted average of these scores would be calculated across tests, using the same test-specific weights as the agencies are proposing to use to calculate ratings scores: The Retail Lending Test would be given a weight of 45 percent, the Community Development Financing Test a weight of 30 percent, the Retail Service and Products Test a weight of 15 percent and the Community Development Services Test a weight of 10 percent. If this weighted average was 4.5 or greater, the large bank would be considered to have an overall performance of at least ''Low Satisfactory'' in that facility-based assessment area. In retail lending assessment areas, the bank's overall performance would be equivalent to its Retail Lending Test conclusion there.

The agencies propose this modification to the ratings approach to ensure that large banks receiving a ''Satisfactory'' rating are meeting the credit needs of their entire community, and not just densely populated markets with high levels of lending and deposits that would factor heavily into the weighted-average conclusion rollups. In this way, overall ratings would accurately reflect performance in all markets the large bank serves.

Intermediate Bank Ratings Adjustments. The agencies propose that an intermediate bank that opts to be evaluated under the proposed Community Development Financing Test may request additional consideration for activities that qualify for consideration under the Retail Services and Products Test or Community Development Services Test in proposed appendix D. In these cases, the agencies may consider, based on the additional activities, whether to increase the bank's rating from a ''Satisfactory'' to an ''Outstanding'' at the institution level. An adjustment would not occur if an intermediate bank's respective rating, without consideration of the additional activities, is ''Needs to Improve'' or ''Substantial Noncompliance.'' The agencies believe that it is appropriate to emphasize retail lending performance, and that electing to conduct retail or community development services does not compensate for poor retail lending performance.

Small Bank Ratings Adjustments. The agencies propose that a small bank may request additional consideration for activities that qualify for consideration under the Retail Services and Products Test, Community Development Financing Test, or Community Development Services Test in proposed appendix D. In these cases, the agencies may consider, based on the additional activities, whether to increase the bank's rating from a ''Satisfactory'' to an ''Outstanding'' at the institution level. An adjustment would not occur if a small bank's respective rating, without consideration of the additional activities, is ''Needs to Improve'' or ''Substantial Noncompliance.'' The agencies believe that it is appropriate to emphasize retail lending performance, and that electing to conduct other activities does not compensate for poor retail lending performance.

Request for Feedback

Question 140. What are the advantages and disadvantages of the proposal to limit the state, multistate MSA, and institution-level ratings to at most a ''Needs to Improve'' for large banks with ten or more assessment areas unless 60 percent or more of the bank's assessment areas at that level have an overall performance of at least ''Low Satisfactory''? Should this limitation apply to all assessment areas, or only facility-based assessment areas? Is ten assessment areas the right threshold number to prompt this limitation, and is 60 percent the right threshold number to pass it? If not, what should that number be? Importantly, what impact would this proposal have on branch closures?

D. Discriminatory and Other Illegal Practices

The agencies propose continuing to consider discrimination and certain other illegal practices as inconsistent with a bank's affirmative obligation to meet the credit needs of its entire community and counter to the CRA's core purpose of encouraging banks to help meet the needs of low- and moderate-income communities and addressing inequities in credit access.

1. Clarifying the Scope of Products and Entities Considered for Rating Downgrades Related to Discriminatory or Other Illegal Practices

The agencies propose to revise the language in the existing CRA regulations regarding the circumstances under which evidence of discriminatory or other illegal practices could adversely affect the evaluation of a bank's CRA performance. Under the current CRA regulations, evidence of discrimination or other illegal credit practices in any geography by the bank, or in any assessment area by any affiliate whose loans have been considered as part of the bank's lending performance, could result in a downgrade to the bank's CRA rating.[256]

Under the proposal, the practices that could adversely affect a bank's CRA performance would no longer be limited to discriminatory or other illegal credit practices but would include any discriminatory or illegal practice. Such practices could be credit practices but could also be practices related to deposit products or other products and services offered by the bank. The agencies note that the CRA statute indicates that banks are required by law to meet the convenience and needs of their communities, which includes the need for credit services as well as deposit services. Consistent with this statutory focus, the proposed revisions would broaden these provisions of the current CRA regulations to include discriminatory or other illegal practices beyond merely credit practices in proposed § __.28(d)(1).

In addition, the agencies propose revising the current CRA regulations to clarify in § __.28(d)(1)(i) that discriminatory or other illegal practices by a bank subsidiary could also result in a downgrade to the bank's CRA rating. The proposal would further state in § __.28(d)(1)(ii) that discriminatory or other illegal practices in any facility-based assessment area, retail lending assessment area, or outside retail lending area by any affiliate whose retail

[256] § __.28(c)(1).

loans are considered as part of the bank's lending performance could adversely affect a bank's CRA performance.

2. Additional Examples of Discriminatory or Other Illegal Practices

For added clarity, the agencies propose amending the CRA regulation in § __.28(d)(2)(vii), (viii) and (iv), respectively to include violations of the Military Lending Act,[257] the Servicemembers Civil Relief Act,[258] as well as the prohibition against unfair, deceptive, or abusive acts or practices (UDAAP) [259] as additional examples of acts and practices that are inconsistent to meeting community credit needs. Because the included list of applicable laws, rules, and regulations is illustrative, and not exhaustive, it is important to note that this is not a substantive change as compared to current examination procedures. Nonetheless, the agencies believe adding these laws to the list would provide greater clarity.

3. Effect of Evidence of Discriminatory or Other Illegal Practices

Currently, in determining the effect of discriminatory or other illegal credit practices on a bank's assigned rating, the banking agencies consider: the nature, extent, and strength of the evidence of the practices; the policies and procedures that the bank (or affiliate, as applicable) has in place to prevent the practices; any corrective action that the bank (or affiliate, as applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.[260]

The agencies propose updating the CRA regulation in § __.28(d)(3) to determine the effect of evidence of discrimination and other illegal practices on a bank's assigned CRA rating based on revised criteria used to evaluate a bank's level of compliance with consumer protection laws and regulations. The existing criteria were put in place when the rating system for consumer compliance examinations placed greater emphasis on transaction testing rather than the adequacy of an institution's consumer compliance management system in preventing consumer harm. In 2016, the Federal Financial Institutions Examination Council (FFIEC) revised the Consumer Compliance Rating System [261] to focus more broadly on an institution's commitment to consumer protection. The agencies propose using the following updated criteria to determine whether there should be a rating downgrade: root cause of any violations of law, the severity of any consumer harm resulting from violations, the duration of time over which the violations occurred, and the pervasiveness of the violations. This change would align the criteria to determine whether a CRA downgrade is warranted with the Uniform Interagency Consumer Compliance Ratings System. In addition to the root cause, severity, duration, and pervasiveness of violations, examiners would also consider the degree to which the bank, a bank subsidiary, or an affiliate, as applicable, establishes an effective compliance management system across the institution to self-identify risks and to take the necessary actions to reduce the risk of non-compliance and consumer harm. All consumer compliance violations would be considered during a CRA examination, although some might not lead to a CRA rating downgrade.

The agencies also propose updating the CRA regulation in § __.28(d) to enable a rating downgrade at the state and multistate MSA level in addition to the current ability to downgrade the institution level rating to provide greater clarity and transparency to the bank and public about the geographic level at which the violations occurred.

XVII. Performance Standards for Small Banks and Intermediate Banks

In recognition of their capacity constraints, the agencies propose to maintain the current evaluation method for small banks. The agencies are proposing to continue evaluating small banks under the small bank performance standards in the current CRA framework in § __.29(a)(1); however, these banks may opt into the Retail Lending Test and may continue to request additional consideration for other qualifying CRA activities in § __.29(a)(2).

The agencies propose evaluating intermediate banks under the proposed Retail Lending Test in § __.22 with certain provisions tailored to intermediate banks. In addition to the proposed Retail Lending Test, the agencies propose to evaluate an intermediate bank's community development activity pursuant to the criteria in § __.29(b)(2), which is the same criteria as the current intermediate small bank community development test. In lieu of evaluation under § __.29(b)(2), intermediate banks could opt into being evaluated under the proposed Community Development Financing Test.

All intermediate banks—evaluated under either the intermediate bank community development evaluation or that choose to be evaluated under the Community Development Financing Test—would have the option to designate retail loans (*e.g.,* small business, small farm, and home mortgage loans) for consideration as community development loans if they have a primary purpose of community development and if the loans are not required to be reported.

A. Small Bank Performance Standards

1. Background

Current Approach for Small Bank Performance Standards. The current category of small banks includes those banks with assets of less than $346 million as of December 31 of the prior two calendar years. Under the current CRA regulations, a small bank is evaluated under the small bank performance standards. Specifically, a small bank is evaluated under a lending test that considers the following criteria: (i) The bank's loan-to-deposit ratio; (ii) the percentage of loans located in the bank's assessment areas; (iii) the bank's record of lending to borrowers of different income levels and businesses and farms of different sizes; (iv) the geographic distribution of the bank's loans; and (v) the bank's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment areas.[262]

Stakeholder Feedback. Most stakeholders have expressed a preference for maintaining the current framework for small banks while permitting these banks to choose to opt into the new approach. These stakeholders noted that while a metrics-based approach may provide additional transparency regarding performance standards, it would be appropriate to continue to evaluate small banks under the current framework given their more limited capacity and resources. Some community-based stakeholders, however, have stated that all banks, including small banks, should be evaluated under a metrics-based approach.

[257] 10 U.S.C. 987 *et seq.*

[258] 50 U.S.C. 3901 *et seq.*

[259] 12 U.S.C. 5531.

[260] 12 CFR __.28(c)(2).

[261] *See* FFIEC, Press Release, ''FFIEC Issues Uniform Consumer Compliance Rating System'' (Nov. 7, 2016), *https://www.ffiec.gov/press/pr110716.htm.*

[262] 12 CFR __.26(b).

2. Proposed Approach for Small Bank Performance Standards

The agencies propose raising the asset threshold for small banks from $346 million to $600 million as described in § __.12. The agencies are not proposing changes to the manner in which small banks are evaluated or to the small bank performance standards. The agencies believe that it would be appropriate to continue to evaluate small banks under the current framework, consistent with the objective to tailor the evaluation approach according to a bank's size and business model. Instead, under the proposal, a small bank may opt into being evaluated under the Retail Lending Test.

In addition, a small bank may request additional consideration for community development activities and for providing branches and other services and delivery systems that enhance credit availability in the bank's facility-based assessment areas. The bank could submit these activities for consideration in determining the bank's overall institution rating, without a requirement to opt into any additional performance test beyond the current small bank retail lending approach. As described above, the agencies would consider these activities to potentially elevate a bank's rating from ''Satisfactory'' to ''Outstanding,'' and would not consider these activities to elevate a ''Needs to Improve'' rating to ''Satisfactory'' or ''Outstanding.'' This limitation is intended to maintain a strong emphasis on retail lending performance. Under the proposed rule, and as in the current practice, a small bank could continue to achieve any rating, including ''Outstanding,'' based on its retail lending performance alone, and would not be required to be evaluated on other activities.

Request for Feedback

Question 141. The agencies propose to continue to evaluate small banks under the current framework in order to tailor the evaluation approach according to a bank's size and business model. What are other ways of tailoring the performance evaluation for small banks?

Question 142. Should additional consideration be provided to small banks that conduct activities that would be considered under the Retail Services and Products Test, Community Development Financing Test, or Community Development Services Test when determining the bank's overall institution rating?

B. Intermediate Bank Performance Standards

1. Background

Current Approach for Intermediate Small Banks. The current CRA regulations include an evaluation framework based on three bank size categories: Large, intermediate small, and small. The current category of intermediate small banks includes those banks with assets of at least $346 million as of December 31 of both of the prior two calendar years and less than $1.384 billion as of December 31 of either of the prior two calendar years. Intermediate small banks are evaluated under a lending test [263] and a community development test,[264] which assesses community development loans, qualified investments, and community development services together. An intermediate small bank has the flexibility to allocate its resources among community development loans, qualified investments, and community development services in amounts that it reasonably determines are most responsive to community development needs and opportunities.[265] Appropriate levels of each of these activities would depend on the capacity and business strategy of the institution, community needs, and number and types of opportunities available for community development within the bank's assessment areas.[266] A bank may not simply ignore one or more of these categories of community development, nor do the regulations prescribe a required threshold for community development loans, qualified investments, and community development services.[267]

Stakeholder Feedback. A number of stakeholders have supported maintaining three categories of banks with performance tests tailored to a bank's capacity and business model. Some stakeholders, and including those from the trade associations, indicated support for an intermediate bank category, though at least one state banking association preferred the proposed two-category approach.

2. Proposal for Intermediate Bank Performance Standards

The agencies propose creating a new intermediate bank category that would include banks with assets of at least $600 million and not more than $2.0 billion as described in § __.12. The agencies propose that an intermediate bank would be evaluated under the proposed Retail Lending Test in § __.22 and the intermediate bank community development performance standards as described in proposed § __.29(b)(2), which includes the same criteria as the community development test that currently applies to intermediate small banks. The agencies also propose that intermediate banks be given the option to be evaluated under the proposed Community Development Financing Test in § __.24 in lieu of the intermediate bank community development performance standards. The agencies believe this option provides intermediate banks the flexibility to determine how their community development activities are evaluated, recognizing the capacity and constraints of these size banks.

a. Retail Lending Test

The agencies propose that under the Retail Lending Test, an intermediate bank's major product lines would be evaluated by applying the proposed metrics approach as specified under § __.22. This method would provide intermediate banks with increased clarity and consistency and transparency of supervisory expectations and standards for evaluating their retail lending products. The agencies do not propose any data reporting requirements for intermediate banks under the Retail Lending Test in § __.42. For example, the agencies would not require intermediate banks to collect deposits data by depositor location and would instead rely on the FDIC's Summary of Deposits data for use in the Retail Lending Test metrics as described in § __.22.

b. Community Development Evaluation

Intermediate Bank Community Development Evaluation. The agencies propose evaluating community development activity of intermediate banks using the same criteria that is included in the current intermediate small bank community development test in 12 CFR __.26(c) under the proposed intermediate bank community development performance standards in § __.29(b)(2), retaining the flexibility provided to intermediate small banks under the current CRA guidance. The agencies propose retaining this additional flexibility for intermediate banks in recognition of their more limited capacity for engaging in community development activities compared to large banks. All intermediate banks, including those evaluated under the current intermediate small bank community

[263] 12 CFR __.26(b).

[264] 12 CFR __.26(c).

[265] *See* Q&A § __.26(c)–1.

[266] *Id.*

[267] *Id.*

development test, would utilize the proposed community development definitions in § __.13.

Flexibility for the Types of Community Development Activities. The agencies propose to retain the current flexibility in the array of community development activities by which an intermediate bank is evaluated. Intermediate banks generally conduct a combination of community development loans, qualified investments, and community development services. Under the current regulation, a bank may not ignore one or more of these categories of community development activities, and the current regulations do not prescribe a required threshold for community development loans, qualified investments, or community development services. The agencies propose that, consistent with current guidance, the appropriate levels of each activity would depend on the bank's capacity and business strategy, along with community development needs and opportunities that are identified by the bank.[268]

Flexibility for Community Development Loans. The agencies propose that intermediate banks continue to have the flexibility to have retail loans such as small business, small farm, and home mortgage loans be considered as community development loans. This option would be available to an intermediate bank if those loans have a primary purpose of community development and are not required to be reported by the bank. For example, an intermediate bank that is not required to report small business and small farm loans, may choose to report those loans for consideration as community development loans as provided in § __ .22(a)(5)(iii). Conversely, if an intermediate bank is required to report home mortgage loans, those loans would be required to be evaluated as retail loans under the Retail Lending Test and the bank would not have the option of having them considered as community development loans as provided in § __ .22(a)(5)(i).

The agencies seek feedback on whether intermediate banks should retain this flexibility for small business and small farm loans regardless of the reporting status of these loans. Intermediate banks are currently not required to report small business and small farm loans as CRA data. However, once the proposed CFPB Section 1071 Rulemaking is finalized, there is a possibility that an intermediate bank may be required to report small business and small farm loans and would lose the flexibility to receive community development consideration for those retail loans because of their reporting status.

Flexibility for Community Development Services. The agencies propose retaining the current flexibility of providing community development consideration for retail banking services if they provide benefit to low- or moderate-income individuals. Under the current regulation, in addition to the types of community development services associated with large banks,[269] an intermediate bank would also receive CRA credit for retail banking services as community development services if they provide benefit to low- or moderate-income individuals, including low-cost deposit accounts and branches located in low- or moderate-income geographies, designated disaster, or distressed or underserved nonmetropolitan middle-income areas.[270]

Option for Evaluation Under the Proposed Community Development Financing Test. In lieu of evaluation under proposed § __.29(b)(2) for evaluating community development activities of an intermediate bank, the agencies propose giving intermediate banks the option to be evaluated under the proposed Community Development Financing Test as specified in § __.24. Under this option, an intermediate bank also has the option to request additional consideration for activities that qualify under the Retail Services and Products Test in § __.23 and the Community Development Services Test in § __.25 for possible adjustment of an overall rating of ''Satisfactory'' to ''Outstanding.'' As described above, the agencies would consider these activities to potentially elevate a bank's rating from a ''Satisfactory'' to an ''Outstanding.'' These activities would not be considered to elevate a ''Needs to Improve'' rating to a ''Satisfactory'' or ''Outstanding'' rating. Similar to requirements for small banks, this limitation is intended to maintain a strong emphasis on retail lending performance. Under the proposed rule, an intermediate bank could continue to achieve any rating, including an ''Outstanding'' rating, based on its retail lending and community development performance alone, and would not be required to be evaluated on other activities.

The additional consideration for retail services and products, and community development services would not be appropriate for an intermediate bank that is evaluated for community development activities under § __ .29(b)(2) because that section already incorporates those activities.

As previously noted, all intermediate banks, including those that opt for evaluation under the proposed Community Development Financing Test, would continue to have the option to designate retail loans (small business, small farm, and home mortgage loans) for consideration as community development loans if they have a primary purpose of community development and are not required to be reported.

Request for Feedback

Question 143. The agencies' proposal to require intermediate banks to be evaluated under the proposed Retail Lending Test is intended to provide intermediate banks with increased clarity and transparency of supervisory expectations and standards for evaluating their retail lending products. The agencies propose tailoring the application of this test by limiting data reporting requirements for intermediate banks. Are there other ways of tailoring the Retail Lending Test for intermediate banks that should be considered?

Question 144. The agencies propose to provide continued flexibility for the consideration of community development activities conducted by intermediate banks both under the status-quo community development test and the proposed Community Development Financing Test. Specifically, intermediate banks' retail loans such as small business, small farm, and home mortgage loans may be considered as community development loans, provided those loans have a primary purpose of community development and the bank is not required to report those loans. Should the agencies provide consideration for those loans under the Community Development Financing Test?

Question 145. Should intermediate banks be able to choose whether a small business or small farm loan is considered under the Retail Lending Test or, if it has a primary purpose of community development, under the applicable community development evaluation, regardless of the reporting status of these loans? Should the same approach be applied for the intermediate bank community development performance standards in § __.29(b) and for intermediate banks that decide to opt into the Community Development Financing Test in § __.24?

[268] *See* Q&A § __.26(c)–1.

[269] 12 CFR __.24; *see also* CRA Q&A § __.12(i)–3.

[270] 12 CFR __.26(c)(3); *see also* CRA Q&A § __ .26(c)(3)–1.

XVIII. Effect of CRA Performance on Applications

The agencies are proposing to maintain the current regulation's regulatory procedures for considering CRA performance on applications including, mergers, deposit insurance, branch openings and relocations, conversions and acquisitions, and other applications, as applicable to each agency. Consideration of CRA performance in bank applications is rooted in the CRA statute. The statute instructs the agencies to assess a bank's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such bank, and to take such record into account in its evaluation of an application for a deposit facility by such bank.[271]

A. Current Approach for CRA Consideration in Applications

Under the current CRA regulations, the agencies take into account a bank's CRA performance when considering certain applications, including those for: A branch opening; merger, consolidation, or acquisition; main office or branch relocation; deposit insurance request; and transactions subject to the Bank Merger Act and Bank Holding Company Act.[272]

Basis for Approval or Denial of an Application. A bank's record of performance may be the basis for denying or conditioning approval of an application. Generally, an institution with a CRA rating below ''Satisfactory'' may be restricted from certain activities until its next CRA examination.

Interested Parties. The current regulation requires that the agencies consider public comment when determining whether to approve an application. In considering CRA performance for an application, the agencies take into account any views and comments expressed by interested parties.

B. Proposed Approach for CRA Consideration in Applications

The agencies are not proposing changes to this section of their regulations outlining consideration of CRA performance for applications, since it is prescribed in the CRA statute. However, by making the assessment of CRA performance more transparent, consistent, and predictable, the proposed CRA methodology would provide greater certainty to a bank regarding the level and distribution of activity that would achieve a ''Satisfactory'' rating when the bank contemplates making an application. It would also provide clear metrics regarding the bank's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods.

Request for Feedback

Question 146. Are the agencies' current policies for considering CRA performance on applications sufficient? If not, what changes would make the process more effective?

XIX. Data Collection, Reporting, and Disclosure

The agencies propose data collection and reporting requirements to increase the clarity, consistency, and transparency of the evaluation process through the use of standard metrics and benchmarks. The agencies also recognize the importance of using existing data sources where possible, and of tailoring data requirements where appropriate.

Under the proposal, all large banks would have the same requirements for certain categories of data, including community development financing data, branch location data, and remote service facility location data. As noted in earlier sections, the proposal also retains the existing large bank data requirements for small business and small farm lending, although the agencies propose replacing this with section 1071 data once it is available. The proposal also provides updated standards for all large banks to report the delineation of their assessment areas.

The agencies propose that some new data requirements would only apply to large banks with assets of over $10 billion. Specifically, the agencies propose that large banks with assets of over $10 billion would have data requirements for deposits data, retail services data on digital delivery systems, retail services data on responsive deposit products, and community development services data. In addition, all banks with assets of over $10 billion would have data requirements for automobile lending.

Banks operating under an approved wholesale or limited purpose bank designation would not be required to collect or report deposits data or report retail services or community development services information.

Intermediate banks, as defined in proposed § __.12, would not be required to collect or report any additional data compared to current requirements. As under current guidance, intermediate banks should continue to be prepared to demonstrate community development activities' qualifications.[273] Intermediate banks would have no deposits data requirements, even when deciding to opt into the proposed Community Development Financing Test.

Small banks, as defined in proposed § __.12, would not be required to collect or report any additional data compared to current requirements.

Under the proposal, the data reporting deadline would be moved from March 1 to April 1 of each year.

A. Background

1. Current Data Collection and Reporting Requirements

Current Data Used for Deposits. The current CRA regulations do not require banks to collect or report deposits data. Instead, for small banks, total deposits and total loans data from the Call Report are used to calculate the loan-to-deposit ratio for the entire bank. Total deposits allocated to each branch from the FDIC's Summary of Deposits are used for performance context for banks of any size. Deposits data by depositor location are not currently collected or reported.

Current Small Bank and Intermediate Small Bank Data Standards for Retail Lending. The current CRA regulations do not require small banks and intermediate small banks to collect, maintain, or report loan data, unless they opt to be evaluated under the lending, investment, and service tests that apply to large banks.[274] Examiners generally use information for a bank's major loan products gathered from individual loan files or maintained on the bank's internal operating systems, including data reported pursuant to HMDA, if applicable.

Current Large Bank Data Standards for Retail Lending and Community Development Financing. Under the current CRA regulations, large banks collect and report certain lending data for home mortgages, small business loans, small farm loans, and community development loans, pursuant to either HMDA or the CRA regulation.[275] CRA data reporting requirements are based on bank size, not type of exam.[276] If a bank, such as a wholesale or limited purpose bank, does not engage in lending of a particular type, current regulations do not require reporting such data. Examiners use this lending

[271] 12 U.S.C. 2903(a)(2).

[272] 12 CFR __.29. For applications under the Bank Merger Act or Bank Holding Company Act, a convenience and needs analysis is conducted. *See* 12 U.S.C. 1828(c) and 12 U.S.C. 1842.

[273] *See* Q&A § __.12(h)–8.

[274] 12 CFR __.42(f).

[275] 12 CFR __.42.

[276] *See* Q&A § __.42–1.

data and other supplemental data to evaluate CRA performance. A bank may use the software provided by the FFIEC for data collection and reporting or develop its own programs. Retail lending data collection and reporting requirements differ based on the product line.

For large banks that do not report HMDA data, examiners use home mortgage information maintained on the bank's internal operating systems or from individual loan files. The data elements for home mortgage loans used for CRA evaluations include loan amount at origination, location, and borrower income. For small business loans and small farm loans, the CRA regulations require large banks to collect and maintain the loan amount at origination, loan location, and an indicator of whether a loan was to a business or farm with gross annual revenues of $1 million or less.[277] Large banks report aggregate small business and small farm data at the census tract level.[278]

Large banks are not required to collect or report data on consumer loans. However, if a large bank opts to have consumer loans considered as part of its CRA evaluation, it must collect and maintain this information based on the category of consumer loan and include it in its public file.[279]

The current CRA regulations also require large banks to report the aggregate number and dollar amount of their community development loans originated or purchased during the evaluation period, but not information for individual community development loans.[280] A bank must, however, provide examiners with sufficient information to demonstrate its community development performance.[281] The CRA regulations do not currently require the reporting or collection of community development loans that remain on the bank's books or the collection and reporting of any information about qualified community development investments. As a result, the total amount (originated and on-balance sheet) of community development loans and investments nationally, or within specific geographies, is not available through reported data. Consequently, examiners supplement reported community development loan data with additional information provided by a bank at the time of an examination, including the amount of investments, the location or areas benefited by these activities and information describing the community development purpose.

Data Currently Used for CRA Retail Services and Community Development Services Analyses. There are no specific data collection or reporting requirements in the CRA regulations for retail services or community development services. A bank must, however, provide examiners with sufficient information to demonstrate its performance in these areas, as applicable. A bank's CRA public file is required to include a list of bank branches, with addresses and census tracts;[282] a list of branches opened or closed;[283] and a list of services, including hours of operation, available loan and deposit products, transaction fees, and descriptions of material differences in the availability or cost of services at particular branches, if any.[284]

Banks have the option of including information regarding the availability of alternative systems for delivering services.[285] Banks may also provide information on community development services, such as the number of activities, bank staff hours dedicated, or the number of financial education sessions offered.

2. Stakeholder Feedback

Industry group stakeholders have asked the agencies to remain mindful about minimizing any data collection, recordkeeping, and reporting burdens potentially associated with revising CRA regulations. Industry stakeholders have expressed concern that any new deposit, lending, investments, and other data collection, reporting, and recordkeeping requirements could potentially be costly and burdensome, as well as stating that efforts to develop data systems and the need for new compliance staff could come at the expense of engaging in community reinvestment activities. Additionally, industry stakeholders have stated that new data collection or reporting requirements should be assessed relative to the corresponding improvements to CRA examinations.

In contrast, community groups have generally indicated that the certainty and transparency gained from accurate community development financing measures would be worth any potential reporting burden. These stakeholders have supported data collection related to community development purpose, duration of financing provided, and partnerships with MDIs and other entities. Regarding community development services, these stakeholders also favored the development of a standardized template with defined data fields and endorsed collection of data relating to bank inputs (*e.g.,* community development hours per employee in each assessment area) and impacts (*e.g.,* number of low- and moderate-income attendees at financial literacy or homebuyer counseling sessions, improvement to attendees' credit scores). Community group stakeholders have expressed support for bank collection, maintenance, and reporting of community development data to improve evaluation procedures and to increase public transparency.

Regarding deposits, community group stakeholders have generally agreed that for small banks and intermediate-small banks, the FDIC's Summary of Deposits data could be an appropriate source to rely upon for computing metrics, given that these banks generally have fewer assessment areas and have most of their customer base residing within their assessment areas. Industry sentiment has been that while new depositor-related data collection and maintenance may be necessary for establishing a metrics-based approach to evaluating retail lending and community development financing, it may entail substantial costs on impacted banks. Overall, stakeholders generally agree that small banks should be exempted from new deposits data-related requirements.

B. Deposits Data

1. Deposits Data Collection and Maintenance Requirements

The agencies propose that deposits data would be used for several evaluation metrics, benchmarks, and weights under the applicable performance tests. The agencies propose an approach for deposits data collection, maintenance, and reporting that is tailored to different bank sizes. Large banks with assets of over $10 billion would be required to collect, maintain, and report deposits data that is based on depositor location, as provided in § .__ 42. Large banks with assets of $10 billion or less, intermediate banks, and small banks would not be required to collect, maintain or report any deposits data. If these banks choose to voluntarily collect and maintain this data, the agencies would use it for any applicable metrics and weights.

[277] 12 CFR __.42(a).

[278] 12 CFR __.42(b)(1).

[279] 12 CFR __.42(c)(1).

[280] 12 CFR __.42(b)(2).

[281] *See* Q&A § __.12(h)–8, which states, in relevant part, ''Financial institutions that want examiners to consider certain activities should be prepared to demonstrate the activities' qualifications.''

[282] 12 CFR __.43(a)(3).

[283] 12 CFR __.43(a)(4).

[284] 12 CFR __.43(a)(5).

[285] *Id.*

Otherwise, the agencies propose using the FDIC's Summary of Deposits data for any applicable metrics for a bank that does not collect and maintain deposits data. As discussed further in this **SUPPLEMENTARY INFORMATION**, the agencies intend for the proposed approach to tailor new deposits data requirements only to large banks with assets of over $10 billion.

a. Large Banks With Assets of Over $10 Billion

The agencies propose to require large banks with assets of over $10 billion to collect and maintain county-level deposits data based on the county in which the depositor's address is located, rather than on the location of the bank branch to which the deposits are assigned, as is the case with the FDIC's Summary of Deposits data. This approach would allow for more precise measurement of a bank's local deposits by county. Furthermore, the agencies considered that banks generally collect and maintain depositor location data to comply with Customer Identification Program requirements and as part of their ordinary course of business. Banks would not report depositor addresses, but only deposits data that is aggregated at a county-, state, multistate MSA, and institution level.

The agencies believe that the current approach of associating deposits with the location of the branch to which they are assigned would raise challenges under the proposed evaluation framework for large banks with assets of over $10 billion. The FDIC's Summary of Deposits data is not always an accurate measure of a bank's deposit base within an assessment area. Specifically, deposits assigned to a branch in the Summary of Deposits may be held by a depositor located outside of the assessment area where the branch is located, such as in a different assessment area of the bank, or outside of any of the bank's assessment areas.[286]

Instead, the agencies propose that large banks with assets of over $10 billion collect and maintain annually, until the completion of the bank's next CRA examination, the dollar amount of the bank's deposits at the county level, based upon the addresses associated with accounts, and calculated based on the average daily balances as provided in statements, such as monthly or quarterly statements. This deposits data would not be assigned to branches, but would, instead, reflect the county level dollar amount of the bank's deposit base.

The proposed collection and maintenance of deposits data at the county level for large banks with assets of over $10 billion would support proposals to more accurately: (i) Construct the bank volume metric and community development financing metric for each bank at the facility-based assessment area, state, multistate MSA, and institution levels, as applicable; (ii) construct the market benchmarks used for the retail lending volume screen and the community development financing metric at the facility-based assessment area, state, multistate MSA, and institution levels, as applicable; and (iii) implement a standardized approach for deriving multistate MSA, state, and institution conclusions and ratings by weighting assessment area conclusions (including retail lending assessment areas) and outside retail lending area conclusions through a combination of deposits and lending volumes.

For each of these purposes, the agencies consider it beneficial to use deposits data that accurately reflect depositor location for all large banks with assets of over $10 billion. The agencies do not believe the above proposals could be implemented using the FDIC's Summary of Deposits data for all large banks. Specifically, the FDIC's Summary of Deposits data does not contain information distinguishing those deposits made by depositors located outside of a bank's facility-based assessment areas from those within facility-based assessment areas. This limitation could introduce imprecision when using the Summary of Deposits data to weight performance conclusions in retail lending assessment areas, outside retail lending areas, and community development activity areas. For large banks with assets of over $10 billion, the agencies believe that the benefits of precision outweigh the burden of requiring the collection and reporting of deposits data.

For banks that collect and maintain deposits data, the agencies propose a definition of deposits, as stated in § __ .12, that is based on two subcategories of the Call Report category of Deposits in Domestic Offices: (i) Deposits of individuals, partnerships, and corporations; and (ii) commercial banks and other depository institutions in the United States. These two subcategories of deposits constitute the majority of deposit dollars captured overall in the Call Report categories of Deposits in Domestic Offices and these subcategories are proposed because they increase a bank's capacity to lend and invest.

The agencies propose that domestically held deposits of foreign banks, and of foreign governments and institutions would not be included because these deposits are not derived from a bank's domestic customer base. The proposal would exclude U.S., state, and local government deposits because these deposits are sometimes subject to restrictions and may be periodically rotated among different banks causing fluctuations in the level of deposits over time.

Further, the agencies seek feedback regarding whether to include deposits for which the depositor is a commercial bank or other depository institution in the definition of deposits, as proposed, or if these deposits should be excluded from the definition. While these deposits may augment a bank's capacity to lend and invest, they are primarily held in banker's banks and credit banks, many of which are exempt from CRA, or operate under the Community Development Financing Test tailored for limited purpose banks, which does not use deposits data.

For deposit account types for which accountholder location information is not generally available, the agencies propose that the aggregate dollar amount of deposits for these accounts would be included at the overall institution level, and not at other geographic levels. For example, the agencies would expect the aggregate dollar amount of deposits for accounts associated with pre-paid debit cards or Health Savings Accounts to be included at the institution level. The agencies seek feedback on additional clarifications regarding what deposit account types may not be appropriate to include at a county level.

The agencies also seek feedback on the appropriate treatment of non-brokered reciprocal deposits in order to appropriately measure an institution's amount of deposits, avoid double

[286] *See FDIC Summary of Deposits Reporting Instructions* (June 30, 2021) (''Institutions should assign deposits to each office in a manner consistent with their existing internal record-keeping practices. The following are examples of procedures for assigning deposits to offices: • Deposits assigned to the office in closest proximity to the accountholder's address. • Deposits assigned to the office where the account is most active. • Deposits assigned to the office where the account was opened. • Deposits assigned to offices for branch manager compensation or similar purposes. Other methods that logically reflect the deposit gathering activity of the financial institution's branch offices may also be used. It is recognized that certain classes of deposits and deposits of certain types of customers may be assigned to a single office for reasons of convenience or efficiency. However, deposit allocations that diverge from the financial institution's internal record-keeping systems and grossly misstate or distort the deposit gathering activity of an office should not be utilized.''), *https://www.fdic.gov/regulations/resources/call/sod/sod-instructions.pdf.*

counting of deposits, and to ensure that accountholder location information for deposit accounts is available to the bank that is collecting and maintaining the data. The agencies are considering that a non-brokered reciprocal deposit as defined in 12 U.S.C. 1831f(i)(2)(E) for the institution sending the non-brokered reciprocal deposit would qualify under the deposits definition in § __.12. In addition, the agencies are considering that a non-brokered reciprocal deposit as defined in 12 U.S.C. 1831f(i)(2)(E) for the institution receiving the non-brokered reciprocal deposit would not qualify under the deposits definition in § __.12.

In order to reduce burden associated with the collection, maintenance, and reporting of deposits data, the agencies intend to explore the feasibility, including costs, of developing a certified geocoding and aggregation platform that banks could use to geocode and aggregate their data in the future.

b. Small Banks, Intermediate Banks, and Large Banks With Assets of $10 Billion or Less

The proposal would not require small banks, intermediate banks, and large banks with assets of $10 billion or less to collect deposits data. This approach is intended to minimize the data collection burden on banks with assets of less than $10 billion, in recognition that large banks with assets of over $10 billion have more capacity to collect and report new deposits data.

Instead of using new deposits data, the agencies propose that the FDIC's Summary of Deposits data would be used for calculating the *retail lending volume screen,* as applicable, for these banks, if they do not elect to collect and maintain deposits data. The Summary of Deposits data would also be used for calculating the community development financing metric for large banks with assets of $10 billion or less and for intermediate banks that opt into the Community Development Financing Test. The Summary of Deposits data would also be used for the weights assigned to each facility-based assessment area when calculating performance scores at the state, multistate MSA, and institution levels, as applicable.

The agencies propose that small banks, intermediate banks, and large banks with assets of $10 billion or less could choose to collect and maintain deposits data on a voluntary basis. Large banks with assets of $10 billion or less that elect to collect deposits data would be required to do so in a machine readable form provided by the agencies, while small banks and intermediate banks would have the option to collect deposits data in the bank's own format. The agencies would use collected data instead of the FDIC's Summary of Deposits data to calculate the bank's metrics and weights for all applicable tests and evaluation areas. The agencies considered that a bank with a significant percentage of deposits drawn from outside of assessment areas in particular may prefer to collect and maintain deposits data to reflect performance more accurately under the retail lending volume screen and the community development financing metrics, and to have weights given to the bank's assessment areas in a way that more accurately reflects the bank's deposits base when assigning ratings.

The agencies seek feedback on the proposed approach and the tradeoffs of requiring only large banks with assets of over $10 billion to collect and maintain deposits data. On the one hand, the proposed approach would limit this requirement to banks with greater resources to comply with this proposed data requirement. On the other hand, the agencies have also considered that this approach may result in metrics and weights that do not reflect the geographic location of a bank's deposit base as accurately as would an approach that required the collection and maintenance of deposits data for all large banks. For example, a large bank with assets of $10 billion or less could have an internet-based business model not focused on branches. If such a bank did not elect to collect and maintain deposits data, the proposed approach would count all of the bank's deposits as being located within the bank's facility-based assessment areas, because the FDIC's Summary of Deposits data necessarily assigns all deposits to branch locations. The agencies have also considered that certain banks, particularly those for which the FDIC's Summary of Deposits data does not approximate well their actual depositors' locations, may wish to voluntarily collect and maintain deposits data for the sake of ensuring metrics and weights that accurately reflect the distribution of their deposits base.

Relatedly, the agencies seek feedback on an alternative approach in which large banks with assets of $10 billion or less are required to collect and maintain deposits data, with the standards and requirements for this data as proposed for large banks with assets of over $10 billion. The agencies have considered that this alternative may improve the precision and consistency of the metrics, benchmarks, and weights applicable to large banks with assets of $10 billion or less. In addition, this alternative may allow for more consistent evaluation standards, rather than using a different source of deposits data for different categories of large banks. However, the agencies have also considered that banks with assets of over $10 billion have greater capacity to collect and maintain deposits data. The agencies also seek feedback on whether a longer transition period to begin collecting and reporting deposits data for large banks with assets of $10 billion or less to begin to collect and maintain deposits data would make this alternative more feasible.

Wholesale Banks and Limited Purpose Banks. Wholesale banks and limited purpose banks would not be required to collect or maintain deposits data under the proposal.

2. Reporting of Deposits Data

a. Large Banks With Assets of Over $10 Billion

The agencies propose that large banks with assets of over $10 billion would be required to report the aggregate dollar amount of deposits drawn from each county, state, and multistate MSA, and at the institution level based on average annual deposits (calculated based on average daily balances as provided in statements such as monthly or quarterly statements, as applicable) from the respective geography. The agencies intend for this approach to appropriately account for deposits that vary significantly over short time periods or seasonally. As discussed above, the reported deposits data would inform bank metrics, benchmarks, and weighting procedures for the Retail Lending Test and Community Development Financing Test.

In addition, the agencies seek feedback on requiring large banks to report the number of depositors at the county level. This data would be used to support agency analysis of deposits data and could be used to support an alternative approach of using the proportion of a bank's depositors in each county to calculate the bank's deposit dollars for purposes of the community development financing metrics and benchmarks, as discussed in Section XII.

The agencies are mindful of limiting the use of deposits data that is collected and reported under the proposed rule as appropriate. For this reason, the agencies propose not to make deposits data reported under § __.42 publicly available in the form of a data set for all reporting lenders. The agencies seek feedback on this approach, and whether

the agencies should instead publish county-level deposits data in the form of a data set.

b. Large Banks With Assets of $10 Billion or Less, Intermediate Banks, Small Banks, and Wholesale and Limited Purpose Banks

Large banks with assets of $10 billion or less, intermediate banks, small banks, and wholesale and limited purpose banks would not be required to report deposits data under the proposal.

As discussed in Section IX and Section XII, respectively, Summary of Deposits data would be used for measuring the deposits of large banks with assets of $10 billion or less for purposes of calculating the proposed market volume benchmark and community development financing benchmarks, even if a bank elected to collect and maintain deposits data to be used for purposes of calculating its metrics and weights. The agencies believe that not requiring these banks to report this data may reduce new data burden for these banks.

The agencies seek feedback on the tradeoffs of the proposed approach of not requiring deposits data reporting for those banks that elect to voluntarily collect and maintain deposits data under § __.42. While this approach would limit new reporting requirements, it would also not support the calculation of more precise market benchmarks, which requires reported deposits data. If a large bank with assets of $10 billion or less *elects* to collect and maintain deposits data, the agencies seek feedback on the alternative of requiring such a bank to also *report* that deposits data, which would help support more precise benchmarks.

The agencies also seek feedback on an alternative approach of requiring *all* large banks with assets of $10 billion or less to collect, maintain, and report deposits data to further ensure accurate benchmarks and consistent standards for all large banks. In considering this alternative, the agencies seek feedback on whether a longer transition period (such as an additional 12 or 24 months beyond the transition period for large banks with assets of over $10 billion) would help make this alternative more feasible.

Request for Feedback

Question 147. What are the potential benefits and downsides of the proposed approach to require deposits data collection, maintenance, and reporting only for large banks with assets of over $10 billion? Does the proposed approach create an appropriate balance between tailoring data requirements and ensuring accuracy of the proposed metrics? Should the agencies consider an alternative approach of requiring, rather than allowing the option for, large banks with assets of $10 billion or less to collect and maintain deposits data? If so, would a longer transition period for large banks with assets of $10 billion or less to begin to collect and maintain deposits data (such as an additional 12 or 24 months beyond the transition period for large banks with assets of over $10 billion) make this alternative more feasible?

Question 148. Should large banks with assets of $10 billion or less that elect to collect and maintain deposits data also be required to report deposits data? Under an alternative approach in which all large banks with assets of $10 billion or less are required to collect and maintain deposits data, should these banks also be required to report the data, or would it be appropriate to limit new data burden for these banks by not requiring them to report the data?

Question 149. What are alternative approaches to deposits data collection and maintenance that would achieve a balance between supporting the proposed metrics and minimizing additional data burden? Would it be preferable to require deposits data collected as a year- or quarterly-end total, rather than an average annual deposit balance calculated based on average daily balances from monthly or quarterly statements?

Question 150. Should deposits sourced from commercial banks or other depository institutions be excluded from the deposits data that is reported or optionally maintained by banks? Should other categories of deposits be included in this deposits data?

Question 151. For what types of deposit accounts, such as pre-paid debit card accounts, and Health Savings Accounts, might depositor location be unavailable to the bank? For these account types, is it appropriate to require the data to be reported at the institution level? Should brokered deposits be reported at the institution level as well?

Question 152. What is the appropriate treatment of non-brokered reciprocal deposits? Should a non-brokered reciprocal deposit be considered as a deposit for the bank sending the non-brokered reciprocal deposit, but not be considered as a deposit for the bank receiving the reciprocal deposit?

Question 153. Do bank operational systems permit the collection of deposit information at the county-level, based on a depositor's address, or would systems need to be modified to capture this information? If systems need to be modified or upgraded, what would the associated costs be?

Question 154. In order to reduce burden associated with the reporting of deposits data, what other steps can the agencies take or what guidance or reporting tools can the agencies develop to reduce burden while still ensuring adequate data to inform the metrics approach?

Question 155. Should the agencies consider an alternative approach of publishing a data set containing county-level deposits data in order to provide greater insight into bank performance?

C. Retail Lending Data

1. Overview

The agencies propose requiring large banks to collect, maintain, and report certain retail lending data, as applicable, for small business, small farm, automobile, and home mortgage loans (including closed-end home mortgages, open-end home mortgages, and multifamily loans). As discussed above, much of the retail lending data needed to examine a bank under the proposed Retail Lending Test is already currently collected and reported by large banks under the CRA regulations. The agencies propose to reduce burden associated with small business and small farm loan data by using the current requirements and data collection and reporting process that banks are familiar with in the short term, as discussed below. In the longer term, the CRA's data collection and reporting requirements for small business loans and small farm loans would be eliminated and replaced by the CFPB's section 1071 data collection and reporting requirements.

The agencies also propose to tailor the data collection and reporting of automobile loans by only requiring large banks with assets of over $10 billion to collect, maintain and report this data. The data necessary to analyze CRA performance for automobile loans are loan amount at origination, loan location (state, county, census tract), and borrower income. Further, the proposal seeks feedback on whether to require large banks to collect and report one additional field for small business and small farm loans before the CFPB's section 1071 data is available. An indicator of whether a loan is to a business or farm with gross annual revenues of more than $250,000 but less than or equal to $1 million (using the revenues that the bank considered in making its credit decision) would allow the agencies to distinguish loans made to the smallest businesses and farms

before the CFPB's section 1071 data is available.

In addition, the agencies propose different standards based on bank size because a bank's capacity to collect, maintain, and report data increases as a bank increases in size and resources, regardless of business strategy. The agencies propose data collection and reporting requirements for large banks using prescribed formats. The prescribed format requirements would not apply to small banks that elect to be examined under the metrics-based Retail Lending Test or to intermediate banks. Instead, examiners would use data that small and intermediate banks maintained in their own format or reported under other regulations, *e.g.,* HMDA.

2. Small Business and Small Farm Loans

Data Collected and Maintained. As required under the existing CRA regulation, the agencies propose to require the collection and maintenance of the following data related to small business loan and small farm loan originations and purchases by the bank: (i) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file; (ii) an indicator for the loan type as reported on the bank's Call Report; (iii) the date of the loan origination or purchase; (iv) loan amount at origination or purchase; (v) the loan location (state, county, census tract); (vi) an indicator for whether the loan was originated or purchased; and (vii) an indicator for whether the loan was to a business or farm with gross annual revenues of $1 million or less.

In addition, the agencies seek feedback on an additional requirement for banks to collect and maintain an indicator of whether the loan was to a business or farm with gross annual revenues of $250,000 or less. This additional indicator would allow the agencies to implement the borrower distribution analysis for small businesses and small farms with gross annual revenues of $250,000 or less before the availability of CFPB's section 1071 data. The agencies seek feedback on the costs and benefits of requiring this potential additional indicator.

Reported Data. The agencies propose to require all large banks to report on an annual basis the aggregate number and amount of small business loans and small farm loans for the prior calendar year for each census tract in which the bank originated or purchased a small business or small farm loan by loan amounts in the categories of $100,000 or less, more than $100,000 but less than or equal to $250,000, and more than $250,000. A large bank would also report the aggregate number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less (using the revenues that the bank considered in making its credit decision). This data enables the agencies to conduct a borrower distribution analysis that shows the level of lending to small businesses of different revenue sizes. The agencies are also considering requiring the reporting of the number and amount of small business loans and small farm loans for each census tract for which the borrower had business revenue of $250,000 or less. The agencies seek feedback on whether to include this additional reporting data point.

The agencies would publish a bank's small business and small farm data aggregated at the county-level. The agencies propose to use the existing small business loan and small farm loan data collection and reporting requirements. However, the agencies propose to use the CFPB's section 1071 data once it is available.[287]

3. Home Mortgage Lending

Under the proposal, banks would be required to collect, maintain, and report home mortgage data similar to current regulatory requirements. If a bank is a HMDA reporter, the bank (other than an intermediate bank or a small bank) would be required to report the location of each home mortgage loan outside of the MSAs in which the bank has home or branch office.

Some banks that are not mandatory HMDA reporters may do enough mortgage lending that the agencies would consider one of the mortgage loan categories a major product line. This could occur, for example, if a bank with a largely online lending business model operated its headquarters in a micropolitan area and had no branches in MSAs. The evaluation of such a bank's retail lending performance would be less accurate if the bank did not collect, maintain, or report its mortgage loan data.

The agencies therefore seek feedback on whether certain banks that are not mandatory reporters under HMDA should be required to collect and maintain, or report, mortgage loan data. One option would be to require any large bank that is not a mandatory HMDA reporter due to the locations of its branches, but that otherwise meets the HMDA size and lending activity requirements, to collect, maintain, and report the mortgage loan data necessary to calculate the retail lending volume screen and distribution metrics. This requirement would narrowly tailor additional data collection requirements to affect only banks that do a substantial volume of mortgage lending. A bank that, for example, specialized in small business lending and made only a few incidental mortgage loans would not be required to collect mortgage data under this alternative, as mortgage lending would not be a significant contributor to the agencies' evaluation of its retail lending performance regardless. Furthermore, this alternative approach would only be applied to large banks, to avoid unduly burdening intermediate and small banks in recognition of their more limited capacities.

Under this alternative approach, the agencies would consider requiring banks as described above to collect and maintain the dollar amount of loans at origination or purchase, an indicator for whether the loan is a closed-end home mortgage loan, an open-end home mortgage loan, or a multifamily loan, the location of each of the bank's home mortgage loan origination or purchase, the annual income relied upon when making the loan, and an indicator of whether the loan was an origination or a purchase. These data fields would allow the calculation of all the bank's retail lending metrics for mortgage lending, clarifying expectations for banks and facilitating a more complete and accurate analysis by including this information in the bank metrics.

Under this alternative proposal, banks would collect, maintain, and report home mortgage data on open- and closed-end one-to-four-unit home mortgages and on multifamily loans. Open-end mortgages and multifamily loans would be treated as separate product lines for determining major product lines and for evaluation under the metrics tests. A modification of this alternative proposal would be to require these same banks to report the data, as well as collect and maintain it. A reporting requirement would allow for more accurate benchmarks in the markets these banks serve; however, it could also be more burdensome for those banks.

The agencies seek comment on the appropriateness of this alternative approach for new data collection, maintenance, and reporting requirements for home mortgage loans by non-HMDA reporters.

[287] As noted above, the CFPB's Section 1071 Rulemaking will effect changes directed by section 1071 of the Dodd-Frank Act requiring financial institutions to compile, maintain, and submit to the CFPB certain data on applications for credit for women-owned, minority-owned, and small businesses. *See* 86 FR 56356 (Oct. 8, 2021), as corrected by 86 FR 70771 (Dec. 13, 2021).

4. Automobile Lending

The agencies propose that automobile loans would be the only consumer loan category with data collection and reporting requirements, and that these new requirements would apply only to banks with assets of over $10 billion. The metrics-based proposal would require banks with assets of over $10 billion to collect and maintain, until the completion of the bank's next CRA examination, the following data for automobile loans originated or purchased by the bank during the evaluation period: (i) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file; (ii) the date of loan origination or purchase; (iii) the loan amount at origination or purchase; (iv) the loan location (state, county, census tract); (v) an indicator for whether the loan was originated or purchased by the bank; and (vi) the borrower's annual income the bank relied on when making its credit decision. In addition, a bank with assets of over $10 billion would also be required to report the aggregate number and amount of automobile loans for each census tract in which the bank originated or purchased an automobile loan and the number and amount of those loans made to low- and moderate-income borrowers. As discussed in Section VIII, it is important to collect data for automobile loans because other market sources lack the comprehensiveness required to construct the necessary metrics and because automobile loans are an important credit need in some markets.

The agencies propose to not publish automobile lending data for individual banks in the form of a data set for all reporting banks. Given that automobile lending data is not required under the current CRA regulations, the agencies are mindful of limiting the use of collected and reported automobile lending data as appropriate. The agencies seek feedback on whether, alternatively, it would be useful to publicly disclose county-level automobile lending data in the form of a data set. In order to reduce burden associated with reporting automobile loans for banks with assets of over $10 billion, the agencies are also exploring the feasibility, including costs, of developing a certified geocoding and aggregation platform in the future that banks could use to geocode and aggregate their data.

A bank that qualifies for evaluation under the small bank performance standards but elects evaluation under the metrics-based Retail Lending Test would not be required to collect, maintain, and report the data required for large banks in a prescribed interagency format. Instead, as proposed for intermediate banks, examiners would use data the bank maintained in its own format or reported under other regulations. Data for these banks would be measured against the benchmarks created using data from banks with assets over $10 billion.

Request for Feedback

Question 156. Should banks collect and report an indicator for whether the loan was made to a business or farm with gross annual revenues of $250,000 or less or another gross annual revenue threshold that better represents lending to the smallest businesses or farms during the interim period before the CFPB Section 1071 Rulemaking is in effect?

Question 157. Would the benefits of requiring home mortgage data collection by non-HMDA reporter large banks that engage in a minimum volume of mortgage lending outweigh the burden associated with such data collection? Does the further benefit of requiring this data to be reported outweigh the additional burden of reporting?

Question 158. Should large banks with assets of $10 billion or less be required to collect, maintain, and report automobile lending data? If so, would a longer transition period for large banks with assets of $10 billion or less to begin to collect, maintain, and report automobile lending data (such as an additional 12 or 24 months beyond the transition period for large banks with assets of over $10 billion) make this alternative more feasible? Does the added value from being able to use these data in the construction of metrics and benchmarks outweigh the burden involved in requiring data collection and reporting by these banks?

Question 159. Should the agencies streamline any of the proposed data fields for collecting and reporting automobile data? If so, would it still allow for constructing comprehensive automobile lending metrics?

Question 160. Should the agencies consider publishing county-level automobile lending data in the form of a data set?

D. Community Development Financing Activity Data

The agencies propose to require large banks, intermediate banks that opt into the Community Development Financing Test, and wholesale and limited purpose banks to collect and maintain community development financing data. Under the proposal, large banks and wholesale and limited purpose banks would be required to collect and maintain the information in a format prescribed by the agencies, while intermediate banks that opt into the Community Development Financing Test would have the choice to either collect and maintain community development financing data in the prescribed format or a format of the bank's choosing. Large banks and wholesale and limited purpose banks would be required to report community development financing data. Small banks would not be subject to regulatory data collection and maintenance requirements for community development financing activities, even if they request consideration for community development financing activities.

The proposed community development financing data would be necessary to construct community development financing metrics and benchmarks for large banks, which would be used to consistently evaluate the dollar amount of a bank's community development lending and investments as discussed in Section XII.

1. Data Required To Be Collected and Maintained

Under the proposal, large banks and wholesale and limited purpose banks would be required to collect and maintain the information listed in § __ .42(a)(5)(ii). The data fields include specific requirements under the categories of general information, such as the name of organization or entity, activity type, community development purpose; activity detail, which may include, for example, whether the activity was a low-income housing tax credit investment or a multifamily mortgage loan; indicators of the impact of the activity; location information; other details, such as indicators of whether the bank has retained certain types of documentation, such as rent rolls, to assist with verifying the eligibility of the activity; and the allocation of the dollar value of the activity to specific geographies, if available. Collecting and maintaining individual activity-level data would allow examiners to verify that activities qualify. Additionally, this information would allow examiners to review the impact and responsiveness of community development activities. The agencies intend to develop a template that would help banks to gather information in a consistent manner. Information provided on the template would help the agencies understand the impact and responsiveness of activities during the Impact Review of community development financing activities.

Intermediate banks that opt to be evaluated under the Community Development Financing Test would need to collect and maintain the information listed in § __.42(a)(5)(ii), but would have the choice to either collect and maintain this community development financing data in a format of the bank's choosing, or in the prescribed format, and would not be required to report the data. For intermediate banks evaluated under the status quo intermediate bank community development evaluation, banks would not be required to collect and maintain data. Consistent with the current approach, these banks would continue to need to demonstrate that community development activities qualify.[288] This approach is intended to appropriately tailor data collection and reporting requirements to account for differences in bank capacity.

2. Data Reporting

The agencies propose to require large banks and wholesale and limited purpose banks to report the community development financing data discussed above, with the exception of the name of organization or entity supported, which the agencies believe is sufficient to be collected and maintained, and does not need to be reported. This data would be used to construct metrics and benchmarks for evaluating bank community development financing performance. The benchmarks would provide consistent data points to banks, the agencies, and the public about the level of community development activities in an area and would provide context for interpreting a bank's community development financing metric, as discussed in Section XII. An intermediate bank could opt to report community development financing data but would not be required to do so.

The agencies propose that community development financing data be reported to the agencies at the individual activity level. The agencies believe this information is necessary to construct the proposed community development financing metrics and benchmarks and to inform both the quantitative and qualitative analyses. Individual activity-level data would also allow for the agencies to allocate activities that benefit multiple counties or states through a standard methodology, as discussed in Section XII, if a specific allocation is not provided by the bank. The agencies considered that reported data at the individual activity level would not require banks to aggregate community development data at the county level, which may be more burdensome. The agencies seek feedback on whether, rather than reporting data at the individual activity level, it would be more appropriate and sufficient to report data at the county-level for each institution. The agencies also seek feedback on whether to require banks to report the location of each activity in one of two ways, at the bank's option: (i) In the form of a specific address or addresses; or (ii) in the form of a census tract or tracts in which the activity was located. This would allow banks either to avoid disclosing the specific address of an activity in reported data if they wish to do so, or to avoid having to geocode their activities at the census tract level if they do not wish to do so.

Request for Feedback

Question 161. How might the format and level of data required to be reported affect the burden on those banks required to report community development financing activity data, as well as the usefulness of the data? For example, would it be appropriate to require reporting community development financing data aggregated at the county-level as opposed to the individual activity-level?

Question 162. What other steps can the agencies take, or what procedures can the agencies develop, to reduce the burden of the collection of additional community development financing data fields while still ensuring adequate data to inform the evaluation of performance? How could a data template be designed to promote consistency and reduce burden?

E. Retail Services and Products Data

The agencies propose to require large banks to collect and maintain information to support the analysis of a bank's delivery systems and credit and deposit products, as described in Section XI, as applicable. Certain data collection and maintenance requirements would be tailored to only apply to large banks with assets of over $10 billion. Intermediate and small banks, at their option, would provide examiners with information on retail services and products activities in the format used in the bank's normal course of business, if the bank seeks additional consideration for these activities. As previously discussed, retail services performance data is not currently collected and reported to the agencies; instead, banks provide certain retail services information in the bank's public file.

Required Data Collection. Under the proposal, large banks would be required to collect and maintain information listed in § __.42(a)(4)(ii) to support the proposal's branch analysis, including: (i) Number and location of branches; (ii) whether branches are full-service facilities (by offering both credit and deposit services) or limited-service facilities; (iii) locations and dates of branch openings and closings; (iv) hours of operation by location; and (v) services offered at each branch that are responsive low- and moderate-income individuals and census tracts. This information is consistent with the information currently provided in a bank's public file.

To support the analysis of remote service facilities availability, the agencies propose requiring information similar to what is being requested for branches, including: (i) Number and location of remote service facilities; (ii) whether remote service facilities are deposit-taking, cash-advancing, or both; (iii) locations and dates of remote service facility openings and closings; and (iv) hours of operation of each remote service facility. The requirement to collect remote service facilities data would be a change from the current practice, under which banks have the option to provide ATM location data in a bank's public file. The agencies believe proposing to require data collection for branches and remote service facilities is appropriate in light of the proposed changes (as described in Section XI) which make greater use of benchmarks in the evaluation of a bank's delivery systems. The agencies seek feedback on whether to require the collection and maintenance of branch and remote service availability data as proposed or, alternatively, whether to continue with the current practice of reviewing the data from the bank's public file (*i.e.,* where branch data is required and remote service facility availability is optional).

In addition, the proposal's data collection and maintenance requirements would facilitate a review of whether digital and other delivery systems are responsive to the needs of low- and moderate-income individuals. Specifically, the proposal would require large banks with assets of over $10 billion to collect and maintain information on: (i) The range of services and products offered through digital and other delivery systems and (ii) digital activity by individuals in low-, moderate-, middle-, and upper-income census tracts, respectively, such as the number of savings and checking accounts opened through digital and other delivery systems and accountholder usage of digital and other delivery systems. The agencies

[288] *See* Q&A § __.12(h)–8.

acknowledge that banks may have varying methods and means for assessing the responsiveness of their digital delivery systems to low- and moderate-income individuals. Therefore, the agencies seek feedback on whether to require that these specific data points be used to evaluate a bank's digital and other delivery systems, or whether to allow banks the flexibility to determine which data points to collect, maintain, and provide for evaluation.

For the proposed review of responsive deposit products, the agencies would require large banks with assets of over $10 billion to collect and maintain: (i) The number of responsive deposit accounts that were opened and closed for each calendar year in low-, moderate-, middle-, and upper income census tracts, respectively; and (ii) the percentage of responsive deposit accounts compared to total deposit accounts for each year of the evaluation period. These data would also be required for large banks with assets of $10 billion or less that elect to have their responsive deposit products evaluated. The agencies seek feedback on these requirements, and whether any other specific data points would support the evaluation of responsive deposit products.

Format for Information Collection. The agencies are considering whether to use a standardized template to facilitate the collection and maintenance of data for the Retail Services and Products Test. A template would potentially offer flexibility for providing quantitative and qualitative information, which may change over time. This flexibility may be particularly relevant for aspects of retail services that banks have not consistently provided to the agencies previously, such as for digital and other delivery systems and deposit products.

Request for Feedback

Question 163. Should the agencies require the collection and maintenance of branch and remote service availability data as proposed, or alternatively, should the agencies continue with the current practice of reviewing this data from the bank's public file?

Question 164. Should the agencies determine which data points a bank should collect and maintain to demonstrate responsiveness to low- and moderate-income individuals via the bank's digital and other delivery systems such as usage? Alternatively, should the agencies grant banks the flexibility to determine which data points to collect and maintain for evaluation?

Question 165. Are the proposed data collection elements for responsive deposit products appropriate, or are there alternatives to the proposed approach that more efficiently facilitate the evaluation of responsive deposit products? Should the agencies require collection and maintenance of specific data elements for the evaluation of responsive deposit products? Alternatively, should the agencies grant banks the flexibility to determine which data points to collect and maintain for evaluation?

Question 166. Does the proposed retail services data exist in a format that is feasibly transferrable to data collection, or would a required template provided by the agencies be sufficient in the collection of retail services and products information?

Question 167. What steps can the agencies take to reduce burden of the proposed information collection requirements while still ensuring adequate information to inform the evaluation of services?

Question 168. Should large banks with assets of $10 billion or less be required to collect and maintain data on deposit product responsiveness and/or digital and other delivery systems? If so, would a longer transition period to begin to collect and report such data (such as an additional 12 or 24 months beyond the transition period for large banks with assets of over $10 billion) make this alternative more feasible? Does the added value from being able to use this data outweigh the burden involved in requiring data collection by these banks?

F. Community Development Services Data

The agencies propose to require that large banks with assets of over $10 billion collect and maintain the community development services information listed in § __.42(a)(6), in machine readable form, as prescribed by the agencies. The data required to be collected and maintained would include the number of full-time equivalent employees at the facility-based assessment area, state, multistate MSA, and institution levels; total number of community development services hours performed by the bank in each facility-based assessment area, state, multistate MSA, and in total; date of activity; name of organization or entity; community development purpose; capacity served; whether the activity is related to the provision of financial services; and the location of the activity. To improve consistency in evaluations, the agencies intend to develop a standardized template for community development services data. Large banks with assets of $10 billion or less would have the option, but would not be required, to collect and maintain the community development services data in § __ .42(a)(6); if they do so, they would have the option to collect and maintain data in their own format, or to use the prescribed template. This information would facilitate the proposed evaluation of a bank's community development service activities.

In addition, the agencies propose that large banks with assets of over $10 billion would report the number of full-time equivalent employees at the facility-based assessment area, state, multistate MSA, and institution levels; and the total number of community development services hours performed by the bank in each facility-based assessment area, state, multistate MSA, and in total. This information is necessary to compute the proposed community development services metric, and the agencies do not believe it is necessary to require banks to report additional community development services information. The reported data would be used to develop a standard quantitative measure to evaluate community development services for banks with assets of over $10 billion.

The agencies seek feedback on whether large banks with assets of $10 billion or less should also be required to collect and maintain community development service data in a machine readable form, as prescribed by the agencies, equivalent to the data required to be collected and maintained by large banks with assets of over $10 billion. The agencies consider that this alternative may support more consistency and clarity in evaluations of community development services for all large banks.

Request for Feedback

Question 169. Should large banks with assets of $10 billion or less be required to collect community development services data in a machine readable form, as prescribed by the agencies, equivalent to the data required to be collected and maintained by large banks with assets of over $10 billion? Under this alternative, should large banks with assets of $10 billion or less have the option of using a standardized template or collecting and maintaining the data in their own format? If large banks with assets of $10 billion or less are required to collect and maintain community development services data, would a longer transition period for these banks to begin to collect and maintain deposits data (such as an additional 12 or 24 months beyond the

transition period for large banks with assets of over $10 billion) make this alternative more feasible? Does the added value from being able to use this data in the construction of a metric outweigh the burden involved in requiring data collection by these banks?

Question 170. Should large banks with assets of over $10 billion be required to collect, maintain, and report data on the number of full-time equivalent employees at the assessment area, state, multistate MSA and institution level in order to develop a standardized metric to evaluate community development service performance for these banks?

G. Data Collection and Reporting Requirements for Operations Subsidiaries, Operating Subsidiaries, and Affiliates

The proposal recognizes that a significant amount of bank activity may be conducted through a bank's operations subsidiaries, operating subsidiaries, and affiliates, necessitating appropriate data collection and reporting requirements. These data collection, maintenance, and reporting requirements are consistent with the requirements of the bank being evaluated.

1. Operations Subsidiaries and Operating Subsidiaries

The agencies propose to require bank operations subsidiaries and operating subsidiaries, as applicable, that engaged in retail lending, retail services and products, community development financing and community development services activities to collect, maintain, and report such activities for purposes of evaluating the bank's performance tests, consistent with the requirements for the bank being evaluated. This would enable the agencies to capture all of the activities of operations subsidiaries and operating subsidiaries in CRA evaluations appropriately, in recognition that banks exercise a high level of ownership, control, and management of their operations subsidiaries or operating subsidiaries, as applicable.

2. Other Affiliates

The agencies propose to require a bank that elects to have its affiliate activity considered, to also collect, maintain, and report the data for these activities that the bank would have collected, maintained, and reported if it engaged in these activities directly. Under the proposal, a bank that elects to have the agencies consider loans by an affiliate, for purposes of the Retail Lending Test, and loans or investments for purposes of the Community Development Financing Test, Community Development Financing Test for Wholesale or Limited Purpose Banks, or under an approved strategic plan, would be required to collect, maintain, and report those loans and investments data. For home mortgage loans, the bank would also be prepared to identify the home mortgage loans reported by the affiliate under Regulation C, if applicable, or as required under proposed § __.42(a)(3) had the loans been originated or purchased by the bank.

H. Data for Delineating Assessment Areas

Under the proposal, large banks would have data collection and reporting requirements for assessment area delineations. All other banks (small and intermediate banks) would be required to collect and maintain data as required for inclusion in their CRA public files, as is currently required. These banks would not have to report assessment area data. Small and intermediate banks could opt to use the large bank data collection and reporting format for providing data to examiners during their evaluation. For all size banks, the agencies would include assessment area delineations in performance evaluations.

1. Facility-Based Assessment Areas

The proposal's requirements for large bank reporting of facility-based assessment areas would include a list for each assessment area showing the states, MSAs, metropolitan divisions, and nonmetropolitan counties within each facility-based assessment area. Under the proposal, large banks would be required to delineate at least full counties for facility-based assessment areas.

2. Retail Lending Assessment Areas

Under the proposal, large banks would be required to collect and report annually to the agencies a list showing the MSAs and counties within each retail lending assessment area. The agencies could verify retail lending assessment area designations using HMDA and CRA small business/small farm data, and the agencies could explore calculating retail lending assessment areas for banks.

3. Intermediate and Small Bank Requirements

As mentioned earlier, small and intermediate banks would not have to report assessment area data under the proposal. Instead these banks would continue to maintain a CRA public file with required information, including: (i) A list of the bank's branches, their street addresses and census tract numbers; (ii) a list of branches opened or closed by the bank during the current year and each of the prior two calendar years, their street addresses and census tract numbers; and (iii) a map of each assessment area showing the boundaries of the area and identifying each state, county, and census tract contained within the area, either on the map or in a separate list.

Request for Feedback

Question 171. Should small banks that opt to be evaluated under the metrics-based Retail Lending Test be required to collect, maintain, and report related data or is it appropriate to use data that a small bank maintains in its own format or by sampling the bank's loan files?

Question 172. Would a tool to identify retail lending assessment areas based on reported data be useful?

I. Disclosure of HMDA Data by Race and Ethnicity

Currently, CRA performance evaluations include significant data on mortgage lending to low- and moderate-income borrowers and low- and moderate-income census tracts, including the number and percentage of loans made by the bank being evaluated. These data also compare the bank's lending to the aggregate lending in the assessment area, distributed by borrower income and geography, as well as the demographic make-up of the assessment area being evaluated. This is done on the basis of income only (low, moderate, middle, and upper). CRA performance evaluations do not currently report data on lending by race or ethnicity. However, for mortgage lending, race and ethnicity data are already collected and reported by most banks subject to the large bank CRA lending test through HMDA. These data are not included in any organized, easy-to-read format in the CRA performance evaluation.

The agencies propose to disclose in the CRA performance evaluation of a large bank the distribution of race and ethnicity of the bank's home mortgage loan originations and applications in each of the bank's facility-based assessment areas, and as applicable, in its retail lending assessment areas. Under the proposal, disclosure would be made for each year of the evaluation period using data currently reported under HMDA. The agencies would disclose the number and percentage of the bank's home mortgage loan

originations and applications by race and ethnicity and compare that data against the demographic data of the assessment area and the aggregate mortgage lending of all lenders in such area. The disclosure of race and ethnicity of the bank's home mortgage loan originations and applications on the bank's CRA performance evaluation would have no direct impact on the conclusions or ratings of the bank and would not constitute a lending analysis for the purpose of evaluating redlining risk factors as part of a fair lending examination. However, separate from this proposed disclosure, to the extent that analysis of HMDA reportable mortgage lending, along with additional data or information evaluated during a fair lending examination, leads the relevant agency to conclude that discrimination occurred, a bank's CRA rating may be affected (*see* proposed § __.28(d)).

The agencies believe that public disclosure of these data in each assessment area would increase the transparency of a bank's mortgage lending operations.

Request for Feedback

Question 173. Should the agencies disclose HMDA data by race and ethnicity in large bank CRA performance evaluations?

XX. Content and Availability of Public File, Public Notice by Banks, Publication of Planned Examination Schedule, and Public Engagement

The agencies recognize that transparency and public engagement are fundamental aspects of the CRA evaluation process and aim to reinforce these objectives in this rulemaking. In order to ensure that a bank's CRA performance evaluation and related information are more readily accessible to the public, the agencies propose allowing any bank with a public website to post its CRA public file there. The proposal also clarifies the agencies' treatment of public comments in connection with CRA examinations. The agencies are also proposing to create a process whereby the public can provide input on community credit needs and opportunities in specific geographic areas.

A. Public File

1. Current Content Required in Public File

Under the current CRA standards, a bank is required to maintain a public file that includes specific information on the bank's current business model, services, and most recent performance evaluation. The public file must include all written comments received from the public for the current year and each of the two prior calendar years that specifically relate to the bank's performance in helping to meet community credit needs, along with any responses by the bank.[289] The public file is also required to contain: A list of the bank's current branches, their street addresses, and geographies,[290] noting branches that have opened or closed during the evaluation period;[291] a list of retail products and services, and if a bank chooses, information regarding alternative delivery systems;[292] and a map of each of the bank's assessment areas.[293]

A bank, except a small bank or a bank that was a small bank in the prior calendar year, must include, when applicable, for each of the prior two calendar years: (i) The number and amount of consumer loans to low-, moderate-, middle- and upper-income individuals, located in low-, moderate-, middle- and upper-income census tracts; and located inside the bank's assessment areas and outside of the bank's assessment areas.[294] The bank must also include a copy of the CRA Disclosure Statement.[295] HMDA reporting institutions must include a statement in the public file that their HMDA data may be obtained on the CFPB's website.[296]

A small bank or a bank that was a small bank during the prior calendar year must include in its public file, (i) the bank's loan-to-deposit ratio for each quarter; and (ii) if it elects to be evaluated under other performance tests, any additional required information.[297]

A bank that received less than a ''Satisfactory'' rating during its most recent examination must include a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community, in its public file.[298] This description must be updated quarterly.

A bank may opt to add any other information to the public file.[299]

2. Proposed Clarification to Specific Requirements for Information in Public File

In general, the agencies propose to maintain the current requirements regarding information that banks are required to include in their public file, with additional clarification regarding specific requirements. The agencies propose using the term ''census tracts'' instead of the more general term ''geographies'' to specify the level of geography for information on current branches and branches that have been opened or closed during the current year and each of the prior two calendar years. The agencies also propose changes to the information that large banks would need to include in their public file.

Large banks would be required to include assessment area maps that include both their facility-based assessment areas and, when applicable, retail lending assessment areas that identify the census tracts contained within those areas. In addition, large banks that are subject to data reporting requirements described in § __.42 would be required to include in their public file a written notice that the bank's CRA Disclosure Statement pertaining to the bank, its operations subsidiaries, or operating subsidiaries, as applicable, and its other affiliates, if applicable, may be obtained on the FFIEC's website. The bank would be required to include the written notice in the public file within three business days of its receipt from the FFIEC.

A bank of any size that received less than a ''Satisfactory'' rating during its most recent examination would continue to be required to include a description of its current efforts to improve its performance in its public file. The agencies propose additional clarification specifying that the description would be required to be updated quarterly by March 31, June 30, September 30, and December 31, respectively.

3. Current Requirements for Location of Public Information

Under the current CRA regulations, a bank's entire public file must be available at its main office. If a bank operates in more than one state, it must keep a file at one branch office in each of these states. Members of the public may ask to inspect this file at any time during the bank's branch operating hours. Upon request, a bank branch must also provide for inspection, within five days, all of the information in the public file relating to the branch's assessment area. When requested, a

[289] 12 CFR __.43(a)(1).
[290] 12 CFR __.43(a)(3).
[291] 12 CFR __.43(a)(4).
[292] 12 CFR __.43(a)(5).
[293] 12 CFR __.43(a)(6).
[294] 12 CFR __.43(b)(1)(i).
[295] 12 CFR __.43(b)(1)(ii).
[296] 12 CFR __.43(b)(2).
[297] 12 CFR __.43(b)(3).
[298] 12 CFR __.43(b)(5).
[299] 12 CFR __.43(a)(7).

bank must also provide a paper copy of its public CRA file, and it is allowed to charge a reasonable fee to cover copying and mailing costs.

4. Proposed Approach for Location of Public Information

The agencies propose to make a bank's CRA public file more accessible by allowing any bank with a public website to include its CRA public file on the bank's public website. Banks would be allowed to retain their public file in digital form only and make paper copies available to the public upon request. Consequently, members of the public interested in the bank's performance in other communities served by the bank would be able to view the entire public file. If a bank does not maintain a public website, the proposal provides that the public file information would be required to be maintained at the main office and, if an interstate bank, at one branch office in each state. Furthermore, banks that do not maintain a public website would have to maintain, at each branch, a copy of the public section of the bank's most recent performance evaluation and a list of services provided by the branch.

This proposal would increase the ease of accessibility of a bank's public file for interested members of the public. A bank would still be required to provide, upon request, copies of its public file to members of the public, either in paper or in digital form, and may continue to charge a reasonable fee for copying and mailing costs. A bank would also continue to be required to ensure that its public file includes information from each of the three previous years, as is the case currently.

B. Public Notice by Banks

1. Current Approach for Public Notices

Currently, a bank must provide the appropriate public notice in the public lobby of its main office and each of its branches, as set forth in appendix B, that includes information about the availability of a bank's public file, the appropriate Federal banking agency's CRA examination schedule, and how a member of the public may provide public comment. A branch of a bank having more than one assessment area shall include certain content in the notice for branch offices. Only a bank that is an affiliate of a holding company, that is not prevented by statute from acquiring additional banks, shall include in the notice how the public can request information about applications covered by the CRA filed by the bank's holding company.

2. Proposed Approach for Public Notices

The agencies propose to continue to require a bank to provide in the public area of its main office and each of its branches the public notice that would be set forth in proposed appendix F. Only a branch of a bank having more than one facility-based assessment area would be required to include certain content in the notice for branch offices. Notices are not required for retail lending assessment areas. A bank that is an affiliate of a holding company, that is not prevented from acquiring additional banks, must include the last sentence of the notices.

C. Publication of Planned Examination Schedule

1. Current Approach for Publication of Planned Examination Schedule

Under the current regulations, the agencies publish at least 30 days in advance of the beginning of each calendar quarter a list of banks scheduled for CRA examinations in that quarter.

2. Proposed Approach for Publication of Planned Examination Schedule

The agencies propose to codify the current practice of publishing at least 60 days in advance of the beginning of each calendar quarter a list of banks scheduled for CRA examinations during the next two quarters. This additional notice to the public provides stakeholders more time to comment on a bank's CRA performance in advance of the examination.

Further, the agencies propose to codify the practice of forwarding all public comments received regarding a bank's CRA performance to the bank and may also publish the public comments on the appropriate Federal banking agency's public website. These public comments would be taken into account in connection with the bank's next scheduled CRA examination.

D. Public Engagement

1. Current Approach for Public Engagement

Currently, members of the public may submit comments to the agencies regarding a bank's CRA performance over the relevant evaluation period. Members of the public may also submit comments in connection with banking applications, including in connection with bank mergers and acquisitions.

2. Proposed Approach for Public Engagement

The agencies encourage communication between members of the public and banks, including through the submission of public comments regarding community credit needs and opportunities as well as a bank's record of helping to meet community credit needs. To advance this public engagement, the agencies intend to establish a way for the public to provide feedback on community credit needs and opportunities in specific geographies, as a complement to, but distinct from, feedback on individual bank performance. In addition, such an approach would be a complement to, not a substitute for, examiners seeking feedback on bank performance from members of a bank's community as part of the CRA evaluation.

Further, the agencies are considering whether it would be feasible, given the timing of data availability and data verification practices, for the agencies to publish certain retail lending and community development financing metrics and branch distribution information in advance of completing an examination to provide additional information to the public.

Request for Feedback

Question 174. Are there other ways the agencies could encourage public comments related to CRA examinations, including any suggested changes to proposed § __.46?

Question 175. Is there additional data the agencies should provide the public and what would that be?

Question 176. Should the agencies publish bank-related data, such as retail lending and community development financing metrics, in advance of an examination to provide additional information to the public?

Question 177. Should the agencies ask for public comment about community credit needs and opportunities in specific geographies?

XXI. Transition

The proposal would establish an effective date for the final rule the first day of the first calendar quarter that begins at least 60 days after publication in the **Federal Register**. The agencies also propose applicability dates for various provisions of the regulations which are applicable on, or over a period of time after, the effective date of the final rule.

The agencies believe varying applicability dates would provide banks with time to transition from the current regulations to the proposed regulations for: Collecting, maintaining, and reporting data; transitioning systems; and establishing policies and procedures necessary for the orderly

implementation of the proposed regulatory framework.

The agencies intend that, during the period between the final rule's effective date and the applicability dates in the final rule for certain provisions (transition period), the agencies' current CRA regulations will remain in effect for these provisions. The agencies would retain the authority to ensure an orderly transition between the two CRA frameworks and expect to issue guidance regarding the applicability of the relevant CRA framework during this time. The agencies also intend to include their current CRA regulations in agency-specific appendices of a final rule and to sunset these appendices as of the final applicability date, at which point all banks would need to be in compliance with all provisions of the final rule.

A. Applicability Dates for Certain Amendments

The agencies propose that the following provisions become applicable on the effective date of the rule: (i) Authority, purposes, and scope; (ii) facility-based assessment area delineation provisions; (iii) small bank performance standards; (iv) intermediate bank community development performance standards; (v) effect of CRA performance on applications; (vi) content and availability of public file; (vii) public notice by banks; (viii) publication of planned examination schedule; and (ix) public engagement. The agencies believe that setting an applicability date for these provisions on the rule's effective date is appropriate and would not present significant implementation burden to banks because only minor amendments are proposed to these sections of the agencies' current CRA regulations.

B. Applicability Dates for New Requirements

For other provisions, the agencies propose an applicability date of approximately 12 months after publication of a final rule for bank activities conducted on that date and forward.[300] These provisions include: (i) Definitions (except for the revised definitions related to small business loans and small farms loans);[301] (ii) community development definitions; (iii) qualifying activities confirmation and illustrative list of activities; (iv) retail lending assessment areas;[302] (v) areas for eligible community development activity; (vi) performance tests, standards, and ratings, in general (Retail Lending Test, Retail Services and Products Test, Community Development Financing Test, Community Development Services Test, Community Development Financing Test for Wholesale and Limited Purpose Banks, and Strategic Plans); (vii) data collection and certain data reporting requirements; and (viii) Impact Review of Community Development Activities.

Under this approach, banks would have a one-year transition period to prepare for the above provisions to go into effect. The agencies are cognizant that banks would need to adjust systems and train personnel to prepare for the implementation of a final CRA rule. Therefore, the agencies would set an applicability date that is appropriate based on the time of year a final rule is issued, including consideration of whether the beginning of a quarter or of a calendar year is appropriate.

For example, assume that a final rule that includes a 12-month transition period is published at the beginning of Year 1. Bank activity in Year 2 would fall under the new definitions and performance tests included in this proposal. In this example, a large bank's activities in Year 2 would be evaluated under the proposed Retail Lending Test, Retail Services and Products Test, Community Development Financing Test, and Community Development Services Test at the bank's next CRA examination (beginning in or after Year 3, as explained below). Also beginning in Year 2, large banks would be required to establish retail lending assessment areas, and bank activity in these areas would be evaluated at the bank's next CRA examination (beginning in or after Year 3, as explained below). In addition, banks would be expected to begin data collection and maintenance requirements for activities, as applicable, in Year 2.

C. Transition Date for the Definition of Small Business Loans and Small Farm Loans

The agencies propose transitioning from the current small business loan and small farm loan definitions based on the Call Report and instead leveraging the CFPB's proposed data collection on loans to businesses, including farms, with gross annual revenues of $5 million or less. In the short term, the small business loan definition, small farm loan definition, and the current data collection and reporting requirements and processes that banks are familiar with would remain the same.

The agencies propose an effective date for the proposed small business and small farm definitions to be on or after the CFPB would make effective its final rule implementing section 1071. Alternatively, the agencies are also considering a 12-month period to transition their small business and small farm definitions to the new CFPB definitions, once that rulemaking is finalized.

D. Transition Dates for Data Collection, Reporting, and Disclosure Requirements

Banks that would be required to collect new data under the proposal starting 12 months after publication of a final rule, would be required to report such data to the agencies by April 1 of the year following the first year of data collection. Thereafter, banks would be required to report collected data on an annual basis by April 1 of the year following the calendar year for which the data was collected. The agencies intend to eliminate the small business loan and small farm loan data collection and reporting requirements under the CRA regulations after the CFPB's section 1071 data collection and reporting requirements are in place. Likewise, the agencies' data disclosure requirements would become applicable the year following the first year of data collection.

The agencies believe that the applicability dates for these provisions would give banks sufficient time from the date the final rule would be published in the **Federal Register** to revise their systems for data collection and develop new procedures for implementation of the proposed regulatory framework.

E. Start Date for CRA Examinations Under the New Tests

The agencies propose starting CRA examinations pursuant to the proposed evaluation framework and new tests, in §§ __.22 through 28, beginning two years after publication of a final rule.

[300] Loans, investments, or services that were undertaken prior to the applicability date that were eligible for CRA consideration at the time would be considered at the subsequent CRA evaluation.

[301] As explained elsewhere in this proposal, the agencies would continue to maintain the current definitions related to small business loans and small farm loans until such time as the CFPB finalizes and implements its Section 1071 Rulemaking, and section 1071 data becomes available.

[302] As set forth in § __.17 of the proposed CRA regulation, a large bank would designate retail lending assessment areas in any single MSA or in all nonmetropolitan counties within a single state if it originated over 100 home mortgage loans or over 250 small business loans in each of the two preceding years in those geographic areas.

This approach would encompass banks evaluated under one or more of the following proposed tests: Retail Lending Test, Retail Services and Products Test, Community Development Financing Test, Community Development Services Test, and Community Development Financing Test for Wholesale and Limited Purpose Banks. CRA examinations conducted after this start date would evaluate the bank's activities conducted during the prior year (for which the proposal's requirements related to bank activities would already be effective, as described above). CRA examinations conducted immediately after this start date would be conducted using modified procedures until peer data and applicable benchmarks become available.

Likewise, the agencies' inclusion of HMDA demographic information in large banks' CRA performance evaluations would begin two years after publication of a final rule.

As described above in Section IX, until the data collected under CFPB's Section 1071 Rulemaking becomes available, the agencies propose that where small business lending or small farm lending qualifies as a major product line, the bank would be evaluated on its distribution of loans to businesses or farms with gross annual revenues of $1 million or less, rather than separately to those with gross annual revenues of $250,000 or less and more than $250,000 but less than or equal to $1 million. For these product lines, the agencies would calculate a single bank metric, market benchmark, and community benchmark corresponding to the percentage of the bank's loans to, the percentage of all reporter banks' loans to, and the percentage of local businesses or farms with gross annual revenues of less than $1 million.

Because small banks would, under the proposal, continue to be evaluated in the same manner as under the current CRA regulations, no start date is proposed in connection with the small bank performance standards. The agencies believe that this approach would be appropriate because no adjustments would be needed to the bank's systems, policies, or procedures, and no additional burden would be imposed, in order to comply with the proposed rule. Similarly, because intermediate banks would, under the proposal, continue to be evaluated under the current community development test for intermediate banks, no transition period is proposed in connection with this test. Small banks opting into the Retail Lending Test and intermediate banks opting into the Community Development Financing Test would have the same start date for CRA examinations as established for other banks evaluated under these tests.

F. Strategic Plans

The agencies propose that the strategic plan provisions in proposed § __.27 would be applicable 12 months after publication of a final rule. As a result, a bank seeking approval to be evaluated under a strategic plan after this date would submit its plan to its appropriate Federal banking agency for approval consistent with the new requirements for strategic plans under the agencies' proposed CRA regulations. The agencies also propose that the strategic plan provisions of the CRA regulations in effect one day before publication of a final rule (*i.e.,* the agencies' current CRA regulations) would apply to any new strategic plan, including any plan that replaces an expired strategic plan, submitted for approval during the transition period between the date of publication of a final rule and before the applicability date of the proposed strategic plan provisions. A plan submitted during this transition period would remain in effect until the expiration date of the approved plan. Banks that submit for approval a new strategic plan or one that replaces an existing plan between the date on which a final rule is published and the date 12 months after that publication date may submit their plans consistent with the requirements for strategic plans under the agencies' current CRA regulations. Such a plan would remain in effect until the expiration date of the plan.

Further, the Board and the FDIC propose that a strategic plan in effect as of the publication date of a final rule would remain in effect until the expiration date of that plan. The OCC proposes that a strategic plan in effect as of the publication date of a final rule remains in effect until the expiration date of the plan, except for provisions that were not permissible under its CRA regulations as of January 1, 2022. The OCC's CRA regulations require this additional provision because the OCC may have approved some existing strategic plans under the OCC 2020 CRA final rule, which allowed strategic plan provisions that differ from the current CRA regulations. This additional provision is identical to the language included in the OCC's final rule rescinding the OCC 2020 CRA final rule.

Request for Feedback

Question 178. The agencies ask for comment on the proposed effective date and the applicability dates for the various provisions of the proposed rule, including on the proposed start date for CRA examinations under the new tests.

Question 179. Would it be better to tie the timing of a change to the proposed small business and small farm definitions to when the CFPB finalizes its Section 1071 Rulemaking or to provide an additional 12 months after the CFPB finalizes its proposed rule? What are the advantages and disadvantages of each option?

Question 180. When should the agencies sunset the agencies' small business loan and small farm loan definitions?

XXII. Regulatory Analysis

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), requires an agency to consider the impact of its proposed rules on small entities. In connection with a proposed rule, the RFA generally requires an agency to prepare an Initial Regulatory Flexibility Analysis (IRFA) describing the impact of the rule on small entities, unless the head of the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities and publishes such certification along with a statement providing the factual basis for such certification in the **Federal Register**. An IRFA must contain: (i) A description of the reasons why action by the agency is being considered; (ii) a succinct statement of the objectives of, and legal basis for, the proposed rule; (iii) a description of, and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; (iv) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; (v) an identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap with, or conflict with the proposed rule; and (vi) a description of any significant alternatives to the proposed rule that accomplish its stated objectives.

1. OCC

The OCC currently supervises 1,103 institutions (commercial banks, trust companies, Federal savings associations, and branches or agencies of foreign banks),[303] of which

[303] Based on data accessed using FINDRS on February 21, 2022.

approximately 655 are small entities under the RFA.[304] The OCC estimates that the proposed rule would impact approximately 636 of these small entities. Among these 636 small entities, four are limited purpose banks, two are wholesale banks, and three are evaluated based on an OCC-approved strategic plan.

The OCC reviews the costs associated with the activities necessary to comply with requirements in a proposed rule to estimate expenditures by entities subject to the rule.[305] In doing so, the OCC estimates the total time required to implement the proposed rule and the hourly wage of bank employees who may be responsible for the tasks associated with achieving compliance with the proposed rule. For OCC cost estimates, the OCC uses a compensation rate of $114 per hour.[306]

Because the proposal maintains the current small bank evaluation process and the small bank performance standards, the proposal would not impose any new requirements on OCC-supervised small entities with less than $600 million in assets. However, the OCC believes that these small entities would need to review the proposed rule and ensure their policies and procedures are compliant. The OCC estimates the annual cost for small entities to conduct this review would be approximately $4,560 dollars per bank (40 hours × $114 per hour). For supervised small entities that are defined as intermediate banks under the proposal, *i.e.,* banks with assets between $600 million and $750 million, the proposal would add some additional compliance burden because these banks would be subject to the new Retail Lending Test, but these banks would not be subject to regulatory data collection and maintenance requirements for retail loans. Therefore, the OCC estimates the annual cost for these banks for this additional compliance burden (plus the cost of reviewing the proposed rule and ensuring that policies and procedures are compliant) would be approximately $9,120 (80 hours × $114 per hour).

In general, the OCC classifies the economic impact on a small entity as significant if the total estimated impact in one year is greater than 5 percent of the small entity's total annual salaries and benefits or greater than 2.5 percent of the small entity's total non-interest expense. Based on these thresholds, the OCC estimates the proposed rule would have a significant economic impact on approximately zero entities, which is not a substantial number. Therefore, the OCC certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

2. Board

The Board is providing an IRFA with respect to the proposed rule. For the reasons described below, the Board believes that the proposal would not have a significant economic impact on a substantial number of small entities. The Board invites public comment on all aspects of its IRFA.

a. Reasons Action Is Being Considered

The agencies are proposing changes to update and clarify their CRA regulations, which establish the framework and criteria by which the agencies assess a bank's record of helping to meet the credit needs of its community, including low- and moderate-income neighborhoods, consistent with safe and sound operations. Additional discussion of the rationale for the proposal is provided in the introductory paragraphs to, as well as throughout, the **SUPPLEMENTARY INFORMATION.**

b. Objectives of the Proposed Rule

The CRA vests the agencies with broad authority to promulgate regulations to carry out the purposes of the CRA with respect to the institutions that each agency supervises.[307] The proposed changes to the agencies' CRA regulations are guided by the specific objectives laid out in the introductory paragraphs of the **SUPPLEMENTARY INFORMATION.**

c. Description and Estimate of the Number of Small Entities

Board-supervised institutions that would be subject to the proposed rule are state member banks (as defined in section 3(d)(2) of the Federal Deposit Insurance Act of 1991), and uninsured state branches of a foreign bank (other than limited branches) resulting from certain acquisitions under the International Banking Act, unless such bank does not perform commercial or retail banking services by granting credit to the public in the ordinary course of business.

The SBA has adopted size standards providing that depository institutions with average assets of less than $750 million over the preceding year (based on the institution's four quarterly Call Reports) are considered small entities.[308] The Board estimates that approximately 450 Board-supervised small entities would be subject to the proposed rule.[309] Of these, approximately 420 would be considered small banks under the proposal, and approximately 30 would be considered intermediate banks under the proposal. The proposal would define ''small bank'' to mean a bank that had average assets of less than $600 million in either of the prior two calendar years, and would define ''intermediate bank'' to mean a bank that had average assets of at least $600 million in both of the prior two calendar years and average assets of less than $2 billion in either of the prior two calendar years, in each case based on the assets reported on its four quarterly Call Reports for each of those calendar years.[310]

d. Estimating Compliance Requirements

The proposal includes a new evaluation framework for evaluating the CRA performance of banks that is tailored by bank size and business model. For example, the agencies propose an evaluation framework that

[304] The OCC bases its estimate of the number of small entities on the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $750 million and $41.5 million, respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining if the OCC should classify an OCC-supervised institution as a small entity. The OCC uses December 31, 2021, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* footnote 8 of the U.S. SBA's Table of Size Standards.

[305] The OCC uses broad categories to capture expenditures. The OCC does not attempt to separately identify the costs associated with each requirement.

[306] To estimate wages the OCC reviewed May 2020 data for wages (by industry and occupation) from the U.S. Bureau of Labor Statistics (BLS) for credit intermediation and related activities (NAICS 5220A1). To estimate compensation costs associated with the rule the OCC uses $114.17 per hour, which is based on the average of the 90th percentile for six occupations adjusted for inflation (2 percent as of Q1 2021), plus an additional 33.4 percent for benefits (based on the percent of total compensation allocated to benefits as of Q4 2020 for NAICS 522: Credit intermediation and related activities).

[307] 12 U.S.C. 2905.

[308] 87 FR 18627, 18630 (Mar. 31, 2022) (NAICS codes 522110–522190). Consistent with the General Principles of Affiliation in 13 CFR 121.103, the assets of all domestic and foreign affiliates are counted toward the $750 million threshold when determining whether to classify a depository institution as a small entity.

[309] The Board's estimate is based on total assets reported on Forms FR Y–9 (Consolidated Financial Statements for Holding Companies) and FFIEC 041 (Consolidated Reports of Condition and Income) for 2021.

[310] By comparison, the agencies' current regulations define ''small bank'' to mean a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $346 million and define ''intermediate small bank'' to mean a bank with assets of at least $346 million as of December 31 of both of the prior two calendar years and less than $1.384 billion as of December 31 of either of the prior two calendar years.

would establish the following four tests for large retail banks: Retail Lending Test, Retail Services and Products Test, Community Development Financing Test, and Community Development Services Test. In addition to the new CRA evaluation framework, the proposal includes data collection, maintenance, and reporting requirements necessary to facilitate the application of various tests. A detailed summary of the proposal's requirements is provided in Sections III through XX of the **SUPPLEMENTARY INFORMATION**.

With respect to the impact of the proposal on small banks and intermediate banks, the Board distinguishes between: (i) Proposed requirements that are mandatory for small banks or intermediate banks or that apply to these banks by default, and (ii) proposed provisions that are voluntary for small banks or intermediate banks or that apply at these banks' election.

Mandatory or default requirements. Under the proposal, small banks would by default be evaluated under the small bank performance standards in § __.29, which evaluates a small bank's performance in helping to meet the credit needs of its facility-based assessment areas. These small bank performance standards are substantially the same as the small bank performance standards in the agencies' current CRA regulations.

Intermediate banks would by default be evaluated under the Retail Lending Test in § __.22 and the community development performance standards in § __.29(b)(2). The Retail Lending Test would evaluate an intermediate bank's record of helping to meet the credit needs of its facility-based assessment areas through the bank's origination and purchase of retail loans in each facility-based assessment area (and, as applicable, in its outside retail lending area).[311] The community development performance standards in § __.29(b)(2) would be used to evaluate an intermediate bank's community development performance. These community development performance standards are substantially the same as the criteria for evaluating an intermediate small bank under the community development test in the agencies' current CRA regulations.

In addition, both small banks and intermediate banks would be required to maintain a public file as provided in § __.43. The proposed public file requirements that are mandatory for small banks and intermediate banks are substantially the same as the public file requirements that are mandatory for small banks and intermediate small banks under the agencies' current CRA regulations. As under the current CRA regulations, small banks and intermediate banks would generally be exempt by default from the data collection, maintenance, and reporting requirements of § __.42 of the proposal.

Voluntary or elective provisions.[312] A small bank that does not wish to be evaluated under the small bank performance standards may elect to be evaluated pursuant to the proposed Retail Lending Test. Similarly, under the proposal, a small bank may voluntarily request additional consideration for activities that would qualify for consideration under the proposed Retail Services and Products Test, Community Development Financing Test, or Community Development Services Test. In general, even where a small bank opts to be evaluated under one or more of these alternative tests, it would not be required to comply with the corresponding data collection, maintenance, and reporting requirements that are applicable to large banks under the proposal, as described in detail in Section XIX of the **SUPPLEMENTARY INFORMATION**.

An intermediate bank that does not wish to be evaluated under the community development performance standards in § __.29(b)(2) may elect to be evaluated pursuant to the Community Development Financing Test. The Community Development Financing Test would evaluate an intermediate bank's record of helping to meet the community development financing needs of the bank's facility-based assessment areas, states, multistate MSAs, and nationwide area, through its provision of community development loans and community development investments. Where an intermediate bank elects to be evaluated under the Community Development Financing Test, the intermediate bank would be required to collect and maintain the loan and investment data specified in § __.42(a)(5)(ii). If an intermediate bank elects to be evaluated under the Community Development Financing Test, the intermediate bank may voluntarily request additional consideration for activities that would qualify for consideration under the proposed Retail Services and Products Test or Community Development Services Test. In general, where an intermediate bank requests additional consideration for activities that would qualify for consideration under the proposed Retail Services and Products Test or Community Development Services test, the intermediate bank would not be required to comply with the corresponding data collection, maintenance and reporting requirements that are applicable to large banks under the proposal, as described in detail in Section XIX of the **SUPPLEMENTARY INFORMATION**.

The agencies' current CRA regulations similarly allow small banks and intermediate small banks to voluntarily opt into one or more alternative tests in lieu of the mandatory or default requirements. However, based on the Board's supervisory experience with its current CRA regulation, few small banks or intermediate small banks choose to be evaluated under alternative tests, and the Board expects that this would continue to be the case under the proposal.

For the reasons described above, the Board does not believe that the proposed rule would have a significant economic impact on a substantial number of small entities.

e. Duplicative, Overlapping, and Conflicting Rules

The Board is not aware of any Federal rules that may duplicate, overlap with, or conflict with the proposed rule.

f. Significant Alternatives Considered

In developing the proposal, one important goal of the agencies was to tailor standards for bank size and business models and minimize data collection and reporting burden. Consistent with this goal, under the proposal, small entities subject to the proposal would generally continue to be evaluated in the same manner as under the agencies' current CRA regulations. In addition, the proposal would not impose new mandatory data collection, maintenance, and reporting requirements on small banks or

[311] Although the proposed Retail Lending Test represents a significant change from the lending test applicable to intermediate small banks in the agencies' current regulations, intermediate banks would not need to collect, maintain, or report data to facilitate the application of this test. Rather, as under the current regulations, examiners would continue to use information gathered from individual loan files or maintained on an intermediate bank's internal operating systems for purposes of the Retail Lending Test.

[312] In addition to the voluntary or elective provisions described herein, a small bank or intermediate bank may elect to be evaluated under a strategic plan, as under the agencies' current regulations. Additionally, any eligible bank may request to be designated as a wholesale or limited purpose bank. Under the proposal, a wholesale or limited purpose bank would be evaluated under the Community Development Financing Test for Wholesale or Limited Purpose Banks, which is similar to the community development test for wholesale or limited purpose banks under the agencies' current CRA regulations.

intermediate banks. The agencies did not consider an alternative to the proposal that would impose new compliance requirements on small entities subject to the proposal.

3. FDIC

The SBA has defined ''small entities'' to include banking organizations with total assets less than or equal to $750 million.[313] The proposed rule seeks to establish a definition of ''small'' insured depository institution as one with average assets of less than $600 million in either of the prior two calendar years, based on the assets reported on its four quarterly Call Reports for each of those calendar years. The agencies, including the FDIC, are in the process of seeking approval from the SBA to use the proposed $600 million threshold, adjusted annually for inflation, rather than the SBA's recently updated size standards, which include a $750 million threshold for small banks. In requesting this approval, the agencies believe that it is appropriate to evaluate banks with assets of between $600 million and $750 million under the proposed intermediate banks standards. While the FDIC undergoes that approval process it will employ the SBA's existing $750 million size standard in its Regulatory Flexibility Act compliance activities. Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-insured institutions. The FDIC does not believe that the proposed rule, if adopted, would have a significant economic effect on a substantial number of small entities. However, some expected effects of the proposed rule are difficult to assess or accurately quantify given current information, therefore the FDIC has included an IRFA in this section.

a. Reasons Why This Action Is Being Considered

Over the past two decades, technology and the expansion of interstate banking has transformed the financial services industry and how banking services are delivered and consumed. These changes affect all banks, regardless of size or location, and are most evident in banks that have a limited physical presence or that rely heavily on technology to deliver their products and services. As banking has evolved, banks' communities are not solely identifiable by the areas that surround their physical locations. The Federal banking agencies have also gained a greater understanding of communities' needs for lending and investment, such as the need for community development investments and loans with maturities longer than the typical CRA evaluation period. The current CRA regulatory framework has not kept pace with the transformation of banking and has had the unintended consequence of incentivizing banks to limit some of their community development loans to the length of a CRA evaluation period.

b. Policy Objectives

As previously discussed in the introductory paragraphs to, as well as in Sections I and II of, the **SUPPLEMENTARY INFORMATION**, in response to feedback, the agencies propose to strengthen the CRA regulatory framework to better achieve the underlying statutory purpose of encouraging banks to help serve the credit needs of their communities by making the CRA framework more objective, transparent, consistent, and easy to understand. To accomplish these goals, the proposal would: Clarify which activities qualify for CRA credit; update where activities count for CRA credit; create a more transparent and objective method for measuring CRA performance; and provide for more transparent, consistent, and timely CRA-related data collection, recordkeeping, and reporting. Revisions that reflect these objectives would provide clarity and visibility for all stakeholders on how a bank's CRA performance is evaluated and the level of CRA activities banks conduct. These changes also would encourage banks to serve their entire communities, including low- and moderate-income neighborhoods, more effectively through a broader range of CRA activities.

c. Legal Basis

The FDIC is issuing this proposed rule under the authorities granted to it under the Community Reinvestment Act of 1977. For a discussion of the legal basis of the proposed rule, please refer to Section I of the **SUPPLEMENTARY INFORMATION** of this proposed rule.

d. Description of the Rule

As previously discussed, the proposed rule, if adopted, would make the CRA regulatory framework more transparent and objective, and help ensure that all relevant compliance activities are considered and that the scope of the performance evaluation more accurately reflects the communities served by each institution. For a more extensive discussion of the proposed rule, please refer to Section II of the **SUPPLEMENTARY INFORMATION** of this proposed rule.

e. Small Entities Affected

The FDIC supervises 3,128 depository institutions, of which 2,355 are identified as small institutions by the terms of the RFA.[314] The proposed rule would affect all FDIC-supervised institutions, therefore the FDIC estimates that the proposed rule would affect 2,355 small, FDIC-supervised institutions. The proposed rule, if adopted, would make the CRA regulatory framework more transparent and objective, and help ensure that all relevant compliance activities are considered and that the scope of the compliance evaluation more accurately reflects the communities served by each institution. The proposed rule would impact four different groups of small, FDIC-supervised institutions: Small banks, intermediate banks, small banks designated as wholesale or limited purpose, and small banks examined under a strategic plan. Of the 2,355 small, FDIC-supervised institutions, 2,289 would meet the criteria for designation as a small bank, 52 would meet the criteria for designation as an intermediate bank, while four would meet the definition of wholesale or limited purpose institutions. Finally, 10 small, FDIC-supervised institutions have elected to use strategic plans.

Wholesale or limited purpose banks are subject to the combined community development test under the current CRA regulations, and would be subject to the Community Development Financing Test for Wholesale or Limited Purpose Banks under the proposed rule, if adopted. As previously discussed, the combined community development test is generally similar to the proposed Community Development Financing

[313] The SBA defines a small banking organization as having $600 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* 13 CFR 121.201 (as amended by 84 FR 34261, effective Aug. 19, 2019). In its determination, the ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' *See* 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

[314] Call Report, Sept. 30, 2021. Nine insured domestic branches of foreign banks are excluded from the count of FDIC-insured depository institutions. These branches of foreign banks are not ''small entities'' for purposes of the RFA.

Test for Wholesale or Limited Purpose Banks, and therefore the FDIC does not believe that the proposed rule would substantively affect these four entities.

As previously discussed, banks evaluated pursuant to an approved strategic plan are generally subject to similar recordkeeping, reporting and disclosure requirements under the current and proposed CRA regulations. However, the proposed rule is expected to change the way in which Strategic Plan banks are evaluated and therefore could pose some substantive effects. But, with the proposed rule the agencies seek to establish CRA evaluation metrics and goals that are responsive to the characteristics of the institutions to which they are applied. Therefore, the FDIC does not believe that the proposed rule would substantively affect these 10 small, FDIC-supervised institutions who have currently elected to be evaluated under strategic plans because their metrics and goals would appropriately reflect their breadth of activities for institutions of a smaller size.

Of the 2,355 small, FDIC-supervised institutions, 447 (19.0 percent) that are not wholesale, limited purpose, or strategic plan banks reported total assets of at least $346 million on both the December 31, 2021 and December 31, 2020 Call Reports, and reported less than $600 million in average assets for the four quarters of 2020 or the four quarters of 2021. Additionally, 52 (2.2 percent) small, FDIC-supervised institutions reported average assets of at least $600 million as of December 31 for both of the prior two calendar years and less than $750 million in affiliated and acquired assets, averaged over the preceding four quarters ending December 31, 2021. Therefore, the FDIC estimates that the proposed rule would most directly affect 447 small, FDIC-supervised institutions that are currently subject to the intermediate small bank performance standards but would be subject to the small bank performance standards of the proposed rule, and 52 small, FDIC-supervised institutions that are currently subject to the intermediate small bank performance standards but would be subject to the intermediate bank performance standards of the proposed rule. Apart from these 447 proposed small banks, 52 proposed intermediate banks and the 14 wholesale, limited purpose, and strategic plan banks, the remainder of the 2,355 small, FDIC-supervised institutions would be subject to the proposed small bank performance standards, just as they are subject to the standards applicable to the smallest institutions under the current regulation. As discussed in the **SUPPLEMENTARY INFORMATION** and below, the FDIC believes the proposed small bank performance standards are substantively similar to the current standards.

f. Expected Effects

If the proposed rule was adopted, small banks generally would see no change in their exam elements. Small banks are presently evaluated under the small bank performance standards,[315] which are substantively similar to the proposed small bank performance standards.[316] Small banks would have the option of being evaluated under the new Retail Lending Test, so there is the possibility that small banks could experience changes in compliance requirements related to the proposed rule. However, as small bank participation is voluntary in the investments and services elements of the current regulation, and the Retail Lending Test of the proposed rule, any changes resulting from these aspects of the proposed rule would likely not be disadvantageous or costly to small institutions.

If the proposed rule were adopted, small, FDIC-supervised institutions presently classified as intermediate small banks, but who would be classified as intermediate banks, could experience some change in their exam elements. Intermediate small banks are currently evaluated under a lending test[317] and a community development test,[318] which assesses community development loans, qualified investments, and community development services together. If adopted, the proposed rule would evaluate Intermediate banks under the proposed Retail Lending Test, with certain provisions tailored to intermediate banks, and the *status quo* community development test, unless they choose to opt into the Community Development Financing Test. The proposed Retail Lending Test is intended to make a bank's retail lending evaluation more transparent and predictable by specifying quantitative standards for lending consistent with achieving, for example, a ''Low Satisfactory'' or ''Outstanding'' conclusion in an assessment area. The proposed rule would limit the evaluation of an intermediate bank's retail lending performance to areas outside of its facility-based assessment areas only if it does more than 50 percent of its lending outside of its facility-based assessment areas. Intermediate banks would have the option of being evaluated under the new Community Development Financing Test, so there is the possibility that intermediate banks could experience changes in compliance requirements related to the proposed rule. However, since it is an intermediate bank's choice to participate in the Community Development Financing Test of the proposed rule or continue to be evaluated under the current intermediate small bank community development test as described in § __ .29, any changes resulting from these aspects of the proposed rule are likely not to be disadvantageous or costly to intermediate institutions.

The proposed rule would decrease compliance requirements for 447 small, FDIC-supervised institutions by making them subject to the small bank performance standards rather than the intermediate bank performance standards. Small banks that are also intermediate small banks are presently evaluated under the small bank performance standards and the community development test.[319] Under the proposed rule, 447 small, FDIC-supervised institutions would be newly classified as small banks, and therefore would no longer be subject to the community development test.

Small, FDIC-supervised institutions are unlikely to experience substantive changes to the regulatory costs of compliance with the CRA regulations as amended by the proposed rule. Under the proposed rule, as under the current CRA regulations, small and intermediate banks would generally be exempt from the data collection, reporting, and disclosure requirements of § __.42 of the proposal.

The proposed rule's publicly available list of examples of qualifying activities would benefit small, FDIC-supervised institutions by establishing a reference for qualifying activities. The proposal would establish an optional process through which FDIC-insured institutions can seek confirmation of a particular activity and have it added to the list. Institutions that seek to do this could incur some costs, but the FDIC believes that small, FDIC-supervised institutions would only incur such costs if they believe that the benefits outweigh the costs.

The proposed amendments to the CRA examination criteria and methods could result in changes to the ratings. Some small, FDIC-supervised institutions may experience changes in their CRA examination ratings, while

[315] 12 CFR 345.26(a)(1).

[316] 12 CFR 345.29(a) of the proposed regulations.

[317] 12 CFR __.26(b).

[318] 12 CFR __.26(c).

[319] 12 CFR 345.26(b) and 12 CFR 345.26(c).

others may experience no change. Further, such potential changes could cause some small, FDIC-supervised institutions to incur costs associated with making changes to their CRA policies and procedures. The FDIC does not currently have access to information that would enable it to estimate these effects of the proposed rule. However, as previously discussed, small banks generally would see no change in their exam elements. Additionally, participation by small banks in the Retail Lending Test is voluntary, and therefore the FDIC believes that any associated changes to CRA examination ratings for small banks are not likely to be substantial.

To the extent that the proposed rule, if adopted, affected the ratings that small, FDIC-supervised institutions receive from a CRA examination, it could affect their ability to accomplish other activities. Under current regulation and guidance, an institution's CRA examination rating is an element considered if an institution applies to establish a new domestic branch or other deposit-taking facility, exercise Trust Powers, or merge with or acquire another institution.[320] The FDIC does not have the information necessary to estimate such effects, if any, on insured institutions.

g. Other Statutes and Federal Rules

The FDIC has not identified any likely duplication, overlap, and/or potential conflict between this proposed rule and any other Federal rule.

h. Alternatives Considered

The FDIC is proposing revisions to the CRA to advance the objectives discussed above. The FDIC considered the status quo alternative of not revising the existing CRA regulations. However, for reasons stated previously the FDIC considers the proposed rule to be a more appropriate alternative.

The FDIC also considered alternatives to the asset size thresholds that delineate small, intermediate, and large banks. For example, as previously discussed, the agencies are in the process of seeking approval from the SBA to use the proposed $600 million threshold, adjusted annually for inflation, rather than the SBA's recently updated size standards, which include a $750 million threshold for small banks. In requesting this approval, the agencies believe that it is appropriate to evaluate banks with assets of between $600 million and $750 million under the proposed intermediate bank standards, and that these banks have the capacity to conduct community development activities, as would be a required component of the evaluation for intermediate, but not small banks. Additionally, the agencies considered increasing the large bank asset threshold beyond the proposed $2 billion level, but decided it would remove a greater share of banks that play a significant role in fulfilling low- and moderate-income credit needs in local areas from the more comprehensive evaluation included in the proposed large bank evaluation approach.

The FDIC invites comments on all aspects of the supporting information provided in this section, and in particular, whether the proposed rule would have any significant effects on small entities that the FDIC has not identified.

OCC Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (2 U.S.C. 1532) requires that the OCC prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by state, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation, currently $165 million) in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act (2 U.S.C. 1535) also requires the OCC to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

We estimate that expenditures to comply with mandates during the first 12-month period of the proposed rule's implementation would be approximately $42.8 million. Therefore, we conclude that the proposed rule would not result in an expenditure of $165 million or more annually by state, local, and tribal governments, or by the private sector. Accordingly, the OCC has not prepared the written statement described in section 202 of the UMRA.

Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA), 12 U.S.C. 4802(a), in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, the agencies will consider, consistent with principles of safety and soundness and the public interest: (i) Any administrative burdens that the proposed rule would place on depository institutions, including small depository institutions and customers of depository institutions; and (ii) the benefits of the proposed rule. The agencies request comment on any administrative burdens that the proposed rule would place on depository institutions, including small depository institutions, and their customers, and the benefits of the proposed rule that the agencies should consider in determining the effective date and administrative compliance requirements for a final rule.

Paperwork Reduction Act

Certain provisions of the proposed rule contain ''collections of information'' within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 through 3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The information collections contained in the proposed rule have been submitted to OMB for review and approval by the OCC and FDIC under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of OMB's implementing regulations (5 CFR part 1320). The Board reviewed the proposed rule under the authority delegated to the Board by OMB. The agencies are proposing to extend for three years, with revision, these information collections.

Title of Information Collection: OCC Community Reinvestment Act; Board Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation BB; FDIC, Community Reinvestment Act.

OMB Control Numbers: OCC 1557–0160; Board 7100–0197; FDIC 3064–0092.

Frequency of Response: On occasion.

Affected Public: Businesses or other for-profit.

Respondents:

OCC: National banks, Federal savings associations, Federal branches and agencies.

FDIC: All insured state nonmember banks, insured state-licensed branches of foreign banks, insured state savings associations, and bank service providers.

Board: All state member banks (as defined in 12 CFR 208.2(g)), bank holding companies (as defined in 12 U.S.C. 1841), savings and loan holding companies (as defined in 12 U.S.C. 1467a), foreign banking organizations (as defined in 12 CFR 211.21(o)), foreign

[320] 12 CFR 345.29(a).

banks that do not operate an insured branch, state branch or state agency of a foreign bank (as defined in 12 U.S.C. 3101(11) and (12)), Edge or agreement corporations (as defined in 12 CFR 211.1(c)(2) and (3)), and bank service providers.

The information collection requirements in the proposed rule are as follows:

§ __.26 Wholesale and limited purpose banks. Banks requesting a designation as either a wholesale bank or limited purpose bank would be required to file a request in writing with the appropriate Federal banking agency at least 3 months prior to the proposed effective date of the designation.

§ __.27 Strategic plan. Banks could submit a strategic plan to the appropriate Federal banking agency for approval. Requirements regarding the content of such a plan are set forth in § __.27 of the proposed rule. The appropriate Federal banking agency would assess a bank's record of helping to meet the credit needs of its facility-based assessment areas, and, as applicable, its retail assessment areas, and geographic areas served at the institution level under its strategic plan if the plan has been properly submitted, been approved, is in effect, and in operation for a minimum of one year. The proposal specifies requirements for the term of a strategic plan, the treatment of multiple assessment areas, the treatment of operations subsidiaries or operating subsidiaries, as applicable, and affiliates, public participation, submission, content, and amendment. Additionally, during the term of a plan, a bank could request that the appropriate Federal banking agency approve an amendment to the plan in the absence of a change in material circumstances. A bank that requests such an amendment would be required to provide an explanation regarding why it is necessary and appropriate to amend its plan goals.

§ __.42(a)(1) Small business and small farm loans data. A bank, except a small bank or an intermediate bank, would be required to collect and maintain in prescribed machine readable form, until the completion of its next CRA examination, data on small business and small farm loans originated or purchased by the bank during the evaluation period.

§ __.42(a)(2) Consumer loans data—automobile loans. A bank with assets of over $10 billion would be required to collect and maintain in prescribed machine readable form, until the completion of its next CRA examination, data for automobile loans originated or purchased by the bank during the evaluation period.

§ __.42(a)(4) Retail services and products data. A large bank would be required to collect and maintain data in a machine readable form until the completion of its next CRA examination. These data include information regarding branches and remote service facilities, and information with respect to retail services and products offered and provided by the bank during the evaluation period. Large banks with assets of over $10 billion, or large banks with assets of $10 billion or less that requests additional consideration for digital and other delivery systems, must collect and maintain data on the range of services and products offered through digital and other delivery systems and digital activity by individuals in low, moderate, middle, and upper-income census tracts. Large banks with assets of over $10 billion, or large banks with assets of $10 billion or less, that request additional consideration for responsive deposit products, must collect and maintain data including the number of deposit products opened and closed by individuals in low-, moderate-, middle-, and upper-income census tracts.

§ __.42(a)(5) Community development loans and community development investments data. A bank, except a small or an intermediate bank, would be required to collect and maintain the following data for community development loans and community development investments originated or purchased by the bank: general information on the loan or investment; community development loan or investment activity information; the indicators of the impact of the activity as applicable; location information; other information relevant to determining that an activity meets the standards under community development; and allocation of dollar value of the activity to counties served by the community development activity, if available. Large banks would be required to collect and maintain this information in prescribed machine readable form. An intermediate bank that opts to be evaluated under the Community Development Financing Test, would be required to collect and maintain this information in the format used by the bank in the normal course of business. Both of these types of banks would be required to maintain this data until completion of its next CRA examination. These banks would be required to collect and maintain, on an annual basis, data for loans and investments originated or purchased during the evaluation period. Likewise, these banks would be required to collect and maintain data on community development loans and investments from prior years that are held on the bank's balance sheet at the end of each quarter.

§ .42(a)(6) Community development services data. A large bank with assets of over $10 billion would be required to collect and maintain in prescribed machine readable form until the completion of its next CRA examination, community development services data including bank information, community development services activity information, and location information.

§ __.42(a)(7) Deposits data. A large bank that had assets of over $10 billion would be required to collect and maintain annually in prescribed machine readable form until the completion of its next CRA examination, the dollar amount of its deposits at the county level, based upon the address associated with the individual account (except for account types where an address is not available), calculated based on average daily balances as provided in statements such as monthly or quarterly statements. A large bank with assets of $10 billion or less that opts to collect and maintain deposits data would be required to do so in machine readable form, until completion of the bank's next CRA examination.

§ __.42(b)(1) Small business and small farm loan data. A bank, except a small or intermediate bank, would be required to report annually by April 1 in prescribed machine readable form, certain aggregate data for small business or small farm loans for each census tract in which the bank originated or purchased such loans.

§ __.42(b)(2) Consumer loans—automobile loans data. A bank with assets of over $10 billion would be required to report annually by April 1, in prescribed machine readable form, the aggregate number and amount of automobile loans and the number and amount of those loans made to low- and moderate-income borrowers for each census tract in which they originated or purchased such loans.

§ __.42(b)(3) Community development loan and community development investment data. A bank, except a small or an intermediate bank, would be required to report annually by April 1 the following community development loan and community development investment data: general information on loans and investments; community development loan or investment activity information; indicators of the impact of the activity;

location information; other information relevant to determining that an activity meets the standards under community development; and allocation of dollar value of activity to counties served by the community development activity (if available).

§ __.42(b)(4) Community development services data. A large bank with assets of over $10 billion would be required to report annually by April 1, community development services data including bank information.

§ __.42(b)(5) Deposits data. A large bank with assets of over $10 billion would be required to report annually by April 1 in prescribed machine readable form the deposits data for the previous calendar year including for each county, state, and multistate MSA and for the institution overall. The reporting would include the average annual deposit balances (calculated based on average daily balances as provided in statements such as monthly or quarterly statements, as applicable), in aggregate, of deposit accounts with associated addresses located in such county, state or multistate MSA where available, and for the institution overall.

§ __.42(c) Data on operations subsidiaries or operating subsidiaries. To the extent that their operations subsidiaries, or operating subsidiaries, as applicable, engage in retail lending, retail services, community development financing, or community development services activities, a bank would be required to collect, maintain, and report these activities for purposes of evaluating the bank's performance. For home mortgage loans, a bank would need to be prepared to identify the loans reported by the operations subsidiary, or operating subsidiary, under 12 CFR part 1003, if applicable, or collect and maintain home mortgage loans by the operations subsidiary that the bank would have collected and maintained under § _.42(a)(3) had the loans been originated or purchased by the bank.

§ __.42(d) Data on other affiliates. A bank that elects to have loans by an affiliate considered for purposes of this part would be required to collect, maintain, and report the lending and investments data they would have collected, maintained, and reported under § __.42(a) or (b) had the loans or investments been originated or purchased by the bank. For home mortgage loans, it would also need to identify the home mortgage loans reported by its affiliate under 12 CFR part 1003, if applicable, or collect and maintain home mortgage loans by the affiliate that the bank would have collected and maintained under § __ .42(a)(3) had the loans been originated or purchased by the bank.

§ __.42(e) Data on community development financing by a consortium or a third party. A bank that elects to have community development loans and community development investments by a consortium or third party be considered for purposes of this part would be required to collect, maintain, and report the lending and investments data they would have collected, maintained, and reported under § __.42(a)(5) and (b)(3) if the loans or investments had been originated or purchased by the bank.

§ __.42(f)(1) Facility-based assessment areas. A bank, except a small bank or intermediate bank, would be required to collect and report to the [Agency] by April 1 of each year a list of each facility-based assessment area showing the states, MSAs, counties or county equivalents, metropolitan divisions, and nonmetropolitan counties within each facility-based assessment area.

§ __.42(f)(2) Retail lending assessment areas. A large bank would be required to delineate retail lending assessment area based on geographic, MSA, and nonmetropolitan areas of states criteria specified in the proposal. A large bank would be required to collect and report a list showing the MSAs and nonmetropolitan counties within each retail lending assessment area by April 1 of each year.

§§ __.43, __.44. Public File and Public Notice. Banks would be required to maintain a public file, in either paper or digital format, that includes prescribed information. Banks would be required to provide copies on request, either on paper or in another form acceptable to the person making the request, of the information in its public file. A bank would also be required to provide in the public area of its main office and branches the public notice set forth in proposed appendix F.

BURDEN ESTIMATES

Source and type of burden	Description	Estimated number of respondents	Average estimated time per response	Frequency of response	Total estimated annual burden
	Reporting				
§ __.26	*Wholesale and limited purpose banks.*				
	OCC	12	4	1	48
	Board	1	4	1	4
	FDIC	1	4	1	4
§ __.27	*Strategic plan.*				
	OCC	6	400	1	2,400
	Board	6	400	1	2,400
	FDIC	11	400	1	4,400
§ __.42(b)(1)	*Small business and small farm loan data.*				
	OCC	139	8	1	1,112
	Board	100	8	1	800
	FDIC	216	8	1	1,728
§ __.42(b)(2)	*Consumer loans—automobile loans data.*				
	OCC	50	8	1	400
	Board	25	8	1	200
	FDIC	48	8	1	384,336
§ __.42(b)(3)	*Community development loan and community development investment data.*				
	OCC	148	8	1	1,184
	Board	114	8	1	912
	FDIC	227	8	1	1,816
§ __.42(b)(4)	*Community development services data.*				

BURDEN ESTIMATES—Continued

Source and type of burden	Description	Estimated number of respondents	Average estimated time per response	Frequency of response	Total estimated annual burden
	OCC	46	8	1	368
	Board	36	8	1	288
	FDIC	48	8	1	384
§__.42(b)(5)	*Deposits data.*				
	OCC	46	8	1	368
	Board	36	8	1	288
	FDIC	48	8	1	384
§__.42(c)	*Data on operations subsidiaries/operating subsidiaries.*				
	OCC	174	38	1	6,612
	Board	191	38	1	7,258
	FDIC	684	38	1	25,992
§__.42(d)	*Data on other affiliates.*				
	OCC	9	38	1	342
	Board	6	38	1	228
	FDIC	233	38	1	8,854
§__.42(e)	*Data on community development financing by a consortium or a third party.*				
	OCC	31	17	1	527
	Board	15	17	1	255
	FDIC	13	17	1	221
§__.42(f)(1)	*Facility-based assessment areas data.*				
	OCC	151	2	1	302
	Board	114	2	1	228
	FDIC	237	2	1	474
§__.42(f)(2)	*Retail Lending Assessment Areas.*				
	OCC	139	4	1	556
	Board	15	4	1	60
	FDIC	69	4	1	276
Recordkeeping					
§__.42(a)(1)	*Small business and small farm loan data.*				
	OCC	139	219	1	30,441
	Board	100	219	1	21,900
	FDIC	216	219	1	47,304
§__.42(a)(2)	*Consumer loan data—automobile loans.*				
	OCC	50	75	1	3,750
	Board	25	75	1	1,875
	FDIC	48	75	1	3,600
§__.42(a)(4)	*Retail services and products data.*				
	OCC	139	50	1	6,950
	Board	108	50	1	5,400
	FDIC	216	50	1	10,800
§__.42(a)(5)	*Community development loan and community development investment data.*				
	OCC	148	300	1	44,400
	Board	114	300	1	34,200
	FDIC	227	300	1	68,100
§__.42(a)(6)	*Community development services data.*				
	OCC	46	50	1	2,300
	Board	48	50	1	2,400
	FDIC	42	50	1	2,100
§__.42(a)(7)	*Deposits data.*				
	OCC	46	350	1	16,100
	Board	36	350	1	12,600
	FDIC	48	350	1	16,800
Disclosures					
§__.43	*Content and availability of public file.*				
§__.44	*Public notice by banks.*				
	OCC	977	10	1	9,770
	Board	695	10	1	6,950
	FDIC	3,128	10	1	31,280
Total Estimated Annual Burden					
	OCC				127,930
	Board				97,646

BURDEN ESTIMATES—Continued

Source and type of burden	Description	Estimated number of respondents	Average estimated time per response	Frequency of response	Total estimated annual burden
	FDIC				225,201

Comments Are Invited on

(a) Whether the collection of information is necessary for the proper performance of the functions of the agencies, including whether the information has practical utility;

(b) The accuracy of the agencies' estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Commenters may submit comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to the addresses listed in the **ADDRESSES** caption in the NPR. All comments will become a matter of public record. A copy of the comments may also be submitted to the OMB desk officer for the agencies: By mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503; by facsimile to (202) 395–5806; or by email to: *oira_submission@omb.eop.gov,* Attention, Federal Banking Agency Desk Officer.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies invite comment on how to make this proposed rule easier to understand.

For example:

- Have the agencies organized the material to inform your needs? If not, how could the agencies present the proposed rule more clearly?
- Are the requirements in the proposed rule clearly stated? If not, how could the proposal be more clearly stated?
- Does the proposed regulation contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the proposed regulation easier to understand? If so, what changes would achieve that?
- Is this section format adequate? If not, which of the sections should be changed and how?
- What other changes can the agencies incorporate to make the proposed regulation easier to understand?

XXIII. Text of Common Proposed Rule (All Agencies)

The text of the agencies' common proposed rule appears below:

PART __—COMMUNITY REINVESTMENT

Sec.

Subpart A—General

__.11 Authority, purposes, and scope.
__.12 Definitions.
__.13 Community development definitions.
__.14 Qualifying activities confirmation and illustrative list of activities.
__.15 Impact review of community development activities.

Subpart B—Geographic Considerations

__.16 Facility-based assessment areas.
__.17 Retail lending assessment areas.
__.18 Areas for eligible community development activity.

Subpart C—Standards for Assessing Performance

__.21 Performance tests, standards, and ratings, in general.
__.22 Retail lending test.
__.23 Retail services and products test.
__.24 Community development financing test.
__.26 Wholesale or limited purpose banks.
__.27 Strategic plan.
__.28 Assigned conclusions and ratings.
__.29 Performance standards for small banks and intermediate banks.
__.31 [Reserved].

Subpart D—Records, Reporting, Disclosure, and Public Engagement Requirements

__.42 Data collection, reporting, and disclosure.
__.43 Content and availability of public file.
__.44 Public notice by banks.
__.45 Publication of planned examination schedule.
__.46 Public engagement.

Subpart E—Transition Rules

__.51 Applicability dates, and transition provisions.
Appendix A to Part __—Calculations for the Retail Tests
Appendix B to Part __—Calculations for the Community Development Tests
Appendix C to Part __—Performance Test Conclusions
Appendix D to Part __—Ratings
Appendix E to Part __—Small Bank Conclusions and Ratings and Intermediate Bank Community Development Evaluation Conclusions
Appendix F to Part __[Reserved]

PART __—COMMUNITY REINVESTMENT

Subpart A—General

§ __.11 Authority, purposes, and scope.

(a) [Reserved].

(b) *Purposes.* This part implements the requirement in the Community Reinvestment Act (12 U.S.C. 2901 *et seq.*) (CRA) that the [Agency] assess a bank's record of helping to meet the credit needs of the local communities in which the bank is chartered, consistent with the safe and sound operation of the bank, and to take this record into account in the agency's evaluation of an application for a deposit facility by the bank. Accordingly, this part:

(1) Establishes the framework and criteria by which the [Agency] assesses a bank's record of responding to the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank; and

(2) Provides that the [Agency] takes that record into account in considering certain applications.

(c) [Reserved].

§ __.12 Definitions.

For purposes of this part, the following definitions apply:

Affiliate means any company that controls, is controlled by, or is under common control with another company. The term ''control'' has the same meaning given to that term in 12 U.S.C. 1841(a)(2), and a company is under common control with another company if both companies are directly or indirectly controlled by the same company.

Affordable housing means activities described in § __.13(b).

Area median income means:

(1) The median family income for the metropolitan statistical area (MSA), if a person or census tract is located in an MSA, or for the metropolitan division, if a person or census tract is located in an MSA that has been subdivided into metropolitan divisions; or

(2) The statewide nonmetropolitan median family income, if a person or census tract is located outside an MSA.

Bank means [Agency definition of bank].

Branch means a staffed banking facility, whether shared or unshared, that is approved or authorized as a branch by the [Agency] and that is open to, and accepts deposits from, the general public.

Census tract means a census tract delineated by the U.S. Census Bureau in the most recent decennial census.

Closed-end home mortgage loan has the same meaning given to the term ''closed-end mortgage loan'' in 12 CFR 1003.2(d), excluding multifamily loans as defined in this section.

Community development means activities described in § __.13(b) through (l).

Community Development Financial Institution (CDFI) has the same meaning given to that term in section 103(5)(A) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701 *et seq.*).

Community development investment means a lawful investment, including a legally binding commitment to invest that is reported on Schedule RC–L of the Consolidated Reports of Condition and Income as filed under 12 U.S.C. 1817 (Call Report), deposit, membership share, grant, or monetary or in-kind donation that has a primary purpose of community development, as described in § __.13(a).

Community development loan means a loan, including a legally binding commitment to extend credit, such as a standby letter of credit, that:

(1) Has a primary purpose of community development, as described in § __.13(a); and

(2) Has not been considered by the bank, an [operations subsidiary or operating subsidiary] of the bank, or an affiliate of the bank under the Retail Lending Test as an automobile loan, closed-end home mortgage loan, open-end home mortgage loan, small business loan, or small farm loan, unless:

(i) The loan is for a multifamily dwelling (as defined in 12 CFR 1003.2(n)); or

(ii) In the case of an intermediate bank that is not required to report a home mortgage loan, a small business loan, or a small farm loan, the bank may opt to have the loan considered under the Retail Lending Test in § __.22 or under the intermediate bank community development performance standards in § __.29(b)(2), or, if the bank opts in, the Community Development Financing Test in § __.24.

Community development services means activities described in § __.25(d).

Consumer loan means a loan to one or more individuals for household, family, or other personal expenditures. A consumer loan does not include a closed-end home mortgage loan, an open-end home mortgage loan, a multifamily loan, a small business loan, or a small farm loan. A consumer loan includes the following categories of loans:

(1) *Automobile loan,* which means a consumer loan extended for the purchase of and secured by a new or used passenger car or other vehicle, such as a minivan, a pickup truck, a sport-utility vehicle, a van, or a similar light truck for personal use, as defined in Schedule RC–C of the Call Report;

(2) *Credit card loan,* which means a line of credit for household, family, or other personal expenditures that is accessed by a borrower's use of a ''credit card,'' as defined in 12 CFR 1026.2;

(3) *Other revolving credit plan,* which means a revolving credit plan that is not accessed by credit card; and

(4) *Other consumer loan,* which is a consumer loan that is not included in one of the other categories of consumer loans.

County means any county or statistically equivalent entity as defined by the U.S. Census Bureau.

Deposits, for purposes of this part, has the following meanings:

(1) For banks that collect, maintain, and report deposits data as provided in § __.42, *deposits* means deposits in domestic offices of individuals, partnerships, and corporations, and of commercial banks and other depository institutions in the U.S. as defined in Schedule RC–E of the Call Report; deposits does not include U.S. Government deposits, state and local government deposits, domestically held deposits of foreign governments or official institutions, or domestically held deposits of foreign banks or other foreign financial institutions;

(2) For banks that collect and maintain, but that do not report, deposits data as provided in § __.42, *deposits* means deposits in domestic offices of individuals, partnerships, and corporations, and of commercial banks and other depository institutions in the U.S. as defined in Schedule RC–E of the Call Report; deposits does not include U.S. Government deposits, state and local government deposits, domestically held deposits of foreign governments or official institutions, or domestically held deposits of foreign banks or other foreign financial institutions, except that, for purposes of the Retail Lending Test's Market Volume Benchmark and for all community development financing benchmarks, *deposits* has the same meaning as in the FDIC's Summary of Deposits Reporting Instructions;

(3) For banks that do not collect and maintain deposits data as provided in § __.42, *deposits* has the same meaning as in the FDIC's Summary of Deposits Reporting Instructions.

Deposit location means:

(1) For banks that collect and maintain deposits data as provided in § __.42, the census tract or county, as applicable, in which the consumer resides, or the census tract or county, as applicable, in which the business is located if it has a local account.

(2) For banks that collect and maintain, but that do not report, deposits data as provided in § __.42, the census tract or county, as applicable, in which the consumer resides, or the census tract or county, as applicable, in which the business is located if it has a local account except that, for purposes of the Market Volume Benchmark and for all community development financing benchmarks, the county of the bank branch to which the deposits are assigned in the FDIC's Summary of Deposits.

(3) For banks that do no collect and maintain deposits data as provided in § __.42, the county of the bank branch to which the deposits are assigned in the FDIC's Summary of Deposits.

Dispersion of retail lending means how geographically diffuse or widely spread such lending is across census tracts of different income levels within a facility-based assessment area, retail lending assessment area, or outside retail lending area.

Distressed or underserved nonmetropolitan middle-income census tract means a census tract publicly designated as such by the Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC), based on the criteria in paragraphs (1) and (2) of this definition, compiled in a list and published annually by the Federal Financial Institutions Examination Council (FFIEC).

(1) A nonmetropolitan middle-income census tract is designated as distressed if it is in a county that meets one or more of the following criteria:

(i) An unemployment rate of at least 1.5 times the national average;

(ii) A poverty rate of 20 percent or more; or

(iii) A population loss of 10 percent or more between the previous and most recent decennial census or a net migration loss of five percent or more over the five-year period preceding the most recent census.

(2) A nonmetropolitan middle-income census tract is designated as underserved if it meets the criteria for population size, density, and dispersion that indicate the area's population is sufficiently small, thin, and distant from a population center that the census tract is likely to have difficulty financing the fixed costs of meeting essential community needs. The criteria for these designations are based on the Urban Influence Codes established by the U.S. Department of Agriculture's Economic Research Service numbered ''7,'' ''10,'' ''11,'' or ''12.''

Distribution of retail lending refers to how such lending is apportioned among borrowers of different income levels, businesses or farms of different sizes, or among census tracts of different income levels.

Evaluation period refers to the period of time between CRA examinations, generally in calendar years, in accordance with the [Agency's] guidelines and procedures.

Facility-based assessment area means a geographic area delineated in accordance with § __.16.

High opportunity area means:

(1) An area designated by the U.S. Department of Housing and Urban Development (HUD) as a ''Difficult Development Area'' (DDA); or

(2) An area designated by a state or local Qualified Allocation Plan as a High Opportunity Area, and where the poverty rate falls below 10 percent (for metropolitan areas) or 15 percent (for nonmetropolitan areas).

Home mortgage loan means a closed-end home mortgage loan or an open-end home mortgage loan as these terms are defined in this section and that is not an excluded transaction under 12 CFR 1003.3(c)(1) through (10) and (13).

Income level includes:

(1) *Low-income,* which means:

(i) For individuals within a census tract, an individual income that is less than 50 percent of the area median income; or

(ii) For a census tract, a median family income that is less than 50 percent of the area median income.

(2) *Moderate-income,* which means:

(i) For individuals within a census tract, an individual income that is at least 50 percent and less than 80 percent of the area median income; or

(ii) For a census tract, a median family income that is at least 50 percent and less than 80 percent of the area median income.

(3) *Middle-income,* which means:

(i) For individuals within a census tract, an individual income that is at least 80 percent and less than 120 percent of the area median income; or

(ii) For a census tract, a median family income that is at least 80 percent and less than 120 percent of the area median income.

(4) *Upper-income,* which means:

(i) For individuals within a census tract, an individual income that is 120 percent or more of the area median income; or

(ii) For a census tract, a median family income that is 120 percent or more of the area median income.

Intermediate bank means a bank that had average assets of at least $600 million in both of the prior two calendar years and less than $2 billion in either of the prior two calendar years, based on the assets reported on its four quarterly Call Reports for each of those calendar years. The $600 million figure and the $2 billion figure will be adjusted annually and published by the [Agency], based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million.

Large bank means a bank that had average assets of at least $2 billion in both of the prior two calendar years, based on the assets reported on its four quarterly Call Reports for each of those calendar years. The $2 billion figure will be adjusted annually and published by the [Agency], based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million.

Limited purpose bank means a bank that offers only a narrow retail product line (such as credit cards, other revolving consumer credit plans, other consumer loans, or other non-reported commercial and farm loans) to a regional or broader market and for which a designation as a limited purpose bank is in effect, in accordance with § __.26.

Loan location. A loan is located as follows:

(1) A consumer loan is located in the census tract where the borrower resides at the time that the consumer submits the loan application;

(2) A home mortgage loan is located in the census tract where the property securing the loan is located; and

(3) A small business loan or small farm loan is located in the census tract where the main business facility or farm is located or where the loan proceeds otherwise will be applied, as indicated by the borrower.

Low branch access census tract means a census tract with one bank, thrift, or credit union branch within:

(1) Ten miles of the census tract center of population or within the census tract in nonmetropolitan areas;

(2) Five miles of the census tract center of population or within the census tract in a census tract located in an MSA but primarily outside of the principal city components of the MSA; or

(3) Two miles of the census tract center of population or within the census tract in a census tract located in an MSA and primarily within the principal city components of the MSA.

Low-cost education loan means any private education loan, as defined in section 140(a)(7) of the Truth in Lending Act (15 U.S.C. 1650(a)(8)) (including a loan under a state or local education loan program), originated by the bank for a student at an ''institution of higher education,'' as generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the U.S. Department of Education, with interest rates and fees no greater than those of comparable education loans offered directly by the U.S. Department of Education. Such rates and fees are specified in section 455 of the Higher Education Act of 1965 (20 U.S.C. 1087e).

Low-income credit union (LICU) has the same meaning given to that term in 12 CFR 701.34.

Metropolitan area means any MSA, combined MSA, or metropolitan division as defined by the Director of the Office of Management and Budget.

Metropolitan division has the same meaning given to that term by the Director of the Office of Management and Budget.

Metropolitan statistical area (MSA) has the same meaning given to that term by the Director of the Office of Management and Budget.

Military bank means a bank whose business predominately consists of serving the needs of military personnel who serve or have served in the armed forces (including the U.S. Air Force, U.S. Army, U.S. Coast Guard, U.S. Marine Corps, and U.S. Navy) or dependents of military personnel.

Minority depository institution (MDI) means an entity that:

(1) For purposes of activities conducted pursuant to 12 U.S.C. 2907(a) (*i.e.,* donating, selling on favorable terms (as determined by the [Agency]), or making available on a rent-free basis any branch of the bank, which is located in a predominately minority neighborhood) has the meaning given to that term in 12 U.S.C. 2907(b)(1); and

(2) For all other purposes:

(i) Has the meaning given to that term in 12 U.S.C. 2907(b)(1);

(ii) Is a minority depository institution, as defined in section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 1463 note); or

(iii) Is considered to be a minority depository institution by the appropriate Federal banking agency. For purposes of this paragraph, ''appropriate Federal banking agency'' has the meaning given to it in 12 U.S.C. 1813(q).

Multifamily loan means a loan for a ''multifamily dwelling'' as defined in 12 CFR 1003.2(n).

Multistate metropolitan statistical area (multistate MSA) has the same meaning given to that term by the Director of the Office of Management and Budget.

Nationwide area means the entire United States and its territories.

Native land area means:

(1) All land within the limits of any Indian reservation under the jurisdiction of the U.S. Government, as described in 18 U.S.C. 1151(a);

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, as described in 18 U.S.C. 1151(b);

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same, as defined in 18 U.S.C. 1151(c);

(4) Any land held in trust by the United States for Native Americans, as described in 38 U.S.C. 3765(1)(A);

(5) Reservations established by a state government for a tribe or tribes recognized by the state;

(6) Any Alaska Native village as defined in 43 U.S.C 1602(c);

(7) Lands that have the status of Hawaiian Home Lands as defined in section 204 of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108), as amended;

(8) Areas defined by the U.S. Census Bureau as Alaska Native Village Statistical Areas, Oklahoma Tribal Statistical Areas, Tribal-Designated Statistical Areas, or American Indian Joint-Use Areas; and

(9) Land areas of state-recognized Indian tribes and heritage groups that are defined and recognized by individual states and included in the U.S. Census Bureau's annual Boundary and Annexation Survey.

Nonmetropolitan area means any area that is not located in an MSA.

Open-end home mortgage loan has the same meaning as given to the term ''open-end line of credit'' in 12 CFR 1003.2(o), excluding multifamily loans as defined in this section.

[*Operations subsidiary or operating subsidiary*] means [Agency definition of operations subsidiary or operating subsidiary].

Outside retail lending area means the nationwide area outside of a bank's facility-based assessment areas and, as applicable, retail lending assessment areas.

Remote service facility means an automated, virtually staffed, or unstaffed banking facility owned or operated by, or operated exclusively for, a bank, such as an automated teller machine (ATM), interactive teller machine, cash dispensing machine, or other remote electronic facility at which deposits are received, cash dispersed, or money lent.

Retail banking services means retail financial services provided by a bank to consumers, small businesses, and small farms and includes a bank's systems for delivering retail financial services.

Retail lending assessment area means a geographic area, separate and distinct from a facility-based assessment area, delineated in accordance with § __.17.

Retail loan. (1) For purposes of the Retail Lending Test in § __.22, retail loan means an automobile loan, closed-end home mortgage loan, open-end home mortgage loan, multifamily loan, small business loan, or small farm loan;

(2) For all other purposes, retail loan means a consumer loan, home mortgage loan, small business loan, or small farm loan.

Small bank means a bank that had average assets of less than $600 million in either of the prior two calendar years, based on the assets reported on its four quarterly Call Reports for each of those calendar years. The $600 million figure will be adjusted annually and published by the [Agency], based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million.

Small business means a business that had gross annual revenues for its preceding fiscal year of $5 million or less.

Small business loan means, notwithstanding the definition of ''small business'' in this section, a loan included in ''loans to small businesses'' as defined in the instructions for preparation of the Call Report.

Small farm means a farm that had gross annual revenues for its preceding fiscal year of $5 million or less.

Small farm loan means, notwithstanding the definition of ''small farm'' in this section, a loan included in ''loans to small farms'' as defined in the instructions for preparation of the Call Report.

State means a U.S. state or territory, and includes the District of Columbia.

Targeted census tract means:

(1) A low-income census tract or a moderate-income census tract; or

(2) A distressed or underserved nonmetropolitan middle-income census tract.

Very low branch access census tract means a census tract with no bank, thrift, or credit union branches within:

(1) Ten miles of the census tract center of population or within the census tract in nonmetropolitan areas;

(2) Five miles of the census tract center of population or within the census tract located in an MSA but primarily outside of the principal city components of the MSA; or

(3) Two miles of the census tract center of population or within the census tract located in an MSA and primarily within the principal city components of the MSA.

Wholesale bank means a bank that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers, and for which a designation as a wholesale bank is in effect, in accordance with § __.26.

Women's depository institution (WDI) has the same meaning given to that term in 12 U.S.C. 2907(b)(2).

§ __.13 Community Development Definitions.

(a) *Consideration for activities with a primary purpose of community development.* A bank may receive community development consideration for a loan, investment, or service that has a primary purpose of community development. A bank will receive consideration for the entire activity where the activity meets the criteria for having a primary purpose of community development under paragraphs (a)(1)(i) and (a)(1)(ii) of this section, except that a bank will receive consideration for the portion of any activity considered to have a primary purpose of community development under paragraph (a)(1)(i)(A) of this section.

(1) *Primary purpose of community development.* A loan, investment, or service has a primary purpose of community development:

(i) If a majority of the dollars, applicable beneficiaries, or housing units of the activity are identifiable to one or more of the community development purposes in paragraph (a)(2) of this section;

(A) Where an activity supports rental housing purchased, developed, financed, rehabilitated, improved, or preserved in conjunction with a federal, state, local, or tribal government affordable housing plan, program, initiative, tax credit, or subsidy with a stated purpose or bona fide intent of providing affordable housing for low-income or moderate-income individuals under paragraph (b)(1) of this section, and fewer than 50 percent of the housing units supported by that activity are affordable, the activity has a primary purpose of community development only for the percentage of total housing units in any development that are affordable.

(B) Notwithstanding paragraph (a)(1)(i)(A) of this section, where an activity involves low-income housing tax credits to support affordable housing under paragraph (b) of this section, the activity has a primary purpose of community development for the full value of the investment even where fewer than 50 percent of the housing units supported by that activity are affordable.

(ii) If the express, bona fide intent of the activity is one or more of the community development purposes in paragraph (a)(2) of this section and the activity is specifically structured to achieve, or is reasonably certain to accomplish, the community development purpose.

(2) *Community development purposes.* Loans, investments, or services meet the definition of community development purpose if they promote one or more of the following:

(i) Affordable housing that benefits low- or moderate-income individuals, as described in paragraph (b) of this section;

(ii) Economic development that supports small businesses or small farms, as described in paragraph (c) of this section;

(iii) Community supportive services that serve or assist low- or moderate-income individuals, as described in paragraph (d) of this section;

(iv) Revitalization activities undertaken in conjunction with a federal, state, local, or tribal government plan, program, or initiative that must include an explicit focus on revitalizing or stabilizing targeted census tracts, as described in paragraph (e) of this section;

(v) Essential community facilities that benefit or serve residents of targeted census tracts, as described in paragraph (f) of this section;

(vi) Essential community infrastructure that benefits or serves residents of targeted census tracts, as described in paragraph (g) of this section;

(vii) Recovery activities that support the revitalization of a designated disaster area, as described in paragraph (h) of this section;

(viii) Disaster preparedness and climate resiliency activities that benefit or serve residents of targeted census tracts, as described in paragraph (i) of this section;

(ix) Activities undertaken with MDIs, WDIs, LICUs, or CDFIs certified by the U.S. Department of the Treasury's Community Development Institutions Fund (Treasury Department-certified CDFIs), as described in paragraph (j) of this section;

(x) Financial literacy programs or initiatives, including housing counseling, as described in paragraph (k) of this section; or

(xi) Activities undertaken in Native Land Areas that benefit or serve residents, including low- or moderate-income residents, of Native Land Areas, as described in paragraph (l) of this section.

(b) *Affordable housing.* Activities that support affordable housing for low- or moderate-income individuals are:

(1) *Rental housing in conjunction with a government affordable housing plan, program, initiative, tax credit, or subsidy.* Rental housing purchased, developed, financed, rehabilitated, improved, or preserved in conjunction with a federal, state, local, or tribal government affordable housing plan, program, initiative, tax credit, or subsidy with a stated purpose or bona fide intent of providing affordable housing for low- or moderate-income individuals;

(2) *Multifamily rental housing with affordable rents.* Rents are deemed affordable for purchased, developed, financed, rehabilitated, improved, or preserved multifamily rental housing if, for the majority of the units, the monthly rent as underwritten by the bank, reflecting post-construction or post-renovation changes as applicable, does not exceed 30 percent of 60 percent of the area median income for the metropolitan area or nonmetropolitan county, and:

(i) The housing is located in a low- or moderate-income census tract;

(ii) The housing is purchased, developed, financed, rehabilitated, improved, or preserved by any non-profit organization with a stated mission of, or that otherwise directly supports, providing affordable housing;

(iii) The property owner has made an explicit written pledge to maintain affordable rents for low- or moderate-income individuals for at least five years or the length of the financing, whichever is shorter; or

(iv) The bank provides documentation that a majority of the housing units are occupied by low- or moderate-income individuals or families.

(3) *Activities that support affordable owner-occupied housing for low- or moderate-income individuals.* Activities, excluding single-family home mortgage loans considered under the Retail Lending Test in § __.22, that directly assist low- or moderate-income individuals to obtain, maintain, rehabilitate, or improve affordable owner-occupied housing or activities that support programs, projects, or initiatives that assist low- or moderate-income individuals to obtain, maintain, rehabilitate, or improve affordable owner-occupied housing; and

(4) *Mortgage-backed securities.* Purchases of mortgage-backed securities that contain a majority of either loans financing housing for low- or moderate-income individuals or loans financing housing that otherwise qualifies as affordable housing under paragraph (b) of this section.

(c) *Economic development.* Economic development activities are:

(1) Activities undertaken consistent with federal, state, local, or tribal government plans, programs, or initiatives that support small businesses or small farms as those entities are defined in the plans, programs, or initiatives, notwithstanding how those entities are defined in § __.12, including lending to, investing in, or providing services to an SBA Certified Development Company (13 CFR 120.10), Small Business Investment Company (13 CFR 107), New Markets Venture Capital Company (13 CFR 108), qualified Community Development Entity (26 U.S.C. 45D(c)), or U.S. Department of Agriculture Rural Business Investment Company (7 CFR 4290.50);

(2) Support for financial intermediaries that lend to, invest in, or provide technical assistance to businesses or farms with gross annual revenues of $5 million or less; or

(3) Providing technical assistance to support businesses or farms with gross

annual revenues of $5 million or less, or providing services such as shared space, technology, or administrative assistance to such businesses or farms or to organizations that have a primary purpose of supporting such businesses or farms.

(d) *Community supportive services.* Community supportive services are general welfare services that serve or assist low- or moderate-income individuals including, but not limited to, childcare, education, workforce development and job training programs, and health services and housing services programs that serve or assist low- or moderate-income individuals, including:

(1) Activities conducted with a non-profit organization that has a defined mission or purpose of serving low- or moderate-income individuals or is limited to offering community supportive services exclusively to low- and moderate-income individuals;

(2) Activities conducted with a non-profit organization located in and serving low- or moderate-income census tracts;

(3) Activities conducted in low- or moderate-income census tracts and targeted to the residents of the census tract;

(4) Activities offered to individuals at a workplace where the majority of employees are low- or moderate-income, based on readily available U.S. Bureau of Labor Statistics data for the average wage for workers in that particular occupation or industry;

(5) Activities provided to students or their families through a school at which the majority of students qualify for free or reduced-price meals under the U.S. Department of Agriculture's National School Lunch Program;

(6) Activities that have a primary purpose of benefitting or serving individuals who receive or are eligible to receive Medicaid;

(7) Activities that benefit or serve individuals who receive or are eligible to receive Federal Supplemental Security Income, Social Security Disability Insurance, or support through other Federal disability assistance programs; or

(8) Activities that benefit or serve recipients of government assistance plans, programs, or initiatives that have income qualifications equivalent to, or stricter than, the definitions of low- and moderate-income as defined in this part. Examples include, but are not limited to, HUD's section 8, 202, 515, and 811 programs or the U.S. Department of Agriculture's section 514, 516, and Supplemental Nutrition Assistance programs.

(e) *Revitalization activities undertaken in conjunction with a government plan, program, or initiative.* Revitalization activities are those undertaken in conjunction with a federal, state, local, or tribal government plan, program, or initiative that includes an explicit focus on revitalizing or stabilizing targeted census tracts. Revitalization activities include, and are not limited to, adaptive reuse of vacant or blighted buildings, brownfield redevelopment, or activities consistent with a plan for a business improvement district or main street program. Revitalization activities do not include housing-related activities. Revitalization activities must meet the following criteria:

(1) The activities benefit or serve residents, including low- or moderate-income residents, in one or more of the targeted census tracts; and

(2) The activities do not displace or exclude low- or moderate-income residents in the targeted census tracts.

(f) *Essential community facilities activities.* Essential community facilities activities are those that provide financing or other support for public facilities that provide essential services generally accessible by a local community, including, but not limited to, schools, libraries, childcare facilities, parks, hospitals, healthcare facilities, and community centers. Activities that support essential community facilities are activities conducted in targeted census tracts that meet the following criteria:

(1) The activities benefit or serve residents, including low- or moderate-income residents, in one or more of the targeted census tracts;

(2) The activities do not displace or exclude low- or moderate-income residents in the targeted census tracts; and

(3) An activity that finances or supports essential community facilities must be conducted in conjunction with a federal, state, local, or tribal government plan, program, or initiative that includes an explicit focus on benefitting or serving the targeted census tracts.

(g) *Essential community infrastructure activities.* Essential community infrastructure activities are those that provide financing and other support for infrastructure, including, but not limited to, broadband, telecommunications, mass transit, water supply and distribution, and sewage treatment and collection systems. Activities that support essential community infrastructure are activities conducted in targeted census tracts that meet the following criteria:

(1) The activities benefit or serve residents, including low- or moderate-income residents, in one or more of the targeted census tracts;

(2) The activities do not displace or exclude low- or moderate-income residents in the targeted census tracts; and

(3) An activity that finances or supports essential community infrastructure must be conducted in conjunction with a federal, state, local, or tribal government plan, program, or initiative that includes an explicit focus on benefitting the targeted census tracts.

(h) *Recovery activities in designated disaster areas.* Activities that promote recovery from a designated disaster:

(1) Are activities that revitalize or stabilize geographic areas subject to a Major Disaster Declaration administered by the Federal Emergency Management Agency (FEMA). Activities that promote recovery from a designated disaster exclude activities that revitalize or stabilize counties designated to receive only FEMA Public Assistance Emergency Work Category A (Debris Removal) and/or Category B (Emergency Protective Measures), unless the Board, the FDIC, and the OCC announce a temporary exception. Activities are eligible for 36 months after a Major Disaster Declaration, unless extended by the Board, the FDIC, and the OCC;

(2) Must benefit or serve residents, including low- or moderate-income residents, and not displace or exclude low- or moderate-income residents, of such geographic areas; and

(3) Must be conducted in conjunction with a federal, state, local, or tribal government disaster plan that includes an explicit focus on benefitting the designated disaster area.

(i) *Disaster preparedness and climate resiliency activities.* Disaster preparedness and climate resiliency activities are activities that assist individuals and communities to prepare for, adapt to, and withstand natural disasters, weather-related disasters, or climate-related risks. Disaster preparedness and climate resiliency activities are those conducted in targeted census tracts that meet the following criteria:

(1) The activities benefit or serve residents, including low- or moderate-income residents, in one or more of the targeted census tracts; and

(2) The activities do not displace or exclude low- or moderate-income residents in the targeted census tracts;

(3) A disaster preparedness and climate resiliency activity must be conducted in conjunction with a federal, state, local, or tribal government plan, program, or initiative focused on

disaster preparedness or climate resiliency that includes an explicit focus on benefitting a geographic area that includes the targeted census tracts.

(j) *Activities with MDIs, WDIs, LICUs, or CDFIs.* Activities with MDIs, WDIs, LICUs, or CDFIs are:

(1) Investments, loan participations, and other ventures undertaken by any bank, including by MDIs and WDIs, in cooperation with other MDIs, other WDIs, or LICUs; and

(2) Lending, investment, and service activities undertaken in connection with a Treasury Department-certified CDFI. A bank's lending, investment, and service activities undertaken in connection with a Treasury Department-certified CDFI at the time of the activity will be presumed to qualify for favorable community development consideration.

(k) *Financial literacy.* Activities that promote financial literacy are those that assist individuals and families, including low- or moderate-income individuals and families, to make informed financial decisions regarding managing income, savings, credit, and expenses, including with respect to homeownership.

(l) *Qualifying activities in Native Land Areas.* (1) Activities in Native Land Areas are activities related to revitalization, essential community facilities, essential community infrastructure, and disaster preparedness and climate resiliency that are specifically targeted to and conducted in Native Land Areas. Activities in Native Land Areas must benefit residents of Native Land Areas, including low- or moderate-income residents.

(i) Revitalization activities in Native Land Areas are those undertaken in conjunction with a Federal, state, local, or tribal government plan, program, or initiative that includes an explicit focus on revitalizing or stabilizing Native Land Areas and a particular focus on low- or moderate-income households. Revitalization activities in Native Land Areas:

(A) Must benefit or serve residents of Native Land Areas, with substantial benefits for low- or moderate-income residents; and

(B) Must not displace or exclude low- or moderate-income residents

(ii) Essential community facilities in Native Land Areas are public service facilities that provide essential services to a community, including, but not limited to, schools, libraries, childcare facilities, parks, hospitals, healthcare facilities, and community centers. Activities that support essential community facilities must benefit or serve residents, including low- or moderate-income residents, of Native Land Areas;

(iii) Eligible community infrastructure in Native Land Areas includes, but is not limited to, broadband, telecommunications, mass transit, water supply and distribution, and sewage treatment and collection systems. Activities that support eligible community infrastructure must benefit or serve residents, including low- or moderate-income residents, of one or more of Native Land Areas; and

(iv) Disaster preparedness and climate resiliency activities in Native Land Areas are activities that assist individuals and communities to prepare for, adapt to, and withstand natural disasters, weather-related disasters, or climate-related risks. Disaster preparedness and climate resiliency activities must benefit or serve residents, including low- or moderate-income residents, of Native Land Areas.

(2) Activities that support and benefit Native Land Areas under paragraphs (l)(1)(ii) and (l)(1)(iii) of this section must:

(i) Benefit or serve residents, including low- or moderate-income residents, of Native Land Areas, and must not displace or exclude low- or moderate-income residents of such geographic areas; and

(ii) Be conducted in conjunction with a Federal, state, local, or tribal government plan, program, or initiative that benefits or serves residents of Native Land Areas.

(3) Activities that support and benefit Native Land Areas under paragraph (l)(1)(iv) of this section must:

(i) Benefit or serve residents, including low- or moderate-income residents, of Native Land Areas, and must not displace or exclude low- or moderate-income residents of such geographic areas; and

(ii) Be conducted in conjunction with a Federal, state, local, or tribal government plan, program, or initiative focused on disaster preparedness or climate resiliency that benefits or serves residents of Native Land Areas.

§ __.14 Qualifying activities confirmation and illustrative list of activities.

(a) *Illustrative activities list.* The Board, the FDIC, and the OCC maintain a publicly available illustrative list of non-exhaustive examples of community development activities that qualify for CRA consideration.

(b) *Modifying the illustrative activities list.* (1) The Board, the FDIC, and the OCC will update the illustrative list of activities periodically.

(2) If the Board, the FDIC, and the OCC determine that an activity is no longer eligible for CRA community development consideration, the owner of the loan or investment at the time of the determination will continue to receive CRA consideration for the remaining term or period of the loan or investment. However, these loans or investments will not be considered eligible for CRA community development consideration for any purchasers of that loan or investment after the determination.

(c) *Confirmation of an eligible activity.* Pursuant to paragraph (d) of this section, a bank subject to this part may submit a request to the [Agency] for confirmation that an activity is eligible for CRA consideration. When the Board, the FDIC, and the OCC confirm that an activity is or is not eligible for CRA consideration, the [Agency] will notify the requestor, and the Board, the FDIC, and the OCC may add the activity to the publicly available illustrative list of activities, incorporating any conditions imposed, if applicable.

(d) *Process.* (1) A bank may request that the [Agency] confirm that an activity is eligible for CRA consideration by submitting a request to the [Agency], in a format prescribed by the [Agency].

(2) In responding to a request for confirmation that an activity is eligible for CRA consideration, the Board, the FDIC, and the OCC will consider:

(i) The information provided to describe and support the request;

(ii) Whether the activity is consistent with the safe and sound operation of the bank; and

(iii) Any other information that the agencies deem relevant.

(3) The Board, the FDIC, and the OCC may impose any conditions on confirmation of an activity's eligibility for CRA consideration, in order to ensure consistency with the requirements of this part.

§ __.15 Impact Review of Community Development Activities.

(a) *Impact review, in general.* Under the Community Development Financing Test in § __.24, the Community Development Services Test in § __.25, and the Community Development Financing Test for Wholesale or Limited Purpose Banks in § __.26, the [Agency] evaluates the impact and responsiveness of a bank's community development activities in each facility-based assessment area and, as applicable, each state, multistate MSA, and nationwide area. In evaluating the impact and responsiveness of a bank's qualifying activities, the [Agency] may take into account performance context information set out in § __.21(e), as applicable.

(b) *Impact review factors.* Factors considered in evaluating the impact and responsiveness of a bank's qualifying activities include, but are not limited to, whether the activities:

(1) Serve persistent poverty counties, defined as counties or county-equivalents that have had poverty rates of 20 percent or more for the past 30 years, as measured by the most recent decennial censuses;

(2) Serve geographic areas with low levels of community development financing;

(3) Support an MDI, WDI, LICU, or Treasury Department-certified CDFI;

(4) Serve low-income individuals and families;

(5) Support small businesses or small farms with gross annual revenues of $250,000 or less;

(6) Directly facilitate the acquisition, construction, development, preservation, or improvement of affordable housing in High Opportunity Areas;

(7) Benefit Native communities, such as qualifying activities in Native Land Areas under § __.13(l);

(8) Are a qualifying grant or donation;

(9) Reflect bank leadership through multi-faceted or instrumental support; or

(10) Result in a new community development financing product or service that addresses community development needs for low- or moderate-income individuals and families.

Subpart B—Geographic Considerations

§ __.16 Facility-based assessment areas.

(a) *In general.* A bank must delineate one or more facility-based assessment areas within which the [Agency] evaluates the bank's record of helping to meet the credit needs of its community pursuant to the standards in this part. The [Agency] does not evaluate the bank's delineation of its facility-based assessment areas as a separate performance criterion, but the [Agency] reviews the delineation for compliance with the requirements of this section.

(b) *Facility-based assessment areas for evaluating performance.* (1) A facility-based assessment area must include each county in which a bank has a main office, a branch, any other staffed bank facility that accept deposits, or a deposit-taking remote service facility, as well as the surrounding geographies in which the bank has originated or purchased a substantial portion of its loans (including home mortgage loans, small business loans, small farm loans, and automobile loans). For purposes of this paragraph, facilities refers to those that are open to the general public and excludes nonpublic facilities.

(2) Except as provided in paragraph (b)(3) of this section, a facility-based assessment area must consist of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous counties within an MSA, metropolitan division, or the nonmetropolitan area of a state and may not extend beyond an MSA boundary or beyond a state boundary unless the assessment area is located in a multistate MSA or combined statistical area.

(3) An intermediate bank or a small bank may adjust the boundaries of its facility-based assessment areas to include only the portion of a county that it reasonably can be expected to serve, subject to paragraph (c) of this section. A facility-based assessment area that includes a partial county must consist only of whole census tracts.

(c) *Limitations on the delineation of a facility-based assessment area.* Each bank's facility-based assessment areas:

(1) May not reflect illegal discrimination; and

(2) May not arbitrarily exclude low- or moderate-income census tracts, taking into account the bank's size and financial condition.

(d) *Military banks.* Notwithstanding the requirements of this section, a bank whose business predominantly consists of serving the needs of military personnel or their dependents who are not located within a defined geographic area may delineate its entire deposit customer base as its assessment area.

(e) *Use of facility-based assessment areas.* The [Agency] uses the facility-based assessment areas delineated by a bank in its evaluation of the bank's CRA performance unless the [Agency] determines that the facility-based assessment areas do not comply with the requirements of this section.

§ __.17 Retail lending assessment areas.

(a) *In general.* The [Agency] evaluates a large bank's performance, including a large bank that elects to be evaluated under an approved strategic plan, by assessing the bank's retail lending activities in one or more retail lending assessment areas outside of the bank's facility-based assessment areas. A large bank must delineate retail lending assessment areas based upon the criteria in paragraphs (b) and (c) of this section.

(b) *Geographic requirements regarding retail lending assessment areas.* (1) A retail lending assessment area must consist of either:

(i) The entirety of a single MSA (using the MSA boundaries that were in effect as of January 1 of the calendar year in which the delineation applies), excluding counties inside facility-based assessment areas; or

(ii) All of the counties in a single state that are not included in an MSA (using the MSA boundaries that were in effect as of January 1 of the calendar year in which the delineation applies), excluding counties inside facility-based assessment areas, aggregated into a single retail lending assessment area.

(2) A retail lending assessment area may not extend beyond an MSA boundary or beyond a state boundary unless the assessment area is located in a multistate MSA or combined statistical area.

(c) *Delineation of retail lending assessment areas.* A large bank must delineate a retail lending assessment area in any MSA or nonmetropolitan area of a state, respectively, in which it originated, as of December 31 of each of the two preceding calendar years, in that geographic area:

(1) At least 100 home mortgage loans outside of facility-based assessment areas; or

(2) At least 250 small business loans outside of facility-based assessment areas.

(d) *Use of retail lending assessment areas.* The [Agency] uses the retail lending assessment areas delineated by a large bank in its evaluation of the bank's retail lending performance unless the [Agency] determines that the retail lending assessment areas do not comply with the requirements of this section.

§ __.18 Areas for eligible community development activity.

In addition to a bank receiving consideration under this part for community development activities conducted in its facility-based assessment areas, a bank will also receive consideration for community development loans, community development investments, and community development services provided outside of its facility-based assessment areas within the states and multistate MSAs in which the bank has a facility-based assessment area and in a nationwide area, as provided in §§ __.21, __.24, __.25, __.26, __.28, and appendices C and D of this part, as applicable.

Subpart C—Standards for Assessing Performance

§ __.21 Performance tests, standards, and ratings, in general.

(a) *Performance tests.* The [Agency] uses the following performance tests and standards to assess a bank's CRA performance:

(1) The Retail Lending Test as provided in § __.22.

(2) The Retail Services and Products Test as provided in § __.23.

(3) The Community Development Financing Test as provided in § __.24.

(4) The Community Development Services Test as provided in § __.25.

(5) The Community Development Financing Test for Wholesale or Limited Purpose Banks as provided in § __.26.

(6) The small bank performance standards as provided in § __.29(a).

(7) The intermediate bank community development performance standards as provided in § __.29(b)(2).

(8) Standards in a strategic plan approved as provided in § __.27.

(b) *Application of performance tests and standards.* (1) *Large banks.* To evaluate the performance of a large bank, the [Agency] applies the Retail Lending Test, the Retail Services and Products Test, the Community Development Financing Test, and the Community Development Services Test.

(2) *Intermediate banks.* (i) To evaluate the performance of an intermediate bank, the [Agency] applies the Retail Lending Test and either the community development performance standards as provided in § __.29(b)(2) or, if the bank chooses, the Community Development Financing Test.

(ii) If an intermediate bank chooses evaluation under the Community Development Financing Test, the following applies:

(A) The [Agency] evaluates the intermediate bank for the evaluation period preceding the bank's next CRA examination under the Community Development Financing Test and continues evaluations under the Community Development Financing Test for subsequent evaluation periods until the bank opts out. If an intermediate bank opts out of the Community Development Financing Test, the [Agency] reverts to evaluating the bank under the intermediate bank community development performance standards, starting with the entire evaluation period preceding the bank's next CRA examination.

(B) The intermediate bank may request additional consideration for activities that qualify under the Retail Services and Products Test or the Community Development Services Test and, after considering such activities, the [Agency] may adjust the bank's rating at the institution level from ''Satisfactory'' to ''Outstanding,'' if the bank would have received a ''Satisfactory'' before the additional consideration.

(3) *Small banks.* (i) To evaluate the performance of a small bank, the [Agency] applies the small bank performance standards as provided in § __.29(a), unless the bank chooses evaluation under the Retail Lending Test.

(ii) If a small bank chooses evaluation under the Retail Lending Test, the following applies:

(A) The [Agency] applies the same provisions used for evaluating intermediate banks under the Retail Lending Test to the small bank, except for § __.22(a)(3).

(B) The [Agency] evaluates the small bank for the evaluation period preceding the bank's next CRA examination under the Retail Lending Test and continues evaluations under the Retail Lending Test for subsequent evaluation periods until the bank opts out. If a small bank opts out of the Retail Lending Test, the [Agency] reverts to evaluating the bank under the small bank performance standards as provided in § __.29(a), starting with the entire evaluation period preceding the bank's next CRA examination.

(C) The small bank may request additional consideration for activities that qualify under the Retail Services and Products Test, the Community Development Financing Test, or the Community Development Services Test and, after considering such activities, the [Agency] may adjust the bank's rating at the institution level from ''Satisfactory'' to ''Outstanding.''

(4) *Wholesale or limited purpose banks.* (i) The [Agency] evaluates a wholesale or limited purpose bank under the Community Development Financing Test for Wholesale or Limited Purpose Banks.

(ii) A wholesale or limited purpose bank may request additional consideration for activities that qualify under the Community Development Services Test and, after considering such activities, the [Agency] may adjust the bank's rating at the institution level from ''Satisfactory'' to ''Outstanding.''

(5) *Banks operating under a strategic plan.* The [Agency] evaluates the performance of a bank that chooses evaluation under a strategic plan approved under § __.27 in accordance with the goals set forth in such plan.

(c) *Activities of [operations subsidiaries or operating subsidiaries] and other affiliates.* In the performance evaluation of a bank, the [Agency] considers the qualifying activities of a bank's [operations subsidiaries or operating subsidiaries] and other affiliates in accordance with paragraphs (c)(1) and (c)(2) of this section, provided that no other bank, other [operations subsidiaries or operating subsidiaries], or other affiliates of the bank claim the activity for purposes of this part.

(1) *Activities of [operations subsidiaries or operating subsidiaries].* The [Agency] considers the qualifying activities of a bank's [operations subsidiaries or operating subsidiaries] as part of the bank's performance evaluation, unless an [operations subsidiary or operations subsidiary] is independently subject to the CRA. The bank must collect, maintain, and report data on the activities of its [operations subsidiaries or operating subsidiaries] as provided in § __.42(d).

(2) *Activities of other affiliates.* The [Agency] considers the qualifying activities of affiliates of a bank that are not [operations subsidiaries or operating subsidiaries], if the bank so chooses, subject to the following:

(i) The affiliate is not independently subject to the CRA.

(ii) The bank collects, maintains, and reports data on the activities of the affiliate as provided in § __.42(e).

(iii) Under the Retail Lending Test, if a bank chooses to have the [Agency] consider retail loans within a retail loan category that are made or purchased by one or more of the bank's affiliates in a particular facility-based assessment area, retail lending assessment area, outside retail lending area, state, or multistate MSA, or nationwide, the [Agency] will consider, subject to paragraphs (c)(2)(i) and (c)(2)(ii) of this section, all of the retail loans within that retail loan category made by all of the bank's affiliates in, respectively, the particular facility-based assessment area, retail lending assessment area, outside retail lending area, state, or multistate MSA, or nationwide.

(d) *Community development financing by a consortium or a third party.* If a bank participates in a consortium that makes community development loans or community development investments, or if a bank invests in a third party that makes such loans or investments, those loans or investments may be considered, at the bank's option, subject to the following limitations:

(i) The bank must report the data pertaining to these loans and investments under § __.42(f);

(ii) If the participants or investors choose to allocate qualifying loans or investments among themselves for

consideration under this section, no participant or investor may claim a loan origination, loan purchase, or investment if another participant or investor claims the same loan origination, loan purchase, or investment; and

(iii) The bank may not claim loans or investments accounting for more than its percentage share (based on the level of its participation or investment) of the total qualifying loans or investments made by the consortium or third party.

(e) *Performance context information considered.* When applying the performance tests and standards provided in paragraphs (a) and (b) of this section, including in considering whether to approve a strategic plan, the [Agency] may consider performance context information to the extent that it is not considered as part of the tests and standards in paragraphs (a) and (b) of this section, including:

(1) Any information regarding a bank's institutional capacity or constraints, including the size and financial condition of the bank, safety and soundness limitations, or any other bank-specific factors that significantly affect the bank's ability to conduct retail banking or community development activities in its facility-based assessment areas;

(2) Any information regarding the bank's past performance;

(3) Demographic data on income levels and income distribution, nature of housing stock, housing costs, economic climate, or other relevant data pertaining to the geographic areas in which the bank is evaluated;

(4) Any information about retail banking and community development needs and opportunities in the geographic areas in which the bank is evaluated provided by the bank or other relevant sources, including but not limited to members of the community, community organizations, state, local, and tribal governments, and economic development agencies;

(5) Data and information provided by the bank regarding the bank's business strategy and product offerings;

(6) The bank's public file, as described in § __.43, including any oral or written comments about the bank's CRA performance submitted to the bank or the [Agency] and the bank's responses to those comments; and

(7) Any other information deemed relevant by the [Agency].

(f) *Conclusions and ratings.* (1) *Conclusions.* As provided in § __.28 and appendix C of this part, the [Agency] assigns to a bank, other than a small bank, conclusions for the bank's performance on the applicable tests and standards in this section, as follows: ''Outstanding,'' ''High Satisfactory,'' ''Low Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance.'' As provided in § __.28 and appendix E of this part, the [Agency] assigns to a small bank conclusions for the bank's performance on the applicable tests and standards in this section, as follows: ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance.''

(2) *Ratings.* The [Agency] assigns to a bank a rating regarding its overall CRA performance, as applicable, in each state, in each multistate MSA, and at the institution level. The ratings assigned by the [Agency] reflect the bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank. As provided in § __.28 and appendices D and E of this part, the [Agency] assigns to a bank a rating of: ''Outstanding''; ''Satisfactory''; ''Needs to Improve''; or ''Substantial Noncompliance.''

(3) *Performance scores.* As provided in § __.28 and appendices C and D of this part, the [Agency] develops performance scores in connection with assigning conclusions and ratings for a bank, other than a small bank evaluated under the small bank performance standards in § __.29(a), a wholesale or limited purpose bank under the Community Development Financing Test for Wholesale or Limited Purpose Banks in § __.26, or a bank evaluated based on a strategic plan under § __.27.

(g) *Safe and sound operations.* The CRA and this part do not require a bank to make loans or investments or to provide services that are inconsistent with safe and sound banking practices, including underwriting standards. Banks are permitted to develop and apply flexible underwriting standards for loans that benefit low- or moderate-income individuals, small businesses or small farms, and low- or moderate-income census tracts, only if consistent with safe and sound operations.

§ __.22 Retail lending test.

(a) *Retail Lending Test—scope.* (1) *General.* The Retail Lending Test evaluates a bank's record of helping to meet the credit needs of its facility-based assessment areas through a bank's origination and purchase of retail loans in each facility-based assessment area.

(2) *Large banks.* For large banks, the Retail Lending Test also evaluates a bank's record of helping to meet credit needs, through the bank's origination and purchase of retail loans, as applicable:

(i) In each retail lending assessment area; and

(ii) In its outside retail lending area, at the institution level.

(3) *Intermediate banks.* For intermediate banks, the Retail Lending Test also evaluates, at the institution level, a bank's record of helping to meet credit needs through the bank's origination and purchase of retail loans in its outside retail lending area if the bank originates and purchases over 50 percent of its retail loans, by dollar amount, outside of its facility-based assessment areas over the relevant evaluation period.

(4) *Major product line.* (i) *Major product line* refers to retail lending in each of the following, separate categories:

(A) Closed-end home mortgage loans: (to include home purchase, home refinance, home improvement, and other purpose closed-end loans, but not including multifamily loans);

(B) Open-end home mortgage loans (to include, but not limited to, home equity lines of credit, but not including multifamily loans);

(C) Multifamily loans;

(D) Small business loans;

(E) Small farm loans; and

(F) Automobile loans;

(ii) Major product line with regard to closed-end home mortgage loans, open-end home mortgage loans, multifamily loans, small business loans, and small farm loans, respectively, means any category of such loans that individually comprises 15 percent or more of a bank's retail lending in a particular facility-based assessment area, retail lending assessment area, or outside retail lending area, by dollar amount, over the relevant evaluation period;

(iii) (A) Major product line with regard to automobile loans means automobile loans that collectively comprise 15 percent or more of a bank's retail lending in a particular facility-based assessment area, retail lending assessment area, or outside retail lending area, based on a combination of the dollar amount and number of loans, over the relevant evaluation period.

(B) Specifically, automobile loans will be considered a major product line if the average of the percentage of automobile lending dollars out of total retail lending dollars and the percentage of automobile loans by loan count out of all total retail lending by loan count is 15 percent or greater in a particular facility-based assessment area, retail lending assessment area, or outside retail lending area.

(5) *Exclusion.* (i) A retail loan may be considered only under the Retail Lending Test and is not eligible for

consideration under the Community Development Financing Test in § __.24 or the intermediate bank community development performance standards in § __.29(b)(2);

(ii) Notwithstanding paragraph (a)(5)(i), a multifamily loan under § __.13(b) may be considered under the Retail Lending Test and under the Community Development Financing Test;

(iii) Notwithstanding paragraph (a)(5)(i), in the case of an intermediate bank that is not required to report a home mortgage loan, a small business loan, or a small farm loan, the bank may opt to have the loan considered under the Retail Lending Test or, if the loan is a qualifying activity pursuant to § __.13, under the Community Development Financing Test or the intermediate bank community development performance standards in § __.29(b)(2).

(b) *Methodology.* (1) *Retail lending volume screen.* The [Agency] first reviews numerical metrics regarding a bank's retail lending volume in each facility-based assessment area that are developed under paragraph (c) of this section.

(2) *Retail lending distribution metrics.* The [Agency] also uses numerical metrics, developed under paragraph (d) of this section, to evaluate the geographic and borrower distribution of a bank's major product lines in each facility-based assessment area and, as applicable:

(i) In each retail lending assessment area; and

(ii) In its outside retail lending area, at the institution level, using a tailored benchmark based on the bank's specific geographic markets served.

(3) *Additional factors considered.* The [Agency] also uses criteria described in paragraph (e) of this section to evaluate a bank's retail lending performance in its facility-based assessment areas.

(c) *Retail lending volume screen.* (1) *Banks that meet or surpass the retail lending volume threshold in a facility-based assessment area.* If the [Agency] determines that a bank meets or surpasses the Retail Lending Volume Threshold in a facility-based assessment area under paragraph (c)(3) of this section:

(i) The [Agency] will evaluate a bank's retail loan distribution for each major product line under paragraph (d) of this section to determine a bank's applicable recommended conclusion for retail lending performance; and

(ii) The [Agency] will assign the bank a recommended Retail Lending Test conclusion in the facility-based assessment area based upon its retail lending performance under paragraphs (c) and (d) of this section. The [Agency] will also evaluate the criteria in paragraph (e) of this section to determine whether to adjust the recommended Retail Lending Test conclusion.

(2) *Banks that fail to meet the retail lending volume threshold in a facility-based assessment area.* If the [Agency] determines that a bank fails to meet the Retail Lending Volume Threshold in a facility-based assessment area under paragraph (c)(3) of this section:

(i) If, after reviewing the factors in in paragraph (c)(2)(iii) of this section, the [Agency] determines that there is an acceptable basis for the bank failing to meet Retail Lending Volume Threshold in a facility-based assessment area, the [Agency] will evaluate the bank's retail loan distribution for each major product line under paragraph (d) of this section to develop a recommended Retail Lending Test conclusion. The [Agency] will also evaluate the criteria in paragraph (e) of this section to determine whether to adjust the recommended Retail Lending Test conclusion;

(ii) (A) If, after reviewing the factors described in paragraph (c)(2)(iii) of this section, the [Agency] determines there is not an acceptable basis for a large bank failing to meet Retail Lending Volume Threshold in a facility-based assessment area, the [Agency] will assign the bank a Retail Lending Test conclusion of ''Substantial Noncompliance'' or ''Needs to Improve'' in that facility-based assessment area based upon:

(*1*) The bank's retail lending volume and the extent by which it failed to meet the Retail Lending Volume Threshold;

(*2*) Its retail loan distribution for each major product line under paragraph (d) of this section; and

(*3*) The criteria in paragraph (e) of this section.

(B) If, after reviewing the factors described in paragraph (c)(2)(iii) of this section, the [Agency] determines there is not an acceptable basis for an intermediate bank, or a small bank that opts to be evaluated under the Retail Lending Test, failing to meet the Retail Lending Volume Threshold in a facility-based assessment area, the [Agency] will take into account the bank's performance relative to the Retail Lending Volume Threshold when determining the bank's recommended Retail Lending Test conclusion in that facility-based assessment area.

(iii) The [Agency] will determine whether there is an acceptable basis for a bank failing to meet the Retail Lending Volume Threshold in a facility-based assessment area by considering the bank's institutional capacity and constraints, including the financial condition of a bank, the presence or lack thereof of other lenders in the geographic area, safety and soundness limitations, business strategy, and other factors that limit the bank's ability to lend in the assessment area.

(3) *Retail lending volume threshold.* The [Agency] determines that a bank has met or surpassed the Retail Lending Volume Threshold in a facility-based assessment area where the bank has a Bank Volume Metric of 30 percent or greater of the Market Volume Benchmark for that facility-based assessment area. The Bank Volume Metric and the Market Volume Benchmark for a facility-based assessment are derived under section I of appendix A of this part.

(d) *Retail lending distribution metrics.* (1) *Scope.* For each major product line, the [Agency] evaluates the geographic and borrower distributions of a bank's retail loans, as applicable:

(i) In each facility-based assessment area;

(ii) In each retail lending assessment area; and

(iii) In its outside retail lending area, at the institution level.

(2) *Recommended Retail Lending Test conclusions.* (i) Using bank borrower and geographic distributions for each major product line compared against applicable performance ranges, as described in appendix A of this part, the [Agency] will assign a bank recommended Retail Lending Test conclusion, as determined in appendix A of this part, in:

(A) (*1*) Each facility-based assessment area of a large bank where the bank meets or surpasses the Retail Lending Volume Threshold under paragraph (c) of this section or the [Agency] determines that the bank has an acceptable basis for failing to meet the Retail Lending Volume Threshold; and

(*2*) Each facility-based assessment area of an intermediate bank;

(B) Each retail lending assessment area of a large bank; and

(C) As applicable, a large bank's or an intermediate bank's outside retail lending area, at the institution level.

(ii) *Geographic distribution measures.* Regarding a bank's geographic distribution of retail lending, the [Agency] will review a bank's performance in low- and moderate-income census tracts using the following measures:

(A) A Geographic Bank Metric, derived under section III.1 of appendix A of this part;

(B) A Geographic Market Benchmark, derived under section III.2.a of appendix A of this part; and

(C) A Geographic Community Benchmark, derived under section III.2.b of appendix A of this part.

(D). For each major product line, the [Agency] will compare the following in low-income census tracts and moderate-income census tracts, respectively:

(*1*) The bank's performance, as captured by the Geographic Bank Metric and as described in sections V.2.b and V.2.c of appendix A of this part, compared against:

(*2*) Performance ranges, with boundaries based upon the Geographic Market Benchmark and the Geographic Community Benchmark as described in section V.2 of appendix A of this part, associated with each potential recommended Retail Lending Test performance conclusion: ''Outstanding,'' ''High Satisfactory,'' ''Low Satisfactory,'' ''Needs to Improve,'' and ''Substantial Noncompliance.''

(iii) *Borrower distribution measures.* Regarding the bank's borrower distribution of retail lending, apart from multifamily lending, the [Agency] will review a bank's retail lending performance regarding, as applicable, low-income borrowers and moderate-income borrowers, small businesses with gross annual revenues of $250,000 or less and small businesses with gross annual revenues of more than $250,000 but less than or equal to $1 million, and small farms with gross annual revenues of $250,000 or less and small farms with gross annual revenues of more than $250,000 but less than or equal to $1 million, using the following measures:

(A) A Borrower Bank Metric, derived under section IV.1 of appendix A of this part;

(B) A Borrower Market Benchmark, derived under section IV.2.a of appendix A of this part; and

(C) A Borrower Community Benchmark, derived under section IV.2.b of appendix A of this part.

(D) For each major product line, the [Agency] will compare the following regarding lending to, as applicable: low-income borrowers and moderate-income borrowers; small businesses with gross annual revenues of $250,000 or less and small businesses with gross annual revenues of more than $250,000 but less than or equal to $1 million, and small farms with gross annual revenues of $250,000 or less and small farms with gross annual revenues of more than $250,000 but less than or equal to $1 million:

(*1*) The bank's performance, as captured by the Borrower Bank Metric and as described in section V.2 of appendix A of this part, compared against:

(*2*) Performance ranges, with boundaries based upon the Borrower Market Benchmark and the Borrower Community Benchmark as described in sections V.2.d and V.2.e of appendix A of this part, associated with each potential recommended Retail Lending Test performance conclusion: ''Outstanding''; ''High Satisfactory''; ''Low Satisfactory''; ''Needs to Improve''; and ''Substantial Noncompliance.''

(e) *Additional factors considered when evaluating retail lending performance.* In addition to considering how a bank performs relative to the Retail Lending Volume Threshold described in paragraph (c) of this section and the performance ranges described in paragraph (d) of this section, the [Agency] evaluates the retail lending performance of a bank in each facility-based assessment area by considering:

(1) Information indicating that a bank has purchased retail loans for the sole or primary purpose of inappropriately influencing its retail lending performance evaluation, including but not limited to subsequent resale of some or all of those retail loans or any indication that some or all of the loans have been considered in multiple banks' CRA evaluations.

(2) The dispersion of retail lending within the facility-based assessment area to determine whether there are gaps in lending in the facility-based assessment area that are not explained by performance context.

(3) The number of banks whose reported retail lending and deposits data is used to establish the applicable Retail Lending Volume Threshold, geographic distribution, and borrower distribution thresholds.

(4) Missing or faulty data that would be necessary to calculate the relevant metrics and benchmarks or any other factors that prevent the [Agency] from calculating a recommended conclusion. If unable to calculate a recommended conclusion, the [Agency] will assign a Retail Lending Test conclusion based on consideration of the relevant available data.

(f) *Retail Lending Test performance conclusions and ratings.* (1) *Conclusions.* As provided in § __.28 and appendix C of this part, the [Agency] assigns conclusions for a bank's Retail Lending Test performance in, as applicable, its facility-based assessment areas, retail lending assessment areas, and outside retail lending area. As described in appendix C of this part, conclusions assigned for a bank's performance in facility-based assessment areas and, as applicable, retail lending assessment areas are the basis for assigned conclusions at the state, multistate MSA, and institution levels. As applicable, a bank's assigned conclusion at the institution level is also informed by the bank's retail lending activities in its outside retail lending area.

(2) *Ratings.* As provided in § __.28 and appendix D of this part, the [Agency] incorporates a bank's Retail Lending Test conclusions into, as applicable, its state, multistate MSA, and institution ratings.

§ __.23 Retail services and products test.

(a) *Scope of Retail Services and Products Test.* (1) *In general.* The Retail Services and Products Test evaluates the availability and responsiveness of a bank's retail banking services and products targeted to low- and moderate-income individuals and in low- and moderate-income census tracts in a bank's facility-based assessment areas and at the state, multistate MSA, and institution levels. The [Agency] considers the bank's delivery systems, as described in paragraph (b) of this section, and the bank's products and other services, as described in paragraph (c) of this section.

(2) *Exclusion.* Activities considered for a bank under the Community Development Services Test may not be considered under the Retail Services and Products Test.

(b) *Delivery systems.* To evaluate a bank's delivery systems, the [Agency] analyzes the following: branch availability and services, as provided in paragraph (b)(1) of this section and remote service facility availability, as provided in paragraph (b)(2) of this section. For a large bank that had average assets of over $10 billion in both of the prior two calendar years, based on the assets reported on its four quarterly Call Reports for each of those calendar years, the [Agency] also analyzes digital and other delivery systems, as provided in paragraph (b)(3) of this section. A large bank that had average assets of $10 billion or less in either of the prior two calendar years, based on the assets reported on its four quarterly Call Reports for each of those calendar years, may request additional consideration under the Retail Services and Products Test for its digital and other delivery systems under paragraph (b)(3) of this section.

(1) *Branch availability and services.* The [Agency] evaluates a bank's branch distribution, branch openings and closings, and branch hours of operation

and services responsive to the needs of low- and moderate-income individuals and in low- and moderate-income communities.

(i) *Branch distribution.* The [Agency] evaluates a bank's branch distribution based on the following:

(A) *Branch distribution metrics.* The [Agency] considers the number and percentage of the bank's branches within low-, moderate-, middle-, and upper-income census tracts.

(B) *Benchmarks.* The [Agency]'s consideration of the branch distribution metrics in a facility-based assessment area is informed by the following benchmarks:

(*1*) Percentage of census tracts in the facility-based assessment area by low-, moderate-, middle-, and upper-income census tracts, respectively;

(*2*) Percentages of households in the facility-based assessment area by low-, moderate-, middle-, and upper-income census tracts, respectively;

(*3*) Percentage of total businesses in the facility-based assessment area by low-, moderate-, middle-, and upper-income census tracts, respectively; and

(*4*) Percentage of all full-service bank branches in the facility-based assessment area by low-, moderate-, middle-, and upper-income census tracts, respectively.

(C) *Geographic considerations.* The [Agency] considers the availability of branches in the following census tracts:

(*1*) Low branch access census tracts or very low branch access census tracts, as defined in § __.12;

(*2*) Middle- and upper-income census tracts in which branches deliver services to low- and moderate-income individuals;

(*3*) Distressed or underserved nonmetropolitan middle-income census tracts; and

(*4*) Native Land Areas.

(ii) *Branch openings and closings.* The [Agency] evaluates the bank's record of opening and closing branches since the previous examination to inform the degree of accessibility of banking services to low- and moderate-income individuals and low- and moderate-income census tracts.

(iii) *Branch hours of operation and services.* The [Agency] evaluates the following:

(A) The reasonableness of branch hours in low- and moderate-income census tracts compared to middle- and upper-income census tracts, including but not limited to whether branches offer extended and weekend hours.

(B) The range of services provided at branches in low-, moderate-, middle-, and upper-income census tracts, respectively, including but not limited to:

(*1*) Bilingual and translation services;

(*2*) Free or low-cost check cashing services, including but not limited to government and payroll check cashing services;

(*3*) Reasonably priced international remittance services; and

(*4*) Electronic benefit transfer accounts.

(C) The degree to which branch services are responsive to the needs of low- and moderate-income individuals in a bank's facility-based assessment areas.

(2) *Remote service facility availability.* The [Agency] evaluates a bank's remote service facility availability in a facility-based assessment area based on the following:

(i) *Remote service facility distribution metrics.* The [Agency] considers the number and percentage of the bank's remote service facilities within low-, moderate-, middle-, and upper-income census tracts.

(ii) *Benchmarks.* The [Agency]'s consideration of the remote service facility distribution metrics is informed by the following benchmarks:

(A) Percentage of census tracts in the facility-based assessment area by low-, moderate-, middle-, and upper-income census tracts, respectively;

(B) Percentage of households in the facility-based assessment area by low-, moderate-, middle-, and upper-income census tracts, respectively; and

(C) Percentage of total businesses in the facility-based assessment area by low-, moderate-, middle-, and upper-income census tracts, respectively.

(iii) *Access to out-of-network remote service facilities.* The [Agency] reviews whether the bank offers customers fee-free access to out-of-network ATMs in low- and moderate-income census tracts.

(3) *Digital and other delivery systems.* The [Agency] evaluates the availability and responsiveness of a bank's digital and other delivery systems, including to low- and moderate-income individuals, by reviewing the following:

(i) Digital activity by individuals in low-, moderate-, middle-, and upper-income census tracts, respectively, such as:

(A) The number of checking and savings accounts opened digitally in low-, moderate-, middle-, and upper-income census tracts, respectively;

(B) Accountholder usage data by type of digital and other delivery systems in low-, moderate-, middle-, and upper-income census tracts, respectively;

(ii) The range of digital and other delivery systems, including but not limited to online banking, mobile banking, and telephone banking; and

(iii) The bank's strategy and initiatives to serve low- and moderate-income individuals with digital and other delivery systems.

(c) *Credit and deposit products.* As provided in paragraph (c)(1) of this section, the [Agency] analyzes the responsiveness of credit products and programs not covered under paragraph (b) of this section to the needs of low- and moderate-income individuals, small businesses, and small farms. As provided in paragraph (c)(2) of this section, for a large bank that had average assets of over $10 billion in both of the prior two calendar years, based on the assets reported on its four quarterly Call Reports for each of those calendar years, the [Agency] also analyzes a bank's deposit products and other services not covered under paragraph (b) of this section. A large bank that had average assets of $10 billion or less in either of the prior two calendar years, based on the assets reported on its four quarterly Call Reports for each of those calendar years, may request additional consideration under the Retail Services and Products Test for its deposit products and other services under paragraph (c)(2) of this section.

(1) *Responsiveness of credit products and programs to the needs of low- and moderate-income individuals, small businesses, and small farms.* The [Agency] evaluates whether a bank's credit products and programs are, in a safe and sound manner, responsive to the needs of low- and moderate-income individuals (including through low-cost education loans), small businesses, and small farms. Categories of responsive credit products and programs may include, but are not limited to, credit products and programs that:

(i) Facilitate home mortgage and consumer lending targeted to low- or moderate-income borrowers in a safe and sound manner.

(ii) Meet the needs of small businesses and small farms, including the smallest businesses and smallest farms, in a safe and sound manner; or

(iii) Are conducted in cooperation with MDIs, WDIs, LICUs, or Treasury Department-certified CDFIs in a safe and sound manner.

(2) *Deposit products responsive to the needs of low- and moderate-income individuals.* (i) *Availability of deposit products responsive to the needs of low- and moderate-income individuals.* The [Agency] evaluates whether the bank offers deposit products that have features and cost characteristics responsive to the needs of low- and moderate-income individuals, consistent with safe and sound operations, including but not limited to

deposit products with the following types of features:

(A) Low-cost features, including but not limited to deposit products with no overdraft or insufficient funds fees, no or low minimum opening balance, no or low monthly maintenance fees, or free or low-cost check-cashing and bill-pay services;

(B) Features facilitating broad functionality and accessibility, including but not limited to deposit products with in-network ATM access, debit cards for point-of-sale and bill payments, and immediate access to funds for customers cashing government, payroll, or bank-issued checks; or

(C) Features facilitating inclusivity of access by persons without banking or credit histories, or with adverse banking histories.

(ii) *Usage of deposit products responsive to the needs of low- and moderate-income individuals.* The [Agency] evaluates the usage of a bank's deposit products that have features and cost characteristics responsive to the needs of low- and moderate-income individuals by considering, for example, the following:

(A) The number of responsive deposit accounts opened and closed during each year of the evaluation period in low-, moderate-, middle-, and upper-income census tracts, respectively.

(B) In connection with § __ .23(c)(2)(ii)(A), the percentage of responsive deposit accounts compared to total deposit accounts for each year of the evaluation period.

(C) Marketing, partnerships, and other activities that the bank has undertaken to promote awareness and use of responsive deposit accounts by low- and moderate-income individuals.

(d) *Retail Services and Products Test performance conclusions and ratings.* (1) *Conclusions.* As provided in § __.28 and appendix C of this part, the [Agency] assigns conclusions for the retail services and products performance of a bank based upon the [Agency]'s assessment of the bank's performance in, as applicable, each facility-based assessment area, state, multistate MSA, and at the institution level.

(2) *Ratings.* As provided in § __.28 and appendix D of this part, the [Agency] incorporates a bank's Retail Services and Products Test conclusions into, as applicable, its state, multistate MSA, and institution ratings.

§ __.24 Community development financing test.

(a) *Scope of Community Development Financing Test.* (1) *In general.* The Community Development Financing Test evaluates a bank's record of helping to meet the community development financing needs of the bank's facility-based assessment areas, states, multistate MSAs, and nationwide area, through its provision of community development loans and community development investments. In determining whether a bank's community development loans or community development investments serve a facility-based assessment area, state, multistate MSA, or nationwide area, the [Agency] considers information provided by the bank and, as needed, publicly available information and information provided by government or community sources that demonstrates that the activity includes serving individuals or census tracts located within the facility-based assessment area, state, multistate MSA, or nationwide area. Community development financing dollars will be allocated in accordance with section 13 of appendix B of this part.

(2) *Exclusion.* (i) In general, a retail loan may only be considered under the Retail Lending Test in § __.22 and is not eligible for consideration under the Community Development Financing Test;

(ii) A multifamily loan described in § __.13(b) may be considered both under the Retail Lending Test in § __.22 and under the Community Development Financing Test;

(iii) An intermediate bank that is not required to report a home mortgage loan, a small business loan, or a small farm loan may opt to have the home mortgage loan, small business loan, or small farm loan considered either under the Retail Lending Test in § __.22 or, if the loan is a qualifying activity pursuant to § __.13, under the Community Development Financing Test or the intermediate bank community development evaluation in § __.29, as applicable.

(b) *Bank performance in a facility-based assessment area.* The [Agency] evaluates the community development financing performance of a bank in a facility-based assessment area based on consideration of the numerical metrics under paragraph (b)(1) of this section and a review of the impact and responsiveness of the bank's activities in a facility-based assessment area under § __.15.

(1) *Bank Assessment Area Community Development Financing Metric.* The Bank Assessment Area Community Development Financing Metric, as specified in section 2 of appendix B of this part, measures the dollar value of a bank's community development loans and community development investments that serve the facility-based assessment area for each year, averaged over the years of the evaluation period, against the dollar value of deposits from the bank's deposit accounts in the facility-based assessment area, averaged over the evaluation period.

(2) *Benchmarks.* The Bank Assessment Area Community Development Financing Metric is compared to the following benchmarks:

(i) *Assessment Area Community Development Financing Benchmark.* The Assessment Area Community Development Financing Benchmark, as specified in section 3 of appendix B of this part, measures the community development financing activity of large banks in the aggregate in the bank's facility-based assessment area against the total dollar value of deposits from large bank deposit accounts in the facility-based assessment area.

(ii) *Metropolitan and Nonmetropolitan Nationwide Community Development Financing Benchmarks.* The Metropolitan and Nonmetropolitan Nationwide Community Development Financing Benchmarks, as specified in section 4 of appendix B of this part, measure the community development financing activity of large banks in the aggregate nationally for metropolitan areas (if the relevant facility-based assessment area is in a metropolitan area) or for nonmetropolitan areas (if the relevant facility-based assessment area is in a nonmetropolitan area) against the total dollar value of deposits from large bank deposit accounts in those areas, respectively.

(c) *Bank performance in a state, multistate MSA, and nationwide area.* (1) *In general.* The [Agency] evaluates the community development financing performance of a bank in a state, multistate MSA, and nationwide area, as applicable, based on the two components in paragraph (c)(1)(i) and (c)(1)(ii) of this section. The [Agency] assigns a conclusion for the bank's performance at each state, multistate MSA, and nationwide area, respectively, based on a weighted combination of these components in accordance with section 15 of appendix B of this part:

(i) A weighted average under paragraphs (c)(2)(i), (c)(3)(i), and (c)(4)(i) of this section of the bank's facility-based assessment area conclusions for each area where conclusions are assigned, as applicable, calculated in accordance with section 16 of appendix B of this part; and

(ii) An assessment under paragraphs (c)(2)(ii), (c)(3)(ii), and (c)(4)(ii) of this section, respectively, which combines

consideration of the applicable metrics and benchmarks with a review of the impact of the bank's activities in those respective areas under § __.15.

(2) *Bank performance in a state.* The two components of the [Agency]'s assessment of a bank's community development performance in a state are as follows:

(i) *Component one—weighted average of facility-based assessment area performance conclusions in a state.* The [Agency] considers the weighted average of the bank's conclusions for its facility-based assessment areas within the state, calculated in accordance with section 16 of appendix B of this part.

(ii) *Component two—metrics and impact assessment in a state.* The [Agency] considers the numerical metrics of this paragraph and the impact of the bank's activities in a state under § __.15. The [Agency] combines the results of the metrics and benchmarks and the impact review in accordance with section 15.iii of appendix B of this part.

(A) *Bank State Community Development Financing Metric.* The Bank State Community Development Financing Metric, as specified in section 5 of appendix B of this part, measures the dollar value of a bank's community development loans and community development investments that serve a state against the dollar value of deposits from the bank's deposit accounts in the state.

(B) *Benchmarks.* The Bank State Community Development Financing Metric is compared to the following benchmarks:

(*1*) *State Community Development Financing Benchmark.* The State Community Development Financing Benchmark, as specified in section 6 of appendix B of this part, measures the community development financing activity of large banks in the state in the aggregate against the total dollar value of deposits from large bank deposit accounts in the state.

(*2*) *State Weighted Assessment Area Community Development Financing Benchmark.* The State Weighted Assessment Area Community Development Financing Benchmark, as specified in section 7 of appendix B of this part, is the average of the bank's Assessment Area Community Development Financing Benchmarks for each facility-based assessment area within the state, weighted in accordance with section 17 of appendix B of this part.

(3) *Bank performance in a multistate MSA.* The two components of the [Agency]'s assessment of a bank's community development performance in a multistate MSA are as follows:

(i) *Component one—weighted average of facility-based assessment area performance in a multistate MSA.* The [Agency] considers the weighted average of the bank's conclusions for its facility-based assessment areas within the multistate MSA, calculated in accordance with section 16 of appendix B of this part.

(ii) *Component two—metrics and impact assessment in a multistate MSA.* The [Agency] considers the numerical metrics in this paragraph and the impact of the bank's activities in a multistate MSA under § __.15. The [Agency] combines the results of the metrics and benchmarks and the impact review in accordance with section 15.iii of appendix B of this part.

(A) *Bank Multistate MSA Community Development Financing Metric.* The Bank Multistate MSA Community Development Financing Metric, as specified in section 8 of appendix B of this part, measures the dollar value of a bank's community development loans and community development investments that serve a multistate MSA against the dollar value of deposits from deposit accounts in the multistate MSA.

(B) *Benchmarks.* The Bank Multistate Community Development Financing Metric is compared to the following benchmarks:

(*1*) *Multistate MSA Community Development Financing Benchmark.* The Multistate MSA Community Development Financing Benchmark, as specified in section 9 of appendix B of this part, measures the community development activity of large banks in the aggregate in the multistate MSA against the total dollar value of deposits from large bank deposit accounts in the multistate MSA.

(*2*) *Multistate MSA Weighted Assessment Area Community Development Financing Benchmark.* The Multistate MSA Weighted Assessment Area Community Development Financing Benchmark, as specified in section 10 of appendix B of this part, is the weighted average of the bank's Bank Assessment Area Community Development Financing Benchmarks for each facility-based assessment area within the multistate MSA, calculated in accordance with section 17 of appendix B of this part.

(4) *Bank performance in a nationwide area.* The two components of the [Agency]'s assessment of a bank's community development performance in a nationwide area are as follows:

(i) *Component one—weighted average of facility-based assessment area performance in a nationwide area.* The [Agency] considers the average of the bank's conclusions for its assessment areas within the nationwide area, weighted in accordance with section 16 of appendix B of this part.

(ii) *Component two—metrics and impact assessment in a nationwide area.* The [Agency] considers the numerical metrics of this paragraph and the impact of the bank's activities in a nationwide area under § __.15. The [Agency] combines the results of the metrics and benchmarks and the impact review in accordance with section 15.iii of appendix B of this part.

(A) *Bank Nationwide Community Development Financing Metric.* The Bank Nationwide Community Development Financing Metric, as specified in section 11 of appendix B of this part, measures the bank's total community development financing activity in a nationwide area for each year, averaged over the years of the evaluation period, divided by the total dollar amount of deposits from bank deposit accounts in a nationwide area, averaged over the years of the evaluation period.

(B) *Benchmarks.* The Bank Nationwide Community Development Financing Metric is compared to the following benchmarks:

(*1*) *Nationwide Community Development Financing Benchmark.* The Nationwide Community Development Financing Benchmark, as specified in section 12 of appendix B of this part, measures the community development financing activity of large banks in the aggregate in a nationwide area for each year, averaged over the years of the evaluation period, divided by the total dollar amount of deposits from large bank deposit accounts in a nationwide area, averaged over the years of the evaluation period.

(*2*) *Nationwide Weighted Assessment Area Community Development Financing Benchmark.* The Nationwide Weighted Assessment Area Community Development Financing Benchmark, as specified in section 13 of appendix B of this part, is the weighted average of the bank's Bank Assessment Area Community Development Financing Benchmarks for each facility-based assessment area within the nationwide area, calculated in accordance with section 17 of appendix B of this part.

(d) *Community Development Financing Test performance conclusions and ratings.* (1) *Conclusions.* As provided in § __.28 and appendix C of this part, the [Agency] assigns conclusions for the Community Development Financing Test performance of a bank based upon the [Agency]'s assessment of the bank's

performance in each facility-based assessment area, state, multistate MSA, and nationwide area.

(2) *Ratings.* As provided in § __.28 and appendix D of this part, the [Agency] incorporates a bank's Community Development Financing Test conclusions into, as applicable, its state, multistate MSA, and institution ratings.

§ __.25 Community development services test.

(a) *Scope of Community Development Services Test.* The Community Development Services Test evaluates a bank's record of helping to meet the community development services needs of the bank's facility-based assessment areas, states, multistate MSAs, and nationwide area. Community development services are defined in paragraph (d) of this section. In determining whether a bank's community development services serve a facility-based assessment area, state, multistate MSA, or nationwide area, the [Agency] considers publicly available information and information provided by the bank or government or community sources that demonstrates that the activity includes serving individuals or census tracts located within the facility-based assessment area, state, multistate MSA, or nationwide area, as applicable.

(b) *Bank performance in a facility-based assessment area.* The [Agency] evaluates the community development services performance of a bank in a facility-based assessment area based on a review of the bank's provision of community development services under paragraph (b)(1) of this section and, as applicable, a metric measuring the bank's community development services hours under paragraph (b)(2) of this section. The [Agency] also reviews the impact and responsiveness of a bank's community development services activities in a facility-based assessment area under paragraph (b)(3) of this section.

(1) *Review of the provision of community development services.* The [Agency] reviews the extent to which a bank provides community development services based on any relevant information provided to the [Agency] by a bank, including any information required to be collected under § __.42, as applicable. This review may include consideration of one or more of the following types of information:

(i) The total number of hours for all community development services performed by a bank;

(ii) The number and type of community development services offered;

(iii) For nonmetropolitan areas, the number of activities related to the provision of financial services;

(iv) The number and proportion of community development service hours completed by, respectively, executive and other employees of the bank;

(v) The extent to which community development services are used, as demonstrated by information such as the number of low- and moderate-income participants, organizations served, and sessions sponsored, as applicable; and

(vi) Any other evidence that the bank's community development services benefit low- and moderate-income individuals or are otherwise responsive to community development needs.

(2) *Bank Assessment Area Community Development Service Hours Metric.* For a large bank that had average assets of over $10 billion in both of the prior two calendar years, based on the assets reported on its four quarterly Call Reports for each of those calendar years, as of December 31, the [Agency] also considers the Bank Assessment Area Community Development Service Hours Metric. The Bank Assessment Area Community Development Service Hours Metric measures the total number of hours for all community development services performed by a bank in a facility-based assessment area during the evaluation period, divided by the total number of full-time equivalent bank employees in the facility-based assessment area, to obtain the average number of community development service hours per full-time equivalent employee.

(3) *Impact review.* The [Agency] evaluates the impact and responsiveness of the bank's community development services in a facility-based assessment area under § __.15.

(c) *Bank performance in a state, multistate MSA, or nationwide area.* The [Agency] evaluates the community development services performance of a bank in a state, multistate MSA, or nationwide area, as applicable under § __.18, based on two components:

(1) *Component one—weighted average of facility-based assessment area performance in a state, multistate MSA, or nationwide area.* The [Agency] considers the weighted average of the bank's Community Development Services Test conclusions for its facility-based assessment areas within a state, multistate MSA, or nationwide area, as applicable under § __.18, calculated in accordance with section 16 of appendix B of this part.

(2) *Component two—evaluation of community development services outside of facility-based assessment areas.* For each state, multistate MSA, or nationwide area, as applicable, the [Agency] may adjust the results of the weighted average derived under paragraph (c)(1) upward, based on an evaluation of the bank's community development services activities outside of its facility-based assessment areas, which may consider the following information:

(i) The number, hours, and type of community development services conducted in the state, multistate MSA, or nationwide area;

(ii) The proportion of activities related to the provision of financial services, as described in paragraph (d)(3) of this section; and

(iii) The impact and responsiveness of the community development services in the state, multistate MSA, or nationwide area, consistent with the factors in paragraph (b)(3) of this section.

(d) *Community development services—defined.* (1) *In general.* Community development services means activities that:

(i) Have a primary purpose of community development, as defined in § __.13(a)(1);

(ii) Are volunteer activities performed by bank board members or employees of the bank; and

(iii) Are related to financial services as described in paragraph (d)(3) of this section, unless otherwise indicated in paragraph (d)(4) of this section.

(2) *Exclusions.* Community development services do not include volunteer activities by bank board members or employees of the bank who are not acting in their capacity as representatives of the bank.

(3) *Activities related to the provision of financial services.* Activities related to the provision of financial services are generally activities that relate to credit, deposit, and other personal and business financial services. Activities related to financial services include, but are not limited to:

(i) Serving on the board of directors of an organization that has a primary purpose of community development;

(ii) Providing technical assistance on financial matters to non-profit, government, or tribal organizations or agencies supporting community development activities;

(iii) Providing support for fundraising to organizations that have a primary purpose of community development;

(iv) Providing financial literacy education as described in § __.13(k); or

(v) Providing services reflecting other areas of expertise at the bank, such as human resources, information technology, and legal services.

(4) *Community development services in nonmetropolitan areas.* Banks may receive community development services consideration for volunteer activities undertaken in nonmetropolitan areas that otherwise meet the criteria for one or more of the community development definitions, as described in § __.13, even if unrelated to financial services. Examples of qualifying activities not related to financial services include, but are not limited to:

(i) Assisting an affordable housing organization to construct homes;

(ii) Volunteering at an organization that provides community support such as a soup kitchen, a homeless shelter, or a shelter for victims of domestic violence; and

(iii) Organizing or otherwise assisting with a clothing drive or a food drive for a community service organization.

(e) *Community Development Services Test performance conclusions and ratings.* (1) *Conclusions.* As provided in § __.28 and appendix C of this part, the [Agency] assigns conclusions for a bank's Community Development Services Test performance in, as applicable, each facility-based assessment area, state, multistate MSA, and at the institution level.

(2) *Ratings.* As provided in § __.28 and appendix D of this part, the [Agency] incorporates a bank's Community Development Services Test conclusions into, as applicable, its state, multistate MSA, and institution ratings.

§ __.26 Wholesale or limited purpose banks.

(a) *Bank request for designation as a wholesale or limited purpose bank.* To receive a designation as a wholesale or limited purpose bank, a bank must file a request, in writing, with the [Agency] at least three months prior to the proposed effective date of the designation. If the [Agency] approves the designation, it remains in effect until the bank requests revocation of the designation or until one year after the [Agency] notifies a wholesale or limited purpose bank that the [Agency] has revoked the designation on its own initiative.

(b) *Performance evaluation.* (1) To evaluate a wholesale or limited purpose bank, the [Agency] applies the Community Development Financing Test for Wholesale or Limited Purpose Banks described in paragraphs (c) through (f) of this section.

(2) A wholesale or limited purpose bank may request additional consideration for activities that would qualify for consideration under the Community Development Services Test. Based on a review of these activities, if warranted, the [Agency] may raise the bank's rating at the institution level from ''Satisfactory'' to ''Outstanding.''

(c) *Scope of Community Development Financing Test for Wholesale or Limited Purpose Banks.* (1) The Community Development Financing Test for Wholesale or Limited Purpose Banks evaluates a wholesale or limited purpose bank's record of helping to meet the community development financing needs of the bank's facility-based assessment areas, states, multistate MSAs, and nationwide area, through its provision of community development loans and community development investments.

(2) In determining whether a wholesale or limited purpose bank's community development financing activities serve a facility-based assessment area, state, multistate MSA, or nationwide area, the [Agency] considers information provided by the bank and, as needed, publicly available information and information provided by government or community sources that demonstrate that the activities include serving individuals or census tracts located within the bank's facility-based assessment area, state, multistate MSA, or nationwide area.

(3) Community development financing dollars will be allocated in accordance with section 14 of appendix B of this part.

(d) *Wholesale or limited purpose bank performance in a facility-based assessment area.* The [Agency] evaluates the community development financing performance of a wholesale or limited purpose bank in a facility-based assessment area based on consideration of the total dollar value of a bank's community development loans and community development investments that serve the facility-based assessment area for each year and a review of the impact and responsiveness of the bank's activities in the facility-based assessment area under § __.15.

(e) *Wholesale or limited purpose bank performance in a state or multistate MSA.* The [Agency] evaluates the community development financing performance of a wholesale or limited purpose bank in a state or multistate MSA based on consideration of the following:

(1) The bank's community development financing performance in its facility-based assessment areas in the state or multistate MSA; and

(2) The dollar value of a bank's community development loans and community development investments that serve the state or multistate MSA during the evaluation period and a review of the impact of the bank's activities in the state or multistate MSA under § __.15.

(f) *Wholesale or limited purpose bank performance in a nationwide area.* The [Agency] evaluates the community development financing performance of a wholesale or limited purpose bank in a nationwide area based on consideration of the following:

(1) The bank's community development financing performance in all of its facility-based assessment areas; and

(2) The Wholesale or Limited Purpose Bank Community Development Financing Metric and a review of the impact of the bank's nationwide activities under § __.15. The Wholesale or Limited Purpose Bank Community Development Financing Metric, as specified in section 18 of appendix B of this part, measures the average total dollar value of a bank's community development loans and community development investments over the evaluation period against the bank's quarterly average total assets over the evaluation period.

(g) *Community Development Financing Test for Wholesale or Limited Purpose Banks performance conclusions and ratings.* (1) *Conclusions.* As provided in § __.28 and appendix C of this part, the [Agency] assigns conclusions for a wholesale or limited purpose bank's Community Development Financing Test performance in, as applicable, each facility-based assessment area, state, multistate MSA, and nationwide area.

(2) *Ratings.* As provided in § __.28 and appendix D of this part, the [Agency] incorporates a wholesale or limited purpose bank's Community Development Financing Test conclusions into, as applicable, its state, multistate MSA, and institution ratings.

§ __.27 Strategic plan.

(a) *Alternative election.* The [Agency] will assess a bank's record of helping to meet the credit needs of its facility-based assessment areas and, as applicable, its retail lending assessment areas and other geographic areas served by the bank at the institution level under a strategic plan, if:

(1) The bank has submitted the plan to the [Agency] as provided for in this section;

(2) The [Agency] has approved the plan;

(3) The plan is in effect; and

(4) The bank has been operating under an approved plan for at least one year.

(b) *Data reporting.* The [Agency]'s approval of a plan does not affect the bank's obligation, if any, to report data as required by § __.42.

(c) *Plans in general.* (1) *Term.* A plan may have a term of no more than five years, and any multi-year plan must include annual interim measurable goals under which the [Agency] will evaluate the bank's performance.

(2) *Multiple assessment areas.* A bank with more than one assessment area may prepare:

(i) A single plan for all of its facility-based assessment areas and, as applicable, retail lending assessment areas and geographic areas outside of its facility-based assessment areas and retail lending assessment areas at the institution level, with goals for each geographic area; or

(ii) Separate plans for one or more of its facility-based assessment areas and, as applicable, retail lending assessment areas, and geographic areas outside of its facility-based assessment areas and retail lending assessment areas at the institution level.

(3) *Treatment of [operations subsidiaries or operating subsidiaries] and affiliates.* (i) The activities of a bank's [operations subsidiary or operating subsidiary] must be included in its plan(s) or be evaluated pursuant to the default evaluation methodology under which the bank would be examined in the absence of an approved plan, unless the [operations subsidiary or operating subsidiary] is subject to CRA requirements.

(ii) Additionally, at a bank's option, activities of other affiliates may be included in a plan, if those activities are not claimed for purposes of this part by any other institution. Other affiliated institutions may prepare a joint plan if the plan provides measurable goals for each institution. Activities may be allocated among institutions at the institutions' option, provided that those activities are not claimed for purposes of this part by another bank.

(iii) The method by which loans are allocated among affiliated institutions for CRA purposes must reflect a reasonable basis for the allocation of banking activities among the institutions and must not be designed solely to artificially enhance any institution's CRA evaluation.

(d) *Public participation in plan development.* Before submitting a plan to the [Agency] for approval, a bank must:

(1) Informally seek suggestions from members of the public in its facility-based assessment areas covered by the plan while developing the plan;

(2) Once the bank has developed a draft plan, formally solicit public comment on the draft plan for at least 30 days by submitting the draft plan for publication on the [Agency]'s website and by publishing the draft plan on its website, or if the bank does not maintain a website by publishing notice in at least one print newspaper or digital publication of general circulation in each facility-based assessment area covered by the plan (or for military banks in at least one print newspaper or digital publication of general circulation targeted to members of the military). The draft plan should include both an electronic means by which, and a postal address where, members of the public can submit comments on the bank's plan; and

(3) During the period when the bank is formally soliciting public comment on its draft plan, make copies of the draft plan available for review at no cost at all offices of the bank in any facility-based assessment area covered by the plan and provide copies of the draft plan upon request for a reasonable fee to cover copying and mailing, if applicable.

(e) *Submission of plan.* The bank must submit its draft plan to the [Agency] at least three months prior to the proposed effective date of the plan. The bank must also submit with its draft plan a description of its efforts to seek suggestions from members of the public, including who was contacted and how information was gathered; any written or other public input received; and, if the plan was revised in light of the public input received, the initial draft plan as released for public comment.

(f) *Plan content.* (1) *Appropriateness of strategic plan election.* A bank's draft plan must include the same performance tests and standards that would otherwise be applied under this part, unless the bank is substantially engaged in activities outside the scope of these tests. The draft plan must specify how these activities are outside the scope of the otherwise applicable performance tests and standards and why being evaluated pursuant to a plan would be a more appropriate means to assess its record of helping to meet the credit needs of its community than if it were evaluated pursuant to the otherwise applicable performance tests and standards.

(2) *Appropriateness of geographic coverage of plan.* A bank's draft plan must incorporate measurable goals for all geographic areas that would be included pursuant to the performance tests and standards that would otherwise be applied in the absence of an approved plan.

(3) *Measurable goals.* (i) As applicable, pursuant to the performance tests and standards that would otherwise be applied in the absence of an approved plan, a bank must specify measurable goals in its draft plan for helping to meet the:

(A) Retail lending needs of, as applicable, its facility-based assessment areas, retail lending assessment areas, and outside retail lending area that are covered by the draft plan;

(B) Retail services and products needs of its facility-based assessment areas and at the institution level that are covered by the draft plan;

(C) Community development financing needs of its facility-based assessment areas, states, multistate MSAs, and nationwide areas that are covered by the draft plan; and

(D) Community development services needs of its facility-based assessment areas and other geographic areas served by the bank that are covered by the draft plan.

(ii) A bank must consider public comments and the bank's capacity and constraints, product offerings, and business strategy in developing measurable goals in its draft plan that are appropriate for its retail lending, retail services and products, community development financing, and community development services activities.

(iii) A bank must include in its draft plan a focus on the credit needs of low- and moderate-income individuals, small businesses, small farms, and low- and moderate-income census tracts, and explain how its draft plan's measurable goals are responsive to the characteristics and credit needs of, as applicable, its assessment areas and other geographic areas served by the bank, considering public comment and the bank's capacity and constraints, product offerings, and business strategy;

(iv) In developing measurable goals related to its retail lending, a bank must incorporate measurable goals in its draft plan for each retail lending major product line and may develop additional goals that cover other lending-related activities based on the bank's specific business strategy.

(v) If a bank's draft plan's measurable goals related to its retail lending do not incorporate the Retail Lending Test's metrics-based methodology as described in § __.22, the bank must explain why measurable goals that do not incorporate the Retail Lending Test's metrics-based methodology are appropriate.

(vi) If a bank's draft plan's measurable goals related to its community development financing do not

incorporate, as applicable, the Community Development Financing Test's or the Community Development Financing Test for Wholesale or Limited Purpose Banks' metrics-based methodology as described in §§ __.24 and __.26, respectively, or for an intermediate bank address the community development performance standards for intermediate banks as provided in § __.29(b)(2), the bank must include an explanation as to why measurable goals do not incorporate, as applicable, the Community Development Financing Test or the Community Development Financing Test for Wholesale or Limited Purpose Banks' metrics-based methodology, or for intermediate banks address the community development performance standards for intermediate banks.

(4) *Confidential information.* A bank may submit additional information to the [Agency] on a confidential basis, but the goals stated in the draft plan must be sufficiently specific to enable the public and the [Agency] to judge the merits of the plan.

(5) *''Satisfactory'' and ''Outstanding'' ratings goals.* A bank must specify in its draft plan measurable goals that constitute ''Satisfactory'' performance and may specify measurable goals that constitute ''Outstanding'' performance. If a bank submits, and the [Agency] approves, both ''Satisfactory'' and ''Outstanding'' measurable goals, the [Agency] will consider the bank eligible for an ''Outstanding'' rating.

(6) *Election if ''Satisfactory'' ratings goals not substantially met.* A bank may elect in its draft plan that, if the bank fails to meet substantially its plan goals for a ''Satisfactory'' rating, the [Agency] will evaluate the bank's performance using the performance tests and standards that would otherwise be applied in the absence of an approved plan.

(g) *Plan approval.* (1) *Timing.* The [Agency] will act upon a draft plan within 90 calendar days after the [Agency] receives the complete draft plan and other material required under paragraph (e) of this section. If the [Agency] fails to act within this time period, the draft plan will be deemed approved unless the [Agency] extends the review period for good cause.

(2) *Public participation.* In evaluating the draft plan's goals, the [Agency] will consider:

(i) The public's involvement in formulating the draft plan, including specific information regarding the members of the public and organizations the bank contacted, how the bank collected information relevant to the draft plan, the nature of the public input, and whether the bank revised the draft plan in light of public input;

(ii) Written public comment on the draft plan; and

(iii) Any response by the bank to public comment on the draft plan.

(3) *Criteria for evaluating plan.* The [Agency] evaluates a draft plan's measurable goals, including the appropriateness of those goals and the information provided by the bank in § __.27(e) and (f), using the following criteria, as appropriate, and based on the bank's capacity and constraints, product offerings, and business strategy:

(i) The extent and breadth of retail lending or retail lending-related activities to address credit needs, including, as appropriate, the distribution of loans among different geographies, businesses and farms of different sizes, and individuals of different income levels and the qualitative aspects of the bank's retail lending programs, as described in § __ .22;

(ii) The dollar amount and qualitative aspects of the bank's community development loans and investments in light of community development needs;

(iii) The availability of bank retail products and the effectiveness of the bank's systems for delivering retail banking services; and

(iv) The number, hours, and type of community development services performed by the bank and the extent to which the bank's community development services are impactful.

(h) *Plan amendment.* (1) *Material change in circumstances.* During the term of a plan, a bank must amend its plan goals if a material change in circumstances:

(i) Impedes its ability to substantially meet approved plan goals, such as financial constraints caused by significant events that impact the local or national economy; or

(ii) Significantly increases its financial capacity and ability, such as through a merger or consolidation, to engage in retail lending, retail services and products, community development financing, or community development services activities referenced in an approved plan.

(2) *Elective revision of plan.* (i) During the term of a plan, a bank may request the [Agency] to approve an amendment to the plan in the absence of a material change in circumstances.

(ii) A bank that requests the [Agency] to approve an amendment to a plan in the absence of a material change in circumstances must provide an explanation regarding why it is necessary and appropriate to amend its plan goals.

(3) *Public participation in plan revision.* A bank must develop an amendment to a previously approved plan in accordance with the public participation requirements of paragraph (d) of this section.

(i) *Plan assessment.* (1) *In general.* The [Agency] approves the goals and assesses performance under a plan as provided for in appendix D of this part.

(2) In determining whether a bank has substantially met its plan goals, the [Agency] will consider:

(i) The number of unmet goals;

(ii) The degree to which the goals were not met;

(iii) The importance of those unmet goals to the plan as a whole; and

(iv) Any circumstances beyond the control of the bank, such as economic conditions or other market factors or events that have adversely impacted the bank's ability to perform.

§ __.28 Assigned conclusions and ratings.

(a) *Conclusions.* (1) *In general.* The [Agency] assigns conclusions for a bank's performance under the respective performance tests that apply to the bank, as provided in §§ __.21 through __.28, __.29(b), and appendix C of this part of ''Outstanding,'' ''High Satisfactory,'' ''Low Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance.''

(2) *Small banks.* The [Agency] assigns performance conclusions for the performance of a small bank evaluated under § __.29(a), as provided in § __.28 and appendix C of this part, of ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance.''

(b) *Ratings.* (1) *In general.* Subject to paragraph (d) of this section, the [Agency] assigns ratings for a bank's overall performance at the state, multistate MSA, and institution level under §§ __.21 through __.27 and __.29, as applicable, of ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance.''

(2) *Performance score.* Other than for a small bank evaluated under the small bank performance standards in § __ .29(a), a wholesale or limited purpose bank under the Community Development Financing Test for Wholesale or Limited Purpose Banks in § __.26, a bank evaluated based on a strategic plan under § __.27, the [Agency] assigns a rating for the bank's overall performance at the state, multistate MSA, and institution levels, respectively, in connection with a performance score, derived as provided in appendix D of this part, and any

adjustments in accordance with paragraph (d) of this section, § __.28, and appendix D of this part.

(c) *States and multistate MSAs.* Regarding the [Agency]'s evaluation of a bank's performance in a state or multistate MSA under this part, the following applies:

(1) *States.* (i) The [Agency] evaluates a bank's performance in any state in which the bank maintains one or more facility-based assessment areas.

(ii) In assigning conclusions and ratings for a state, the [Agency] does not consider a bank's activities in that state that take place in the portion of the state comprising any multistate MSA identified in paragraph (c)(2) of this section.

(2) *Multistate MSAs.* The [Agency] evaluates a bank's performance under this part in any multistate MSA in which the bank maintains a branch in two or more states located within that multistate MSA.

(d) *Effect of evidence of discriminatory or other illegal practices.* (1) *Scope.* At the state, multistate MSA, and institution levels, the [Agency]'s evaluation of a bank's performance under this part is adversely affected by evidence of discriminatory or other illegal practices:

(i) In any census tract by the bank, including by [an operations subsidiary or operating subsidiary] of the bank; or

(ii) In any facility-based assessment area, retail lending assessment area, or outside retail lending area by any affiliate whose retail loans are considered as part of the bank's lending performance.

(2) *Evidence of discriminatory or other illegal practices.* Evidence of discriminatory or other practices that violate an applicable law, rule, or regulation includes, but is not limited to:

(i) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;

(ii) Violations of the Home Ownership and Equity Protection Act;

(iii) Violations of section 5 of the Federal Trade Commission Act;

(iv) Violations of 12 U.S.C. 5531 (regarding unfair, deceptive, or abusive acts or practices in connection with consumer financial products or services);

(v) Violations of section 8 of the Real Estate Settlement Procedures Act;

(vi) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission;

(vii) Violations of the Military Lending Act; and

(viii) Violations of the Servicemembers Civil Relief Act.

(3) *Agency considerations.* In determining the effect of evidence of practices described in paragraph (d)(2) of this section on the bank's assigned state, multistate MSA, and institution ratings, the [Agency] will consider: The root cause or causes of any violations of law; the severity of any consumer harm resulting from violations of law; the duration of time over which the violations occurred; the pervasiveness of the violations; the degree to which the bank, [operations subsidiary or operating subsidiary], or affiliate, as applicable, has established an effective compliance management system across the institution to self-identify risks and to take the necessary actions to reduce the risk of non-compliance and consumer harm.

(e) *Consideration of past performance.* When assigning ratings, the [Agency] considers a bank's past performance. If a bank's prior rating was ''Needs to Improve,'' the [Agency] may determine that a ''Substantial Noncompliance'' rating is appropriate where the bank failed to improve its performance since the previous evaluation period, with no acceptable basis for such failure.

§ __.29 Performance standards for small banks and intermediate banks.

(a) *Small bank performance criteria.* Unless a small bank opts to be evaluated under the Retail Lending Test in § __.22, the [Agency] evaluates a small bank's performance in helping to meet the credit needs of its facility-based assessment areas pursuant to the criteria in this section.

(1) *Lending evaluation.* A small bank's retail lending performance is evaluated pursuant to the following criteria:

(i) The bank's loan-to-deposit ratio, adjusted for seasonal variation, and, as appropriate, other retail and community development lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or community development investments;

(ii) The percentage of loans and, as appropriate, other lending-related activities located in the bank's facility-based assessment areas;

(iii) The bank's record of lending to and, as appropriate, engaging in other retail and community development lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(iv) The bank's geographic distribution of retail loans; and

(v) The bank's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its facility-based assessment areas.

(2) *Additional consideration.* The [Agency] may adjust a small bank rating of ''Satisfactory'' to ''Outstanding'' at the institution level, where a small bank requests and receives additional consideration for its performance in making community development investments and services and its performance in providing branches and other services and delivery systems that enhance credit availability in its facility-based assessment areas.

(3) *Small bank performance ratings.* The [Agency] rates the performance of a small bank evaluated under this section as provided in appendix E of this part.

(b) *Intermediate bank performance criteria.* (1) *Retail Lending Test and optional Community Development Financing Test.* The [Agency] evaluates an intermediate bank under the Retail Lending Test in § __.22 and the community development performance standards as provided in § __.29(b)(2), unless an intermediate bank chooses to be evaluated under the Community Development Financing Test in § __.24.

(2) *Intermediate bank community development evaluation.* An intermediate bank's community development performance is evaluated pursuant to the following criteria:

(i) The number and amount of community development loans;

(ii) The number and amount of community development investments;

(iii) The extent to which the bank provides community development services; and

(iv) The bank's responsiveness through such activities to community development lending, investment, and services needs.

(3) *Additional consideration.* For an intermediate bank that opts to be evaluated under the Community Development Financing Test in § __.24, the [Agency] may adjust an intermediate bank rating of ''Satisfactory'' to ''Outstanding'' at the institution level if the bank requests and receives additional consideration for activities that qualify under the Retail Services and Products Test in § __.23, the Community Development Services Test in § __.25, or both.

(4) *Intermediate bank performance ratings.* The [Agency] rates the performance of an intermediate bank evaluated under this section as provided in appendices D and E of this part.

§ __.31 [Reserved]

Subpart D—Records, Reporting, Disclosure, and Public Engagement Requirements

§ __.42 Data collection, reporting, and disclosure.

(a) *Information required to be collected and maintained.* (1) *Small business and small farm loans data.* A bank, except a small bank or an intermediate bank, must collect and maintain in machine readable form, as prescribed by the [Agency], until the completion of its next CRA examination, the following data, for each small business or small farm loan originated or purchased by the bank during the evaluation period:

(i) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

(ii) An indicator for the loan type as reported on the bank's Call Report;

(iii) The date of the loan origination or purchase;

(iv) The loan amount at origination or purchase;

(v) The loan location, including state, county, and census tract;

(vi) An indicator for whether the loan was originated or purchased by the bank; and

(vii) An indicator for whether the loan was to a business or farm with gross annual revenues of $1 million or less.

(2) *Consumer loans data—automobile loans.* A bank that had average assets of over $10 billion in both of the prior two calendar years, based on the assets reported on its four quarterly Call Reports for each of those calendar years, must collect and maintain in machine readable form, as prescribed by the [Agency], until the completion of its next CRA examination, the following data, for each automobile loan originated or purchased by the bank during the evaluation period:

(i) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

(ii) The date of the loan origination or purchase;

(iii) The loan amount at origination or purchase;

(iv) The loan location, including state, county, and census tract;

(v) An indicator for whether the loan was originated or purchased by the bank; and

(vi) The borrower annual income on which the bank relied when making the credit decision.

(3) *Home mortgage loans.* If a bank, except a small or an intermediate bank, is subject to reporting under 12 CFR part 1003, the bank must collect and maintain, in machine readable form, as prescribed by the [Agency], until the completion of its next CRA examination, the location of each home mortgage loan application, origination, or purchase outside the MSAs in which the bank has a home or branch office (or outside any MSA) in accordance with the requirements of 12 CFR part 1003.

(4) *Retail services and products data.* (i) A large bank must collect and maintain in machine readable form, as prescribed by the [Agency], until completion of the bank's next CRA examination, the following data with respect to retail services and products offered and provided by the bank during the evaluation period:

(A) Number and location of branches and remote service facilities. As applicable, location information must include:

(*1*) Street address;

(*2*) City;

(*3*) County;

(*4*) State; and

(*5*) Zip code;

(B) An indicator for whether each branch is full-service or limited-service, and for each remote service facility whether it is deposit-taking, cash-advancing, or both;

(C) Locations and dates of branch and remote service facility openings and closings, as applicable;

(D) Hours of operation of each branch and remote service facility, as applicable;

(E) Services offered at each branch that are responsive to low- and moderate-income individuals and low- and moderate-income census tracts;

(ii) A large bank that had average assets of over $10 billion in both of the prior two calendar years (based on the assets reported on its four quarterly Call Reports for each of those calendar years) and a large bank that had average assets of $10 billion or less in either of the prior two calendar years (based on the assets reported on its four quarterly Call Reports for each of those calendar years) that requests additional consideration for digital and other delivery systems under § __.23(b)(3), must collect and maintain in machine readable form, as prescribed by the [Agency], until completion of the bank's next CRA examination, the following data:

(A) The range of services and products offered through digital and other delivery systems;

(B) Digital activity by individuals in low-, moderate-, middle-, and upper-income census tracts, respectively, such as:

(*1*) Number of savings and checking accounts opened through digital and other delivery systems, by census tract income level for each calendar year;

(*2*) Accountholder usage data by type of digital and other delivery systems, by census tract income level for each calendar year; and

(C) Optionally, additional information that demonstrates that digital and other delivery systems serve low- and moderate-income individuals and low- and moderate-income census tracts.

(iii) A large bank that had average assets of over $10 billion in both of the prior two calendar years (based on the assets reported on its four quarterly Call Reports for each of those calendar years) and a large bank that had average assets of $10 billion or less in either of the prior two calendar years (based on the assets reported on its four quarterly Call Reports for each of those calendar years) that requests additional consideration for deposit products responsive to the needs of low- and moderate- income individuals under § __.23(c)(2), must collect and maintain in machine readable form, as prescribed by the [Agency], until completion of the bank's next CRA examination, the following data:

(A) The number of responsive deposit accounts opened and closed during each year of the evaluation period in low-, moderate-, middle-, and upper-income census tracts, respectively;

(B) In connection with § __ .23(c)(2)(ii)(A), the percentage of responsive deposit accounts compared to total deposit accounts for each year of the evaluation period;

(C) Optionally, additional information regarding the responsiveness of deposit products to the needs of low- and moderate-income individuals and low- and moderate-income census tracts.

(5) *Community development loans and community development investments data.* (i)(A) A bank, except a small or an intermediate bank, must collect and maintain in machine readable form, as prescribed by the [Agency], until the completion of the bank's next CRA examination, the data listed in paragraph (a)(5)(ii) of this section for community development loans and community development investments originated or purchased by the bank.

(B) An intermediate bank that opts to be evaluated under the Community Development Financing Test in § __.24 must collect and maintain in the format used by the bank in the normal course of business, until the completion of the bank's next CRA examination, the data listed in paragraph (a)(5)(ii) of this section for community development loans and community development

investments originated or purchased by the bank.

(C) Pursuant to § __.42(a)(5)(i)(A) and (B), a bank must collect and maintain, on an annual basis, data for loans and investments originated or purchased during the evaluation period and for loans and investments from prior years that are held on the bank's balance sheet at the end of each quarter (March 31, June 30, September 30, December 31) of the calendar year.

(ii) Pursuant to § __.42(a)(5)(i)(A) and (B), a bank must collect and maintain the following data:

(A) General information on the loan or investment:

(*1*) A unique number or alpha-numeric symbol that can be used to identify the loan or investment;

(*2*) Date of origination, purchase, or transaction of the loan or investment;

(*3*) Date the loan or investment was sold or paid off; and

(*4*) (*i*) For the first year of the loan or investment, the loan or investment amount at origination or purchase for originations or purchases as of December 31 of the calendar year; and

(*ii*) For all years following the first year of the loan or investment, the loan or investment amount reflected on the bank's balance sheet as of the end of each quarter (March 31, June 30, September 30, December 31) of the calendar year.

(B) Community development loan or investment activity information:

(*1*) Name of organization or entity;

(*2*) Activity type (loan or investment);

(*3*) Community development purpose, as described in § __.13(a)(2); and

(*4*) Activity detail, such as the specific type of financing and type of entity supported (*e.g.,* low-income housing tax credit, New Markets Tax Credit, Small Business Investment Company, multifamily mortgage, private business, non-profit or mission-driven organization, mortgage-backed security, or other).

(C) Indicators of the impact of the activity, as applicable:

(*1*) Activity serves persistent poverty counties;

(*2*) Activity serves geographic areas with low levels of community development financing;

(*3*) Activity supports an MDI, WDI, LICU, or Treasury Department-certified CDFI;

(*4*) Activity serves low-income individuals and families;

(*5*) Activity supports small businesses or small farms with gross annual revenues of $250,000 or less;

(*6*) Activity directly facilitates the acquisition, construction, development, preservation, or improvement of affordable housing in High Opportunity Areas;

(*7*) Activity benefits Native communities, such as qualifying activities in Native Land Areas under § __.13(l);

(*8*) Activity is a qualifying grant or donation;

(*9*) Activity reflects bank leadership through multi-faceted or instrumental support; and

(*10*) Activity results in a new community development financing product or service that addresses community development needs for low- or moderate-income individuals and families.

(D) Location information:

(*1*) Street address;

(*2*) City;

(*3*) County;

(*4*) State;

(*5*) Zip code; and

(*6*) Whether a bank is seeking consideration at the assessment area, statewide, or nationwide levels;

(E) Other information relevant to determining that an activity meets the standards under § __.13; and

(F) Allocation of dollar value of activity to counties served by the community development activity (if available):

(*1*) Specific information about the dollar value of the activity that was allocated to each county served by the activity; and

(*2*) A list of the geographic areas served by the activity, specifying any county, counties, state, states, or nationwide area served.

(6) *Community development services data.* A large bank that had average assets of over $10 billion in both of the prior two calendar years, based on the assets reported on its four quarterly Call Reports for each of those calendar years, must collect and maintain in machine readable form, as prescribed by the [Agency], until the completion of the bank's next CRA examination, the following community development services data:

(i) Bank information:

(A) Number of full-time equivalent employees at the facility-based assessment area, state, multistate MSA, and institution levels; and

(B) Total number of community development services hours performed by the bank in each facility-based assessment area, state, multistate MSA, and in total.

(ii) Community development services activity information:

(A) Date of activity;

(B) Name of organization or entity;

(C) Community development purpose, as described in § __.13(a)(2);

(D) Capacity served (*e.g.,* board member, technical assistance, financial education, general volunteer); and

(E) Whether the activity is related to the provision of financial services.

(iii) Location information:

(A) Street address;

(B) City;

(C) County;

(D) State;

(E) Zip code; and

(F) Whether bank is seeking consideration at the assessment area, statewide, or nationwide level.

(7) *Deposits data.* A large bank that had average assets of over $10 billion in both of the prior two calendar years, based on the assets reported on its four quarterly Call Reports for each of those calendar years, must collect and maintain annually, in machine readable form as prescribed by the [Agency], until the completion of its next CRA examination, the dollar amount of its deposits at the county level, based upon the address associated with the individual account (except for account types where an address is not available), calculated based on average daily balances as provided in statements such as monthly or quarterly statements. A large bank that had average assets of $10 billion or less in either of the prior two calendar years, based on the assets reported on its four quarterly Call Reports for each of those calendar years, that opts to collect and maintain the data in this paragraph must do so in machine readable form, as prescribed by the [Agency], until completion of the bank's next CRA examination.

(b) *Information required to be reported.* (1) *Small business and small farm loan data.* A bank, except a small bank or an intermediate bank, must report annually by April 1 to the [Agency] in machine readable form, as prescribed by the [Agency], the data listed in paragraphs (b)(1)(i) through (b)(1)(iv) of this section for the prior calendar year. For each census tract in which the bank originated or purchased a small business or small farm loan, the bank must report the aggregate number and amount of small business and small farm loans:

(i) With an amount at origination of $100,000 or less;

(ii) With an amount at origination of more than $100,000 but less than or equal to $250,000;

(iii) With an amount at origination of more than $250,000; and

(iv) To businesses and farms with gross annual revenues of $1 million or less (using the revenues that the bank considered in making its credit decision).

(2) *Consumer loans—automobile loans data.* A bank that had average assets of over $10 billion in both of the prior two calendar years, based on the assets reported on its four quarterly Call Reports for each of those calendar years, must report annually by April 1 to the [Agency] in machine readable form, as prescribed by the [Agency], for each census tract in which the bank originated or purchased an automobile loan, the aggregate number and amount of automobile loans and the number and amount of those loans made to low- and moderate-income borrowers. The [Agency] will not make automobile lending data reported under this paragraph publicly available in the form of a data set for all reporting banks.

(3) *Community development loans and community development investments data.* A bank, except a small or an intermediate bank, must report annually by April 1 to the [Agency] community development loan and community development investment data described in paragraph (a)(5)(ii) of this section, except for the data described in paragraph (a)(5)(ii)(B)(*1*) of this section.

(4) *Community development services data.* A large bank that had average assets of over $10 billion in both of the prior two calendar years, based on the assets reported on its four quarterly Call Reports for each of those calendar years, must report annually by April 1 to the [Agency] the community development services data listed in paragraph (a)(6)(i) of this section.

(5) *Deposits data.* A large bank that had average assets of over $10 billion in both of the prior two calendar years, based on the assets reported on its four quarterly Call Reports for each of those calendar years, must report annually by April 1 to the [Agency] in machine readable form, as prescribed by the [Agency], the deposits data for the previous calendar year collected and maintained in accordance with paragraph (a)(7) of this section. This reporting must include, for each county, state, and multistate MSA and for the institution overall, the average annual deposit balances (calculated based on average daily balances as provided in statements such as monthly or quarterly statements, as applicable), in aggregate, of deposit accounts with associated addresses located in such county, state, or multistate MSA where available, and for the institution overall. The [Agency] will not make deposits data reported under this paragraph publicly available in the form of a data set for all reporting banks.

(c) *Data on* [*operations subsidiaries or operating subsidiaries*]. To the extent that [operations subsidiaries or operating subsidiaries] engage in retail lending, retail services, community development financing, or community development services activities, a bank must collect, maintain, and report such activities of its [operations subsidiaries or operating subsidiaries] pursuant to paragraphs (a) and (b) of this section, as applicable, for purposes of evaluating the bank's performance. For home mortgage loans, the bank must identify the home mortgage loans reported by the [operations subsidiary or operating subsidiary] under 12 CFR part 1003, if applicable, or collect and maintain home mortgage loans by the [operations subsidiary or operating subsidiary] that the bank would have collected and maintained under paragraphs (a)(3) of this section had the loans been originated or purchased by the bank.

(d) *Data on other affiliates.* A bank that elects to have the [Agency] consider loans by an affiliate, for purposes of this part must collect, maintain, and report the lending and investments data that the bank would have collected, maintained, and reported pursuant to paragraphs (a) and (b) of this section had the loans or investments been originated or purchased by the bank. For home mortgage loans, the bank must also identify the home mortgage loans reported by affiliates under 12 CFR part 1003, if applicable, or collect and maintain home mortgage loans by the affiliate that the bank would have collected and maintained under paragraphs (a)(3) of this section had the loans been originated or purchased by the bank.

(e) *Data on community development financing by a consortium or a third party.* A bank that elects to have the [Agency] consider community development loans and community development investments by a consortium or third party for purposes of this part must collect, maintain, and report the lending and investments data that the bank would have collected, maintained, and reported under paragraphs (a)(5) and (b)(3) of this section had the loans or investments been originated or purchased by the bank.

(f) *Assessment area data.* (1) *Facility-based assessment areas.* A bank, except a small bank or an intermediate bank, must collect and report to the [Agency] annually by April 1 a list for each facility-based assessment area showing the states, MSAs, counties or county-equivalents, and metropolitan divisions within the facility-based assessment area.

(2) *Retail lending assessment areas.* A large bank must collect and report to the [Agency] annually by April 1 a list for each retail lending assessment area showing the MSAs and counties within the retail lending assessment area, as applicable.

(g) *CRA Disclosure Statement.* The [Agency] prepares annually, for each bank that reports data pursuant to this section, a CRA Disclosure Statement that contains, on a state-by-state basis:

(1) For each county (and for each facility-based assessment area and each retail lending assessment area smaller than a county, if applicable) with a population of 500,000 persons or fewer in which the bank reported a small business or a small farm loan:

(i) The number and amount of small business loans and small farm loans reported as originated or purchased located in low-, moderate-, middle-, and upper-income geographies;

(ii) A list grouping each census tract according to whether the census tract is low-, moderate-, middle-, or upper-income;

(iii) A list showing each census tract in which the bank reported a small business loan or a small farm loan; and

(iv) The number and amount of small business loans and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(2) For each county (and for each facility-based assessment area and retail lending assessment area smaller than a county, if applicable) with a population in excess of 500,000 persons in which the bank reported a small business loan or a small farm loan:

(i) The number and amount of small business loans and small farm loans reported as originated or purchased located in census tracts with median income relative to the area median income of less than 10 percent, 10 or more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more;

(ii) A list grouping each census tract in the county, facility-based assessment area, or retail lending assessment area according to whether the median income in the census tract relative to the area median income is less than 10 percent, 10 or more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60

percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more; and

(iii) A list showing each census tract in which the bank reported a small business loan or a small farm loan; and

(3) The number and amount of small business loans and small farm loans located inside each facility-based assessment area and retail lending assessment area reported by the bank and the number and amount of small business loans and small farm loans located outside of the facility-based assessment areas and retail lending assessment areas reported by the bank;

(4) The number and amount of community development loans and community development investments reported as originated or purchased inside each facility-based assessment area, each state in which the bank has a branch, each multistate MSA in which a bank has a branch in two or more states of the multistate MSA, and nationwide outside of these states and multistate MSAs.

(h) *Aggregate disclosure statements.* The [Agency], in conjunction with the [other Agencies], prepares annually, for each MSA or metropolitan division (including an MSA or metropolitan division that crosses a state boundary) and the nonmetropolitan portion of each state, an aggregate disclosure statement of reported small business lending, small farm lending, community development lending, and community development investments by all banks subject to reporting under 12 CFR parts 25, 228, or 345. These disclosure statements indicate, for each census tract and with respect to community development loans, and community development investments for each county, the number and amount of all small business loans, small farm loans, community development loans, and community development investments, originated or purchased by reporting banks, except that the [Agency] may adjust the form of the disclosure if necessary, because of special circumstances, to protect the privacy of a borrower or the competitive position of a bank.

(i) *Central data depositories.* The [Agency] makes the aggregate disclosure statements, described in paragraph (h) of this section, and the individual bank CRA Disclosure Statements, described in paragraph (g) of this section, available on the FFIEC's website at *www.ffiec.gov.*

(j) *Race and ethnicity disclosure.* (1) *In general.* The [Agency] includes in a large bank's CRA performance evaluation the information in paragraph (j)(2) of this section concerning the distribution of a bank's originations and applications of home mortgage loans by race and ethnicity in each of the bank's assessment areas. This information is disclosed for each year of the evaluation period based on data reported under the Home Mortgage Disclosure Act (HMDA).

(2) *Data disclosed in CRA performance evaluations.* For each of the bank's facility-based assessment areas, and as applicable, its retail lending assessment areas, the [Agency] discloses the number and percentage of originations and applications of a bank's home mortgage loans by borrower race and ethnicity, and compares such data to the aggregate mortgage lending of all lenders in the assessment area and the demographic data in that assessment area.

(3) *Effect on CRA conclusions and ratings.* The disclosures made under paragraphs (j)(1) and (j)(2) of this section do not impact the conclusions or ratings of the bank.

§ __.43 Content and availability of public file.

(a) *Information available to the public.* A bank must maintain a public file, in either paper or digital format, that includes the following information:

(1) All written comments received from the public for the current year and each of the prior two calendar years that specifically relate to the bank's performance in helping to meet community credit needs, and any response to the comments by the bank, if neither the comments nor the responses contain statements that reflect adversely on the good name or reputation of any persons other than the bank or publication of which would violate specific provisions of law;

(2) A copy of the public section of the bank's most recent CRA performance evaluation prepared by the [Agency]. The bank must include this copy in the public file within 30 business days after its receipt from the [Agency];

(3) A list of the bank's branches, their street addresses, and census tracts;

(4) A list of branches opened or closed by the bank during the current year and each of the prior two calendar years, their street addresses, and census tracts;

(5) A list of retail banking services (including hours of operation, available loan and deposit products, and transaction fees) generally offered at the bank's branches and descriptions of material differences in the availability or cost of services at particular branches, if any. A bank may elect to include information regarding the availability of other systems for delivering retail banking services (for example, mobile or online banking, loan production offices, and bank-at-work or mobile branch programs);

(6) A map of each facility-based assessment area and retail lending assessment area showing the boundaries of the area and identifying the census tracts contained within the area, either on the map or in a separate list; and

(7) Any other information the bank chooses.

(b) *Additional information available to the public*—(1) *Banks other than small banks and intermediate banks.* A bank subject to the data reporting requirements described in § __.42 must include in its public file a written notice that the bank's CRA Disclosure Statement pertaining to the bank, its [operations subsidiaries or operating subsidiaries], and its other affiliates, if applicable, may be obtained on the FFIEC's website at *https://www.ffiec.gov/craadweb/disrptmain.aspx.* The bank must include the written notice in the public file within three business days after receiving notification from the FFIEC of the availability of the disclosure statement.

(2) *Banks required to report HMDA data.* A bank required to report home mortgage loan data pursuant to 12 CFR part 1003 must include in its public file a written notice that the bank's HMDA Disclosure Statement may be obtained on the Consumer Financial Protection Bureau's (CFPB's) website at *www.consumerfinance.gov/hmda.* In addition, if the [Agency] considered the home mortgage lending of a bank's [operations subsidiaries or operating subsidiaries] or, at a bank's election, the [Agency] considered the home mortgage lending of other bank affiliates, the bank must include in its public file the names of the [operations subsidiaries or operating subsidiaries] and the names of the affiliates and a written notice that the [operations subsidiaries' or operating subsidiaries'] and other affiliates' HMDA Disclosure Statements may be obtained at the CFPB's website. The bank must include the written notices in the public file within three business days after receiving notification from the FFIEC of the availability of the disclosure statements.

(3) *Small banks.* A small bank or a bank that was a small bank during the prior calendar year must include in its public file: The bank's loan-to-deposit ratio for each quarter of the prior calendar year and, at its option, additional data on its loan-to-deposit ratio.

(4) *Banks with strategic plans.* A bank that has been approved to be assessed under a strategic plan must include in its public file a copy of that plan. A bank need not include information submitted to the [Agency] on a confidential basis in conjunction with the plan.

(5) *Banks with less than ''Satisfactory'' ratings.* A bank that received a less than ''Satisfactory'' rating during its most recent examination must include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. The bank must update the description quarterly, by March 31, June 30, September 30, and December 31, respectively.

(c) *Location of public information.* A bank must make available to the public for inspection upon request and at no cost the information required in this section as follows:

(1) All information required for the bank's public file under this section must be maintained on the bank's website. If the bank does not maintain a website, the information must be maintained at the main office and, if an interstate bank, at one branch office in each state; and

(2) The public file must contain the following information:

(i) A copy of the public section of the bank's most recent CRA performance evaluation and a list of services provided by the branch; and

(ii) Within five calendar days of the request, all the information that the bank is required to maintain under this section in the public file relating to the facility-based assessment area in which the branch is located.

(d) *Copies.* Upon request, a bank must provide copies, either on paper or in digital form acceptable to the person making the request, of the information in its public file. The bank may charge a reasonable fee not to exceed the cost of copying and mailing (if not provided in digital form).

(e) *Timing requirements.* Except as otherwise provided in this section, a bank must ensure that its public file contains the information required by this section for each of the previous three calendar years, with the most recent calendar year included in its file annually by April 1 of the current calendar year.

§ __.44 Public notice by banks.

A bank must provide in the public area of its main office and each of its branches the appropriate public notice set forth in appendix F of this part. Only a branch of a bank having more than one facility-based assessment area must include the bracketed material in the notice for branch offices. Only a bank that is an affiliate of a holding company must include the next to the last sentence of the notices. A bank must include the last sentence of the notices only if it is an affiliate of a holding company that is not prevented by statute from acquiring additional banks.

§ __.45 Publication of planned examination schedule.

The [Agency] publishes on its public website, at least 60 days in advance of the beginning of each calendar quarter, a list of banks scheduled for CRA examinations for the next two quarters.

§ __.46 Public engagement.

(a) *In general.* The [Agency] encourages communication between members of the public and banks, including through members of the public submitting written public comments regarding community credit needs and opportunities as well as regarding a bank's record of helping to meet community credit needs. The [Agency] will take these comments into account in connection with the bank's next scheduled CRA examination.

(b) *Submission of public comments.* Members of the public may submit public comments regarding community credit needs and a bank's CRA performance by submitting comments to the [Agency] electronically at [Agency contact information].

(c) *Timing of public comments.* If the [Agency] receives a public comment before the close date of a bank's CRA examination, the public comment will be considered in connection with that CRA examination. If the [Agency] receives a public comment after the close date of a bank's CRA examination, it will be considered in connection with the bank's subsequent CRA examination.

(d) *Distribution of public comments.* The [Agency] will forward all public comments received regarding a bank's CRA performance to the bank. The [Agency] may also publish the public comments on its public website.

Subpart E—Transition Rules

§ __.51 Applicability dates, and transition provisions.

(a) *Applicability dates.* (1) *In general.* Except as provided in paragraphs (a)(2), (b), and (c) of this section, this part is applicable to banks, and banks must comply with any requirements in this part, beginning on the first day of the first calendar quarter that is at least 60 days after publication of the final rule.

(2) *Specific applicability dates.* The following sections are applicable to banks, and banks must comply with any requirements in these sections, on the following dates:

(i) On [DATE ONE YEAR AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]: §§ __.12, excluding the definitions of ''small business'' and ''small farm,'' through __ .15; __.17 through __.28; __.29(b)(1) and (b)(3); __.42(a), (c), (d), (e), and (f); and appendices A through F.

(ii) On [DATE TWO YEARS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**], § __.12 with respect to the definitions of ''small business'' and ''small farm''; and § __ .42(b), (g), (h) and (i).

(b) *Examinations.* (1) *Start Date for CRA Examinations under New Tests.* The [Agency] will begin conducting CRA examinations pursuant to the relevant performance tests described in §§ __.22 through __.28, as applicable, and § .42(j), after [DATE TWO YEARS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

(2) *Consideration of Bank Activities.* (i) In assessing a bank's CRA performance, the [Agency] will consider any loan, investment, or service that was eligible for CRA consideration at the time the bank conducted the activity.

(ii) Notwithstanding paragraph (i), in assessing a bank's CRA performance the [Agency] will consider any loan or investment that was eligible for CRA consideration at the time that the bank entered into a legally binding commitment to make the loan or investment.

(c) *Strategic Plans.* (1) *New and replaced strategic plans.* The CRA regulatory requirements in effect on [DATE ONE DAY BEFORE DATE OF PUBLICATION DATE IN THE **FEDERAL REGISTER**] applies to any new strategic plan, including a plan that replaces an expired strategic plan, submitted to the [Agency] for approval on or after [DATE OF PUBLICATION IN THE **FEDERAL REGISTER**] but before [DATE ONE YEAR AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]. Strategic plans approved under this paragraph remain in effect until the expiration date of the plan.

(2) *Existing strategic plans.* A strategic plan in effect as of [DATE OF PUBLICATION IN THE **FEDERAL REGISTER**] remains in effect until the expiration date of the plan.

Appendix A to Part __—Calculations for the Retail Tests

Appendix A, based on requirements described in §§ __.22, __.23, and __.28, includes the following sections:

Retail Lending Volume Screen;

Geographic Distribution and Borrow Distribution Metrics and Benchmarks—In General

Geographic Distribution Metrics and Benchmarks;

Borrower Distribution Metrics and Benchmarks;

Recommended Retail Lending Test Conclusions; and

Retail Lending Test and Retail Services and Products Test Weighting and Conclusions in States, Multistate MSAs, and at the Institution Level.

I. Retail Lending Volume Screen

Section __.22(c)(3) provides that a large bank must have a Bank Volume Metric of 30 percent or greater of the Market Volume Benchmark, or the [Agency] must determine that there is an acceptable basis for the bank failing to meet this threshold after reviewing the additional factors described in § __ .22(c)(2)(iii), to be eligible for a recommended Retail Lending Test conclusion of ''Outstanding,'' ''High Satisfactory,'' or ''Low Satisfactory'' in a facility-based assessment area. An intermediate bank, or a small bank that opts to be evaluated under the Retail Lending Test, that does not have a Bank Volume Metric of 30 percent or greater of the Market Volume Benchmark, where the [Agency] does not determine that there is an acceptable basis for the bank failing to meet the metric after reviewing the additional factors in § __ .22(c)(2)(iii), remains eligible for all possible recommended Retail Lending Test conclusions in a facility-based assessment area, with the [Agency] assessing the bank's performance relative to the Retail Lending Volume Threshold as one factor in assigning a conclusion.

The [Agency] calculates the Bank Volume Metric and the Market Volume Benchmark for a facility-based assessment area, and determines whether the bank has passed the Retail Lending Volume Threshold in that facility-based assessment area, as set forth below.

1. *Bank Volume Metric.* The [Agency] calculates the Bank Volume Metric by dividing the annual average of the year-end total dollar amount of the bank's originated and purchased automobile, closed-end home mortgage, open-end home mortgage, multifamily, small business, and small farm loans in the facility-based assessment area by the annual average of the bank's deposits in that facility-based assessment area over the evaluation period. For a bank that collects and maintains deposits data as provided in § __.42, the dollar amount of its deposits in each assessment area is the annual average of deposits over the evaluation period. For banks that do not collect and maintain deposits data as provided in § __.42, the [Agency] measures the dollars of deposits in each assessment area as the annual average of deposits assigned to branches that the bank operates in its assessment area, as reported in the FDIC's Summary of Deposits, available at *www.FDIC.gov,* over the evaluation period.

Example: Assume that the year-end total dollar amount of a bank's originated and purchased loans in a facility-based assessment area, averaged over the years considered in the evaluation period, is $1 million. Assume further that the evaluation period annual average of deposits in that facility-based assessment area is $5 million. The Bank Volume Metric for that facility-based assessment area would be $1 million divided by $5 million, or 20 percent.

$$\frac{Bank\ Retail\ Loans\ (\$1\ million)}{Bank\ Deposits\ (\$5\ million)} = Bank\ Volume\ Metric\ (20\%)$$

2. *Market Volume Benchmark.* For each facility-based assessment area, the [Agency] calculates the Market Volume Benchmark. The numerator of the Market Volume Benchmark is the annual average of the year-end total dollar amount of all originated automobile, closed-end home mortgage, open-end home mortgage, multifamily, small business, and small farm loans in counties wholly or partially within the facility-based assessment area originated and reported by large banks that operated a branch in those counties at the end of that year. This numerator is divided by the annual average of the deposits of those banks from those counties. The deposits in the facility-based assessment area is the sum of: (i) The annual average of deposits in counties in the facility-based assessment area reported by all large banks with assets of over $10 billion that operate a branch in the assessment area in the years of the evaluation period during which they operated a branch at the end of the year; and (ii) the annual average of deposits assigned to branches in the facility-based assessment area by all large banks with assets of $10 billion or less, according to the FDIC's Summary of Deposits, over the evaluation period.

Example: Assume that the annual average of the year-end total dollar amount of all retail loans originated in counties wholly or partially within the facility-based assessment area by banks that operated a branch in that assessment area is $20 million. Assume further that the deposits sourced by those banks wholly or partially within the facility-based assessment area is $50 million. The Market Volume Benchmark for that facility-based assessment area would be $20 million divided by $50 million, or 40 percent.

$$\frac{Aggregate\ Market\ Retail\ Loans\ (\$20\ million)}{Aggregate\ Market\ Deposits\ (\$50\ million)} = Market\ Volume\ Benchmark\ (40\%)$$

3. *Retail Lending Volume Threshold.* For each facility-based assessment area, the [Agency] calculates a Retail Lending Volume Threshold by multiplying the Market Volume Benchmark for that facility-based assessment area by 30 percent (or 0.3). The bank passes the Retail Lending Volume Threshold in a facility-based assessment area if the Bank Volume Metric is greater than or equal to the Retail Lending Volume Threshold.

Example: Based on the above examples, the Retail Lending Volume Threshold would be calculated by multiplying the Market Volume Benchmark of 40 percent by 0.3 for a result of 12 percent. The Bank Volume Metric, 20 percent, is greater than the Retail Lending Volume Threshold. Accordingly, the bank passes the Retail Lending Volume Threshold.

Bank Volume Metric (20%) > Retail Lending Volume Threshold {(40%) × 0.3 = 12%}

II. Geographic Distribution and Borrower Distribution Metrics and Benchmarks—in General

1. The distribution metrics and benchmarks in this section apply: In a bank's facility-based assessment areas and, as applicable, in retail lending assessment areas, and outside retail lending area. As applicable, the [Agency] assesses a bank's Retail Lending Test performance in an outside retail lending area only at the institution level, using benchmarks tailored to the bank's specific geographic areas served.

2. An intermediate bank's retail lending in an outside retail lending area is only evaluated if the bank originates and purchases over 50 percent of its retail loans, by dollar amount, outside of its facility-based assessment areas over the relevant evaluation period.

3. A bank's retail lending performance in the specified geographies is compared against applicable retail lending performance ranges, using geographic and borrower retail loan distribution metrics, as calculated in paragraphs III and IV of this appendix.

4. With the exception of the facility-based assessment area of a large bank in which it failed to meet the Retail Lending Volume Threshold and the [Agency] did not find an acceptable basis for the bank failing to meet the threshold, a bank will be assigned a recommended Retail Lending Test conclusion in the specified geographic areas of ''Outstanding,'' ''High Satisfactory,'' ''Low Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance.''

III. Geographic Distribution Metrics and Benchmarks

For each of the bank's major product lines in applicable geographic areas, a bank's geographic distribution performance will be measured by means of a comparison of the Geographic Bank Metric to the Geographic Market Benchmark and the Geographic Community Benchmark. The relevant calculations are described below.

1. *Calculation of Geographic Bank Metrics.* For each of a bank's major product lines, the [Agency] measures the bank's geographic distribution of retail lending, originated and purchased, in the applicable geographic area. For this measure, the [Agency] derives Geographic Bank Metrics, as set out below.

The [Agency] calculates a Geographic Bank Metric for each of the bank's major product lines in low-income census tracts and moderate-income census tracts by dividing the total number of the bank's originated and purchased loans in low-income census tracts and moderate-income census tracts, respectively, by the total number of the bank's originated and purchased loans in the geographic area overall for that product line.

Example: Assume that a bank originated and purchased 25 small farm loans in one of its facility-based assessment areas during the evaluation period, and that five of these were located in low-income census tracts. The Geographic Bank Metric for small farm loans in low-income census tracts would be five divided by 25, for a result of 20 percent. Assume that the bank originated and purchased six small farm loans in moderate-income census tracts. The Geographic Bank Metric for small farm loans in moderate-income census tracts would be six divided by 25, for a result of 24 percent.

$$\frac{Bank\ Loans\ in\ Low-Income\ Census\ Tracts\ (5)}{Bank\ Loans\ (25)} = Geographic\ Bank\ Metric\ (20\%)$$

$$\frac{Bank\ Loans\ in\ Moderate-Income\ Census\ Tracts\ (6)}{Bank\ Loans\ (25)}$$

$$= Geographic\ Bank\ Metric\ (24\%)$$

2. *Calculation of Geographic Market Benchmarks and Geographic Community Benchmarks.* For each of a bank's major product lines in an applicable geographic area, the [Agency] compares the bank's geographic distribution of retail lending, originated and purchased, in the geographic area, as measured by the Geographic Bank Metric, to benchmarks set by overall lending activity in the area, as well as other information. The [Agency] derives Geographic Market Benchmarks and Geographic Community Benchmarks, as set out below. The method for calculating the Geographic Market Benchmarks and Geographic Community Benchmarks in outside retail lending areas includes additional steps to tailor the benchmarks to the geographic areas in which the bank's retail lending is concentrated.

a. *Geographic Market Benchmarks in Facility-Based Assessment Areas and Retail Lending Assessment Areas.* The [Agency] calculates the Geographic Market Benchmark for each of the bank's major product lines, in low-income census tracts and moderate-income census tracts respectively, by dividing the total number of loans in each major product line that were originated by lenders that report relevant data for that product line by the total number of loans in that product line in the geographic area overall that were originated by lenders that report relevant data for that product line.

Example: Assume that lenders that report small farm loan data originated 100 small farm loans in the counties within the assessment area, and that 40 of these were located in low-income census tracts. The Geographic Market Benchmark for small farm loans in low-income census tracts would be 40 divided by 100, or 40 percent. Assume that an additional 30 of these were located in moderate-income census tracts. The Geographic Market Benchmark for small farm loans in moderate-income census tracts would be 30 divided by 100, or 30 percent.

$$\frac{Aggregate\ Market\ Loans\ in\ Low-Income\ Census\ Tracts\ (40)}{Aggregate\ Market\ Loans\ (100)}$$

$$= Geographic\ Market\ Benchmark\ (40\%)$$

$$\frac{Aggregate\ Market\ Loans\ in\ Moderate-Income\ Census\ Tracts\ (30)}{Aggregate\ Market\ Loans\ (100)}$$

$$= Geographic\ Market\ Benchmark\ (30\%)$$

b. *Geographic Community Benchmarks in Facility-Based Assessment Areas and Retail Lending Assessment Areas.* The [Agency] calculates the Geographic Community Benchmark for each major product line, in low-income census tracts and moderate-income census tracts respectively, as follows:

i. For closed-end home mortgage loans and open-end home mortgage loans, by dividing the total number of owner-occupied residential units in low-income census tracts and moderate-income census tracts, respectively, by the total number of owner-occupied residential units in the geographic area overall.

ii. For multifamily loans, by dividing the total number of residential units in multifamily buildings in low-income census tracts and moderate-income census tracts, respectively, by the total number of residential units in multifamily buildings in the geographic area overall.

iii. For small business loans, by dividing the total number of small businesses in low-income census tracts and moderate-income census tracts, respectively, by the total

number of small businesses in the geographic area overall.

iv. For small farm loans, by dividing the total number of small farms in low-income census tracts and moderate-income census tracts, respectively, by the total number of small farms in the geographic area overall.

v. For automobile loans, by dividing the total number of households in low-income census tracts and moderate-income census tracts, respectively, by the total number of households in the geographic area overall.

Example: Assume that there were 4,000 small business establishments in the assessment area, and that 500 of these were in low-income census tracts. The Geographic Community Benchmark for small business loans in low-income census tracts would be 500 divided by 4,000, or 12.5 percent. Assume that an additional 1,000 of these were in moderate-income census tracts. The Geographic Community Benchmark for small business loans in moderate-income census tracts would be 1,000 divided by 4,000, or 25 percent.

$$\frac{Small\ Businesses\ in\ Low-Income\ Census\ Tracts\ (500)}{Small\ Businesses\ (4{,}000)}$$

$$= Geographic\ Community\ Benchmark\ (12.5\%)$$

$$\frac{Small\ Businesses\ in\ Moderate-Income\ Census\ Tracts\ (1{,}000)}{Small\ Businesses\ (4{,}000)}$$

$$= Geographic\ Community\ Benchmark\ (25\%)$$

c. *Tailored Geographic Market Benchmarks in Outside Retail Lending Areas.* The [Agency] calculates the Tailored Geographic Market Benchmark for each of the bank's major product lines, in low-income census tracts and moderate-income census tracts respectively, in outside retail lending areas. The Tailored Geographic Market Benchmark is calculated by means of a weighted average of the Geographic Market Benchmark from every MSA and the nonmetropolitan portion of every state, weighted by the percentage, in dollars, of the bank's retail lending outside of facility-based assessment areas and retail lending assessment areas in each of those MSAs and nonmetropolitan portions of states. Specifically:

i. The [Agency] calculates the Geographic Market Benchmarks for each major product line and income group separately for each MSA and for the nonmetropolitan portion of each state, following the formula described in section III.2.a of this appendix.

ii. The [Agency] calculates local weights as the dollar amount of the bank's retail lending that occurred outside of its facility-based assessment areas and retail lending assessment areas in each MSA and the nonmetropolitan portion of each state, as a percentage of the bank's total dollar amount of retail lending in its outside retail lending area.

iii. The [Agency] then calculates the Tailored Geographic Market Benchmarks as the weighted average of the benchmarks calculated in section III.2.c.i of this appendix, using the weights calculated in section III.2.c.ii.

For retail lending in outside retail lending areas, the [Agency] will use the Tailored Geographic Market Benchmark as the relevant Geographic Market Benchmark for calculating the Performance Ranges described in section V of this appendix.

d. *Tailored Geographic Community Benchmarks in Outside Retail Lending Areas.* The [Agency] calculates the Tailored Geographic Community Benchmark for each of the bank's major product lines, in low-income census tracts and moderate-income census tracts respectively, in outside retail lending areas. The Tailored Geographic Community Benchmark is calculated by means of a weighted average of the Geographic Community Benchmark from every MSA and the nonmetropolitan portion of every state, weighted by the percentage, in dollars, of the bank's retail lending outside of facility-based assessment areas and retail lending assessment areas in each of those MSAs and nonmetropolitan portions of states. Specifically:

i. The [Agency] calculates the Geographic Community Benchmarks for each major product line and income group separately for each MSA and for the nonmetropolitan portion of each state, following the formula described in section III.2.b of this appendix.

ii. The [Agency] calculates local weights as the dollar amount of the bank's retail lending that occurred outside of its facility-based assessment areas and retail lending assessment areas in each MSA and the nonmetropolitan portion of each state, as a percentage of the bank's total dollar amount of retail lending in outside retail lending areas.

iii. The [Agency] then calculates the Tailored Geographic Community Benchmarks as the weighted average of the benchmarks calculated in section III.2.d.i of this appendix, using the weights calculated in section III.2.d.ii.

For retail lending in outside retail lending areas, the [Agency] will use the Tailored Geographic Community Benchmark as the relevant Geographic Community Benchmark for calculating the Performance Ranges described in section V of this appendix.

IV. Borrower Distribution Metrics and Benchmarks

For each of the bank's major product lines, excluding multifamily lending, in applicable geographic areas, a bank's borrower distribution performance will be measured by means of a comparison of the Borrower Bank Metric to the Borrower Market Benchmark and the Borrower Community Benchmark.

The relevant calculations for applicable geographic areas are described below.

1. *Calculation of Borrower Bank Metrics.* The [Agency] calculates the Borrower Bank Metric for each major product line, excluding multifamily loans, in an applicable geographic area as follows:

i. For closed-end home mortgage loans, by dividing the total number of the bank's originated and purchased closed-end home mortgage loans to low-income borrowers or moderate-income borrowers, respectively, in the geographic area by the total number of the bank's originated and purchased closed-end home mortgage loans in that geographic area overall.

ii. For open-end home mortgage loans, by dividing the total number of the bank's originated and purchased open-end home mortgage loans to low-income borrowers or moderate-income borrowers, respectively, in the geographic area by the total number of the bank's originated and purchased open-end home mortgage loans in that geographic area overall.

iii. For small business loans, by dividing the total number of the bank's originated and purchased small business loans to small businesses with gross annual revenues of $250,000 or less or small businesses with gross annual revenues of more than $250,000 but less than or equal to $1 million, respectively, in the geographic area by the total number of the bank's originated and purchased small business loans in that geographic area overall. (Until such time as the data reported under the CFPB's Section 1071 Rulemaking is available, the Borrower Bank Metric would instead be the total number of small business loans to businesses with gross annual revenues of less than or equal to $1 million divided by the total number of small business loans.)

iv. For small farm loans, by dividing the total number of the bank's originated and purchased small farm loans to small farms with gross annual revenues of $250,000 or

less or small farms with gross annual revenues of more than $250,000 but less than or equal to $1 million, respectively, in the geographic area by the total number of the bank's originated and purchased small farm loans in that geographic area overall. (Until such time as the data reported under the CFPB's Section 1071 Rulemaking is available, the Borrower Bank Metric would instead be the total number of small farm loans to farms with gross annual revenues of less than or equal to $1 million divided by the total number of small farm loans.)

v. For automobile loans, by dividing the total number of the bank's originated and purchased automobile loans to low-income borrowers or moderate-income borrowers, respectively, in the geographic area by the total number of the bank's originated and purchased automobile loans in that geographic area overall.

Example: Assume that a bank originated and purchased 100 closed-end home mortgage loans in one of its facility-based assessment areas during the evaluation period, and that 20 of these went to low-income borrowers. The Borrower Bank Metric for closed-end home mortgage loans to low-income borrowers would be 20 divided by 100, or 20 percent. Assume that an additional 30 of these went to moderate-income borrowers. The Borrower Bank Metric for closed-end home mortgage loans to moderate-income borrowers would be 30 divided by 100, or 30 percent.

$$\frac{Bank\ Loans\ to\ Low-Income\ Borrowers\ (20)}{Bank\ Loans\ (100)} = Borrower\ Bank\ Metric\ (20\%)$$

$$\frac{Bank\ Loans\ to\ Moderate-Income\ Borrowers\ (30)}{Bank\ Loans\ (100)} = Borrower\ Bank\ Metric\ (30\%)$$

2. *Calculation of Borrower Market Benchmarks and Borrower Community Benchmarks.* For each of a bank's major product lines in an applicable geographic area, the [Agency] compares the bank's borrower distribution of retail lending, originated and purchased, in the geographic area, as measured by the Borrower Bank Metric, to benchmarks set by overall lending activity in the area, as well as other information. The [Agency] derives Borrower Market Benchmarks and Borrower Community Benchmarks, as set out below. The method for calculating the Borrower Market Benchmarks and Borrower Community Benchmarks in outside retail lending areas includes additional steps to tailor the benchmarks to the regions in which the bank's retail lending is concentrated.

a. *Borrower Market Benchmarks in Facility-Based Assessment Areas and Retail Lending Assessment Areas.* The [Agency] calculates the Borrower Market Benchmark for each of the bank's major product lines, excluding multifamily loans, for borrowers of each applicable income level in an applicable geographic area as follows.

i. For closed-end home mortgage loans, by dividing the total number of closed-end home mortgage loans to low-income borrowers or moderate-income borrowers, respectively, in the geographic area overall that were originated by all lenders that report home mortgage loan data by the total number of closed-end home mortgage loans in that geographic area overall that were originated by all lenders that report home mortgage loan data.

ii. For open-end home mortgage loans, by dividing the total number of open-end home mortgage loans to low-income borrowers or moderate-income borrowers, respectively, in the geographic area overall that were originated by all lenders that report home mortgage loan data by the total number of open-end home mortgage loans in that geographic area overall that were originated by all lenders that report home mortgage loan data.

iii. For small business loans, by dividing the total number of small business loans to small businesses with gross annual revenues of $250,000 or less or small businesses with gross annual revenues of more than $250,000 but less than or equal to $1 million, respectively, in the geographic area overall that were originated by all lenders that report small business loan data by the total number of small business loans in that geographic area overall that were originated by all lenders that report small business loan data. (Until such time as the data reported under the CFPB's Section 1071 Rulemaking is available, the Borrower Market Benchmark would instead be the total number of small business loans to businesses with gross annual revenues of less than or equal to $1 million divided by the total number of small business loans.)

iv. For small farm loans, by dividing the total number of small farm loans to small farms with gross annual revenues of $250,000 or less or small farms with gross annual revenues of more than $250,000 but less than or equal to $1 million, respectively, in the geographic area overall that were originated by all lenders that report small farm loan data by the total number of small farm loans in that geographic area overall that were originated by all lenders that report small farm loan data. (Until such time as the data reported under the CFPB's Section 1071 Rulemaking is available, the Borrower Market Benchmark would instead be the total number of small farm loans to farms with gross annual revenues of less than or equal to $1 million divided by the total number of small farm loans.)

v. For automobile loans, by dividing the total number of the automobile loans to low-incomer borrowers or moderate-income borrowers, respectively, in the geographic area overall that were originated by all lenders that report automobile loan data by the total number of automobile loans in that geographic area overall that were originated by all lenders that report automobile loan data.

Example: Assume that all lenders that report home mortgage loan data originated and purchased 1,000 closed-end home mortgage loans in the counties that encompass the bank's facility-based assessment area during the evaluation period, and that 100 of these went to low-income borrowers. The Borrower Market Benchmark for closed-end home mortgage loans to low-income borrowers would be 100 divided by 1,000, or 10 percent. Assume that an additional 200 of these went to moderate-income borrowers. The Borrower Market Benchmark for closed-end home mortgage loans to moderate-income borrowers would be 200 divided by 1,000, or 20 percent.

$$\frac{Aggregate\ Market\ Loans\ to\ Low-Income\ Borrowers\ (100)}{Aggregate\ Market\ Loans\ (1{,}000)}$$

$$= Borrower\ Market\ Benchmark\ (10\%)$$

$$\frac{Aggregate\ Loans\ to\ Moderate-Income\ Borrowers\ (200)}{Aggregate\ Market\ Loans\ (1{,}000)}$$

$$= Borrower\ Market\ Benchmark\ (20\%)$$

b. *Borrower Community Benchmarks in Facility-Based Assessment Areas and Retail Lending Assessment Areas.* The [Agency] calculates the Borrower Community Benchmark for each of the bank's major product lines, excluding multifamily loans, in an applicable geographic area as follows.

i. For closed-end home mortgage loans and open-end home mortgage loans, by dividing the total number of low-income families or moderate-income families, respectively, in the geographic area by the total number of families in that geographic area overall.

ii. For small business loans, by dividing the total number of small businesses with gross annual revenues of $250,000 or less or small businesses with gross annual revenues of more than $250,000 but less than or equal to $1 million, respectively, in the geographic area by the total number of small businesses in that geographic area overall. (Until such time as the data reported under the CFPB's Section 1071 Rulemaking is available, the Borrower Community Benchmark would instead be the total number of businesses with gross annual revenues of less than or equal to $1 million divided by the total number of small businesses.)

iii. For small farm loans, by dividing the total number of small farms with gross annual revenues of $250,000 or less or small farms with gross annual revenues of more than $250,000 but less than or equal to $1 million, respectively, in the geographic area by the total number of small farms in that geographic area overall. (Until such time as the data reported under the CFPB's Section 1071 Rulemaking is available, the Borrower Community Benchmark would instead be the total number of farms with gross annual revenues of less than or equal to $1 million divided by the total number of small farms.)

iv. For automobile loans, by dividing the total number of low-income households or moderate-income households, respectively, in the geographic area by the total number of households in that geographic area overall.

Example: Assume that there were 4,000 families in the facility-based assessment area, and that 1,000 of these were low-income families. The facility-based assessment area Borrower Community Benchmark for, respectively, closed-end home mortgages and open-end home mortgages for low-income families would be 1,000 divided by 4,000, or 25 percent. Assume that an additional 1,200 of these were moderate-income families. The facility-based assessment area Borrower Community Benchmark for, respectively, closed-end home mortgages and open-end home mortgages for moderate-income families would be 1,200 divided by 4,000, or 30 percent.

$$\frac{Low-Income\ Families\ (1{,}000)}{Families\ (4{,}000)} = Borrower\ Community\ Benchmark\ (25\%)$$

$$\frac{Moderate-Income\ Families\ (1{,}200)}{Families\ (4{,}000)} = Borrower\ Community\ Benchmark\ (30\%)$$

c. *Tailored Borrower Market Benchmarks in Outside Retail Lending Areas.* The [Agency] calculates the Tailored Borrower Market Benchmark for each of the bank's major product lines, excluding multifamily loans, to borrowers of different income categories respectively, in outside retail lending areas. The Tailored Borrower Market Benchmark is calculated by means of a weighted average of the Borrower Market Benchmark from every MSA and the nonmetropolitan portion of every state, weighted by the percentage, in dollars, of the bank's retail lending outside of facility-based assessment areas and retail lending assessment areas in each of those MSAs and nonmetropolitan portions of states. Specifically:

i. The [Agency] calculates the Borrower Market Benchmarks for each major product line and income group separately for each MSA and for the nonmetropolitan portion of each state, following the formula described in section IV.2.a of this appendix.

ii. The [Agency] calculates local weights as the dollar amount of the bank's retail lending that occurred in outside retail lending areas in each MSA and the nonmetropolitan portion of each state, as a percentage of the bank's total dollar amount of retail lending in outside retail lending areas.

iii. The [Agency] then calculates the Tailored Borrower Market Benchmarks as the weighted average of the Benchmarks calculated in section IV.2.c.i of this appendix, using the weights calculated in section IV.2.c.ii.

For retail lending in outside retail lending areas, the [Agency] will use the Tailored Borrower Market Benchmark as the relevant Borrower Market Benchmark for calculating the Performance Ranges described in section V of this appendix.

d. *Tailored Borrower Community Benchmarks in Outside Retail Lending Areas.* The [Agency] calculates the Tailored Borrower Community Benchmark for each of the bank's major product lines, except for multifamily loans, to borrowers of different income categories respectively, in the bank's outside retail lending area. The Tailored Borrower Community Benchmark is calculated by means of a weighted average of the Borrower Community Benchmark from every MSA and the nonmetropolitan portion of every state, weighted by the percentage, in dollars, of the bank's retail lending outside of facility-based assessment areas and retail lending assessment areas in each of those MSAs and nonmetropolitan portions of states. Specifically:

i. The [Agency] calculates the Borrower Community Benchmarks for each major product line and income group separately for each MSA and for the nonmetropolitan portion of each state, following the formula described in section IV.2.b of this appendix.

ii. The [Agency] calculates local weights as the dollar amount of the bank's retail lending that occurred in outside retail lending areas in each MSA and the nonmetropolitan portion of each state, as a percentage of the bank's total dollar amount of retail lending in outside retail lending areas.

iii. The [Agency] then calculates the Tailored Borrower Community Benchmarks as the weighted average of the Benchmarks calculated in section IV.2.d.i of this appendix, using the weights calculated in section IV.2.d.ii.

For retail lending in a bank's outside retail lending area, the [Agency] will use the Tailored Borrower Community Benchmark as the relevant Borrower Community Benchmark for calculating the Performance Ranges described in section V of this appendix.

V. Recommended Retail Lending Test Conclusions

1. The [Agency] calculates an eligible bank's recommended Retail Lending Test performance conclusion in each facility-based assessment area, excluding the facility-based assessment areas of a large bank in which it failed to meet or surpass the Retail Lending Volume Threshold and the [Agency] did not find an acceptable basis for that failure, and, as applicable, each retail lending assessment area, and in its outside retail lending area by comparing a bank's borrower and geographic distribution metrics for each major product line to a set of performance ranges determined by the market and community benchmarks. For facility-based assessment areas, the [Agency] will then consider the additional factors described in § __.22(e) to adjust a bank's recommended Retail Lending Test conclusion in those assessment areas, as appropriate. For facility-based assessment areas of a large bank in which it failed to meet the Retail Lending Volume Threshold and the [Agency] did not find an acceptable basis for that failure, the [Agency] will use the recommended conclusion developed in this section along with other factors to determine whether the bank should be assigned a ''Needs to Improve'' or ''Substantial Noncompliance'' conclusion in that facility-based assessment area.

2. In evaluating a bank's Retail Lending Test performance in any applicable geographic area:

a. For each major product line, the [Agency] will develop separate supporting conclusions for each of the categories outlined below regarding retail lending performance in the geographic area. These conclusions are based upon a comparison of the bank's performance to the applicable set of performance ranges. Each supporting conclusion in the categories outlined below will receive a Performance Score: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points).

TABLE 1 TO APPENDIX A—RETAIL LENDING TEST CONCLUSION CATEGORIES

Major product line	Lending in numerator of bank geographic metric	Lending in numerator of bank borrower metric
Closed-End Home Mortgage Loans	Low-Income Census Tracts	Low-Income Borrowers.
	Moderate-Income Census Tracts	Moderate-Income Borrowers.
Open-End Home Mortgage Loans	Low-Income Census Tracts	Low-Income Borrowers.
	Moderate-Income Census Tracts	Moderate-Income Borrowers.
Multifamily Loans	Low-Income Census Tracts	N/A.
	Moderate-Income Census Tracts	N/A.
Home Mortgage Loans	Low-Income Census Tracts	Low-Income Borrowers.
	Moderate-Income Census Tracts	Moderate-Income Borrowers.
Small Business Loans	Low-Income Census Tracts	Small Businesses with Gross Annual Revenues of $250,000 or Less.
	Moderate-Income Census Tracts	Small Businesses with Gross Annual Revenues of More than $250,000 but Less Than or Equal to $1 million.
Small Farm Loans	Low-Income Census Tracts	Small Farms with Gross Annual Revenues of $250,000 or Less.
	Moderate-Income Census Tracts	Small Farms with Gross Annual Revenues of More than $250,000 but Less Than or Equal to $1 million.
Automobile Loans	Low-Income Census Tracts	Low-Income Households.
	Moderate-Income Census Tracts	Moderate-Income Households.

b. *Geographic Distribution Performance Ranges.* For assessing geographic distribution, for each major product line the [Agency] will compare the bank's performance as measured by the relevant Geographic Bank Metrics in connection with, as applicable, lending in low-income census tracts and moderate-income census tracts to a set of Geographic Performance Ranges associated with each potential recommended Retail Lending Test conclusion for that income level.

The Geographic Performance Ranges are each defined by the minimum Geographic Performance Threshold that the Geographic Bank Metric must meet or surpass to fall within a given Geographic Performance Range. The Geographic Performance Thresholds are determined by the values of the Geographic Market Benchmark and Geographic Community Benchmark, as well as set of Market Multipliers and Community Multipliers associated with each conclusion category. The [Agency] will calculate the Geographic Performance Thresholds and the resulting Geographic Performance Ranges in any applicable geographic area as follows:

i. The Geographic Performance Threshold for a recommended ''Outstanding'' Retail Lending Test conclusion is the minimum of either:

A. The product of 1.0 times the Geographic Community Benchmark; or

B. The product of 1.25 times the Geographic Market Benchmark.

The Outstanding Geographic Performance Range is all potential values of the Geographic Bank Metric equal to or above the Outstanding Geographic Performance Threshold.

ii. The Geographic Performance Threshold for a recommended ''High Satisfactory'' Retail Lending Test conclusion is the minimum of either:

A. The product of 0.9 times the Geographic Community Benchmark; or

B. The product of 1.1 times the Geographic Market Benchmark.

The High Satisfactory Geographic Performance Range is all potential values of the Geographic Bank Metric equal to or above the High Satisfactory Geographic Performance Threshold but below the Outstanding Geographic Performance Threshold.

iii. The Geographic Performance Threshold for a recommended ''Low Satisfactory'' Retail Lending Test conclusion is the minimum of either:

A. The product of 0.65 times the Geographic Community Benchmark; or

B. The product of the 0.8 times the Geographic Market Benchmark.

The Low Satisfactory Geographic Performance Range is all potential values of the Geographic Bank Metric equal to or above the Low Satisfactory Geographic Performance Threshold but below the High Satisfactory Geographic Performance Threshold.

iv. The Geographic Performance Threshold for a recommended ''Needs to Improve'' Retail Lending Test conclusion is the minimum of either:

A. The product of 0.33 times the Geographic Community Benchmark; or

B. The product of 0.33 times the Geographic Market Benchmark.

The Needs to Improve Geographic Performance Range is all potential values of the Geographic Bank Metric equal to or above the Needs to Improve Geographic Performance Threshold but below the Low Satisfactory Geographic Performance Threshold.

v. The Substantial Noncompliance Geographic Performance Range is all

potential values of the Geographic Bank Metric below the Needs to Improve Geographic Performance Threshold.

c. *Geographic Distribution Recommended Retail Lending Test Conclusions and Performance Scores.* The [Agency] will compare the Geographic Bank Metric to the Geographic Performance Ranges described in paragraphs V.2.b.i through V.2.b.v of this appendix. The recommended Retail Lending Test conclusion for the geographic distribution performance will be the Geographic Performance Range the Geographic Bank Metric falls within. Based on this recommended Retail Lending Test conclusion, geographic performance for the product and income group is assigned a numerical performances score using the following points values: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points).

d. *Borrower Distribution Performance Ranges.* For assessing borrower distribution, for each major product line, apart from multifamily lending, the [Agency] will compare the bank's performance as measured by the relevant Borrower Bank Metrics in connection with, as applicable, lending to low-income borrowers, moderate-income borrowers, small businesses with annual revenues of $250,000 or less and small businesses with annual revenues of more than $250,000 but less than or equal to $1 million, and small farms with annual revenues of $250,000 or less and small farms with annual revenues of more than $250,000 but less than or equal to $1 million, to a set of Borrower Performance Ranges associated with each potential recommended Retail Lending Test conclusion for that borrower segment.

The Borrower Performance ranges are each defined by the minimum Borrower Performance Threshold that the Borrower Bank Metric must meet or surpass to fall within a given Borrower Performance Range. The Borrower Performance Thresholds are determined by the values of the Borrower Market Benchmark and Borrower Community Benchmark, as well as the set of Market Multipliers and Community Multipliers associated with each conclusion category. The [Agency] will calculate the Borrower Performance Thresholds and the resulting Borrower Performance Ranges in any applicable geographic area, as follows:

i. The Borrower Performance Threshold for a recommended ''Outstanding'' Retail Lending Test conclusion is the minimum of either:

A. The product of 1.0 times the Borrower Community Benchmark; or

B. The product of 1.25 times the Borrower Market Benchmark.

The Outstanding Borrower Performance Range is all potential values of the Borrower Bank Metric equal to or above the Outstanding Borrower Performance Threshold.

ii. The Borrower Performance Threshold for a recommended ''High Satisfactory'' Retail Lending Test conclusion is the minimum of either:

A. The product of 0.9 times the Borrower Community Benchmark; or

B. The product of 1.1 times the Borrower Market Benchmark.

The High Satisfactory Borrower Performance Range is all potential values of the Borrower Bank Metric equal to or above the High Satisfactory Borrower Performance Threshold but below the Outstanding Borrower Performance Threshold.

iii. The Borrower Performance Threshold for a recommended ''Low Satisfactory'' Retail Lending Test conclusion is the minimum of either:

A. The product of 0.65 times the Borrower Community Benchmark; or

B. The product of 0.8 times the Borrower Market Benchmark.

The Low Satisfactory Borrower Performance Range is all potential values of the Borrower Bank Metric equal to or above the Low Satisfactory Borrower Performance Threshold but below the High Satisfactory Borrower Performance Threshold.

iv. The Borrower Performance Threshold for a recommended ''Needs to Improve'' Retail Lending Test conclusion is the minimum of either:

A. The product of 0.33 times the Borrower Community Benchmark; or

B. The product of 0.33 times the Borrower Market Benchmark.

The Needs to Improve Borrower Performance Range is all potential values of the Borrower Bank Metric equal to or above the Needs to Improve Borrower Performance Threshold but below the Low Satisfactory Borrower Performance Threshold.

v. The Substantial Noncompliance Borrower Performance Range is all potential values of the Borrower Bank Metric below the Needs to Improve Borrower Performance Threshold.

e. *Borrower Distribution Recommended Conclusions and Performance Scores.* The [Agency] will compare the Borrower Bank Metric to the Borrower Performance Ranges described in V.2.d.i through V.2.d.v above. The recommended Retail Lending Test conclusion for the borrower distribution performance, for each product and income group, will be that of the Borrower Performance Range the Borrower Bank Metric falls within. Based on this recommended Retail Lending Test conclusion, borrower performance for the product and income group is assigned a numerical performance score using the following points values: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points).

3. To determine a bank's recommended Retail Lending Test conclusion for an applicable geography, the [Agency] utilizes a weighted average of a bank's performance for the following categories with regard to each major product line:

TABLE 2 TO APPENDIX A—RETAIL LENDING TEST MAJOR PRODUCT LINE WEIGHTING

Major product line	Lending in numerator of bank geographic metric	Lending in numerator of bank borrower metric
Closed-End Home Mortgage Loans	Low-Income Census Tracts	Low-Income Borrowers.
	Moderate-Income Census Tracts	Moderate-Income Borrowers.
Open-End Home Mortgage Loans	Low-Income Census Tracts	Low-Income Borrowers.
	Moderate-Income Census Tracts	Moderate-Income Borrowers.
Multifamily Loans	Low-Income Census Tracts	N/A.
	Moderate-Income Census Tracts	N/A.
Home Mortgage Loans	Low-Income Census Tracts	Low-Income Borrowers.
	Moderate-Income Census Tracts	Moderate-Income Borrowers.
Small Business Loans	Low-Income Census Tracts	Small Businesses with Gross Annual Revenues of $250,000 or Less.
	Moderate-Income Census Tracts	Small Businesses with Gross Annual Revenues of More Than $250,000 but Less Than or Equal to $1 million.
Small Farm Loans	Low-Income Census Tracts	Small Farms with Gross Annual Revenues of $250,000 or Less.
	Moderate-Income Census Tracts	Small Farms with Gross Annual Revenues of More than $250,000 but Less than or Equal to $1 million.
Automobile Loans	Low-Income Census Tracts	Low-Income Households.
	Moderate-Income Census Tracts	Moderate-Income Households.

a. The [Agency] follows the below steps to create a weighted average performance score for each major product line.

i. First, for each major product line, the [Agency] creates a *geographic income average* of the bank's Geographic Performance Scores and a *borrower income average* of the bank's Borrower Performance Scores.

ii. For the geographic income average of each major product line, the relevant Community Benchmark is used to weight together the bank's Geographic Performance Scores. These benchmarks are outlined in the following table:

TABLE 3 TO APPENDIX A—RETAIL LENDING TEST COMMUNITY BENCHMARK USED TO WEIGHT TOGETHER BANK'S GEOGRAPHIC PERFORMANCE SCORES

Major product line	Geographic distribution performance score component	Geographic community benchmark weight
Closed-End Home Mortgage and Open End Home Mortgage Loans.	Low-Income Census Tracts	Percentage of Owner-Occupied Units in Low-Income Census Tracts.
	Moderate-Income Census Tracts	Percentage of Owner-Occupied Units in Moderate-Income Census Tracts.
Multifamily Loans	Low-Income Census Tracts	Percentage of Multifamily Units in Low-Income Census Tracts.
	Moderate-Income Census Tracts	Percentage of Multifamily Units in Moderate-Income Census Tracts.
Small Business Loans	Low-Income Census Tracts	Percentage of Small Businesses in Low-Income Census Tracts.
	Moderate-Income Census Tracts	Percentage of Small Businesses in Moderate-Income Census Tracts.
Small Farm Loans	Low-Income Census Tracts	Percentage of Small Farms in Low-Income Census Tracts.
	Moderate-Income Census Tracts	Percentage of Small Farms in Moderate-Income Census Tracts.
Automobile Loans	Low-Income Census Tracts	Percentage of Households in Low-Income Census Tracts.
	Moderate-Income Census Tracts	Percentage of Households in Moderate-Income Census Tracts.

iii. For the borrower income average of each major product line, excluding multifamily lending, the relevant Community Benchmark is used to weight together the bank's Borrower Performance Scores. These benchmarks are outlined in the following table:

TABLE 4 TO APPENDIX A—RETAIL LENDING TEST COMMUNITY BENCHMARK USED TO WEIGHT TOGETHER BANK'S BORROWER PERFORMANCE SCORES

Major product line	Borrower distribution performance score component	Borrower community benchmark
Closed-End Home Mortgage and Open-End Home Mortgage Loans.	Low-Income Borrowers	Percentage of Low-Income Families.
	Moderate-Income Borrowers	Percentage of Moderate-Income Families.
Multifamily Loans	N/A	N/A.
	N/A	N/A.
Small Business Loans	Small Businesses with Gross Annual Revenues of $250,000 or Less.	Percentage of Small Businesses with Gross Annual Revenues of $250,000 or Less.
	Small Businesses with Gross Annual Revenues of More Than $250,000 and Less Than or Equal to $1 Million.	Percentage of Small Businesses with Gross Annual Revenues of More Than $250,00 and Less Than or Equal to $1 Million.
Small Farm Loans	Small Farms with Gross Annual Revenues of $250,000 or Less.	Percentage of Small Farms with Gross Annual Revenues of $250,000 or Less.
	Small Farms with Gross Annual Revenues of More Than $250,000 and Less Than or Equal to $1 Million.	Percentage of Small Farms with Gross Annual Revenues of More Than $250,00 and Less Than or Equal to $1 Million.
Automobile Loans	Low-Income Borrowers	Percentage of Low-Income Households.
	Moderate-Income Borrowers	Percentage of Moderate-Income Households.

In the case of an assessment area that contains no low-income census tracts and no moderate-income census tracts, the bank will not receive a *geographic income average* for that assessment area

Example: Suppose that a bank originates and purchases closed-end home mortgage loans in a facility-based assessment area. Assume that owner-occupied housing in moderate-income census tracts represent 80 percent of all owner-occupied units in low- and moderate-income census tracts combined, and accordingly closed-end home mortgage loans in moderate-income census tracts receive an 80 percent weight and closed-end home mortgage loans in low-income census tracts receive a 20 percent weight. Additionally, assume that for closed-end home mortgage loans, the bank's geographic distribution conclusion in connection with low-income census tracts was ''High Satisfactory'' (Performance Score of 7 points) and its geographic distribution conclusion in connection with moderate-income census tracts was ''Needs to Improve'' (Performance Score of 3 points).

For geographic distribution: The bank's *geographic income average for closed-end home mortgage loans* would be 3.8 [(7 points

× 0.2 weight = 1.4) + (3 points × 0.8 weight = 2.4)].

Assume also that low-income families account for 70 percent of the total low- and moderate-income families in the assessment area, and that accordingly closed-end home mortgage lending to low-income families receives a 70 percent weight and closed-end home mortgage lending to moderate-income families receives a 30 percent weight. Additionally assume that the bank's borrower distribution conclusion in connection with low-income borrowers was ''Outstanding'' (Performance Score of 10 points) and its borrower distribution conclusion in connection with moderate-income borrowers was ''Low Satisfactory'' (Performance Score of 6 points).

For borrower distribution: The bank's *borrower income average for closed-end home mortgage loans* would be 8.8 [(10 points × 0.7 weight = 7.0) + (6 points × 0.3 weight = 1.8)].

b. Second, for each major product line, the [Agency] then uses the simple mean of the *geographic income average* and the *borrower income average* to develop a *product line average.* For multifamily lending, banks do not receive borrower income performance conclusions so the *product line average* is set equal to the *geographic income average.* If a bank has no *geographic income average* for a product (due to the absence of both low-income census tracts and moderate-income census tracts in the geographic area), then the *product line average* is set equal to the *borrower income average.*

Example: Based on the illustration above:

For closed-end home mortgage loans: The bank's *product line average* for closed-end home mortgage loans would be 6.3 [(3.8 geographic income average × 0.5 weight = 1.9) + (8.8 borrower income average × 0.5 weight = 4.4)].

c. Third, the [Agency] uses the volume of retail lending (measured in dollars of originations and purchases) that the bank made in each major product line in a relevant geographic area to assign a weight to that major product line. A weighted average taken across products then produces a *geographic product average.*

Example: Suppose that, in addition to the closed-end home mortgage lending described in the illustration above, the example bank also engaged in small business lending in its assessment area. Assume that, among major product lines, 60 percent of the banks loans in that assessment area were closed-end home mortgages and 40 percent were small business loans (by dollar volume). Accordingly, closed-end home mortgage lending would receive a 60 percent weight and small business lending would receive a 40 percent weight. Assume further that, based on steps V.3.a.i-iii, the bank's *product line average* for small business lending in the assessment area was 4.2.

For all retail loans: The bank's *geographic product average* for all retail lending is 5.46 [(6.3 closed-end home mortgage product line average × 0.6 weight = 3.78) + (4.2 small business product line average × 0.4 weight = 1.68)].

d. Fourth, the [Agency] takes the *geographic product average* and translates it into a recommended Retail Lending Test conclusion for the relevant geographic area by rounding to the nearest conclusion score using the following points values: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points). The rounding procedure works as follows:

i. A geographic product average of less than 1.5 results in a conclusion of ''Substantial Noncompliance'';

ii. A geographic product average of 1.5 or more but less than 4.5 results in a conclusion of ''Needs to Improve'';

iii. A geographic product average of 4.5 or more but less than 6.5 results in a conclusion of ''Low Satisfactory'';

iv. A geographic product average of 6.5 or more but less than 8.5 results in a conclusion of ''High Satisfactory'';

v. A geographic product average of 8.5 or more results in a conclusion of ''Outstanding.''

For small banks evaluated pursuant to the Retail Lending Test, recommended Retail Lending Test conclusions of ''High Satisfactory'' and ''Low Satisfactory'' both result in a recommended Retail Lending Test conclusion of ''Satisfactory'' in any applicable state, multistate MSA, or at the institution level.

Example: Based on the illustration above, the bank's *geographic product average* of 5.46 is closest to the conclusion score (6) associated with a ''Low Satisfactory,'' so the bank's recommended Retail Lending Test conclusion is ''Low Satisfactory'' for the assessment area. Finally, the [Agency] will review additional factors in described in § _ _.22(e) to determine whether and how to adjust a bank's recommended Retail Lending Test conclusion in this facility-based assessment area.

VI. Retail Lending Test and Retail Services and Products Test Weighting and Conclusions in States, Multistate MSAS, and at the Institution Level

1. Retail Lending Test conclusions in states and multistate MSAs are based on Retail Lending Test conclusions for facility-based assessment areas and, as applicable, retail lending assessment areas.

Facility-based assessment area and retail lending assessment area conclusions are translated into numerical performance scores using the following mapping: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points). The [Agency] takes a weighted average of these performance scores across assessment areas. Each assessment area is weighted by the simple average of:

a. The dollars of deposits the bank draws from that assessment area, measured as a percentage of all dollars of deposits that the bank draws from assessment areas in the relevant geographic area (*i.e.,* state where the bank has a branch, multistate MSA where the bank has a branch in two or more states of the multistate MSA, and nationwide at the institution level); and

b. The dollars of retail loans the bank made in that assessment area over the evaluation period, measured as a percentage of all of the retail loans that the bank made in assessment areas in the relevant geographic area over the evaluation period.

For banks that collect and maintain deposits data as provided in § __.42, the dollars of deposits in each assessment area are the annual average daily balance of deposits as provided in bank statements (for example, monthly, quarterly) for the bank's deposits associated with an address in that assessment area over the evaluation period. For banks that do not collect and maintain deposits data as provided in § __.42, the [Agency] measures the dollars of deposits in each assessment area as the annual average of deposits assigned to branches that the bank operates in its assessment area, as reported in the FDIC's Summary of Deposits.

The [Agency] calculates the weighted average of facility-based assessment area performance scores and, as applicable, retail lending assessment area performance scores to produce the Retail Lending Test performance score for each state, multistate MSA, and at the institution level. The [Agency] assigns a conclusion corresponding with the conclusion category that is nearest to the performance score, as follows: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points). For performance scores at the exact mid-point between two conclusions categories, the [Agency] rounds up to assign the conclusion (*i.e.,* a performance score of 8.5 is ''Outstanding''). These performance scores are then each rounded to the nearest conclusion score to produce a Retail Lending Test conclusion for each state, multistate MSA, and at the institution level using the following corresponding points values: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points).

2. The Retail Lending Test conclusion at the institution level is based on Retail Lending Test conclusions for all facility-based assessment areas and, as applicable, retail lending assessment areas and in outside retail lending areas. Facility-based assessment area, retail lending assessment area, and outside retail lending area conclusions are translated into numerical performance scores using the following mapping: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points).

The [Agency] takes a weighted average of these performance scores across facility-based assessment areas and, as applicable, retail lending areas and outside retail lending areas. Each assessment area and the outside retail lending area is weighted by the simple average of:

a. The dollars of deposits the bank draws from that assessment area or outside retail lending area, measured as a percentage of all of the bank's dollars of deposits; and

b. The dollars of retail loans the bank made in that assessment area or outside retail lending area over the evaluation period, measured as a percentage of all the retail

loans the bank made over the evaluation period.

For banks that collect and maintain deposits data as provided in § __.42, the dollars of deposits in each geographic area are the annual average daily balance of deposits as provided in bank statements (for example, monthly, quarterly) for the bank's deposits associated with an address in that assessment area or outside retail lending area over the evaluation period. For banks that do not collect and maintain deposits data as provided in § __.42, the [Agency] measures the dollars of deposits in each geographic area as the annual average of deposits assigned to branches the bank operates in its assessment area, as reported in the FDIC's Summary of Deposits.

The [Agency] calculates the weighted average of facility-based assessment area performance scores and, as applicable, retail lending assessment area performance scores and outside retail lending area performance scores to produce the Retail Lending Test performance score for bank at the institution level. This institution-level performance score is then rounded to the nearest conclusion score to produce a Retail Lending Test conclusion for the institution using the following points values: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points).

Example 1: Assume that a large bank operates in one state only, and has two facility-based assessment areas and one retail lending assessment area in that state, and also engages in retail lending activity in an outside retail lending area.

Assume also that:

i. In facility-based assessment area 1, the bank received a ''Needs to Improve'' (3 points) Retail Lending Test conclusion, and that it is associated with 75 percent of the bank's deposits and 10 percent of the bank's retail loans (both, by dollar amount);

ii. In facility-based assessment area 2, the bank received a ''Low Satisfactory'' (6 points) Retail Lending Test conclusion, and that it is associated with 15 percent of the bank's deposits and 20 percent of the bank's retail loans;

iii. In its retail lending assessment area, the bank received an ''Outstanding'' (10 points) Retail Lending Test conclusion, and that it is associated with 8 percent of the bank's deposits and 68 percent of the bank's retail loans; and

iv. In the outside retail lending area, the bank received a ''High Satisfactory'' (7 points) Retail Lending Test conclusion, and that these areas are associated with 2 percent of the bank's deposits and 2 percent of the bank's retail loans.

Calculating Weights

i. For facility-based assessment area 1: weight = 42.5 percent [(75 percent of deposits + 10 percent of retail loans)/2];

ii. For facility-based assessment area 2: weight = 17.5 percent [(15 percent of deposits + 20 percent of retail loans)/2];

iii. For the retail lending assessment area: weight = 38 percent [(8 percent of deposits + 68 percent of retail loans)/2]; and

iv. For the outside retail lending area: weight = 2 percent [(2 percent of deposits + 2 percent of loans)/2].

Institution Retail Lending Test Score and Recommended Retail Lending Test Conclusion: Using the relevant points values—''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points)—and based on the illustration above, the bank's recommended Retail Lending Test performance score at the institution level is 6.3 [(0.425 weight × 3 points in facility-based assessment area 1) + (0.175 weight × 6 points in facility-based assessment area 2) + (0.38 weight × 10 points in retail lending assessment area) + (0.02 weight 7 points in outside retail lending area)].

A performance score of 6.3 is closest to the conclusion score (6) associated with ''Low Satisfactory,'' so the bank's recommended Retail Lending Test conclusion at the institution level is ''Low Satisfactory.''

Example 2: Assume that an intermediate bank operates in one state only, and has two facility-based assessment areas, and also engages in retail lending activity in an outside retail lending area, having originated or purchased over 50 percent of its retail loans outside of its facility-based assessment areas.

Assume also that:

i. In facility-based assessment area 1, the bank received an ''Outstanding'' (10 points) Retail Lending Test conclusion, and that it is associated with 60 percent of the bank's deposits and 30 percent of the bank's retail loans (both, by dollar amount);

ii. In facility-based assessment area 2, the bank received a ''High Satisfactory'' (7 points) Retail Lending Test conclusion, and that it is associated with 40 percent of the bank's deposits and 10 percent of the bank's retail loans; and

iii. In the outside retail lending area, the bank received a ''Needs to Improve'' (3 points) Retail Lending Test conclusion, and that these areas are associated with 0 percent of the bank's deposits (as the bank did not voluntarily collect and maintain depositor location data, so deposit location is based on branch assignment and all branches are necessarily located within facility-based assessment areas) and 60 percent of the bank's retail loans.

Calculating weights:

i. For facility-based assessment area 1: weight = 45 percent [(60 percent of deposits + 30 percent of retail loans)/2];

ii. For facility-based assessment area 2: weight = 25 percent [(40 percent of deposits + 10 percent of retail loans)/2]; and

iii. For the outside retail lending area: weight = 30 percent [(0 percent of deposits + 60 percent of loans)/2].

Institution Retail Lending Test Score and Recommended Retail Lending Test Conclusion: Using the relevant points values—''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points)—and based on the illustration above, the bank's recommended Retail Lending Test performance score at the institution level is 7.2 [(0.45 weight × 10 points in facility-based assessment area 1) + (0.25 weight × 7 points in facility-based assessment area 2) + (0.3 weight × 3 points in outside retail lending area)].

A performance score of 7.2 is closest to the conclusion score (7) associated with ''High Satisfactory,'' so the bank's recommended Retail Lending Test conclusion at the institution level is ''High Satisfactory.''

VII. Retail Services and Products Test Weighting and Conclusions in States, Multistate MSAS, and at the Institution Level

1. *State and multistate MSA.* Retail Services and Products Test conclusions in a state or multistate MSA are based on Services and Products Test conclusions for facility-based assessment areas in the relevant state or multistate MSA. Facility-based assessment area conclusions are translated into numerical performance scores using the following mapping: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points).

The [Agency] then calculates a weighted average of these performance scores across assessment areas in each relevant state or multistate MSA. Each facility-based assessment area is weighted by the simple average of:

a. The dollars of deposits the bank draws from that assessment area, measured as a percentage of all dollars of deposits that the bank draws from facility-based assessment areas in the relevant state or multistate MSA; and

b. The dollars of retail loans the bank made in that assessment area over the evaluation period, measured as a percentage of all of the retail loans that the bank made in facility-based assessment areas in the relevant state or multistate MSA over the evaluation period.

For banks that collect and maintain deposits data as provided in § __.42, the dollars of deposits in each assessment area are the annual average daily balance of deposits as provided in bank statements (for example, monthly, quarterly) for the bank's deposits associated with an address in that assessment area over the evaluation period. For banks that do not collect and maintain deposits data as provided in § __.42, the [Agency] measures the dollars of deposits in each assessment area as the annual average of deposits assigned to branches the bank operates in its assessment area, as reported in the FDIC's Summary of Deposits.

The raw number resulting from the weighted average calculation is the bank's performance score for its Retail Services and Products Test performance in a state or multistate MSA. The [Agency] assigns a conclusion corresponding with the conclusion category that is nearest to the performance score, as follows: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points). For performance scores at the exact mid-point between two conclusions categories, the [Agency] rounds up to assign the conclusion (*i.e.,* a performance score of 8.5 is ''Outstanding'').

Example: Assume that a large bank operates two facility-based assessment areas in a particular state.

Assume also that:

i. In facility-based assessment area 1, the bank received a ''Low Satisfactory'' (6 points) Retail Services and Products Test conclusion, and that it is associated with 75 percent of the bank's deposits and 80 percent of the bank's retail loans (both, by dollar amount) in its facility-based assessment areas in the state;

ii. In facility-based assessment area 2, the bank received a ''Needs to Improve'' (3 points) Retail Services and Products Test conclusion, and that it is associated with 25 percent of the bank's deposits and 20 percent of the bank's retail loans in its facility-based assessment areas the state

Calculating weights:

i. For facility-based assessment area 1: Weight = 77.5 percent [(75 percent of deposits + 80 percent of retail loans)/2];

ii. For facility-based assessment area 2: Weight = 22.5 percent [(25 percent of deposits + 20 percent of retail loans)/2].

State-Level Performance Score and Conclusion for the Retail Services and Products Test: Using the relevant points values—''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points)—and based on the illustration above, the bank's weighted average of facility-based assessment area conclusions at the state level is 5.325 [(0.775 weight × 6 points in facility-based assessment area 1) + (0.225 weight × 3 points in facility-based assessment area 2).]

A performance score of 5.325 is closest to the conclusion score (6) associated with ''Low Satisfactory,'' so the bank's Retail Services and Products Test conclusion at the state level is ''Low Satisfactory.''

2. *Institution.* The Retail Services and Products Test conclusion at the institution level is based on a combined assessment of the bank's delivery systems performance under § __.23(b) and its credit and deposit products performance under § __.23(c). The delivery systems evaluation comprises two parts:

a. The weighted average of a bank's Retail Services and Products Test performances scores for its conclusions in all of its facility-based assessment areas, calculated in accordance with section VII.1 but including all of the bank's facility-based assessment areas; and

b. As applicable, the bank's performance regarding digital and other delivery systems under § __.23(b)(3).

Based on an evaluation of the components of the bank's delivery systems performance and the credit and deposit products performance, as applicable, the [Agency] assigns a Retail Services and Products Test conclusion for the bank at the institution level. The institution-level conclusion is translated into a numerical performance score using the following mapping: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points).

Appendix B to Part __—Calculations for the Community Development Tests

Appendix B includes information and calculations for metrics, benchmarks, combining test elements to derive performance scores and conclusions, and weighting conclusions for, as applicable, the Community Development Financing Test as provided in § __.24, the Community Development Services Test as provided in § __.25, and the Community Development Financing Test for Wholesale or Limited Purpose Banks as provided in § __.26.

1. *Community development loans and community development investments included in the community development financing metrics and benchmarks—in general.* The community development financing metrics and benchmarks in § __.24 are based on annual community development financing activity. Community development financing activity for each calendar year in an evaluation period comprises the following:

a. The dollar amount of all community development loans originated and community development investments made in that year;

b. The dollar amount of any increase in an existing community development loan that is renewed or modified in that year; and

c. The outstanding value of community development loans originated or purchased and community development investments made in previous years that remain on the bank's balance sheet on the last day of each quarter of the year, averaged across the four quarters of the year.

To calculate the community development financing metric for an evaluation period, the [Agency] uses the annual average of community development financing activity for each year, and the annual average of bank deposits over the evaluation period.

For the facility-based assessment area, state, and multistate MSA, and nationwide area community development financing metrics in § __.24(c), all community development financing activities that are attributed to the specific facility-based assessment area, state, multistate MSA, or nationwide area, respectively, are included. *See* section 13 of this appendix for an explanation of how the [Agency] allocates community development financing dollars to a facility-based assessment area, state, multistate MSA, or nationwide area, respectively.

2. *Bank Assessment Area Community Development Financing Metric.* Section __ .24(b)(1) provides that, to assist the [Agency] in evaluating a bank's community development financing activity in a facility-based assessment area, the [Agency] considers a Bank Assessment Area Community Development Financing Metric. The Bank Assessment Area Community Development Financing Metric for a facility-based assessment area for the evaluation period is calculated by dividing the annual average of the bank's community development financing activity for each year, over the evaluation period, by the annual average dollar value of deposits from the bank's deposit accounts in the facility-based assessment area over the evaluation period.

For a bank that collects and maintains deposits data as provided in § __.42, the dollar amount of its deposits in each assessment area are the annual average of deposits over the evaluation period. For a bank that does not collect and maintain deposits data as provided in § __.42, the [Agency] measures the dollars of deposits in each assessment area as the annual average of deposits assigned to branches that the bank operates in its assessment area, as reported in the FDIC's Summary of Deposits, over the evaluation period.

Example: Assume that the annual average dollar amount of a bank's community development financing activity in a facility-based assessment area over the bank's three-year evaluation period is $100,000. Assume further that the annual average dollar value of deposits from the bank's deposit accounts located in the facility-based assessment, reported each year by the bank as the average of monthly deposit statements, is $10 million. The Bank Assessment Area Community Development Financing Metric for that facility-based assessment area would be $100,000 divided by $10 million, or 0.01 (equivalently, 1 percent).

3. *Assessment Area Community Development Financing Benchmark.* Section __.24(b)(2)(i) provides that the [Agency] uses an Assessment Area Community Development Financing Benchmark for evaluating a bank's community development financing activity in each facility-based assessment area. The Assessment Area Community Development Financing Benchmark is calculated by dividing the total annual community development financing activity for all large banks in the facility-based assessment area for each year, averaged over the years of the evaluation period, by the total dollar value of all large bank deposit accounts in that facility-based assessment area, averaged over the years of the evaluation period.

The deposits in the facility-based assessment area are the sum of: (i) The annual average of deposits in counties in the facility-based assessment area reported by all large banks with assets of over $10 billion over the evaluation period; and (ii) the annual average of deposits assigned to branches in the facility-based assessment area by all large banks with assets of $10 billion or less, according to the FDIC's Summary of Deposits, over the evaluation period.

Example: Assume that the total dollar amount of all large banks' community development financing activity in the facility-based assessment area, average annually over the years of the evaluation period is $10 million. Assume further that the total reported dollar value of all large bank deposit accounts in that facility-based assessment, averaged annually over the years of the evaluation period, is $1 billion. The Assessment Area Community Development Financing Benchmark for the facility-based assessment area would be $10 million divided by $1 billion, or 0.01 (equivalently, 1 percent).

4. *Metropolitan and Nonmetropolitan Nationwide Community Development Financing Benchmarks.* Section __.24(b)(2)(ii) provides that the [Agency] uses Nationwide Community Development Financing Benchmarks for evaluating a bank's community development financing activity in each facility-based assessment area. The [Agency] calculates a Metropolitan Nationwide Community Development Financing Benchmark for metropolitan areas when the relevant facility-based assessment area is in a metropolitan area. The [Agency] calculates a Nonmetropolitan Nationwide Community Development Financing Benchmark for nonmetropolitan areas when the relevant facility-based assessment area is in a nonmetropolitan area.

i. *Metropolitan Nationwide Community Development Financing Benchmark.* The Metropolitan Nationwide Community Development Financing Benchmark is derived by dividing the total dollar amount of all large banks' annual community development financing activity in all metropolitan areas in a nationwide area for each year, averaged over the years of the evaluation period, by the total dollar amount of all deposits from large bank deposit accounts in all metropolitan areas in a nationwide area, averaged over the years of the evaluation period.

The deposits in all metropolitan areas in a nationwide area is the sum of: (i) The annual average of deposits in counties in all metropolitan areas in a nationwide area reported by all large banks with assets of over $10 billion over the evaluation period; and (ii) the annual average of deposits assigned to branches in all metropolitan areas in a nationwide area by all large banks with assets of $10 billion or less, according to the FDIC's Summary of Deposits, over the evaluation period.

Example: Assume that the total dollar amount of all large banks' community development financing activity in metropolitan areas, averaged over the years of the evaluation period, is $100 billion. Assume further that the total dollar value of all large bank deposit accounts in metropolitan areas in the nation as reported by those banks, averaged over the years of the evaluation period, is $5 trillion. The Metropolitan Nationwide Community Development Financing Benchmark would be $100 billion divided by $5 trillion, or 0.02 (equivalently, 2 percent).

ii. *Nonmetropolitan Nationwide Community Development Financing Benchmark.* The Nonmetropolitan Nationwide Community Development Financing Benchmark is derived by dividing the total dollar amount of all large banks' annual community development financing activity in all nonmetropolitan areas in the nationwide area for each year, averaged over the years of the evaluation period, by the reported total dollar amount of all deposits from large bank deposit accounts in all nonmetropolitan areas in a nationwide area, averaged over the years of the evaluation period.

The deposits in all nonmetropolitan areas in a nationwide area is the sum of: (i) The annual average of deposits in counties in all nonmetropolitan areas in a nationwide area reported by all large banks with assets of over $10 billion over the evaluation period; and (ii) the annual average of deposits assigned to branches in all nonmetropolitan areas in a nationwide area by all large banks with assets of $10 billion or less, according to the FDIC's Summary of Deposits, over the evaluation period.

Example: Assume that the average annual dollar amount of all large banks' community development financing activity in nonmetropolitan areas over the evaluation period is $10 billion. Assume further that the total dollar value of all large bank deposit accounts in nonmetropolitan areas, averaged over the years of the evaluation period, is $1 trillion. The Nonmetropolitan Nationwide Community Development Financing Benchmark would be $10 billion divided by $1 trillion, or 0.01 (equivalently, 1 percent).

5. *Bank State Community Development Financing Metric.* Section __.24(c)(2)(ii)(A) provides that, to assist the [Agency] in evaluating a bank's community development financing activity in each state, the [Agency] considers a Bank State Community Development Financing Metric. For each state, the [Agency] calculates a Bank State Community Development Financing Metric for that state for the evaluation period. The Bank State Community Development Financing Metric is calculated by dividing a bank's total community development financing activity within an state for each year, averaged over the years of the evaluation period, including all activities within the bank's facility-based assessment areas and outside of its facility-based assessment areas but within the state, by the total dollar amount of deposits from the bank's deposit accounts in the state at the end of each calendar year, averaged over the years of the evaluation period.

For a bank that collects and maintains deposits data as provided in § __.42, the dollar amount of its deposits is the annual average of deposits over the evaluation period in the state. For a bank that does not collect and maintain deposits data as provided in § __.42, the [Agency] measures the dollars of deposits as the annual average of deposits assigned to branches that the bank operates in the state, as reported in the FDIC's Summary of Deposits, over the evaluation period.

Example: Assume that the bank's total community development financing activity within a state, averaged over the years of its evaluation period is $50 million. Assume further that the total dollar amount of deposits from the bank's deposit accounts in the state for each calendar year, averaged over the years of the evaluation period, is $5 billion. The Bank State Community Development Financing Metric would be $50 million divided by $5 billion, or 0.01 (equivalently, 1 percent).

6. *State Community Development Financing Benchmark.* Section __.24(c)(2)(ii)(B)(*1*) provides that the [Agency] uses a State Community Development Financing Benchmark for evaluating a bank's community development financing activity in each state. The State Community Development Financing Benchmark is calculated by dividing the total community development financing activity in a state by all large banks for each year, averaged over the years of the evaluation period, by the total dollar amount of all deposits from large bank deposit accounts in the state at the end of each calendar year, averaged over the years of the evaluation period.

The deposits in the state is the sum of: (i) The annual average of deposits in counties in the state reported by all large banks with assets of over $10 billion over the evaluation period; and (ii) the annual average of deposits assigned to branches in the state by all large banks with assets of $10 billion or less, according to the FDIC's Summary of Deposits, over the evaluation period.

Example: Assume that the total dollar amount of all large banks' community development financing activity in a state, averaged over the years of the evaluation period, is $75 million. Assume further that the total dollar value of all large bank deposit accounts in the state at the end of each calendar year, averaged over the years of the evaluation period, is $500 billion. The State Community Development Financing Benchmark for the facility-based assessment area would be $75 billion divided by $500 billion, or 0.015 (equivalently, 1.5 percent).

7. *State Weighted Assessment Area Community Development Financing Benchmark.* Section __.24(c)(2)(ii)(B)(*2*) provides that the [Agency] uses a State Weighted Assessment Area Community Development Financing Benchmark for evaluating a bank's community development financing activity in each state. The State Weighted Assessment Area Community Development Financing Benchmark is calculated by averaging all of the bank's Assessment Area Community Development Financing Benchmarks (see section 3) in a state, after weighting each in accordance with section 17 of this appendix B.

Example: Assume that a bank has two facility-based assessment areas in a state. (Whether the bank also has retail lending assessment areas or lending activity outside of its assessment areas in the state has no bearing on this benchmark.)

Assume also that:

a. In facility-based assessment area 1, the bank's Assessment Area Community Development Financing Benchmark is 3 percent. Out of the total of the bank's deposits and retail loans that are associated with either of the two assessment areas in the state, this assessment area is associated with 70 percent of the bank's deposits and 60 percent of the bank's retail loans (both, by dollar amount);

b. In facility-based assessment area 2, the bank's Assessment Area Community Development Financing Benchmark is 5 percent. Out of the total of the bank's deposits and retail loans that are associated with either of the two assessment areas in the state, this assessment area is associated with 30 percent of the bank's deposits and 40 percent of the bank's retail loans (both, by dollar amount).

Calculating weights:

a. For facility-based assessment area 1: weight = 65 percent [(70 percent of deposits + 60 percent of retail loans)/2];

b. For facility-based assessment area 2: weight = 35 percent [(30 percent of deposits + 40 percent of retail loans)/2].

State Weighted Assessment Area Community Development Financing Benchmark: The bank's State Weighted Assessment Area Community Development Financing Benchmark is 3.7 percent [(0.65 weight × 3 percent in facility-based assessment area 1) + (0.35 weight × 5 percent in facility-based assessment area 2)].

8. *Bank Multistate MSA Community Development Financing Metric.* Section __ .24(c)(3)(ii)(A) provides that, to assist the [Agency] in evaluating a bank's community development financing activity in a multistate MSA, the [Agency] considers a Bank Multistate MSA Community Development Financing Metric. For each multistate MSA, the [Agency] calculates a Bank Multistate MSA Community Development Financing Metric for that multistate MSA for the evaluation period. The Bank Multistate MSA Community Development Financing Metric is calculated by dividing the total community development financing activity within the multistate MSA for each year, averaged together over the years of the evaluation period, including all activities within the bank's facility-based assessment areas and outside of its facility-based assessment areas but within the multistate MSA, by the total dollar amount of deposits from the bank's deposit accounts in the multistate MSA, averaged together over the years of the evaluation period.

For a bank that collects and maintains deposits data as provided in § __.42, the dollar amount of its deposits is the annual average of deposits over the evaluation period in the multistate MSA. For a bank that does not collect and maintain deposits data as provided in § __.42, the [Agency] measures the dollars of deposits as the annual average of deposits assigned to branches that the bank operates in the multistate MSA, as reported in the FDIC's Summary of Deposits, over the evaluation period.

Example: Assume that the bank's total community development financing activity within a multistate MSA, averaged over the years of its evaluation period, is $150 million. Assume further that the total dollar amount of deposits from the bank's deposit accounts in the multistate MSA, averaged over the years of the evaluation period, is $10 billion. The Bank Multistate MSA Community Development Financing Metric for that multistate MSA would be $150 million divided by $10 billion, or 0.015 (equivalently, 1.5 percent).

9. *Multistate MSA Community Development Financing Benchmark.* Section __.24(c)(3)(ii)(B)(*1*) provides that the [Agency] uses a Multistate MSA Community Development Financing Benchmark for evaluating a bank's community development financing activity in each multistate MSA. The Multistate MSA Community Development Financing Benchmark is calculated by dividing the total community development financing activity in the multistate MSA by all large banks for each year, averaged over the years of the evaluation period, by the total dollar amount of all deposits from large bank deposit accounts in the multistate MSA, averaged over the years of the evaluation period.

The deposits in the multistate MSA is the sum of: (i) The annual average of deposits in counties in the multistate MSA reported by all large banks with assets of over $10 billion over the evaluation period; and (ii) the annual average of deposits assigned to branches in the multistate MSA by all large banks with assets of $10 billion or less, according to the FDIC's Summary of Deposits, over the evaluation period.

Example: Assume that the total dollar amount of all large banks' community development financing activity in a multistate MSA, averaged over the years of the evaluation period, is $125 million. Assume further that the total dollar value of all large bank deposit accounts in the multistate MSA, averaged over the years of the evaluation period, is $1.5 billion. The Multistate MSA Community Development Financing Benchmark for the facility-based assessment area would be $125 million divided by $1.5 billion, or 0.083 (equivalently, 8.3 percent).

10. *Multistate MSA Weighted Assessment Area Community Development Financing Benchmark.* Section __.24 (c)(3)(ii)(B)(*2*) provides that the [Agency] uses a Multistate MSA Weighted Assessment Area Community Development Financing Benchmark for evaluating a bank's community development financing activity in each multistate MSA. The Multistate MSA Weighted Assessment Area Community Development Financing Benchmark is calculated by averaging all of the bank's Assessment Area Community Development Financing Benchmarks (see section 3) in a multistate MSA, after weighting each in accordance with section 17 of this appendix.

Example: Assume that a bank has two facility-based assessment areas in a multistate MSA. (Whether the bank also has retail lending assessment areas or lending activity outside of its assessment areas in the multistate MSA has no bearing on this benchmark.)

Assume also that:

a. In facility-based assessment area 1, the bank's Assessment Area Community Development Financing Benchmark is 3 percent. Out of the total of the bank's deposits and retail loans that are associated with either of the two assessment areas in the multistate MSA, this assessment area is associated with 70 percent of the bank's deposits and 60 percent of the bank's retail loans (both, by dollar amount);

b. In facility-based assessment area 2, the bank's Assessment Area Community Development Financing Benchmark is 5 percent. Out of the total of the bank's deposits and retail loans that are associated with either of the two assessment areas in the multistate MSA, this assessment area is associated with 30 percent of the bank's deposits and 40 percent of the bank's retail loans (both, by dollar amount).

Calculating weights:

a. For facility-based assessment area 1: Weight = 65 percent [(70 percent of deposits + 60 percent of retail loans)/2];

b. For facility-based assessment area 2: Weight = 35 percent [(30 percent of deposits + 40 percent of retail loans)/2].

Multistate MSA Weighted Assessment Area Community Development Financing Benchmark: The bank's Multistate MSA Weighted Assessment Area Community Development Financing Benchmark is 3.7 percent [(0.65 weight × 3 percent in facility-based assessment area 1) + (0.35 weight × 5 percent in facility-based assessment area 2)].

11. *Bank Nationwide Community Development Financing Metric.* Section __ .24(c)(4)(ii)(A) provides that the [Agency] uses a Bank Nationwide Community Development Financing Metric for evaluating a bank's community development financing activity in a nationwide area. The Bank Nationwide Community Development Financing Metric is calculated by dividing the bank's total community development financing activity in a nationwide area for each year, averaged over the years of the evaluation period, by the total dollar amount of deposits from bank deposit accounts in a nationwide area, averaged over the years of the evaluation period.

For a bank that collects and maintains deposits data as provided in § __.42, the dollar amount of its deposits is the annual average of deposits over the evaluation period in the nationwide area. For a bank that does not collect and maintain deposits data as provided in § __.42, the [Agency] measures the dollars of deposits as the annual average of deposits assigned to branches that the bank operates in the nationwide area, as reported in the FDIC's Summary of Deposits, over the evaluation period.

Example: Assume that the bank's total community development financing activity nationwide, averaged over the years of the evaluation period, is $200 million. Assume further that the total dollar amount of deposits from the bank's deposit accounts nationwide for each calendar year, averaged over the years of the evaluation period, is $8 billion. The Bank Nationwide Community Development Financing Metric would be $200 million divided by $8 billion, or 0.025 (equivalently, 2.5 percent).

12. *Nationwide Community Development Financing Benchmark.* Section __ .24(c)(4)(ii)(B)(*1*) provides that the [Agency] uses a Nationwide Community Development Financing Benchmark for evaluating a bank's total community development financing activity. The Nationwide Community Development Financing Benchmark is calculated by dividing the total community development financing activity for all large banks in a nationwide area for each year, averaged over the years of the evaluation period, by the total dollar amount of all deposits from large bank deposit accounts in a nationwide area, averaged over the years of the evaluation period.

The deposits in a nationwide area is the sum of: (i) The annual average of deposits in counties in a nationwide area reported by all large banks with assets of over $10 billion over the evaluation period; and (ii) the annual average of deposits assigned to branches in a nationwide area by all large banks with assets of $10 billion or less, according to the FDIC's Summary of Deposits, over the evaluation period.

Example: Assume that the total dollar amount of all large banks' community development financing activity nationwide,

averaged over the years of the evaluation period, is $110 billion. Assume further that the total dollar value of all large bank deposit accounts nationwide, averaged over the years of the evaluation period, is $6 trillion. The Nationwide Community Development Financing Benchmark would be $110 billion divided by $6 trillion, or 0.0183 (equivalently, 1.83 percent).

13. *Nationwide Weighted Assessment Area Community Development Financing Benchmark.* Section __.24(c)(4)(ii)(B)(*2*) provides that the [Agency] uses a Nationwide Weighted Assessment Area Community Development Financing Benchmark for evaluating a bank's community development financing activity in a nationwide area. The Nationwide Weighted Assessment Area Community Development Financing Benchmark is calculated by averaging all of the bank's Assessment Area Community Development Financing Benchmarks (see section 3) in a nationwide area, after weighting each in accordance with section 17 of this appendix.

Example: Assume that a bank has three facility-based assessment areas nationwide. (Whether the bank also has retail lending assessment areas or lending activity outside of its assessment areas in the nationwide has no bearing on this benchmark.)

Assume also that:

a. In facility-based assessment area 1, the bank's Assessment Area Community Development Financing Benchmark is 2 percent. Out of the total of the bank's deposits and retail loans that are associated with any of the three facility-based assessment areas nationwide, this assessment area is associated with 60 percent of the bank's deposits and 50 percent of the bank's retail loans (both, by dollar amount);

b. In facility-based assessment area 2, the bank's Assessment Area Community Development Financing Benchmark is 3 percent. Out of the total of the bank's deposits and retail loans that are associated with any of the three facility-based assessment areas nationwide, this assessment area is associated with 30 percent of the bank's deposits and 40 percent of the bank's retail loans (both, by dollar amount);

c. In facility-based assessment area 3, the bank's Assessment Area Community Development Financing Benchmark is 4 percent. Out of the total of the bank's deposits and retail loans that are associated with any of the three facility-based assessment areas nationwide, this assessment area is associated with 10 percent of the bank's deposits and 10 percent of the bank's retail loans (both, by dollar amount).

Calculating weights:

a. For facility-based assessment area 1: Weight = 55 percent [(60 percent of deposits + 50 percent of retail loans)/2];

b. For facility-based assessment area 2: Weight = 35 percent [(30 percent of deposits + 40 percent of retail loans)/2];

c. For facility-based assessment area 3: Weight = 10 percent [(10 percent of deposits + 10 percent of retail loans)/2].

Nationwide Weighted Assessment Area Community Development Financing Benchmark: The bank's Nationwide Weighted Assessment Area Community Development Financing Benchmark is 2.55 percent [(0.55 weight × 2 percent in facility-based assessment area 1) + (0.35 weight × 3 percent in facility-based assessment area 2) + (0.10 weight × 4 percent in facility-based assessment area 3)].

14. *Allocation of community development financing dollars.* In developing conclusions for a bank's performance under the Community Development Financing Test in §§ __.24 and __.26, the [Agency] allocates community development financing dollars to a facility-based assessment area, state, multistate MSA, or nationwide area as follows:

Activities that provide a benefit to only one county, and not to any areas beyond that one county, would have the full dollar amount of the activity allocated to that county.

Activities that benefit multiple counties will be allocated according to the geographic scope of the activity and any documentation that the bank can provide regarding the dollar amount allocated to each county, as follows:

a. A bank may opt to produce documentation for an activity specifying the appropriate dollar amount to assign to each county, such as specific addresses and dollar amounts associated with projects at each address, or other accounting information that indicates the specific dollar amount of the activity that benefitted each county. The activity will then be allocated accordingly.

b. If a bank does not produce such documentation for an activity, then:

i. An activity with a geographic scope of less than an entire state will be allocated to the county level based on the proportion of low- and moderate-income families in each county;

ii. Activities with a scope of one or more entire states, but not the entire nation, will be allocated to the state level based on the proportion of low- and moderate-income families in each state; and

iii. Activities with a scope of the entire nation would be allocated to the institution level.

TABLE 1 TO APPENDIX B—COMMUNITY DEVELOPMENT FINANCING ALLOCATION

	Documentation ties activity to counties with specific $ amounts	No documentation to indicate specific $ amounts for each county
Serving or benefitting one county	Allocate to county	NA.
Serving or benefitting multi-county, part of one state	Allocate to counties	Allocate to counties proportionate to the number of low- and moderate-income families.
Serving or benefitting multi-county, part of multiple states.	Allocate to counties	Allocate to counties proportionate to the number of low- and moderate-income families.
Entire statewide area	Allocate to counties	Allocate to state.
Multiple entire states	Allocate to counties	Allocate to states proportionate to the number of low- and moderate-income families.
Entire nation	Allocate to counties	Allocate to nationwide area.

15. *Combined score for assessment area conclusions and metrics analysis/impact review.* As described in § __.24(c), the [Agency] assigns a conclusion for a bank's performance under the Community Development Financing Test in a state, multistate MSA, and nationwide area, respectively and as applicable, based on a score combining the following:

i. *Weighted average of the bank's facility-based assessment area conclusions.* For each state, multistate MSA, and nationwide area, respectively, the [Agency] derives a weighted average of the conclusions for facility-based assessment areas in each respective state, multistate MSA, or nationwide areas, calculated in accordance with section 16 of this appendix.

ii. *Bank score for metrics and benchmark analysis and impact review.* For each state, multistate MSA, and nationwide area, respectively, the [Agency] determines a score by considering the metrics and benchmarks and the impact review, corresponding with the following conclusion categories: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points).

iii. *Combined score.* The [Agency] derives a performance score, which is then associated with a conclusion category, by calculating a weight for each of components described in sections 15.i and 15.ii, and adding the two weighted results together. The weights for each component are determined by calculating the simple average of the bank's share of deposits associated with facility-based assessment areas out of all of the bank's deposits in the state, multistate MSA, or nationwide area, respectively, and the bank's share of retail loans in facility-based assessment areas out of all of the banks retail loans in the state, multistate MSA, or nationwide area, respectively.

A. If the average of the bank's share of loans and deposits in facility-based assessment areas is 80 percent to 100 percent,

then the component in section 15.i receives a 50 percent weight and the component in section 15.ii receives a 50 percent weight.

B. If the average of bank's share of loans and deposits in facility-based assessment areas is at least as much as 60 percent but less than 80 percent, then the component in section 15.i receives a 40 percent weight and the component in section 15.ii receives a 60 percent weight.

C. If the average of the bank's share of loans and deposits in facility-based assessment areas is at least as much as 40 percent but less than 60 percent, then the component in section 15.i receives a 30 percent weight and the component in section 15.ii receives a 70 percent weight.

D. If the average of the bank's share of loans and deposits in facility-based assessment areas is at least as much as 20 percent but less than 40 percent, then the component in section 15.i receives a 20 percent weight and the component in section 15.ii receives an 80 percent weight.

E. If the average of the bank's share of loans and deposits in facility-based assessment areas is below 20 percent, then the component in section 15.i receives a 10 percent weight and the component in section 15.ii receives a 90 percent weight.

Example: Assume that the weighted average of the bank's facility-based assessment area conclusions nationwide (section 15.i) is 7.5. Assume further that the bank score for metrics and benchmark analysis and impact review nationwide (section 15.ii) is 6.

Assume further that 95 percent of the bank's deposits, and 75 percent of the bank's retail loans (both, by dollar amount) are associated with its facility-based assessment areas, with the remaining 5 percent of the bank's deposits, and 25 percent of retail loans, associated with areas outside of the bank's facility-based assessment areas.

Calculating weights:

The weights for each component are assigned based on the bank's share of deposits and loans that are associated with its facility-based assessment areas, which falls in the range of 80 percent—100 percent, corresponding to weights of 50 percent for the first component, and 50 percent for the second component: [(95 percent of deposits + 75 percent of retail loans)/2 = 85 percent, which is between 80 percent and 100 percent]. Thus, the weighted average of the bank's facility-based assessment area conclusions nationwide (section 15.i) receives a weight of 50 percent, and the bank score for metrics and benchmark analysis and impact review nationwide (section 15.ii) receives a weight of 50 percent.

Institution Community Development Financing Test Conclusion: Using the relevant point values—''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points)—and based on the example above, the bank's Community Development Financing Test conclusion at the institution level is a ''High Satisfactory'': [(0.50 weight × 7.5 points for the weighted average of the bank's facility-based assessment area conclusions nationwide) + (0.50 weight × 6 points for the bank score for metrics and benchmark analysis and impact review nationwide)] results in a performance score of 6.75, which is closest to the point value (7) associated with ''High Satisfactory.''

16. *Weighting of conclusions.* In developing conclusions for a bank's performance under the Community Development Financing Test in § __.24 and the Community Development Services Test in § __.25, the [Agency] weights conclusions in a state, multistate MSA, and nationwide area as follows:

i. *State.* In a state, the [Agency] weights the bank's performance test conclusion in each facility-based assessment area using the simple average of the percentages of, respectively, statewide bank deposits associated with the facility-based assessment area and statewide retail loans that the bank originated or purchased in the facility-based assessment area. The statewide percentages of deposits and retail loans associated with each facility-based assessment area will be based upon, respectively, the dollar volumes of deposits and loans in each facility-based assessment area compared with, respectively, the statewide dollar totals of deposits and loans within facility-based assessment areas of that state.

For a bank that collects and maintains deposits data as provided in § __.42, the dollar amount of its deposits is the annual average of deposits over the evaluation period in each facility-based assessment area and state. For a bank that does not collect and maintain deposits data as provided in § __.42, the [Agency] measures the dollars of deposits as the annual average of deposits assigned to branches that the bank operates in each facility-based assessment area and state, as reported in the FDIC's Summary of Deposits, over the evaluation period.

ii. *Multistate MSA.* In a multistate MSA, the [Agency] weights the bank's performance test conclusion in each facility-based assessment area using the simple average of the percentages of, respectively, multistate MSA bank deposits associated with the facility-based assessment area and multistate MSA bank retail loans originated or purchased in the facility-based assessment area. The multistate MSA percentages of deposits and loans associated with each facility-based assessment area will be based upon, respectively, the dollar volumes of deposits and loans in each facility-based assessment area compared with, respectively, the multistate MSA dollar totals of deposits and loans within facility-based assessment areas of that multistate MSA.

For a bank that collects and maintains deposits data as provided in § __.42, the dollar amount of its deposits is the annual average of deposits over the evaluation period in each facility-based assessment area and multistate MSA. For a bank that does not collect and maintain deposits data as provided in § __.42, the [Agency] measures the dollars of deposits as the annual average of deposits assigned to branches that the bank operates in each facility-based assessment area and multistate MSA, as reported in the FDIC's Summary of Deposits, over the evaluation period.

iii. *Institution.* At the institution level, the [Agency] weights the bank's performance test conclusion in each facility-based assessment area using the simple average of the percentages of, respectively, nationwide bank deposits associated with the facility-based assessment area and nationwide bank retail loans originated or purchased in the facility-based assessment area. The nationwide percentages of deposits and loans associated with each facility-based assessment area will be based upon, respectively, the dollar volumes of deposits and loans in each facility-based assessment area compared with, respectively, the nationwide dollar totals of deposits and loans within facility-based assessment areas of the nationwide area.

For a bank that collects and maintains deposits data as provided in § __.42, the dollar amount of its deposits is the annual average of deposits over the evaluation period in each facility-based assessment area and nationwide area. For a bank that does not collect and maintain deposits data as provided in § __.42, the [Agency] measures the dollars of deposits as the annual average of deposits assigned to branches that the bank operates in each facility-based assessment area and nationwide area, as reported in the FDIC's Summary of Deposits, over the evaluation period.

17. *Weighting of benchmarks.* In developing benchmarks for assessing a bank's performance under the Community Development Financing Test in § __.24 the [Agency] calculates a weighted average of the Assessment Area Community Development Financing Benchmarks pertaining to a bank's facility-based assessment areas in a state, multistate MSA, and nationwide area as follows:

i. *State Weighted Assessment Area Community Development Financing Benchmark.* To calculate the State Weighted Assessment Area Community Development Financing Benchmark for a state, the [Agency] weights the bank's Assessment Area Community Development Financing Benchmark in each facility-based assessment area using the simple average of the percentages of, respectively, statewide bank deposits associated with the facility-based assessment area and statewide retail loans that the bank originated or purchased in the facility-based assessment area. The statewide percentages of deposits and retail loans associated with each facility-based assessment area will be based upon, respectively, the dollar volumes of deposits and loans in each facility-based assessment area compared with, respectively, the statewide dollar totals of deposits and loans within facility-based assessment areas of that state.

For a bank that collects and maintains deposits data as provided in § __.42, the dollar amount of its deposits is the annual average of deposits over the evaluation period in each facility-based assessment area and state. For a bank that does not collect and maintain deposits data as provided in § __.42, the [Agency] measures the dollars of deposits as the annual average of deposits assigned to branches that the bank operates in each facility-based assessment area and state, as reported in the FDIC's Summary of Deposits, over the evaluation period.

ii. *Multistate MSA Weighted Assessment Area Community Development Financing Benchmark.* To calculate the Multistate MSA Weighted Assessment Area Community Development Financing Benchmark for a Multistate MSA, the [Agency] weights the bank's Assessment Area Community Development Financing Benchmark in each facility-based assessment area using the simple average of the percentages of, respectively, multistate MSA bank deposits associated with the facility-based assessment area and multistate MSA bank retail loans originated or purchased in the facility-based assessment area. The multistate MSA percentages of deposits and loans associated with each facility-based assessment area will be based upon, respectively, the dollar volumes of deposits and loans in each facility-based assessment area compared with, respectively, the multistate MSA dollar totals of deposits and loans within facility-based assessment areas of that multistate MSA.

For a bank that collects and maintains deposits data as provided in § __.42, the dollar amount of its deposits is the annual average of deposits over the evaluation period in each facility-based assessment area and multistate MSA. For a bank that does not collect and maintain deposits data as provided in § __.42, the [Agency] measures the dollars of deposits as the annual average of deposits assigned to branches that the bank operates in each facility-based assessment area and multistate MSA, as reported in the FDIC's Summary of Deposits, over the evaluation period.

iii. *Nationwide Weighted Assessment Area Community Development Financing Benchmark.* To calculate the Nationwide Weighted Assessment Area Community Development Financing Benchmark for a nationwide area, the [Agency] weights the bank's Assessment Area Community Development Financing Benchmark in each facility-based assessment area using the simple average of the percentages of, respectively, nationwide bank deposits associated with the facility-based assessment area and nationwide bank retail loans originated or purchased in the facility-based assessment area. The nationwide percentages of deposits and loans associated with each facility-based assessment area will be based upon, respectively, the dollar volumes of deposits and loans in each facility-based assessment area compared with, respectively, the nationwide dollar totals of deposits and loans within facility-based assessment areas of the nationwide area.

For a bank that collects and maintains deposits data as provided in § __.42, the dollar amount of its deposits is the annual average of deposits over the evaluation period in each facility-based assessment area and nationwide area. For a bank that does not collect and maintain deposits data as provided in § __.42, the [Agency] measures the dollars of deposits as the annual average of deposits assigned to branches that the bank operates in each facility-based assessment area and nationwide area, as reported in the FDIC's Summary of Deposits, over the evaluation period.

18. *Wholesale or Limited Purpose Bank Community Development Financing Metric.* Section __.26(f) provides that, to assist the [Agency] in evaluating a wholesale or limited purpose bank's community development financing activity in a nationwide area, the [Agency] considers a Wholesale or Limited Purpose Bank Community Development Financing Metric. The Wholesale or Limited Purpose Bank Community Development Financing Metric is calculated as follows:

i. The [Agency] calculates the annual average of the bank's community development financing activity of the bank over the years of the evaluation period.

ii. The [Agency] calculates the quarterly average of the bank's total assets for the same years for which the annual average of the bank's community development financing activity is calculated under section 18.i of this appendix.

iii. The [Agency] divides the annual average of the bank's community development financing activity calculated under section 18.i of this appendix by the quarterly average of the bank's total assets calculated under section 18.ii of this appendix.

Appendix C to Part __—Performance Test Conclusions

a. Performance test conclusions in general. The [Agency] assigns conclusions for a bank's performance under, as applicable, the Retail Lending Test, the Retail Services and Products Test, the Community Development Financing Test, the Community Development Services Test, and the Community Development Financing Test for Wholesale or Limited Purpose Banks.

b. *Retail Lending Test conclusions.* The [Agency] assigns conclusions for a bank's Retail Lending Test performance in, as applicable, facility-based assessment areas, retail lending assessment areas, and its outside retail lending area. Conclusions assigned for a bank's performance in facility-based assessment areas and, as applicable, retail lending assessment areas are the basis for assigned conclusions at the state, multistate MSA, and institution levels, as provided in paragraphs (b)(3) and (b)(4) below. As applicable, pursuant to § __.22(a) a bank's performance conclusion at the institution level is also informed by the bank's retail lending activities in its outside retail lending area.

1. *Facility-based assessment area.* i. *Failure to meet retail lending volume threshold without an acceptable basis for such failure.* A. For each facility-based assessment area in which a bank fails to meet the retail lending volume threshold provided in § __.22 and is not deemed to have an acceptable basis for failing to meet the threshold, the [Agency] develops a Retail Lending Test conclusion based on the bank's geographic distribution metrics, borrower distribution metrics, and performance ranges as provided in § __.22 and calculated in sections III, IV, and V of appendix A of this part and the applicable additional factors described in § __.22(e).

B. For large banks, in each such facility-based assessment area, the [Agency] assigns one of the following Retail Lending Test conclusions and corresponding performance score: ''Needs to Improve'' (3 points) or ''Substantial Noncompliance'' (0 points).

C. For intermediate banks, in each such facility-based assessment area, the [Agency] assigns one of the following Retail Lending Test conclusions and corresponding performance score: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory,'' (6 points); ''Needs to Improve'' (3 points); or ''Substantial Noncompliance'' (0 points).

ii. *Meeting the retail lending volume threshold or having an acceptable basis for not meeting such threshold.* A. For each facility-based assessment area in which a bank meets the retail lending volume threshold provided in § __.22 or is deemed to have an acceptable basis for failing to meet the threshold, the [Agency] develops a Retail Lending Test conclusion based on the bank's geographic distribution metrics, borrower distribution metrics, and performance ranges provided in § __.22 and calculated in accordance with sections III, IV, and V of appendix A of this part and the additional factors described in § __.22(e).

B. For the bank's performance in each such facility-based assessment area, the [Agency] assigns one of the following Retail Lending Test conclusions and corresponding performance score: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory,'' (6 points); ''Needs to Improve'' (3 points); or ''Substantial Noncompliance'' (0 points).

2. *Retail lending assessment area.* i. For each retail lending assessment area, the [Agency] develops a Retail Lending Test conclusion based on the bank's geographic distribution metrics, borrower distribution metrics, and performance ranges provided in § __.22 and calculated in accordance with sections III, IV, and V of appendix A of this part.

ii. For the bank's performance in each retail lending assessment area, the [Agency] assigns one of the following Retail Lending Test conclusions and corresponding performance score: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory,'' (6 points); ''Needs to Improve'' (3 points); or ''Substantial Noncompliance'' (0 points).

3. *Outside retail lending area.* i. For each outside retail lending area, the [Agency] develops a Retail Lending Test conclusion based on the bank's geographic distribution metrics, borrower distribution metrics, and performance ranges provided in § __.22 and calculated in accordance with sections III, IV, and V of appendix A of this part.

ii. For the bank's performance in each outside retail lending area, the [Agency] assigns one of the following Retail Lending Test conclusions and corresponding performance score: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory,'' (6 points); ''Needs to Improve'' (3 points); or ''Substantial Noncompliance'' (0 points).

4. *State or multistate MSA.* i. For each state or multistate MSA, the [Agency] develops a Retail Lending Test conclusion for a bank's performance based on a bank's Retail Lending Test conclusions for its facility-based assessment areas and, as applicable, retail lending assessment areas in each respective state or multistate MSA. The

[Agency] calculates a weighted average of the performance scores associated with the conclusions in accordance with section VI of appendix A of this part. The resulting raw number is the performance score for the bank's Retail Lending Test performance in a state or multistate MSA.

ii. For the bank's performance in each state or multistate MSA, the [Agency] assigns a conclusion corresponding with the conclusion category that is nearest to the performance score, as follows: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points). For performance scores at the exact mid-point between two conclusion categories, the [Agency] rounds up to assign the conclusion (*i.e.,* a performance score of 8.5 is ''Outstanding'').

5. *Institution.* i. For an institution overall, the [Agency] develops a Retail Lending Test conclusion for a bank's performance based on all of a bank's Retail Lending Test conclusions for its facility-based assessment areas and, as applicable, retail lending assessment areas. For large banks and certain intermediate banks as provided in § __ .22(a)(3), the [Agency] also bases the institution-level conclusion on the bank's Retail Lending Test conclusion in its outside retail lending area. The [Agency] calculates a weighted average of the performance test conclusions for the assessment areas and outside retail lending area in accordance with section VI of appendix A of this part. The resulting raw number is the performance score for the bank's Retail Lending Test performance at the institution level.

ii. For the bank's performance at the institution level, the [Agency] assigns a conclusion corresponding with the conclusion category that is nearest to the performance score, as follows: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points). For performance scores at the exact mid-point between two conclusion categories, the [Agency] rounds up to assign the conclusion (*i.e.,* a performance score of 8.5 is ''Outstanding'').

c. *Retail Services and Products Test conclusions.* The [Agency] assigns Retail Services and Products Test conclusions in a bank's facility-based assessment areas and, as applicable, at the state, multistate MSA, and institution levels. Conclusions assigned for a bank's performance in a bank's facility-based assessment areas are the basis for conclusions at the state, multistate MSA, and institution levels. As applicable, a bank's performance conclusion at the institution level is also informed by bank's performance regarding digital and other delivery systems under § __ .23(b)(3) and retail credit and deposit products under § __.23(c).

1. *Facility-based assessment area.* i. Retail Services and Products Test conclusions for a bank's performance in a facility-based assessment area are based on an evaluation of the bank's delivery systems, as described in § __.23(b)(1) and (b)(2).

ii. For each facility-based assessment area, the [Agency] assigns one of the following Retail Services and Products Test conclusions and corresponding performance score: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory,'' (6 points); ''Needs to Improve'' (3 points); or ''Substantial Noncompliance'' (0 points).

2. *State or multistate MSA.* For each state and multistate MSA, as applicable, the [Agency] develops a Retail Services and Products Test conclusion for a bank's performance based on a bank's Retail Services and Products Test conclusions for its facility-based assessment areas in each respective state or multistate MSA. The [Agency] calculates a weighted average of the performance test conclusions for facility-based assessment areas in accordance with section VII of appendix A of this part. The resulting raw number is the performance score for the bank's Retail Services and Products Test performance in a state or multistate MSA. The [Agency] assigns a conclusion corresponding with the conclusion category that is nearest to the performance score, as follows: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points). For performance scores at the exact mid-point between two conclusion categories, the [Agency] rounds up to assign the conclusion (*i.e.,* a performance score of 8.5 is ''Outstanding'').

3. *Institution.* i. For an institution overall, the [Agency] assigns a Retail Services and Products Test conclusion for a bank's performance based on a combined assessment of the bank's delivery systems performance and its credit and deposit products performance, as applicable, as follows:

A. *Delivery systems evaluation. 1.* The weighted average of a bank's Retail Services and Products Test performances scores for its conclusions in all of its facility-based assessment areas, calculated in accordance with section VII of appendix A of this part; and

2. The bank's performance regarding digital and other delivery systems under § __ .23(b)(3).

B. *Credit and deposit products evaluation.* The bank's performance regarding credit and deposit products under § __.23(c), as applicable.

ii. On the basis of paragraph c.3.i of this section, the [Agency] assigns a Retail Services and Products Test conclusion for the bank at the institution level. The institution-level conclusion is translated into a numerical performance score using the following mapping: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points).

d. *Community Development Financing Test conclusions.* The [Agency] assigns Community Development Financing Test conclusions in facility-based assessment areas and, as applicable, in states, multistate MSAs, and in nationwide areas. Conclusions assigned for a bank's performance in a bank's facility-based assessment areas are the basis for conclusions at the state, multistate MSA, and institution levels, combined with an evaluation of applicable metrics and benchmarks for the bank's community development financing activity at those levels, as well as a review of the impact and responsiveness of those activities.

1. *Facility-based assessment area.* (i) For each facility-based assessment area, the [Agency] develops a Community Development Financing Test conclusion based on the metric and benchmarks in § __ .24 and a review of the impact and responsiveness of a bank's activities under § __.15. The facility-based conclusion is translated into a numerical performance score, as follows: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points).

2. *State, multistate MSA, or nationwide area.* Community Development Financing Test conclusions for a bank's performance in a state, multistate MSA, or nationwide area are derived as set forth in section 15 of appendix B of this part.

e. *Community Development Services Test conclusions.* The [Agency] assigns Community Development Services Test conclusions in facility-based assessment areas and, as applicable, in states, multistate MSAs, and in nationwide areas. Conclusions assigned for a bank's performance in a bank's facility-based assessment areas are the basis of conclusions for state, multistate MSA, and nationwide area performance, with a possible upward adjustment based on the [Agency]'s review of the impact and responsiveness of the bank's community development services activities in those areas, respectively.

1. *Facility-based assessment area.* For each facility-based assessment area, the [Agency] develops a Community Development Services Test conclusion based on, as applicable, an assessment of the Bank Assessment Area Community Development Service Hours Metric and other data set forth in § __.25(b)(1) and a review of the impact and responsiveness of a bank's activities under § __.15. The facility-based assessment area conclusion is translated into a numerical performance score, as follows: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points).

2. *State, multistate MSA, or nationwide area.* For each state, multistate MSA, and for a nationwide area, as applicable, the [Agency] develops a Community Development Services Test for a bank's performance, as follows:

i. For each such state, multistate MSA, and for a nationwide area, the [Agency] calculates a weighted average of the performance test conclusions in accordance with section 15 of appendix B of this part. The resulting raw number is the performance score for the bank's Community Development Services Test performance in a state, multistate MSA, or nationwide area. Subject to paragraph (e)(2)(ii) of this appendix, the [Agency] assigns a conclusion corresponding with the conclusion category that is nearest to the performance score, as follows: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial

Noncompliance'' (0 points). For performance scores at the exact mid-point between two conclusion categories, the [Agency] rounds up to assign the conclusion (*i.e.,* a performance score of 8.5 is ''Outstanding'').

ii. The [Agency] may adjust upward the performance score derived under paragraph (e)(2)(i) of this appendix, based on the [Agency]'s review of the impact and responsiveness of the bank's Community Development Services Test activities outside of facility-based assessment areas in each state, multistate MSA, or nationwide area under § __.15 to a performance score associated with one of the following conclusions: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); or ''Needs to Improve'' (3 points).

f. *Community Development Financing Test for Wholesale or Limited Purpose Banks conclusions.* The [Agency] assigns conclusions for a wholesale or limited purpose bank under the Community Development Financing Test for Wholesale or Limited Purpose Banks in facility-based assessment areas and, as applicable, in states, multistate MSAs, and in a nationwide area. Conclusions assigned for a bank's performance in a bank's facility-based assessment areas inform conclusions for state, multistate MSA, and nationwide area performance, along with the [Agency's] review of the volume, impact, and responsiveness of the bank's activities in those areas, respectively.

1. *Facility-based assessment area.* For each facility-based assessment area, the [Agency] assigns one of the following Community Development Financing Test conclusions based on consideration of the dollar value of a bank's community development loans and community development investments that serve the facility-based assessment area during the evaluation period, and a review of the impact and responsiveness of the bank's activities in the facility-based assessment area under § __.15: ''Outstanding;'' ''High Satisfactory;'' ''Low Satisfactory;'' ''Needs to Improve;'' ''Substantial Noncompliance.''

2. *State or multistate MSA.* For each state or multistate MSA, the [Agency] assigns a Community Development Financing Test conclusion of ''Outstanding,'' ''High Satisfactory,'' ''Low Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance'' based on the following:

i. The bank's facility-based assessment area performance test conclusions in each state or multistate MSA, respectively; and

ii. The dollar value of a bank's community development loans and community development investments that serve the state or multistate MSA during the evaluation period, and a review of the impact and responsiveness of the bank's activities in the state or multistate MSA under § __.15.

3. *Nationwide area.* For a nationwide area, the [Agency] assigns a Community Development Financing Test conclusion of ''Outstanding,'' ''High Satisfactory,'' ''Low Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance'' based on the following:

i. The bank's community development financing performance in all of its facility-based assessment areas; and

ii. The bank's Wholesale or Limited Purpose Bank Community Development Financing Metric and a review of the impact and responsiveness of the bank's activities in a nationwide area under § __.15.

Appendix D to Part__—Ratings

a. *Ratings in general.* In assigning a rating, the [Agency] evaluates a bank's performance under the applicable performance criteria in this part, in accordance with §§ __.21 and __.28, including consideration of evidence of discriminatory or other illegal practices. The [Agency] assigns a rating of ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance'' for the bank's performance at the state, multistate MSA, and institution levels.

b. *Large bank ratings at the state, multistate MSA, and institution levels.* 1. *State and multistate MSA.* Subject to paragraph (g) of this appendix, the [Agency] combines a large bank's raw performance scores for its state or multistate MSA performance under the Retail Lending Test, Retail Services and Products Test, Community Development Financing Test, and Community Development Services Test to determine the bank's rating at the state or multistate MSA level.

i. The [Agency] weights the performance scores as follows: Retail Lending Test (45 percent); Retail Services and Products Test (15 percent); Community Development Financing Test (30 percent); and Community Development Services Test (10 percent). The [Agency] multiplies each of these weights by the bank's performance score on the respective performance test, and then adds the resulting values together to develop a state or multistate MSA performance score.

ii. The [Agency] assigns a rating corresponding with the rating category that is nearest to the state or multistate MSA performance score, as follows:

A. A state or multistate MSA performance score of less than 1.5 results in a state or multistate MSA rating of ''Substantial Noncompliance;''

B. A state or multistate MSA performance score of 1.5 or more but less than 4.5 results in a state or multistate MSA rating of ''Needs to Improve;''

C. A state or multistate MSA performance score of 4.5 or more but less than 8.5 results in a state or multistate MSA rating of ''Satisfactory;''

D. A state or multistate MSA performance score of 8.5 or more results in a state or multistate MSA rating of ''Outstanding.''

Example: Assume that a large bank received the following performance scores and conclusions in a state:

1. On the Retail Lending Test, the bank received a 7.3 performance score and a corresponding conclusion of ''High Satisfactory;''

2. On the Retail Services and Products Test, the bank received a 6.0 performance score and a corresponding conclusion of ''Low Satisfactory;''

3. On the Community Development Financing Test, the bank received a 5.7 performance score and a corresponding conclusion of ''Low Satisfactory;'' and

4. On the Community Development Services Test, the bank received a 3.0 performance score and a corresponding conclusion of ''Needs to Improve.''

Calculating weights:

1. For the Retail Lending Test, the weight is 45 percent (or 0.45);

2. For the Retail Services and Products Test, the weight is 15 percent (or 0.15);

3. For the Community Development Financing Test, the weight is 30 percent (or 0.3); and

4. For the Community Development Services Test, the weight is 10 percent (or 0.1).

State Performance Score and Rating: Based on the illustration above, the bank's state performance score is 6.2.

(0.45 weight × 7.3 performance score on the Retail Lending Test = 3.29) + (0.15 weight × 6.0 performance score on the Retail Services and Products Test = 0.9) + (0.3 weight × 5.7 performance score on the Community Development Financing Test = 1.7) + (0.1 weight × 3.0 performance score on the Community Development Services Test = 0.3).

A state performance score of 6.2 is greater than or equal to 4.5 but less than 8.5, resulting in a rating of ''Satisfactory.''

2. *Institution.* Subject to paragraph g. of this appendix, the [Agency] combines a large bank's raw performance scores for its institution-level performance under the Retail Lending Test, Retail Services and Products Test, Community Development Financing Test, and Community Development Services Test to determine the bank's rating at the institution level.

i. The [Agency] weights the performance scores as follows: Retail Lending Test (45 percent); Retail Services and Products Test (15 percent); Community Development Financing Test (30 percent); and Community Development Services Test (10 percent). The [Agency] multiplies each of these weights by the bank's performance score on the respective performance test, and then adds the resulting values together to develop an institution performance score.

ii. The [Agency] assigns a rating corresponding with the rating category that is nearest to the institution performance score, as follows:

A. An institution performance score of less than 1.5 results in an institution rating of ''Substantial Noncompliance;''

B. An institution performance score of 1.5 or more but less than 4.5 results in an institution rating of ''Needs to Improve;''

C. An institution performance score of 4.5 or more but less than 8.5 results in an institution rating of ''Satisfactory;''

D. An institution performance score of 8.5 or more results in an institution rating of ''Outstanding.''

Example: Assume that a large bank received the following performance scores and conclusions at the institution level:

A. On the Retail Lending Test, the bank received a 6.2 performance score and a corresponding conclusion of ''Low Satisfactory;''

B. On the Retail Services and Products Test, the bank received a 7 performance score and a corresponding conclusion of ''High Satisfactory;''

C. On the Community Development Financing Test, the bank received a 6.4

performance score and a corresponding conclusion of ''Low Satisfactory;'' and

D. On the Community Development Services Test, the bank received a 2.5 performance score and a corresponding conclusion of ''Needs to Improve.''

Calculating weights:

A. For the Retail Lending Test, the weight is 45 percent (or 0.45);

B. For the Retail Services and Products Test, the weight is 15 percent (or 0.15);

C. For the Community Development Financing Test, the weight is 30 percent (or 0.3); and

D. For the Community Development Services Test, the weight is 10 percent (or 0.1).

Institution Performance Score and Rating: Based on the illustration above, the bank's institution performance score is 6.01.

(0.45 weight × 6.2 performance score on the Retail Lending Test = 2.79) + (0.15 weight × 7.0 performance score on the Retail Services and Products Test = 1.05) + (0.3 weight × 6.4 performance score on the Community Development Financing Test = 1.92) + (0.1 weight × 2.5 performance score on the Community Development Services Test = 0.25).

An institution performance score of 6.012 is greater than or equal to 4.5 but less than 8.5, resulting in an overall institution rating of ''Satisfactory.''

c. *Intermediate bank ratings.* 1. *Intermediate banks evaluated under the Retail Lending Test and the Community Development Financing Test.* i. *State or multistate MSA.* Subject to paragraph (g) of this appendix, the [Agency] combines an intermediate bank's raw performance scores for its state or multistate MSA performance under Retail Lending Test and Community Development Financing Test to determine the bank's rating at the state or multistate MSA level.

A. The [Agency] weights the performance scores as follows: Retail Lending Test (50 percent) and Community Development Financing Test (50 percent). The [Agency] multiplies each of these weights by the bank's corresponding performance score on the respective performance test, and then adds the resulting values together to develop a state or multistate MSA performance score.

B. The [Agency] assigns a rating corresponding with the rating category that is nearest to the state or multistate MSA performance score, as follows:

1. A state or multistate MSA performance score of less than 1.5 results in a state or multistate MSA rating of ''Substantial Noncompliance;''

2. A state or multistate MSA performance score of 1.5 or more but less than 4.5 results in a state or multistate MSA rating of ''Needs to Improve;''

3. A state or multistate MSA performance score of 4.5 or more but less than 8.5 results in a state or multistate MSA rating of ''Satisfactory;''

4. A state or multistate MSA performance score of 8.5 or more results in a state or multistate MSA rating of ''Outstanding.''

ii. *Institution.* Subject to paragraph g. of this appendix, the [Agency] combines an intermediate bank's raw performance scores for its institution-level performance under Retail Lending Test and Community Development Financing Test to determine the bank's rating at the institution level.

A. The [Agency] weights the performance test conclusions as follows: Retail Lending Test (50 percent) and Community Development Financing Test (50 percent). The [Agency] multiplies each of these weights by the bank's corresponding performance score on the respective performance test, and then adds the resulting values together to develop an institution performance score.

B. The [Agency] assigns a rating corresponding with the rating category that is nearest to the institution performance score, as follows:

1. An institution performance score of less than 1.5 results in an institution rating of ''Substantial Noncompliance;''

2. An institution performance score of 1.5 or more but less than 4.5 results in an institution rating of ''Needs to Improve;''

3. An institution performance score of 4.5 or more but less than 8.5 results in an institution rating of ''Satisfactory;''

4. An institution performance score of 8.5 or more results in an institution rating of ''Outstanding.''

C. The [Agency] may adjust an intermediate bank's institution rating from ''Satisfactory'' to ''Outstanding'' where the bank has requested and received sufficient additional consideration for activities that qualify under the Retail Services and Products Test, the Community Development Services Test, or both.

2. *Intermediate banks evaluated under the Retail Lending Test and the intermediate bank community development evaluation in § __.29(b).* (i) *State or multistate MSA.* The [Agency] combines an intermediate bank's raw performance scores for its state or multistate MSA conclusions under Retail Lending Test and the intermediate bank community development evaluation in § __ .29(b) to determine the bank's rating at the state or multistate MSA level.

A. The [Agency] weights the performance scores as follows: Retail Lending Test (50 percent) and intermediate bank community development evaluation (50 percent). The [Agency] multiplies each of these weights by the bank's corresponding performance score on the respective performance test and performance evaluation, and then adds the resulting values together to develop a state or multistate MSA performance score. For purposes of this paragraph, the performance score for the intermediate bank community development evaluation corresponds to the conclusion assigned, as follows: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points).

B. The [Agency] assigns a rating corresponding with the rating category that is nearest to the state or multistate MSA performance score, as follows:

1. A state or multistate MSA performance score of less than 1.5 results in a state or multistate MSA rating of ''Substantial Noncompliance;''

2. A state or multistate MSA performance score of 1.5 or more but less than 4.5 results in a state or multistate MSA rating of ''Needs to Improve;''

3. A state or multistate MSA performance score of 4.5 or more but less than 8.5 results in a state or multistate MSA rating of ''Satisfactory;''

4. A state or multistate MSA performance score of 8.5 or more results in a state or multistate MSA rating of ''Outstanding.''

iii. *Institution.* The [Agency] combines an intermediate bank's raw performance scores for its institution-level conclusions under Retail Lending Test and intermediate bank community development evaluation to determine the bank's rating at the institution level.

A. The [Agency] weights the performance test conclusions as follows: Retail Lending Test (50 percent) and intermediate bank community development evaluation (50 percent). The [Agency] multiplies each of these weights by the bank's corresponding performance score on the respective performance test and performance evaluation, and then adds the resulting values together to develop an institution performance score.

B. The [Agency] assigns a rating corresponding with the rating category that is nearest to the institution performance score, as follows:

1. An institution performance score of less than 1.5 results in an institution rating of ''Substantial Noncompliance;''

2. An institution performance score of 1.5 or more but less than 4.5 results in an institution rating of ''Needs to Improve;''

3. An institution performance score of 4.5 or more but less than 8.5 results in an institution rating of ''Satisfactory;''

4. An institution performance score of 8.5 or more results in an institution rating of ''Outstanding.''

d. *Ratings for small banks evaluated under the Retail Lending Test.* The [Agency] determines a small bank's state, multistate MSA, or institution rating based on the raw performance score for its Retail Lending Test conclusions at the state, multistate MSA, or institution level, respectively.

1. The [Agency] assigns a rating corresponding with the rating category that is nearest to the state, multistate MSA, or institution performance score, as follows:

i. A state, multistate MSA, or institution performance score of less than 1.5 results in a state, multistate MSA, or institution rating of ''Substantial Noncompliance;''

ii. A state, multistate MSA, or institution performance score of 1.5 or more but less than 4.5 results in a state, multistate MSA, or institution rating of ''Needs to Improve;''

iii. A state, multistate MSA, or institution performance score of 4.5 or more but less than 8.5 results in a state, multistate MSA, or institution rating of ''Satisfactory;''

iv. A state, multistate MSA, or institution performance score of 8.5 or more results in a state, multistate MSA, or institution rating of ''Outstanding.''

2. The [Agency] may adjust a small bank's institution rating from ''Satisfactory'' to ''Outstanding'' where the bank has requested and received sufficient additional consideration for activities that qualify for its performance in making community

development investments and services and its performance in providing branches and other services and delivery systems that enhance credit availability in its facility-based assessment areas.

e. *Wholesale or limited purpose banks.* 1. The [Agency] determines a wholesale or limited purpose bank's state, multistate MSA, or institution level rating based on its Community Development Financing Test for Wholesale or Limited Purpose Banks conclusion at the state, multistate MSA, or nationwide area, respectively.

2. The [Agency] assigns a rating according to the category of the conclusion assigned: ''Outstanding;'' ''High Satisfactory;'' ''Low Satisfactory;'' or ''Needs to Improve;'' or ''Substantial Noncompliance.'' A conclusion of either ''Low Satisfactory'' or ''High Satisfactory'' corresponds to a rating of ''Satisfactory.''

3. The [Agency] may adjust a wholesale or limited purpose bank's institution-level rating from ''Satisfactory'' to ''Outstanding'' where the bank has requested and received sufficient additional consideration for activities that qualify for consideration under the Community Development Services Test.

f. *Ratings for banks operating under an approved strategic plan.* 1. *Satisfactory goals.* The [Agency] approves as ''Satisfactory'' measurable goals that adequately help to meet the credit needs of the bank's assessment areas.

2. ''*Outstanding*'' *goals.* If the plan identifies a separate group of measurable goals that substantially exceed the levels approved as ''Satisfactory,'' the [Agency] will approve those goals as ''Outstanding.''

3. *Rating.* The [Agency] assesses the performance of a bank operating under an approved plan, to determine if the bank has met its plan goals:

i. If the bank substantially achieves its plan goals for a ''Satisfactory'' rating, the [Agency] will rate the bank's performance under the plan as ''Satisfactory.''

ii. If the bank exceeds its plan goals for a ''Satisfactory'' rating and substantially achieves its plan goals for an ''Outstanding'' rating, the Board will rate the bank's performance under the plan as ''Outstanding.''

iii. If the bank fails to meet substantially its plan goals for a ''Satisfactory'' rating, the [Agency] will rate the bank as either ''Needs to Improve'' or ''Substantial Noncompliance,'' depending on the extent to which it falls short of its plan goals, unless the bank elected in its plan to be rated otherwise, as provided in § __.27(f)(6).

g. *Minimum performance test conclusion requirements.* 1. *Retail lending test minimum conclusion.* An intermediate or large bank must receive at least a ''Low Satisfactory'' Retail Lending Test conclusion at, respectively, the state, multistate MSA, or institution level to receive an overall state, multistate MSA, or institution rating of ''Satisfactory'' or ''Outstanding.''

2. *Minimum of* ''*low satisfactory*'' *overall assessment area conclusion for 60 percent of assessment areas.* i. A large bank with a total of 10 or more facility-based and retail lending assessment areas in any state or multistate MSA, or nationwide, as applicable, may not receive a rating of ''Satisfactory'' or ''Outstanding'' in that state or multistate MSA, or for the institution unless the bank received an overall assessment area conclusion of at least ''Low Satisfactory'' in 60 percent or more of the total number of its assessment areas in that state or multistate MSA, or nationwide, as applicable.

ii. *Overall assessment area conclusion.* For purposes of the requirement in paragraph (g)(2)(i) of this appendix:

A. An overall assessment area conclusion in a retail lending assessment area is the retail lending assessment area conclusion derived under the Retail Lending Test in accordance with appendix C of this part.

B. An overall assessment area conclusion in a facility-based assessment area is calculated by combining a large bank's raw performance scores for its conclusions in the facility-based assessment area under the Retail Lending Test, Retail Services and Products Test, Community Development Financing Test, and Community Development Services Test.

C. The [Agency] weights the performance scores as follows: Retail Lending Test (45 percent); Retail Services and Products Test (15 percent); Community Development Financing Test (30 percent); and Community Development Services Test (10 percent). The [Agency] multiplies each of these weights by the bank's performance score on the respective performance test, and then adds the resulting values together to develop a facility-based assessment area performance score.

D. The [Agency] assigns a conclusion corresponding with the conclusion category that is nearest to the performance score, as follows: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points). For performance scores at the midpoint between two conclusion categories, the [Agency] rounds up to assign the conclusion (*i.e.,* a performance score of 8.5 is ''Outstanding'').

Appendix E to Part __—Small Bank Conclusions and Ratings and Intermediate Bank Community Development Evaluation Conclusions

a. *Small banks evaluated under the small bank performance standards*—1. *Lending evaluation conclusions.* Unless a small bank has opted to be evaluated pursuant to the Retail Lending Test, the [Agency] assigns conclusions for a small bank's lending test performance under § __.29 of ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance.''

i. *Eligibility for a* ''*Satisfactory*'' *lending evaluation conclusion.* The [Agency] assigns a small bank's lending performance a conclusion of ''Satisfactory'' if, in general, the bank demonstrates:

A. A reasonable loan-to-deposit ratio (considering seasonal variations) given the bank's size, financial condition, the credit needs of its facility-based assessment areas, and taking into account, as appropriate, other lending-related activities such as loan originations for sale to the secondary markets and community development loans and community development investments;

B. A majority of its loans and, as appropriate, other lending-related activities, are in its facility-based assessment areas;

C. A distribution of retail lending to and, as appropriate, other lending-related activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of different sizes that is reasonable given the demographics of the bank's facility-based assessment areas;

D. A record of taking appropriate action, when warranted, in response to written complaints, if any, about the bank's performance in helping to meet the credit needs of its facility-based assessment areas; and

E. A reasonable geographic distribution of loans given the bank's facility-based assessment areas.

ii. *Eligibility for an* ''*Outstanding*'' *lending evaluation conclusion.* A small bank that meets each of the standards for a ''Satisfactory'' conclusion under this paragraph and exceeds some or all of those standards may warrant consideration for a lending evaluation conclusion of ''Outstanding.''

iii. ''*Needs to Improve*'' *or* ''*Substantial Noncompliance*'' *lending evaluation conclusions.* A small bank may also receive a lending evaluation conclusion of ''Needs to Improve'' or ''Substantial Noncompliance'' depending on the degree to which its performance has failed to meet the standard for a ''Satisfactory'' conclusion.

2. *Small bank ratings.* Unless a small bank has opted to be evaluated pursuant to the Retail Lending Test, the [Agency] assigns a small bank rating of ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance'' based on § __ .29 and consideration of evidence of discriminatory or other illegal practices as described in § __.28.

i. ''*Outstanding*'' *overall small bank rating.* A small bank that meets each of the standards for a ''Satisfactory'' rating under the lending evaluation and exceeds some or all of those standards may warrant consideration for an overall bank rating of ''Outstanding.'' In assessing whether a bank's performance is ''Outstanding,'' the [Agency] considers the extent to which the bank exceeds each of the performance standards for a ''Satisfactory'' rating and its performance in making community development investments and services and its performance in providing branches and other services and delivery systems that enhance credit availability in its facility-based assessment areas.

ii. ''*Needs to Improve*'' *or* ''*Substantial Noncompliance*'' *overall bank ratings.* A small bank may also receive an overall bank rating of ''Needs to Improve'' or ''Substantial Noncompliance'' depending on the degree to which its performance has failed to meet the standards for a ''Satisfactory'' rating.

b. *Intermediate banks evaluated under the community development performance standards in § __.29.* Unless an intermediate bank has opted to be evaluated pursuant to the Community Development Financing Test, the [Agency] assigns conclusions for an intermediate bank's community development

performance under § __.29 of ''Outstanding,'' ''High Satisfactory,'' ''Low Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance.''

1. *Community development evaluation conclusions.* i. A. *Eligibility for a ''Satisfactory'' community development evaluation conclusion.* The [Agency] assigns an intermediate bank's community development performance a ''Low Satisfactory'' conclusion if the bank demonstrates adequate responsiveness, and a ''High Satisfactory'' conclusion if the bank demonstrates good responsiveness, to the community development needs of its facility-based assessment areas through community development loans, community development investments, and community development services. The adequacy of the bank's response will depend on its capacity for such community development activities, its facility-based assessment areas' need for such community development activities, and the availability of such opportunities for community development in the bank's facility-based assessment areas.

B. The [Agency] considers an intermediate bank's retail banking services and products activities as community development services if they provide benefit to low- and moderate-income individuals.

ii. *Eligibility for an ''Outstanding'' community development evaluation conclusion.* The [Agency] assigns an intermediate bank's community development performance an ''Outstanding'' conclusion if the bank demonstrates excellent responsiveness to community development needs in its facility-based assessment areas through community development loans, community development investments, and community development services, as appropriate, considering the bank's capacity and the need and availability of such opportunities for community development in the bank's facility-based assessment areas.

iii. *''Needs to Improve'' or ''Substantial Noncompliance'' community development evaluation conclusions.* The [Agency] assigns an intermediate bank's community development performance a ''Needs to Improve'' or ''Substantial Noncompliance'' conclusion depending on the degree to which its performance has failed to meet the standards for a ''Satisfactory'' conclusion.

2. *Intermediate bank ratings.* The [Agency] rates an intermediate bank's performance as described in appendix D of this part.

Appendix F to Part __[RESERVED]

End of Common Proposed Rule Text

List of Subjects

12 CFR Part 25

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 228

Banks, banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 345

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the common preamble and under the authority of 12 U.S.C. 93a and 2905, the Office of the Comptroller of the Currency proposes to amend part 25 of chapter I of title 12, Code of Federal Regulations as follows:

PART 25—COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS

■ 1. The authority citation for part 25 is revised to read as follows:

Authority: 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1462a, 1463, 1464, 1814, 1816, 1828(c), 1835a, 2901 through 2908, 3101 through 3111, and 5412(b)(2)(B).

Subpart E—[Redesignated]

■ 2. Redesignate subpart E as subpart F.

■ 3. Amend part 25 by revising subparts A though D, adding a new subpart E, revising appendices A and B and adding appendices C through F to read as set forth at the end of the common preamble.

■ 4. In part 25 amend subparts A through E and appendices A through E by:

■ a. Removing ''[Agency]'' wherever it appears and adding ''appropriate Federal banking agency'' in its place;

■ b. Removing ''bank'', ''*bank*'', ''banks'', ''*banks*'', ''bank's'', and ''*bank's*'', wherever they appear and adding ''bank or savings association'', ''*bank or savings association*'', ''banks or savings associations'', ''*banks or savings associations*'', bank's or savings association's'', or ''*bank's or savings association's*'' in their places, respectively;

■ c. Removing ''Bank'', ''*Bank*'', ''Banks'', and ''*Banks*'' wherever they appear and adding ''Bank and savings association'', ''*Bank and savings association*'', ''Banks and savings associations'', or ''*Banks and savings associations*'' in their places, respectively;

■ d. Removing ''[operations subsidiary or operating subsidiary]'' wherever it appears and adding ''operating subsidiary'' in its place;

■ e. Removing ''[operations subsidiaries or operating subsidiaries]'' wherever it appears and adding ''operating subsidiaries'' in its place; and

■ f. Removing ''[*operations subsidiaries or operating subsidiaries*]'' wherever it appears and adding ''*operating subsidiaries*'' in its place.

■ 5. Amend § 25.11 by revising paragraphs (a) and (c) to read as follows:

§ 25.11 Authority, purposes, and scope.

(a) *Authority.* The authority for this part is 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1462a, 1463, 1464, 1814, 1816, 1828(c), 1835a, 2901 through 2908, 3101 through 3111, and 5412(b)(2)(B).

* * * * *

(c) *Scope*—(1) *General.* (i) Subparts A, B, C, D, and E and appendices A, B, C, D, E, and F apply to all banks and savings associations except as provided in paragraphs (c)(2) and (3) of this section. Subpart F only applies to banks.

(ii) With respect to subparts A, B, C, D, and E and appendices A, B, C, D, E, and F:

(A) The OCC has the authority to prescribe these regulations for national banks, Federal savings associations, and State savings associations and has the authority to enforce these regulations for national banks and Federal savings associations; and

(B) The FDIC has the authority to enforce these regulations for State savings associations.

(iii) With respect to subparts A (except in the definition of *Minority depository institution* in § 25.12), B, C, D, and E and appendices A, B, C, D, E, and F, references to appropriate Federal banking agency will mean the OCC when the institution is a national bank or Federal savings association and the FDIC when the institution is a State savings association.

(2) *Federal branches and agencies.* (i) This part applies to all insured Federal branches and to any Federal branch that is uninsured that results from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. 3103(a)(8)).

(ii) Except as provided in paragraph (c)(2)(i) of this section, this part does not apply to Federal branches that are uninsured, limited Federal branches, or Federal agencies, as those terms are defined in part 28 of this chapter.

(3) *Certain special purpose banks and savings associations.* This part does not apply to special purpose banks or special purpose savings associations that do not perform commercial or retail banking services by granting credit to the public in the ordinary course of business, other than as incident to their

specialized operations. These banks or savings associations include banker's banks, as defined in 12 U.S.C. 24 (Seventh), and banks or savings associations that engage only in one or more of the following activities: Providing cash management controlled disbursement services or serving as correspondent banks or savings associations, trust companies, or clearing agents.

■ 6. In § 25.12:

■ a. Add the definition of ''*Bank*'';

■ b. Remove the definitions of ''*Bank and savings association*'' and ''[*Operations subsidiary or operating subsidiary*]''; and

■ c. Add the definitions of ''*Operating subsidiary*'', and ''*Savings association*''.

The additions read as follows:

§ 25.12 Definitions.

* * * * *

Bank means a national bank (including a Federal branch as defined in part 28 of this chapter) with Federally insured deposits, except as provided in § 25.11(c).

* * * * *

Operating subsidiary means an operating subsidiary as described in 12 CFR 5.34 in the case of an operating subsidiary of a national bank or an operating subsidiary as described in 12 CFR 5.38 in the case of a savings association.

* * * * *

Savings association means a Federal savings association or a State savings association.

* * * * *

■ 7. Add § 25.31 to read as follows:

§ 25.31 Effect of CRA performance on applications.

(a) *CRA performance.* Among other factors, the appropriate Federal banking agency takes into account the record of performance under the CRA of each applicant bank or savings association, and for applications under 10(e) of the Home Owners' Loan Act (12 U.S.C. 1467a(e)), of each proposed subsidiary savings association, in considering an application for:

(1) The establishment of:

(i) A domestic branch for insured national banks; or

(ii) A domestic branch or other facility that would be authorized to take deposits for savings associations;

(2) The relocation of the main office or a branch;

(3) The merger or consolidation with or the acquisition of assets or assumption of liabilities of an insured depository institution requiring approval under the Bank Merger Act (12 U.S.C. 1828(c));

(4) The conversion of an insured depository institution to a national bank or Federal savings association charter; and

(5) Acquisitions subject to section 10(e) of the Home Owners' Loan Act (12 U.S.C. 1467a(e)).

(b) *Charter application.* (1) An applicant (other than an insured depository institution) for a national bank charter shall submit with its application a description of how it will meet its CRA objectives. The OCC takes the description into account in considering the application and may deny or condition approval on that basis.

(2) An applicant for a Federal savings association charter shall submit with its application a description of how it will meet its CRA objectives. The appropriate Federal banking agency takes the description into account in considering the application and may deny or condition approval on that basis.

(c) *Interested parties.* The appropriate Federal banking agency takes into account any views expressed by interested parties that are submitted in accordance with the applicable comment procedures in considering CRA performance in an application listed in paragraphs (a) and (b) of this section.

(d) *Denial or conditional approval of application.* A bank's or savings association's record of performance may be the basis for denying or conditioning approval of an application listed in paragraph (a) of this section.

(e) *Insured depository institution.* For purposes of this section, the term ''insured depository institution'' has the meaning given to that term in 12 U.S.C. 1813.

§ 25.42 [Amended]

■ 8. In § 25.42 amend paragraph (i) by removing ''[other Agencies]'' and adding in its place the phrase ''Board of Governors of the Federal Reserve System and FDIC or OCC, as appropriate''.

§ 25.43 [Amended]

■ 9. In § 25.43 amend paragraph (b)(2) by removing ''[operations subsidiaries' or operating subsidiaries']'' and adding ''operating subsidiaries''' in its place.

§ 25.46 [Amended]

■ 10. In § 25.46 amend paragraph (b) by removing ''[Agency contact information]'' and adding in its place ''*CRAComments@occ.treas.gov* for banks and Federal savings associations or *CRACommentCollector@fdic.gov* for State savings associations''.

■ 11. Revise paragraph (c)(2) of § 25.51 to read as follows:

§ 25.51 Applicability dates, and transition provisions.

* * * * *

(c) * * *

(2) *Existing plans.* A strategic plan in effect as of [DATE OF PUBLICATION IN THE **FEDERAL REGISTER**] remains in effect until the expiration date of the plan except for provisions that were not permissible under this part as of January 1, 2022.

■ 12. Revise the heading of Appendix A to read as follows:

Appendix A to Part 25—Calculations for the Retail Tests

■ 13. Revise the heading of Appendix B to read as follows:

Appendix B to Part 25—Calculations for the Community Development Tests

■ 14. Revise the heading of Appendix C to read as follows:

Appendix C to Part 25—Performance Test Conclusions

■ 15. Revise the heading of Appendix D to read as follows:

Appendix D to Part 25—Ratings

■ 16. Revise the heading of Appendix E to read as follows:

Appendix E to Part 25— Small Bank Conclusions and Ratings and Intermediate Bank Community Development Evaluation Conclusions

■ 17. Add Appendix F to read as follows:

Appendix F to Part 25—CRA Notice

(a) Notice for main offices and, if an interstate bank, one branch office in each state.

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the [Office of the Comptroller of the Currency (OCC) or Federal Deposit Insurance Corporation (FDIC), as appropriate] evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The [OCC or FDIC, as appropriate] also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA, including, for example, information about our branches, such as their location and services provided at them; the public section of our most recent CRA Performance Evaluation, prepared by the [OCC or FDIC, as appropriate]; and comments received from the public relating to our performance in helping to meet community credit needs, as well as our responses to those comments. You may review this information today.

At least 60 days before the beginning of each calendar quarter, the [OCC or FDIC, as appropriate] publishes a list of the banks that are scheduled for CRA examination by the [OCC or FDIC, as appropriate] for the next two quarters. This list is available through the [OCC's or FDIC's, as appropriate] website at [*OCC.gov* or *FDIC.gov,* as appropriate].

You may send written comments about our performance in helping to meet community credit needs to (name and address of official at bank), (title of responsible official), to the [OCC or FDIC Regional Director, as appropriate, (address)]. You may also submit comments electronically to the [OCC at *CRAComments@occ.treas.gov* or FDIC through the FDIC's website at *FDIC.gov/regulations/cra,* as appropriate]. Your written comments, together with any response by us, will be considered by the [OCC or FDIC, as appropriate] in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the [OCC or FDIC Regional Director, as appropriate]. You may also request from the [OCC or FDIC Regional Director, as appropriate] an announcement of our applications covered by the CRA filed with the [OCC or FDIC, as appropriate]. [We are an affiliate of (name of holding company), a bank holding company. You may request from (title of responsible official), Federal Reserve Bank of (address) an announcement of applications covered by the CRA filed by bank holding companies.]

(b) Notice for branch offices.

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the [Office of the Comptroller of the Currency (OCC) or Federal Deposit Insurance Corporation (FDIC), as appropriate] evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The [OCC or FDIC, as appropriate] also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA. You may review today the public section of our most recent CRA Performance Evaluation, prepared by the [OCC or FDIC, as appropriate], and a list of services provided at this branch. You may also have access to the following additional information, which we will make available to you at this branch within five calendar days after you make a request to us:

(1) A map showing the facility-based assessment area containing this branch, which is the area in which the [OCC or FDIC, as appropriate] evaluates our CRA performance in this community;

(2) Information about our branches in this facility-based assessment area;

(3) A list of services we provide at those locations;

(4) Data on our lending performance in this facility-based assessment area; and

(5) Copies of all written comments received by us that specifically relate to our CRA performance in this facility-based assessment area, and any responses we have made to those comments. If we are operating under an approved strategic plan, you may also have access to a copy of the plan.

[If you would like to review information about our CRA performance in other communities served by us, the public file for our entire bank is available on our website (website address) and at (name of office located in state), located at (address).]

At least 60 days before the beginning of each calendar quarter, the [OCC or FDIC, as appropriate] publishes a list of the banks that are scheduled for CRA examination by the [OCC or FDIC, as appropriate] for the next two quarters. This list is available through the [OCC's or FDIC's, as appropriate] website at [*OCC.gov* or *FDIC.gov,* as appropriate].

You may send written comments about our performance in helping to meet community credit needs to (name and address of official at bank), (title of responsible official), to the [OCC or FDIC Regional Director, as appropriate (address)]. You may also submit comments electronically to the [OCC at *CRAComments@occ.treas.gov* or FDIC through the FDIC's website at *FDIC.gov/regulations/cra,* as appropriate]. Your written comment, together with any response by us, will be considered by the [OCC or FDIC, as appropriate] in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the [OCC or FDIC Regional Director, as appropriate]. You may also request from the [OCC or FDIC Regional Director, as appropriate] an announcement of our applications covered by the CRA filed with the [OCC or FDIC, as appropriate]. [We are an affiliate of (name of holding company), a bank holding company. You may request from (title of responsible official), Federal Reserve Bank of (address) an announcement of applications covered by the CRA filed by bank holding companies.]

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

For the reasons discussed in the common preamble section, the Board of Governors of the Federal Reserve System proposes to amend part 228 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 228—COMMUNITY REINVESTMENT (REGULATION BB)

■ 18. The authority citation for part 228 continues to read as follows:

Authority: 12 U.S.C. 321, 325, 1828(c), 1842, 1843, 1844, and 2901 *et seq.*

■ 19. Revise part 228 as set forth at the end of the common preamble.

■ 20. Amend newly revised part 228 by:

■ a. Removing ''[Agency]'' wherever it appears and adding ''Board'' in its place;

■ b. Removing the words ''[operations subsidiary or operating subsidiary]'' wherever they appear and adding, in their place, the words ''operations subsidiary'';

c. Removing the words ''[operations subsidiaries or operating subsidiaries]'', ''[*operations subsidiaries or operating subsidiaries*]'' wherever they appear and adding in their place, ''operations subsidiaries'' ''*operations subsidiaries*'', respectively.

■ 21. Amend § 228.11 by revising paragraphs (a) and (c) to read as follows:

§ 228.11 Authority, purposes and scope.

(a) *Authority.* The Board of Governors of the Federal Reserve System (the Board) issues this part to implement the Community Reinvestment Act (12 U.S.C. 2901 *et seq.*) (CRA). The regulations comprising this part are issued under the authority of the CRA and under the provisions of the United States Code authorizing the Federal Reserve:

(1) To conduct examinations of state-chartered banks that are members of the Federal Reserve System (12 U.S.C. 325);

(2) To conduct examinations of bank holding companies and their subsidiaries (12 U.S.C. 1844) and savings and loan holding companies and their subsidiaries (12 U.S.C. 1467a); and

(3) To consider applications for:

(i) Domestic branches by state member banks (12 U.S.C. 321);

(ii) Mergers in which the resulting bank would be a state member bank (12 U.S.C. 1828(c));

(iii) Formations of, acquisitions of banks by, and mergers of, bank holding companies (12 U.S.C. 1842);

(iv) The acquisition of savings associations by bank holding companies (12 U.S.C. 1843); and

(v) Formations of, acquisitions of savings associations by, conversions of, and mergers of, savings and loan holding companies (12 U.S.C. 1467a).

* * * * *

(c) *Scope.* (1) *General.* This part applies to all banks except as provided in paragraph (c)(3) of this section.

(2) *Foreign bank acquisitions.* This part also applies to an uninsured state branch (other than a limited branch) of a foreign bank that results from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. 3103(a)(8)). The terms ''state branch'' and ''foreign bank'' have the same meanings as given to those terms in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101 *et seq.*); the term ''uninsured state branch'' means a state branch the deposits of which are not insured by the Federal Deposit Insurance Corporation; the term ''limited branch'' means a state branch that accepts only deposits that are permissible for a corporation organized

under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*).

(3) *Certain exempt banks.* This part does not apply to banks that do not perform commercial or retail banking services by granting credit to the public in the ordinary course of business, other than as incident to their specialized operations and done on an accommodation basis. These banks include bankers' banks, as defined in 12 U.S.C. 24 (Seventh), and banks that engage only in one or more of the following activities: providing cash management controlled disbursement services or serving as correspondent banks, trust companies, or clearing agents.

§ 228.11 [Amended]

■ 22. In § 228.11 amend paragraph (b) by removing the words ''Community Reinvestment Act (12 U.S.C. 2901 *et seq.*) (CRA)'' and adding, in their place, ''CRA''.

■ 23. In § 228.12:

■ a. Revise the definition of ''*Affiliate*''.

■ b. Remove the definition of ''[*Operations subsidiary or operating subsidiary*]'' and add, in its place, the definition of ''*Operations subsidiary*''.

The revision and addition read as follows:

§ 228.12 Definitions.

* * * * *

Affiliate means any company that controls, is controlled by, or is under common control with another company. The term ''control'' has the meaning given to that term in 12 U.S.C. 1841(a)(2), as implemented by the Board in 12 CFR part 225, and a company is under common control with another company if both companies are directly or indirectly controlled by the same company.

* * * * *

Operations subsidiary means an organization designed to serve, in effect, as a separately incorporated department of the bank, performing, at locations at which the bank is authorized to engage in business, functions that the bank is empowered to perform directly.

■ 24. Add § 228.31 to read as follows:

§ 228.31 Effect of CRA performance on applications.

(a) *CRA performance.* Among other factors, the Board takes into account the record of performance under the CRA of:

(1) Each applicant bank for the:

(i) Establishment of a domestic branch by a State member bank; and

(ii) Merger, consolidation, acquisition of assets, or assumption of liabilities requiring approval under the Bank Merger Act (12 U.S.C. 1828(c)) if the acquiring, assuming, or resulting bank is to be a State member bank; and

(2) Each insured depository institution (as defined in 12 U.S.C. 1813) controlled by an applicant and subsidiary bank or savings association proposed to be controlled by an applicant:

(i) To become a bank holding company in a transaction that requires approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842);

(ii) To acquire ownership or control of shares or all or substantially all of the assets of a bank, to cause a bank to become a subsidiary of a bank holding company, or to merge or consolidate a bank holding company with any other bank holding company in a transaction that requires approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842);

(iii) To own, control or operate a savings association in a transaction that requires approval under section 4 of the Bank Holding Company Act (12 U.S.C. 1843);

(iv) To become a savings and loan holding company in a transaction that requires approval under section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a); and

(v) To acquire ownership or control of shares or all or substantially all of the assets of a savings association, to cause a savings association to become a subsidiary of a savings and loan holding company, or to merge or consolidate a savings and loan holding company with any other savings and loan holding company in a transaction that requires approval under section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a).

(b) *Interested parties.* In considering CRA performance in an application described in paragraph (a) of this section, the Board takes into account any views expressed by interested parties that are submitted in accordance with the Board's Rules of Procedure set forth in part 262 of this chapter.

(c) *Denial or conditional approval of application.* A bank or savings association's record of performance may be the basis for denying or conditioning approval of an application listed in paragraph (a) of this section.

(d) *Definitions.* For purposes of paragraphs (a)(2)(i)–(iii) of this section, ''bank,'' ''bank holding company,'' ''subsidiary,'' and ''savings association'' have the same meanings given to those terms in section 2 of the Bank Holding Company Act (12 U.S.C. 1841). For purposes of paragraphs (a)(2)(iv) and (v) of this section, ''savings and loan holding company'' and ''subsidiary'' have the same meaning given to those terms in section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a).

§ 228.42 [Amended]

■ 25. In § 228.42 amend paragraph (i) by removing the words ''[other Agencies]'' and adding in their place, the words ''FDIC and OCC''.

§ 228.43 [Amended]

■ 26. In § 228.43 amend paragraph (b)(2) by removing the words ''[operations subsidiaries' or operating subsidiaries']'' and add in their place, the words ''operations subsidiaries' ''.

§ 228.46 [Amended]

■ 27. In § 228.46 amend paragraph (b) by removing the words ''[Agency contact information]'' and adding in their place, the words ''at Staff Group: Community Reinvestment Act at *https://federalreserve.gov/apps/contactus/feedback.aspx?Submit=Submit,* by mail to Secretary of the Board, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551, or by facsimile at (202) 452–3819''.

■ 28. Revise the heading of Appendix A to read as follows:

Appendix A to Part 228—Calculations for the Retail Tests

■ 29. Revise the heading of Appendix B to read as follows:

Appendix B to Part 228—Calculations for the Community Development Tests

■ 30. Revise the heading of Appendix C to read as follows:

Appendix C to Part 228—Performance Test Conclusions

■ 31. Revise the heading of Appendix D to read as follows:

Appendix D to Part 228—Ratings

■ 32. Revise the heading of Appendix E to read as follows:

Appendix E to Part 228—Small Bank Conclusions and Ratings and Intermediate Bank Community Development Evaluation Conclusions

■ 33. Add Appendix F to read as follows:

Appendix F to Part 228—CRA Notice

(a) Notice for main offices and, if an interstate bank, one branch office in each state.

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Federal Reserve Board (Board) evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The Board also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA, including, for example, information about our branches, such as their location and services provided at them; the public section of our most recent CRA Performance Evaluation, prepared by the Federal Reserve Bank of ____(Reserve Bank); and comments received from the public relating to our performance in helping to meet community credit needs, as well as our responses to those comments. You may review this information today.

At least 60 days before the beginning of each calendar quarter, the Federal Reserve System publishes a list of the banks that are scheduled for CRA examination by the Reserve Bank for the next two quarters. This list is available from (title of responsible official), Federal Reserve Bank of ____(address), or through the Board's website at *federalreserve.gov*.

You may send written comments about our performance in helping to meet community credit needs to (name and address of official at bank) and (title of responsible official), Federal Reserve Bank of ____(address), or through the Board's website at *federalreserve.gov*. Your letter, together with any response by us, will be considered by the Federal Reserve System in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the Reserve Bank. You may also request from the Reserve Bank an announcement of our applications covered by the CRA filed with the Reserve Bank. [We are an affiliate of (name of holding company), a bank holding company. You may request from (title of responsible official), Federal Reserve Bank of ____(address) an announcement of applications covered by the CRA filed by bank holding companies.]

(b) Notice for branch offices.

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Federal Reserve Board (Board) evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The Board also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA. You may review today the public section of our most recent CRA evaluation, prepared by the Federal Reserve Bank of ____(address), and a list of services provided at this branch. You may also have access to the following additional information, which we will make available to you at this branch within five calendar days after you make a request to us: (1) A map showing the assessment area containing this branch, which is the area in which the Board evaluates our CRA performance in this community; (2) information about our branches in this assessment area; (3) a list of services we provide at those locations; (4) data on our lending performance in this assessment area; and (5) copies of all written comments received by us that specifically relate to our CRA performance in this assessment area, and any responses we have made to those comments. If we are operating under an approved strategic plan, you may also have access to a copy of the plan.

[If you would like to review information about our CRA performance in other communities served by us, the public file for our entire bank is available at (name of office located in state), located at (address).]

At least 60 days before the beginning of each calendar quarter, the Federal Reserve System publishes a list of the banks that are scheduled for CRA examination by the Reserve Bank for the next two quarters. This list is available from (title of responsible official), Federal Reserve Bank of ____(address), or through the Board's website at *federalreserve.gov*.

You may send written comments about our performance in helping to meet community credit needs to (name and address of official at bank) and (title of responsible official), Federal Reserve Bank of ____(address), or through the Board's website at *federalreserve.gov*. Your letter, together with any response by us, will be considered by the Federal Reserve System in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the Reserve Bank. You may also request from the Reserve Bank an announcement of our applications covered by the CRA filed with the Reserve Bank. [We are an affiliate of (name of holding company), a bank holding company. You may request from (title of responsible official), Federal Reserve Bank of ____(address) an announcement of applications covered by the CRA filed by bank holding companies.]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons discussed in the preamble, the Federal Deposit Insurance Corporation proposes to revise part 345 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 345—COMMUNITY REINVESTMENT

■ 34. Revise the authority citation for part 345 to read as follows:

Authority: 12 U.S.C. 1814–1817, 1819–1820, 1828, 1831u, 2901–2908, 3103–3104, and 3108(a).

■ 35. Revise part 345 to read as set forth at the end of the common preamble.

■ 36. Amend newly revised part 345 by:

■ a. Removing the word ''[Agency]'' wherever it appears and adding ''FDIC'' in its place;

■ b. Removing the phrase ''[operations subsidiary or operating subsidiary]'' wherever it appears and adding ''operating subsidiary'' in its place;

■ c. Removing the phrase ''[operations subsidiaries or operating subsidiaries]'' wherever it appears and adding ''operating subsidiaries'' in its place;

■ d. Removing the phrase ''[*operations subsidiaries or operating subsidiaries*]'' wherever it appears and adding ''*operating subsidiaries*'' in its place.

■ 37. Revise paragraphs (a) and (c) of § 345.11 to read as follows:

§ 345.11 Authority, purposes, and scope.

(a) *Authority.* The authority for this part is 12 U.S.C. 1814–1817, 1819–1820, 1828, 1831u, 2901–2908, 3103–3104, and 3108(a).

* * * * *

(c) *Scope.* (1) *General.* Except for certain special purpose banks described in paragraph (c)(3) of this section, this part applies to all insured State nonmember banks, including insured State branches as described in paragraph (c)(2) and any uninsured State branch that results from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. 3103(a)(8)).

(2) *Insured State branches.* Insured State branches are branches of a foreign bank established and operating under the laws of any State, the deposits of which are insured in accordance with the provisions of the Federal Deposit Insurance Act. In the case of insured State branches, references in this part to main office mean the principal branch within the United States and the term branch or branches refers to any insured State branch or branches located within the United States. The assessment area of an insured State branch is the community or communities located within the United States served by the branch as described in § 345.41.

(3) *Certain special purpose banks.* This part does not apply to special purpose banks that do not perform commercial or retail banking services by granting credit to the public in the ordinary course of business, other than as incident to their specialized operations. These banks include banker's banks, as defined in 12 U.S.C. 24 (Seventh), and banks that engage only in one or more of the following activities: Providing cash management controlled disbursement services or serving as correspondent banks, trust companies, or clearing agents.

■ 38. Amend § 345.12 as follows:

■ a. Revise the definition of ''*Bank*''.

■ b. Remove the definition of ''[*Operations subsidiary or operating subsidiary*]'' and add in its place the definition of ''*Operating subsidiary*''.

The revision and addition read as follows:

§ 345.12 Definitions.

* * * * *

Bank means a State nonmember bank, as that term is defined in section 3(e)(2)

of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1813(e)(2)), with Federally insured deposits, except as defined in § 345.11(c)). The term bank also includes an insured State branch as defined in § 345.11(c)).

* * * * *

Operating subsidiary, for purposes of this part, means an operating subsidiary as described in 12 CFR 5.34.

■ 39. Add § 345.31 to read as follows:

§ 345.31 Effect of CRA performance on applications.

(a) CRA performance. Among other factors, the FDIC takes into account the record of performance under the CRA of each applicant bank in considering an application for approval of:

(1) The establishment of a domestic branch or other facility with the ability to accept deposits;

(2) The relocation of the bank's main office or a branch;

(3) The merger, consolidation, acquisition of assets, or assumption of liabilities; and

(4) Deposit insurance for a newly chartered financial institution.

(b) New financial institutions. A newly chartered financial institution shall submit with its application for deposit insurance a description of how it will meet its CRA objectives. The FDIC takes the description into account in considering the application and may deny or condition approval on that basis.

(c) Interested parties. The FDIC takes into account any views expressed by interested parties that are submitted in accordance with the FDIC's procedures set forth in part 303 of this chapter in considering CRA performance in an application listed in paragraphs (a) and (b) of this section.

(d) Denial or conditional approval of application. A bank's record of performance may be the basis for denying or conditioning approval of an application listed in paragraph (a) of this section.

§ 345.42 [Amended]

■ 40. In § 345.42 amend paragraph (i) by removing ''[other Agencies]'' and adding, in its place, the phrase ''Federal Reserve and OCC''.

§ 345.43 [Amended]

■ 41. In § 345.43 amend paragraph (b)(2) by removing ''[operations subsidiaries' or operating subsidiaries']'' and adding ''operating subsidiaries' '' in its place.

§ 345.46 [Amended]

■ 42. In § 345.46 amend paragraph (b) by removing ''[Agency contact information]'' and adding in its place ''at *CRACommentCollector@fdic.gov*''.

■ 43. Revise the heading of Appendix A to read as follows:

Appendix A to Part 345—Calculations for the Retail Lending Test

■ 44. Revise the heading of Appendix B to read as follows:

Appendix B to Part 345—Calculations for the Community Development Tests

■ 45. Revise the heading of Appendix C to read as follows:

Appendix C to Part 345—Performance Test Conclusions

■ 46. Revise the heading of Appendix D to read as follows:

Appendix D to Part 345—Ratings

■ 47. Revise the heading of Appendix E to read as follows:

Appendix E to Part 345—Small Bank Conclusions and Ratings and Intermediate Bank Conclusions

■ 48. Add Appendix F to read as follows:

Appendix F to Part 345—CRA Notice

(a) Notice for main offices and, if an interstate bank, one branch office in each state.

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Federal Deposit Insurance Corporation (FDIC) evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The FDIC also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA, including, for example, information about our branches, such as their location and services provided at them; the public section of our most recent CRA Performance Evaluation, prepared by the FDIC; and comments received from the public relating to our performance in helping to meet community credit needs, as well as our responses to those comments. You may review this information today.

At least 60 days before the beginning of each calendar quarter, the FDIC publishes a nationwide list of the banks that are scheduled for CRA examination for the next two quarters. This list is available from the Regional Director, FDIC (address). You may send written comments about our performance in helping to meet community credit needs to (name and address of official at bank) and FDIC Regional Director. You may also submit comments electronically through the FDIC's website at *www.fdic.gov/regulations/cra.* Your letter, together with any response by us, will be considered by the FDIC in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the FDIC Regional Director. You may also request from the FDIC Regional Director an announcement of our applications covered by the CRA filed with the FDIC. [We are an affiliate of (name of holding company), a bank holding company. You may request from the (title of responsible official), Federal Reserve Bank of ____(address) an announcement of applications covered by the CRA filed by bank holding companies.]

(b) *Notice for branch offices.*

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Federal Deposit Insurance Corporation (FDIC) evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The FDIC also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA. You may review today the public section of our most recent CRA evaluation, prepared by the FDIC, and a list of services provided at this branch. You may also have access to the following additional information, which we will make available to you at this branch within five calendar days after you make a request to us:

(1) A map showing the assessment area containing this branch, which is the area in which the FDIC evaluates our CRA performance in this community;

(2) Information about our branches in this assessment area;

(3) A list of services we provide at those locations;

(4) Data on our lending performance in this assessment area; and

(5) Copies of all written comments received by us that specifically relate to our CRA performance in this assessment area, and any responses we have made to those comments. If we are operating under an approved strategic plan, you may also have access to a copy of the plan.

[If you would like to review information about our CRA performance in other communities served by us, the public file for our entire bank is available at (name of office located in state), located at (address).]

At least 60 days before the beginning of each calendar quarter, the FDIC publishes a nationwide list of the banks that are scheduled for CRA examination for the next two quarters. This list is available from the Regional Director, FDIC (address). You may send written comments about our performance in helping to meet community credit needs to (name and address of official at bank) and the FDIC Regional Director. You may also submit comments electronically through the FDIC's website at *www.fdic.gov/regulations/cra.* Your letter, together with any response by us, will be considered by the FDIC in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the FDIC Regional Director. You may also request from the FDIC Regional Director an announcement of our applications covered by the CRA filed with the FDIC. [We are an affiliate of (name of holding company), a bank holding company. You may request from the (title of responsible official), Federal Reserve Bank of ____(address) an announcement of applications covered by the CRA filed by bank holding companies.]

Michael J. Hsu,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on May 5, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–10111 Filed 6–2–22; 8:45 am]

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