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Contents

Federal Register

Vol. 88, No. 180

Tuesday, September 19, 2023

Agriculture Department
See Farm Service Agency
See Food and Nutrition Service
See Forest Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 64401–64402

Army Department
NOTICES
Meetings:
Board of Visitors, United States Military Academy, 64417–64418

Census Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
American Community Survey Methods Panel: 2024 Sexual Orientation and Gender Identity Test, 64404–64407
Automated Export System, 64407–64408

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Temporary Assistance for Needy Families Data Reporting for Work Participation, 64435

Coast Guard
RULES
Special Local Regulations:
Clearwater Offshore Nationals/Race World Offshore, Gulf of Mexico, Clearwater, FL, 64381–64382

Commerce Department
See Census Bureau
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Eligibility Questionnaire for Helping American Victims Afflicted by Neurological Attacks Act Payments, 64409
Generic Clearance Improving Customer Experience, 64408–64409

Comptroller of the Currency
RULES
National Bank Community Development Investments, 64358–64365
PROPOSED RULES
Long-term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions, 64524–64579

Defense Department
See Army Department
See Navy Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 64418–64420
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Certain Federal Acquisition Regulation Part 28 Requirements, 64433–64434
Presolicitation Notice and Response, 64434

Defense Nuclear Facilities Safety Board
RULES
Debt Collection Procedures, 64353
Federal Employee Salary Offset Procedures for the Collection of a Debt Owed to the Federal Government, 64353–64358

Education Department
NOTICES
Free Application:
Federal Student Aid Information to be Verified for the 2024–2025 Award Year, 64421–64425

Energy Department
See Federal Energy Regulatory Commission
RULES
Energy Conservation Program:
Energy Conservation Standards for Commercial Packaged Boilers, 64351–64353

Environmental Protection Agency
PROPOSED RULES
Pesticide Petition:
Residues of Pesticide Chemicals in or on Various Commodities (August 2023), 64398–64399
NOTICES
Pesticide Registration Review:
Proposed Interim Decision for Tetrachlorvinphos, 64429–64430

Farm Service Agency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Generic Clearance for the Collection of Qualitative Customer Feedback on the Service Delivery, 64402–64404

Federal Aviation Administration
RULES
Airworthiness Directives:
Airbus SAS Airplanes, 64365–64368
Viking Air Limited (Type Certificated Previously Held by Bombardier Inc. and de Havilland, Inc.) Airplanes, 64368–64372
NOTICES
Meetings:
NextGen Advisory Committee, 64508–64509

Federal Communications Commission
RULES
Establishing Rules for Digital Low Power Television and Television Translator Stations, 64382–64384

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 64431–64432

Federal Deposit Insurance Corporation
PROPOSED RULES
Long-term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions, 64524–64579
Resolution Plans Required for Insured Depository Institutions with $100 Billion or More in Total Assets; Informational Filings Required for Insured Depository Institutions with At Least $50 Billion but Less Than $100 Billion in Total Assets, 64579–64625
NOTICES
Guidance:
Resolution Plan Submissions of Domestic Triennial Full Filers, 64626–64641
Resolution Plan Submissions of Foreign Triennial Full Filers, 64641–64658

Federal Energy Regulatory Commission
NOTICES
Combined Filings, 64425–64429
Environmental Assessments; Availability, etc.:
Marine Renewable Energy Collaborative of New England, 64429
Meetings; Sunshine Act, 64427–64428

Federal Highway Administration
PROPOSED RULES
Interstate System Access, 64388–64398
NOTICES
Surface Transportation Project Delivery Program:
Florida Department of Transportation Audit Number 4 Report, 64509–64512

Federal Motor Carrier Safety Administration
NOTICES
Exemption Application:
Qualification of Drivers; Epilepsy and Seizure Disorders, 64513–64515
Qualification of Drivers; Hearing, 64512

Federal Railroad Administration
NOTICES
Application:
Approval of Discontinuance or Modification of a Railroad Signal System, 64516–64518
Meetings:
Railroad Safety Advisory Committee, 64515–64516
Petition for Waiver of Compliance, 64515–64517

Federal Reserve System
PROPOSED RULES
Long-term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions, 64524–64579
NOTICES
Change in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 64432
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 64432
Guidance:
Resolution Plan Submissions of Domestic Triennial Full Filers, 64626–64641
Resolution Plan Submissions of Foreign Triennial Full Filers, 64641–64658

Federal Retirement Thrift Investment Board
NOTICES
Meetings, 64432–64433

Federal Transit Administration
NOTICES
Safety Advisory:
23-1 Bus-to-Person Collisions, 64518

Fish and Wildlife Service
PROPOSED RULES
Endangered and Threatened Species:
Establishment of a Nonessential Experimental Population of the Gray Wolf in the State of Colorado; Final Environmental Impact Statement, 64399–64400

Food and Drug Administration
RULES
Advisory Committee; Board of Tea Experts; Termination and Technical Amendment to the Citation for the Federal Advisory Committee Act, 64379
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Participation in Food and Drug Administration Fellowship and Traineeship Programs, 64438–64440
Electronic Records; Electronic Signatures, 64441–64443
Voluntary National Retail Food Regulatory Program Standards, 64440–64441
Guidance:
Demonstrating Substantial Evidence of Effectiveness Based on One Adequate and Well-Controlled Clinical Investigation and Confirmatory Evidence, 64445–64446
Regulatory Considerations for Prescription Drug Use-Related Software, 64443–64444
Request for Comments:
Information Technology Strategy, 64435–64438

Food and Nutrition Service
PROPOSED RULES
Provisions to Improve the Supplemental Nutrition Assistance Program's Quality Control System, 64756–64789

Foreign Assets Control Office
RULES
Publication:
Ethiopia Sanctions Regulations Web General License 4, 64379–64380
Global Magnitsky Sanctions Regulations Web General Licenses 1, 2, and Subsequent Iterations, 64380–64381
NOTICES
Sanctions Action, 64520–64521

Forest Service
NOTICES
Meetings:
Hiawatha National Forest Resource Advisory Committee, 64404

General Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Certain Federal Acquisition Regulation Part 28 Requirements, 64433–64434
Presolicitation Notice and Response, 64434

Geological Survey
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Assessment of Flooding Impacts and Climate Inequities, 64452–64453

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
Secretarial Review and Publication of the 2022 Annual Report to Congress and the Secretary Submitted by the Consensus-Based Entity Regarding Performance Measurement, 64660–64753

Homeland Security Department
See Coast Guard
See U.S. Customs and Border Protection
PROPOSED RULES
Subcontractor Labor Hour Rates Under Time and Materials Contracts; Withdrawal, 64399
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Next Generation Network Priority Services User Requirements, 64451–64452

Industry and Security Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Import, End-User, Delivery Verification Certificates and Firearms Entry Clearance Requirements, 64409–64410
Rated Orders under the Defense Priories and Allocations System, 64410–64411

Interior Department
See Fish and Wildlife Service
See Geological Survey
See National Park Service

Internal Revenue Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 64521–64522

International Trade Administration
NOTICES
Requests for Nominations:
United States-India CEO Forum, 64411

International Trade Commission
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Tin- and Chromium-Coated Steel Sheet from Japan, 64464
Performance Review Board Membership, 64464

Justice Department
See Justice Programs Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
National Crime Victimization Survey, 64465

Justice Programs Office
NOTICES
Environmental Assessments; Availability, etc.:
Grant Funding Programs; Draft, 64465–64466

Labor Department
See Occupational Safety and Health Administration

Millennium Challenge Corporation
NOTICES
Selection Criteria and Methodology Report for Fiscal Year 2024, 64467–64474

National Aeronautics and Space Administration
RULES
Acquisition Regulation:
Revision of the Definition of Commercial Item; Supplement, 64384–64385
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Certain Federal Acquisition Regulation Part 28 Requirements, 64433–64434
Presolicitation Notice and Response, 64434

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 64474

National Endowment for the Arts
NOTICES
2023 Tribal Consultation, 64474–64475

National Foundation on the Arts and the Humanities
See National Endowment for the Arts

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 64449–64450
National Heart, Lung, and Blood Institute, 64447–64448
National Institute of Diabetes and Digestive and Kidney Diseases, 64446–64449
National Institute of Environmental Health Sciences, 64447
National Institute of General Medical Sciences, 64447, 64450–64451
National Institute on Aging, 64446, 64448, 64450

National Oceanic and Atmospheric Administration
RULES
Atlantic Highly Migratory Species:
Atlantic Bluefin Tuna Fisheries; General Category September Time Period Quota Transfer and Closure, 64385–64387
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Alaska Crab Arbitration, 64411–64412
American Lobster—Annual Trap Transfer Program, 64414–64415
Central Gulf of Alaska Rockfish Program: Permits and Reports, 64413–64414
Dr. Nancy Foster Scholarship Program, 64415–64416
Application:
Marine Mammals; File No. 27460, 64413
Meetings:
Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review, 64415
Mid-Atlantic Fishery Management Council, 64416–64417

National Park Service
NOTICES
Inventory Completion:
University of California, Davis, Davis, CA, and University of California, Berkeley, Berkeley, CA, 64456–64457
University of Nevada, Las Vegas, Las Vegas, NV, 64453–64463
Repatriation of Cultural Items:
Department of the Interior, Fish and Wildlife Service, Southwest Region, Albuquerque, NM, 64463–64464
University of California, Berkeley, Berkeley, CA, 64460–64461

Navy Department
NOTICES
Environmental Impact Statements; Availability, etc.:
Proposed Land Acquisition at Washington Navy Yard, Washington, DC, 64421

Nuclear Regulatory Commission
RULES
List of Approved Spent Fuel Storage Casks:
NAC International, Inc. MAGNASTOR Storage System, Certificate of Compliance No. 1031, Amendment Nos. 11 and 12 and Revisions to Amendment Nos. 0 through 9, 64351

Occupational Safety and Health Administration
NOTICES
Nationally Recognized Testing Laboratories:
NSF International; Grant of Expansion of Recognition, 64466–64467

Pipeline and Hazardous Materials Safety Administration
NOTICES
Meetings:
Pipeline Safety; Gas Pipeline Advisory Committee, 64518–64520

Postal Regulatory Commission
NOTICES
New Postal Products, 64475

Presidential Documents
PROCLAMATIONS
Special Observances:
National Hispanic Heritage Month (Proc. 10623), 64349–64350

Securities and Exchange Commission
NOTICES
Self-Regulatory Organizations; Proposed Rule Changes:
BOX Exchange LLC, 64482–64504
Cboe BZX Exchange, Inc., 64480–64482
Nasdaq BX, Inc., 64475–64480
Nasdaq PHLX LLC, 64504–64506

Small Business Administration
NOTICES
Meetings:
Regional Small Business Regulatory Fairness Boards, 64506

Substance Abuse and Mental Health Services Administration
NOTICES
Funding Opportunity:
Fiscal Year 2023; Supplemental, 64451

Tennessee Valley Authority
NOTICES
Environmental Impact Statements; Availability, etc.:
Spring Valley II Solar Project, 64506–64508

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration
See Federal Railroad Administration
See Federal Transit Administration
See Pipeline and Hazardous Materials Safety Administration

Treasury Department
See Comptroller of the Currency
See Foreign Assets Control Office
See Internal Revenue Service
RULES
Import Restrictions Imposed:
Archaeological and Ethnological Material of Cambodia; Extension and Amendment, 64372–64379

U.S. Customs and Border Protection
RULES
Import Restrictions Imposed:
Archaeological and Ethnological Material of Cambodia; Extension and Amendment, 64372–64379

Veterans Affairs Department
NOTICES
Meetings:
Advisory Committee on Prosthetics and Special–Disabilities Programs, 64522

Separate Parts In This Issue

Part II
Federal Deposit Insurance Corporation, 64524–64658
Federal Reserve System, 64524–64579, 64626–64658
Treasury Department, Comptroller of the Currency, 64524–64579

Part III
Health and Human Services Department, 64660–64753

Part IV
Agriculture Department, Food and Nutrition Service, 64756–64789

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

10623.....64349

7 CFR

Proposed Rules:

271.....64756
275.....64756

10 CFR

72.....64351
431.....64351
1709.....64353
1710.....64353

12 CFR

24.....64358

Proposed Rules:

3.....64524
54.....64524
216.....64524
217.....64524
238.....64524
252.....64524
324.....64524
360.....64524
374.....64524

14 CFR

39 (2 documents) 64365, 64368

19 CFR

12.....64372

21 CFR

14.....64379

23 CFR

Proposed Rules:

624.....64388

31 CFR

550.....64379
583.....64380

33 CFR

100.....64381

40 CFR

Proposed Rules:

180.....64398

47 CFR

74.....64382

48 CFR

1812.....64384
1813.....64384
1816.....64384
1819.....64384
1823.....64384
1832.....64384
1852.....64384

Proposed Rules:

3016.....64399
3052.....64399

50 CFR

635.....64385

Proposed Rules:

17.....64399

Federal Register
Vol. 88, No. 180
Tuesday, September 19, 2023

Presidential Documents

Title 3—

The President

Proclamation 10623 of September 14, 2023

National Hispanic Heritage Month, 2023

By the President of the United States of America

A Proclamation

During National Hispanic Heritage Month, we honor the diverse history of generations of Latinos, whose aspirations and achievements have shaped the soul of our Nation.

I have often said that America can be defined in one word: possibilities. The Hispanic community has always embodied that ideal. It lives in the dreams of those who have only just arrived here and in the legacy of families who have been here for centuries. Latinos have helped chart America's course since our start—as doctors and engineers; artists and entrepreneurs; and leaders in science, business, labor, government, and military and across grassroots movements. Their faith and drive have pushed our country to grow, prosper, and pursue its highest ideals.

My Administration is working to make the American Dream real for everyone, including by expanding opportunities for Latinos across the country. Since I took office, we have seen over 13 million new jobs created. Unemployment is near a 50-year low. We helped more than 2.5 million Latinos enroll in health insurance through the Affordable Care Act—that is an increase of more than 50 percent since 2020. We expanded the Child Tax Credit, which slashed child poverty by over 40 percent among Latinos to the lowest rate on record. I signed the most significant gun safety legislation in 30 years. We have invested in community colleges, Pell Grants, and Hispanic-Serving Institutions, helping more Latino students access higher education. And we have made Puerto Rico's economic recovery and development a priority by providing funding for new infrastructure and clean energy projects and upgrading their transportation.

We are doing all this by investing in America—rebuilding our Nation's roads, bridges, ports, and public transportation; replacing every lead pipe in the country; and expanding access to high-speed internet. Our historic Inflation Reduction Act is giving families more breathing room by lowering health insurance and prescription drug costs, including capping the cost of insulin at $35 a month for people with Medicare. And it makes the biggest investment ever in combating climate change while bringing environmental justice to communities of color, including Latinos, that have been exposed to legacy pollution.

At the same time, on my first day in office, I sent the Congress a plan to finally fix our Nation's broken immigration system—securing our border while building a fair, orderly, and humane process for migration that keeps families together and protects workers from exploitation. It also includes a pathway to citizenship for Dreamers, temporary status holders, and farm workers.

Throughout our work, the leadership of my four Latino Cabinet members—Secretary of Health and Human Services Xavier Becerra, Secretary of Education Miguel Cardona, Secretary of Homeland Security Alejandro Mayorkas, and Small Business Administrator Isabella Guzman—has made an immense difference. And tens of thousands of other Latinos serving our Nation continue to inspire us all—including history-makers like Supreme Court Justice Sonia Sotomayor; educators like Dr. Julieta García, to whom I awarded

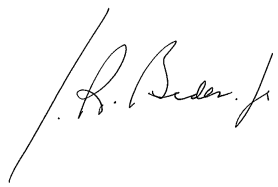
the Medal of Freedom; brave police officers like the fallen Wilbert Mora and Jason Rivera, who posthumously received the Medal of Valor; and the 28 Hispanic Federal judges that I nominated and have seen confirmed. And countless more are enriching our country in meaningful ways, including legendary artists like José Feliciano, Judith Baca, and Antonio Martorell—who each received the National Arts Medals—and Richard Blanco, who I awarded the National Humanities Medal.

During National Hispanic Heritage Month, we salute the vital contributions of these public servants and of the more than 62 million Latinos who help make our Nation stronger every day. Latino history is American history. It is a story of hard work, family, faith, pride, and possibility, and it is proof that there is nothing we cannot do when we do it together.

In recognition of the achievements of the Hispanic community, the Congress, by Public Law 100–402, as amended, has authorized and requested the President to issue annually a proclamation designating September 15 through October 15 as ''National Hispanic Heritage Month.''

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 September 15 through October 15, 2023, as National Hispanic Heritage Month. I call upon all Americans to observe this month with appropriate ceremonies, activities, and programs that celebrate Hispanic heritage and recognize the impact Hispanic peoples have had on our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of September, in the year of our Lord two thousand twenty-three, and of the Independence of the United States of America the two hundred and forty-eighth.



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Rules and Regulations

Federal Register
Vol. 88, No. 180
Tuesday, September 19, 2023

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2023–0085]

RIN 3150–AK99

List of Approved Spent Fuel Storage Casks: NAC International, Inc. MAGNASTOR® Storage System, Certificate of Compliance No. 1031, Amendment Nos. 11 and 12 and Revisions to Amendment Nos. 0 Through 9

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of October 16, 2023, for the direct final rule that was published in the **Federal Register** on July 31, 2023. This direct final rule amended its spent fuel storage regulations by revising the NAC International, Inc. MAGNASTOR® Storage System listing within the ''List of approved spent fuel storage casks'' to include Amendment Nos. 11 and 12 and revisions to Amendment Nos. 0 through 9 to Certificate of Compliance No. 1031.

DATES: The effective date of October 16, 2023, for the direct final rule published July 31, 2023 (88 FR 49267), is confirmed.

ADDRESSES: Please refer to Docket ID NRC–2023–0085 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0085. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The proposed certificates of compliance, the proposed changes to the technical specifications, and the preliminary safety evaluation reports are available in ADAMS under Accession No. ML22220A149. The final certificates of compliance, the final changes to the technical specifications, and the final safety evaluation reports are available in ADAMS under Accession No. ML23250A323.
- *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 a.m. and 4 p.m. eastern time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Bernard White, Office of Nuclear Materials Safety and Safeguards, telephone: 301–415–6577, email: *Bernard.White@nrc.gov* and Irene Wu, Office of Nuclear Materials Safety and Safeguards, telephone: 301–415–1951, email: *Irene.Wu@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: On July 31, 2023 (88 FR 49267), the NRC published a direct final rule amending its regulations in part 72 of title 10 of the *Code of Federal Regulations* to include Amendment Nos. 11 and 12 and revisions to Amendment Nos. 0 through 9 to Certificate of Compliance No. 1031. Amendment No. 11 revises the certificate of compliance to add a new concrete cask, transfer cask, fuel baskets and revised contents. Amendment No. 11 also adds a definition for the concrete cask lid, clarifies the definition for the concrete cask to exclude the lid, clarifies the definition of storage cask, and provides alternate fabrication criteria and techniques for the concrete cask lid. Amendment No. 12 and revisions to Amendment Nos. 0 through 9 add definitions for the storage cask and concrete cask lid, revise the definition of the concrete cask, and provide alternate fabrication criteria and techniques for the concrete cask lid to the certificate of compliance.

In the direct final rule, the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on October 16, 2023. The NRC did not receive any comments on the direct final rule. Therefore, this direct final rule will become effective as scheduled.

Dated: September 13, 2023.

For the Nuclear Regulatory Commission.

Cindy K. Bladey,

Chief, Regulatory Analysis and Rulemaking Support Branch, Division of Rulemaking, Environmental, and Financial Support Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2023–20173 Filed 9–18–23; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2013–BT–STD–0030]

RIN 1904–AB86

Energy Conservation Program: Energy Conservation Standards for Commercial Packaged Boilers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule; technical amendment.

SUMMARY: The Department of Energy (DOE) is amending its standards for commercial packaged boilers (CPB) in compliance with a United States Court of Appeals for the District Court of Columbia Circuit court decision vacating the January 10, 2020 rule that amended standards for CPB.

DATES: This action is effective on September 19, 2023. However, the opinion had legal effect on August 28, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Julia Hegarty, U.S. Department of Energy, Office of Energy Efficiency and

Renewable Energy, Building Technologies Program, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (240) 597–6737. Email: Julia *Hegarty@ee.doe.gov.*

Ms. Amelia Whiting, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–2588. Email: *Amelia.Whiting@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The Energy Policy and Conservation Act of 1975 (EPCA), as amended, requires DOE to, among other things, periodically consider whether amended energy conservation standards for commercial packaged boilers are warranted. On January 10, 2020, DOE published a final rule, 85 FR 1592 (January 10, 2020; ''January 2020 Final Rule''), amending energy conservation standards for commercial packaged boilers (''CPB''). A commercial packaged boiler is a packaged boiler that meets all of the following requirements: (1) has rated input of 300,000 Btu/h or greater; (2) is to any significant extent, distributed in commerce for space conditioning and/or service water heating in buildings but does not meet the definition of ''hot water supply boiler''; (3) does not meet the definition of ''field-constructed''; and (4) is designed to operate a steam pressure at or below 15 psig; operate at or below a water pressure of 160 psig and water temperature of 250 °F, or operate at a steam pressure at or below 15 psig and at or below a water pressure of 160 psig and water temperature of 250 °F. 10 CFR 431.82.

The American Public Gas Association (''APGA''), Air-Conditioning, Heating and Refrigeration Institute (''AHRI''), and Spire Inc. filed petitions for review of DOE's January 2020 Final Rule in the United States Courts of Appeals for the D.C. Circuit, Fourth Circuit, and Eight Circuit, respectively. *American Public Gas Association* v. *DOE,* 22 F.4th 1018 (D.C. Cir. 2022). The Petition was consolidated in the D.C. Circuit. In a January 18, 2022, opinion, the D.C. Circuit determined that DOE failed to provide meaningful responses to comments with respect to three distinct issues related to modeling used during the rulemaking proceeding: (1) the random assignment of boiler efficiencies to buildings; (2) forecasted fuel prices; and (3) estimated burner operating hours. As such, the court concluded DOE failed to adequately explain why the January 2020 Final Rule satisfies the applicable clear and convincing evidence standard and remanded, but did not vacate, the January 2020 Final Rule to DOE to cure the failures to explain.

On remand, DOE published a supplemental response to comments providing additional explanation regarding these three issues. 87 FR 23421 (April 20, 2022). APGA, AHRI, and Spire Inc. filed separate petitions for review of the supplemental response to comments, which were consolidated in the D.C. Circuit. The D.C. Circuit issued an opinion on July 7, 2023, granting the petition for review and vacating the energy conservation standards for CPBs established in the January 2020 Final Rule, and remanding the proceedings to DOE. (See 10 CFR 431.87)

This final rule is not subject to the requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553(b)(B). DOE finds good cause to waive the requirement to provide prior notice and an opportunity for public comment as such procedure is unnecessary. DOE must comply with the order of a Federal court, and has no discretion to do otherwise. In implementation of that order, DOE is vacating the current energy conservation standards for commercial packaged boilers. Comments suggesting any other course would serve no useful purpose.

Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule; technical amendment.

Signing Authority

This document of the Department of Energy was signed on September 8, 2023, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on September 11, 2023.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE amends part 431 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Revise § 431.87 to read as follows:

§ 431.87 Energy conservation standards and their effective dates.

(a) Each commercial packaged boiler listed in table 1 of this paragraph (a) and manufactured on or after the effective date listed must meet the indicated energy conservation standard.

TABLE 1 TO PARAGRAPH (a)—COMMERCIAL PACKAGED BOILER ENERGY CONSERVATION STANDARDS

Equipment category	Subcategory	Certified rated input	Efficiency level—effective date: March 2, 2012*
Hot Water Commercial Packaged Boilers	Gas-fired	≥300,000 Btu/h and ≤2,500,000 Btu/h	80.0% E_T.
Hot Water Commercial Packaged Boilers	Gas-fired	>2,500,000 Btu/h	82.0% E_C.
Hot Water Commercial Packaged Boilers	Oil-fired	≥300,000 Btu/h and ≤2,500,000 Btu/h	82.0% E_T.
Hot Water Commercial Packaged Boilers	Oil-fired	>2,500,000 Btu/h	84.0% E_C.
Steam Commercial Packaged Boilers	Gas-fired, all, except natural draft	≥300,000 Btu/h and ≤2,500,000 Btu/h	79.0% E_T.
Steam Commercial Packaged Boilers	Gas-fired, all, except natural draft	>2,500,000 Btu/h	79.0% E_T.
Steam Commercial Packaged Boilers	Gas-fired—natural draft	≥300,000 Btu/h and ≤2,500,000 Btu/h	77.0% E_T.
Steam Commercial Packaged Boilers	Gas-fired—natural draft	>2,500,000 Btu/h	77.0% E_T.
Steam Commercial Packaged Boilers	Oil-fired	≥300,000 Btu/h and ≤2,500,000 Btu/h	81.0% E_T.
Steam Commercial Packaged Boilers	Oil-fired	>2,500,000 Btu/h	81.0% E_T.

* Where E_C is combustion efficiency and E_T is thermal efficiency.

(b) Each commercial packaged boiler listed in table 2 of this paragraph (b) and manufactured on or after the effective date listed in Table 2 must meet the indicated energy conservation standard.

TABLE 2 TO PARAGRAPH (b)—COMMERCIAL PACKAGED BOILER ENERGY CONSERVATION STANDARDS

Equipment category	Subcategory	Certified rated input	Efficiency level—effective date: March 2, 2022*
Steam Commercial Packaged Boilers	Gas-fired—natural draft	≥300,000 Btu/h and ≤2,500,000 Btu/h	79.0% E_T.
Steam Commercial Packaged Boilers	Gas-fired—natural draft	>2,500,000 Btu/h	79.0% E_T.

*Where E_T is thermal efficiency.

[FR Doc. 2023–19908 Filed 9–18–23; 8:45 am]

BILLING CODE 6450–01–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Part 1709

[Docket No. DNFSB–2023–01]

Debt Collection Procedures

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Defense Nuclear Facilities Safety Board (DNFSB) is confirming the effective date of October 10, 2023, for the direct final rule that was published in the **Federal Register** on July 11, 2023.

DATES: The effective date of October 10, 2023, for the direct final rule published on July 11, 2023, (88 FR 44031), is confirmed.

ADDRESSES: *DNFSB's General Counsel web page:* Go to *https://www.dnfsb.gov/office-general-counsel* and click ''**Federal Register** Notices'' to access publicly available information related to this rulemaking.

FOR FURTHER INFORMATION CONTACT: Patricia A. Hargrave, Associate General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2901, (202) 694–7000.

SUPPLEMENTARY INFORMATION: On August 30, 2021 (88 FR 44031), the DNFSB published a direct final rule to implement the Debt Collection Act (DCA), as amended, 31 U.S.C. 3701, *et seq.* The DCA governs the federal government's debt collection activities. In accordance with this law, the Treasury Department and the Department of Justice jointly promulgated Federal Claims Collection Standards (FCCS), 31 CFR parts 900 through 904. Agencies may adopt the FCCS without change or may prescribe agency regulations for collecting debts by administrative offset that are consistent with the FCCS. 31 U.S.C. 3716. These regulations are required before an agency may collect a debt by administrative offset.

In the direct final rule, the DNFSB stated that, if no significant adverse comments were received, the direct final rule would become effective on October 11, 2023. The DNFSB received one comment. The DNFSB evaluated the comment against the criteria described in the direct final rule and determined that the comment was not significant and adverse. Specifically, the commentator stated that the rule would be ''great'' due to ''the added measure of structure and accountability that will result from this rule.'' The comment was positive and supportive. The direct final rule will become effective as scheduled.

Dated: September 7, 2023.

Joyce Connery,

Chair.

[FR Doc. 2023–19718 Filed 9–18–23; 8:45 am]

BILLING CODE 3670–01–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Part 1710

[Docket No. DNFSB–2023–02]

RIN 3155–AA02

Federal Employee Salary Offset Procedures for the Collection of a Debt Owed to the Federal Government

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Interim rule with request for comments.

SUMMARY: The Defense Nuclear Facilities Safety Board (Board) is issuing interim regulations to govern the collection of debts owed to the Board and to the United States by federal employees.

DATES: This interim final rule is effective October 19, 2023. Comments must be submitted on or before October 19, 2023.

ADDRESSES: You may submit comments at any time prior to the comment deadline by the following methods:

Email: Send an email to *comment@dnfsb.gov.* Please include ''Federal Employee Offset Procedures'' in the subject line of your email.

Mail: Send hard copy comments to the Defense Nuclear Facilities Safety Board, Attn: Office of the General Counsel, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2901.

FOR FURTHER INFORMATION CONTACT: Patricia A. Hargrave, Associate General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2901, (202) 694–7000.

SUPPLEMENTARY INFORMATION:

I. Background

These regulations implement the debt collection procedures provided under section 5 of the Debt Collection Act (DCA), as amended, codified at 5 U.S.C. 5514. The DCA authorizes the federal government to collect debts by offset from the salaries of federal employees without the employee's consent, provided that the employee is properly notified and given the opportunity to exercise certain administrative rights.

The DCA, codified at 5 U.S.C. 5514, made changes in the way executive agencies collect debts owed to the federal government. The purpose of the DCA is to improve the ability of the government to collect money owed to it. The DCA requires each agency to establish a salary offset program for the collection of debts owed by federal employees to the federal government. Before an agency may collect a debt by salary offset, an employee-debtor must be provided with notice of the debt and the opportunity to (1) inspect and copy government records relating to the debt, (2) enter into a written repayment agreement, and (3) request an impartial hearing on the agency's determination of the existence or the amount of the debt. The employee must notify the agency of his or her intent to exercise these rights within the time prescribed in the agency's regulations.

Office of Personnel Management (OPM) regulations govern the salary offset program and establish certain minimum standards and procedures that must be incorporated into each agency's salary offset regulations. OPM's regulations require each agency to submit proposed regulations to OPM for review and approval prior to becoming final rules. The Board sent a copy of its interim rule to OPM in compliance with 5 CFR 550.1105. OPM approved the Board's interim rule on salary offset on July 27, 2023.

The Board is establishing a new part 1710 in 10 CFR, chapter XVII, that would contain the provisions necessary to meet the requirements of the DCA. The new part 1710 provides procedures for the Board to collect debts owed to the federal government by administrative offset from a federal employee's salary without his or her consent. This rule applies to all federal employees who owe debts to the Board and to current employees of the Board who owe debts to other federal agencies.

The Board has determined that this document is interpretative because it merely implements a definitive statutory scheme and the requirements contained in regulations promulgated by OPM, codified in 5 CFR part 550, subpart K. Accordingly, no notice of proposed rulemaking is required pursuant to 5 U.S.C. 553(b)(A). In addition, because this rule relates to agency management and personnel, no notice of proposed rulemaking is required pursuant to 5 U.S.C. 553(a)(2). The Board, however, will consider any public comments before issuing a final rule.

II. Regulatory Analysis

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, agencies must consider the impact of their rulemakings on ''small entities'' (small businesses, small organizations, and local governments) when publishing regulations subject to the notice and comment requirements of the Administrative Procedure Act. As noted in section I. Background above, the Board has determined that notice and the opportunity to comment are unnecessary because this interim rule is interpretative and relates to agency management and practice. Therefore, no analysis is required by the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This interim rule will not result in the expenditure by state, local, and tribal governments, in aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 658 and 1501–03, 1531–34.

Small Business Regulatory Enforcement Fairness Act of 1996

This interim rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, as amended, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

This interim rule contains no new reporting or recordkeeping requirements under the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 *et seq.* The adoption of the FCCS regulations does not require or request information from members of the public. Therefore, this rulemaking is not covered by the restrictions of the PRA.

Executive Order 12988 and Executive Order 13132—Federalism

According to Executive Orders 12988 and 13132, agencies must state in clear language the preemptive effect, if any, of new regulations. The creation of this interim rule affects only how the Board collects debts owed by federal employees to the government by salary offset. It does not have any effect on preemption of state, tribal, or local government laws or otherwise have federalism implications.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* 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. If the rule meets the definition of a major rule, the Comptroller General must provide a report to Congress and the rule may not take effect until 60 days after it has been published in the **Federal Register**. The Office of Information and Regulatory Affairs has designated this rule as not a major rule, as defined by 5 U.S.C. 804(2). The Board is submitting the rule report to Congress and the Comptroller General of the United States.

Finding of No Significant Environmental Impact

Implementing these regulations will not result in significant impacts affecting the quality of the human environment, unavoidable adverse environmental effects, rejection of reasonable alternatives to the proposed action, or irreversible or irretrievable commitments of environmental resources. The agency has not consulted with any other agencies in making this determination.

Executive Order12866—Regulatory Planning and Review

Executive Order 12866 requires federal agencies submit significant regulatory actions to the Office of Management of Budget. This interim rule is not significant and will not have a significant impact on small entities. The interim rule implements statutory and regulatory requirements to collect employee debts as allowed by statute.

III. Rulemaking Procedure

The Board is publishing this interim rule without a prior proposal because it is interpretative as it merely implements a definitive statutory scheme and the requirements contained in regulations promulgated by OPM. The Board, however, will consider any comments before issuing the final rule.

List of Subjects in 10 CFR Part 1710

Debts, Claims, Salary offset.

■ For the reasons described in the preamble, the Board amends chapter XVII of title 10, Code of Federal Regulations, by adding part 1710 to read as follows:

PART 1710—FEDERAL EMPLOYEE SALARY OFFSET PROCEDURES FOR THE COLLECTION OF A DEBT OWED TO THE FEDERAL GOVERNMENT

Subpart A—General Provisions

Sec.

1710.101 Scope.
1710.103 Definitions.
1710.105 Application.

Subpart B—Notice, Hearing, and Salary Offset Process

1710.107 Notice requirements before offset.
1710.109 Hearing.
1710.111 Procedures for salary offset.
1710.113 Coordinating salary offset with other agencies.
1710.115 Notice of salary offset from another agency.
1710.117 Refunds.
1710.119 Non-waiver of rights.
1710.121 Interest, penalties, and administrative charges.

Authority: 5 U.S.C. 5514; 5 CFR part 550 subpart K.

Subpart A—General Provisions

§ 1710.101 Scope.

(a) This part provides procedures for the collection by administrative offset of a federal employee's salary without his/her consent to satisfy certain debts owed to the federal government. This part applies to all federal employees who owe debts to the Defense Nuclear Facilities Safety Board (Board) and to current employees of the Board who owe debts to other federal agencies. This part does not apply when the employee consents to recovery from his/her current pay account.

(b) These procedures do not apply to debts or claims arising under:

(1) The Internal Revenue Code of 1954, as amended, 26 U.S.C. 1 *et seq.;*

(2) The tariff laws of the United States; or

(3) Any case where a collection of a debt is explicitly provided for or prohibited by another statute.

(c) These procedures do not preclude the compromise, suspension, or termination of collection action where appropriate under the standards implementing the revised Federal Claims Collection Standards (FCCS), 31 U.S.C. 3711 *et seq.,* 31 CFR chapter IX, parts 900 through 904.

(d) This part does not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584 or in any way questioning the amount or validity of the debt by submitting a subsequent claim to the Board. This part does not preclude an employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected.

(e) The Board is not limited to collection remedies contained in the revised FCCS. The FCCS is not intended to impair common law remedies.

§ 1710.103 Definitions.

Administrative charges are those amounts assessed by the Board to cover the costs of processing and handling delinquent debts due the government.

Administrative offset means withholding money payable by the United States Government to, or held by the government for, a person to satisfy a debt the person owes the United States Government.

Agency means any agency of the executive, legislative, and judicial branches of the federal government, including government corporations.

Centralized salary offset computer matching describes the computerized process used to match delinquent debt records with federal salary payment records when the purpose of the match is to identify federal employees who owe debts to the federal government.

Creditor agency means the agency to which the debt is owed, including a debt collection center when acting on behalf of a creditor agency in matters pertaining to the collection of a debt.

Debt and *claim* are used synonymously to refer to an amount of money, funds, or property that has been determined by an agency official to be owed to the United States from any person, organization, or entity, except another federal agency. For the purposes of administrative offset under 31 U.S.C. 3716, the terms ''debt'' and ''claim'' include an amount of money, funds, or property owed by a person to a state (including past-due support being enforced by a state), the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico.

Debt collection center means the Department of the Treasury or other government agency or division designated by the Secretary of the Treasury, with authority to collect debts on behalf of creditor agencies.

Delinquent debt record refers to the information about a debt that an agency submits to Treasury when the agency refers the debt for collection by offset in accordance with the provision of 31 U.S.C. 3716.

Disbursing official means an official who has authority to disburse federal salary payments pursuant to 31 U.S.C. 3321 or another law.

Disposable pay means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of:

(1) Any amount required by law to be withheld;

(2) Amounts properly withheld for federal, state, or local income tax purposes;

(3) Amounts deducted as health insurance premiums;

(4) Amounts deducted as normal retirement contributions, not including amounts deducted for supplementary coverage; and

(5) Amounts deducted as normal life insurance premiums, not including amounts deducted for supplementary coverage.

Employee is any individual employed by any agency of the executive, legislative, and judicial branches of the federal government, including government corporations.

FCCS means the Federal Claims Collection Standards jointly published by the Department of the Treasury and the Department of Justice at 31 CFR parts 900 through 904.

Hearing official means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed or the repayment schedule if not established by written agreement between the employee and the Board, and who renders a decision on the basis of this hearing.

Paying agency means the agency that employs the individual who owes the debt and authorizes the payment of his/her current pay.

Salary offset means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

Treasury means the Department of the Treasury.

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 5 U.S.C. 8346(b), or any other law.

§ 1710.105 Application.

The regulations in this part are to be followed when:

(a) The Board is owed a debt by an individual currently employed by another federal agency;

(b) The Board is owed a debt by an individual who is a current employee of the Board; or

(c) The Board employs an individual who owes a debt to another federal agency.

Subpart B—Notice, Hearing, and Salary Offset Process

§ 1710.107 Notice requirements.

(a) Deductions under the authority of 5 U.S.C. 5514 shall not be made unless the creditor agency provides the employee with written notice that he/she owes a debt to the Federal government a minimum of 30 calendar days before salary offset is initiated. When the Board is the creditor agency, this notice of intent to offset an employee's salary shall be hand-delivered at work, or sent by registered mail, return receipt requested, to the employee's most current address that is available to the Board. The written notice will contain:

(1) A statement that the debt is owed and an explanation of its origin, nature, and amount;

(2) The creditor agency's intention to collect the debt by deducting from the

employee's current disposable pay account until the debt and all accumulated interest are paid in full;

(3) The amount and frequency of the intended deduction (stated as a fixed dollar amount or as a percentage of pay, not to exceed 15 percent of disposable pay) and the intention to continue the deduction until the debt is paid in full or otherwise resolved;

(4) An explanation of interest, penalties, and administrative charges, including a statement that these charges will be assessed unless excused in accordance with the Federal Claims Collection Standards at 31 CFR parts 900 through 904;

(5) The employee's right to inspect and copy government records pertaining to the debt or, if the employee or his or her representative cannot personally inspect the records, to request and receive a copy of these records;

(6) If not previously provided, the opportunity (under terms agreeable to the Board) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset (31 CFR 901.2) (the agreement must be in writing, signed by the employee and the Board, and documented in the Board's files);

(7) The employee's right to a hearing conducted by an official arranged for by the Board (an administrative law judge, or alternatively, a hearing official not under the control of the head of the agency) if a petition is filed as prescribed in § 1710.109;

(8) The methods and time period for petitioning for hearings;

(9) A statement that the timely filing of a petition for a hearing will stay the commencement of collection proceedings;

(10) A statement that a final decision on the hearing will be issued not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(11) A statement that any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under 5 U.S.C. chapter 75, 5 CFR part 752, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, sections 3729–3731 of title 31, United States Code, or any other applicable statutory authority; or

(iii) Criminal penalties under sections 286, 287, 1001, and 1002 of title 18, United States Code or any other applicable statutory authority.

(12) A statement of other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are contractual or statutory provisions to the contrary, a statement that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

(b) Entitlement to hearing:

(1) An employee who has received a notice under paragraph (a) that his or her debt will be collected by means of salary offset may request a hearing concerning the existence or amount of the debt.

(2) If a hearing is given, the employee is entitled to receive a written decision from the official holding the hearing on the following issues:

(i) the determination of the creditor agency concerning the existence or amount of the debt; and

(ii) The repayment schedule, if it was not established by written agreement between the employee and the creditor agency.''

(c) Exceptions to entitlement to notice, hearing, written responses, and final decisions:

(1) Any adjustment to pay arising out of any employee's election of coverage or a change in coverage under a federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment, and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to $50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

§ 1710.109 Hearing.

(a) *Request for hearing.* An employee shall file a petition for a hearing in accordance with the instructions outlined in the creditor agency's notice of salary offset.

(1) If the Board is the creditor agency, a hearing may be requested by filing a written petition stating why the employee disputes the existence or amount of the debt or the repayment schedule if it was not established by written agreement between the employee and the Board. The employee shall sign the petition and fully identify and explain with reasonable specificity all the facts, evidence, and witnesses, if any, which the employee believes support his or her position. The petition for a hearing must be received no later than fifteen (15) calendar days after receipt of the notice of offset unless the employee can show that the delay in meeting the deadline date was because of circumstances beyond his or her control or because of failure to receive notice of the time limit (unless he or she was otherwise aware of it).

(2) [Reserved]

(b) *Failure to submit timely request for hearing.* If the employee fails to submit a request for hearing within the time period described in paragraph (a)(1) of this section, the employee will have waived the right to a hearing, and salary offset may be initiated. The Board, however, shall accept a late request for hearing if the employee can show that the late request was the result of circumstances beyond the employee's control or because of a failure to receive actual notice of the filing deadline.

(c) *Hearing official.* The Board must obtain the services of a hearing official who is not under the supervision or control of the Board. The Board may contact the Chief Financial Officer to request a hearing official.

(d) *Notice of hearing.* After the employee requests a hearing, the designated hearing official shall inform the employee of the form of the hearing to be provided. For oral hearings, the notice shall set forth the date, time, and location of the hearing. For paper hearings, the notice shall notify the employee of the date by which he or she should submit written arguments to the designated hearing official. The hearing official shall give the employee reasonable time to submit documentation in support of the employee's position. The hearing official shall schedule a new hearing date if requested by both parties. The hearing official shall give both parties reasonable notice of the time and place of a rescheduled hearing.

(e) *Oral hearing.* The hearing official will conduct an oral hearing if he or she determines that the matter cannot be resolved by review of documentary evidence alone (for example, when an issue of credibility or veracity is involved). The hearing need not take the

form of an evidentiary hearing, but may be conducted in a manner determined by the hearing official, including but not limited to:

(1) Informal conferences with the hearing official, in which the employee and agency representative will be given full opportunity to present evidence, witnesses, and argument;

(2) Informal meetings with an interview of the employee by the hearing official; or

(3) Formal written submissions, with an opportunity for oral presentation.

(f) *Paper hearing.* If the hearing official determines that an oral hearing is not necessary, he or she will make the determination based upon a review of the available written record, including any documentation submitted by the employee in support of his or her position.

(g) *Failure to appear or submit documentary evidence.* In the absence of good cause shown (for example, excused illness), if the employee fails to appear at an oral hearing or fails to submit documentary evidence as required for a paper hearing, the employee will have waived the right to a hearing, and salary offset may be initiated. Further, the employee will have been deemed to admit the existence and amount of the debt as described in the notice of intent to offset. If the Board's representative fails to appear at an oral hearing, the hearing official shall proceed with the hearing as scheduled and will make his or her determination based upon the oral testimony presented and the documentary evidence submitted by both parties.

(h) *Burden of proof.* The Board will have the initial burden to prove the existence and amount of the debt. Thereafter, if the employee disputes the existence or amount of the debt, the employee must prove by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the employee may present evidence that the proposed terms of the repayment schedule are unlawful, would cause a financial hardship to the employee, or that collection of the debt may not be pursued due to operation of law.

(i) *Record.* The hearing official shall maintain a summary record of any hearing provided by this part. Witnesses will testify under oath or affirmation in oral hearings.

(j) *Date of decision.* The hearing official shall issue a written opinion stating his or her decision, based upon documentary evidence and information developed at the hearing, as soon as practicable after the hearing, but not later than 60 days after the date on which the request for hearing was received by the Board. If the employee requests a delay in the proceedings, the deadline for the decision may be postponed by the number of days by which the hearing was postponed. When a decision is not timely rendered, the Board shall waive penalties applied to the debt for the period beginning with the date the decision is due and ending on the date the decision is issued. The written decision must include:

(1) A statement of the facts presented to demonstrate the nature and origin of the alleged debt;

(2) The hearing official's analysis, findings, and conclusions;

(3) The amount and validity of the debt; and

(4) The repayment schedule, where appropriate.

§ 1710.111 Procedures for salary offset.

(a) *Determination of disposable pay.* The Board will determine an employee's disposable pay (as defined in § 1710.103) and will implement salary offset as described in paragraph (c) of this section, or when requested by another agency, as described in § 1710.113(c). If the debtor is not employed by the Board, the Board will request the agency employing the debtor to determine the amount of the employee's disposable pay and implement salary offset upon request.

(b) *When salary offset begins.* Deductions will begin within three official pay periods following receipt of the creditor agency's request for offset.

(c) *Amount of salary offset.* The amount to be offset from each salary payment will be up to 15 percent of a debtor's disposable pay, as follows:

(1) If the amount of the debt is equal to or less than 15 percent of the disposable pay, such debt generally will be collected in one lump sum payment;

(2) Installment deductions will be made over a period of no greater than the anticipated period of employment. An installment deduction will not exceed 15 percent of the disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount. An installment deduction may be less than 15 percent of disposable pay if the creditor agency has determined that smaller deductions are appropriate based on the employee's ability to pay.

(d) *Final salary payment.* After the employee has separated either voluntarily or involuntarily from the payment agency, the p]ayment agency may make a lump sum deduction exceeding 15 percent of disposable pay from any final salary or other payments pursuant to 31 U.S.C. 3716 in order to satisfy the debt.

(e) *Multiple debts.* In instances where two or more creditor agencies are seeking salary offset, or where two or more debts are owed to a single creditor agency, the Board's finance office may, at its discretion, determine whether one or more debts should be offset simultaneously within the 15 percent limitation.

(f) *Precedence of debts owed to the Board.* For Board employees, debts owed to the Board generally take precedence over debts owed to other agencies. In the event that a debt to the Board is certified while an employee is subject to a salary offset to repay another agency, the Board's finance office may decide whether to have that debt repaid in full before collecting its claim or whether changes should be made in the salary deduction being sent to the other agency. If debts owed to the Board can be collected in one pay period, the finance office may suspend the salary offset to the other agency for that pay period in order to liquidate the Board debt.

(g) *Order of debt collection.* When an employee owes two or more debts, the best interests of the government shall be the primary consideration in determining the order of debt collection. The Board's finance office, in making this determination, will be guided primarily by the statute of limitations that affects the collection of the debt(s).

§ 1710.113 Coordinating salary offset with other agencies.

(a) *Responsibility of the Board as the creditor agency.* The Chairperson or his or her designee shall coordinate debt collections with other agencies and shall, as appropriate:

(1) Arrange for a hearing or special review upon proper petitioning by a federal employee; and

(2) Prescribe, upon consultation with the General Counsel, such additional practices and procedures as may be necessary to carry out the intent of this regulation.

(3) The designated salary offset coordinator will be responsible for:

(i) Ensuring that each notice of intent to offset is consistent with the requirements of §§ 1710.107 and 1710.111 of this part;

(ii) Ensuring that each certification of debt that is sent to a paying agency is consistent with the requirements of paragraph (b) of this section;

(iii) Obtaining hearing officials; and

(iv) Ensuring that hearings are properly scheduled.

(b) *Requesting recovery from current paying agency.* Upon completion of the

procedures established in these regulations and pursuant to 5 U.S.C. 5514, the Board must:

(1) Certify, in writing, to the paying agency that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government's right to collect the debt first accrued, and that the Board's regulations implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management;

(2) Advise the paying agency of the amount or percentage of disposable pay to be collected in each installment and the number and commencing date of the installments (if a date other than the next officially established pay period is required);

(3) Advise the paying agency of the action(s) taken under 5 U.S.C. 5514(b) and give the date(s) action(s) were taken (unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures and the written consent or statement is forwarded to the paying agency);

(4) Submit a debt claim certification containing the information specified in paragraphs (b)(1), (2), and (3) of this section and an installment agreement (or other instruction on the payment schedule), if applicable, to the paying agency; and

(5) Submit the debt claim to the paying agency for collection if the employee is in the process of separating, and has not received a final salary check, or other final payment(s) from the paying agency. The Board must submit a properly certified claim to the agency responsible for making such payments before the collection can be made.

(c) *Separated employee.* If the employee is already separated and all payments due from his or her former paying agency have been paid, the Board may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement and Disability Fund (5 CFR 831.1801 *et seq.* or 5 CFR 845.401 *et seq.*), or other similar funds, be administratively offset to collect the debt (31 U.S.C. 3716 and the FCCS).

(d) *Employee transfer.* When an employee transfers from one paying agency to another paying agency, the Board is not required to repeat the due process procedures described in 5 U.S.C. 5514 and this subpart to resume the collection. The Board will submit a properly certified claim to the new paying agency and will subsequently review the debt to verify that the collection is continued by the new paying agency.

§ 1710.115 Notice of salary offset from another agency.

(a) *Complete claim.* When the Board receives a certified claim from a creditor agency, deductions should be scheduled to begin at the next officially established pay interval. The Board's finance office will provide the employee with a notice that contains:

(1) A statement that the Board has received a certified debt claim from the creditor agency;

(2) The amount of the debt claim;

(3) The date salary offset deductions will begin;

(4) The amount of such deductions; and

(5) A copy of the notice received from the creditor agency.

(b) *Notice of Claim.* The Board's finance office will provide a copy of the notice to the creditor agency and advise the creditor agency of the dollar amount to be offset and the pay period when the offset will begin.

(c) *Incomplete claim.* When the Board receives an incomplete certification of debt from a creditor agency, it must return the debt claim with notice that procedures under 5 U.S.C. 5514 and 10 CFR 1710.113 must be followed and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

(d) *Review.* The Board will not review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(e) *Employees who transfer from one paying agency to another.* If, after the creditor agency has submitted the debt claim to the Board, the employee transfers from the Board to a different paying agency before the debt is collected in full, the Board will certify the total amount collected on the debt. One copy of the certification will be furnished to the employee and one copy to the creditor agency, along with notice of the employee's transfer.

§ 1710.117 Refunds.

(a) The Board will refund promptly any amounts deducted to satisfy debts owed to the United States when the debt is waived, found not owed to the United States, or when directed by an administrative or judicial order.

(b) Unless required or permitted by law or contract, refunds under this section may not bear interest.

§ 1710.119 Non-waiver of rights.

An employee's involuntary payment of all or any part of a debt collected under these regulations will not be construed as a waiver of any rights that the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless there are statutes or contracts to the contrary.

§ 1710.121 Interest, penalties, and administrative charges.

Charges may be assessed for interest, penalties, and administrative charges in accordance with the FCCS, 31 CFR 901.9.

Dated: September 7, 2023.

Joyce Connery,

Chair.

[FR Doc. 2023–19716 Filed 9–18–23; 8:45 am]

BILLING CODE 3670–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 24

[Docket ID OCC–2023–0005]

RIN 1557–AF19

National Bank Community Development Investments

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Final rule; amendment of a form's expiration date.

SUMMARY: The OCC is making a nonsubstantive amendment to form ''CD–1—National Bank Community Development (Part 24) Investments'' to reflect the current expiration date assigned by the Office of Management and Budget under the Paperwork Reduction Act.

DATES: The final rule is effective on September 19, 2023.

FOR FURTHER INFORMATION CONTACT: Chandni Ohri, Director for Community Development, (202) 649–6420, 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.

SUPPLEMENTARY INFORMATION: The OCC is amending 12 CFR part 24, Appendix 1 to update the expiration date included on ''CD–1—National Bank Community Development (Part 24) Investments'' (CD–1 Form) to reflect the current August 31, 2025, expiration date assigned by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act.

Administrative Law Statements

A. Administrative Procedure Act

The OCC is issuing the final rule without prior notice and the opportunity for public comment and the delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).[1] Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an ''agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [2] The final rule merely implements a nonsubstantive amendment to update the CD–1 Form's expiration date in 12 CFR part 24, Appendix 1; therefore, requesting comment or delaying the correction would be unnecessary. For these reasons, the OCC finds that there is good cause to issue the final rule without notice and comment.[3]

The final rule is effective immediately upon publication in the **Federal Register**. The APA requires a 30-day delayed effective date, except for (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause.[4] The final rule merely implements a nonsubstantive amendment to update the CD–1 Form's expiration date and has no substantive effect.[5] Therefore, the OCC finds good cause to dispense with the 30-day delayed effective date.

B. Congressional Review Act

For purposes of the Congressional Review Act, OMB makes a determination as to whether a final rule constitutes a ''major'' rule.[6] If a rule is deemed a ''major rule'' by OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[7]

The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[8] The OCC currently supervises approximately 1,060 national banks, federal savings associations, trust companies and federal branches and agencies of foreign banks (collectively, banks).[9] This final rule will update the expiration date of the CD–1 Form that national banks must submit to provide an after-the-fact notice or to request prior approval of a public welfare investment. However, no new information is being collected by the form and no new requirements are being imposed on OCC-supervised institutions. Thus, we expect this change to have no impact and, thus, is not a ''major rule'' for purposes of the Congressional Review Act.

For the same reasons set forth above, the OCC is adopting this final rule without the delayed effective date generally prescribed under the Congressional Review Act. The delayed effective date required by the Congressional Review Act does not apply to ''any rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [10] In light of the fact that the final rule has no substantive effect and merely updates the expiration date of the CD–1 Form, delaying the effective date of the final rule is unnecessary.

As required by the Congressional Review Act, the OCC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid OMB control number. OCC has determined that this final rule does not substantively affect any current information collections or create any new collections. The final rule will update the image of Form CD–1, ''National Bank Community Development Investments'' (1557–0194), that is included in 12 CFR part 24, Appendix 1 so that it reflects the expiration date of the currently approved information collection.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [11] requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). Consistent with section 553(b)(B) of the APA, the OCC has determined for good cause that general notice and opportunity for public comment is unnecessary, and, therefore, the OCC did not issue a notice of proposed rulemaking. Accordingly, the RFA's requirements relating to initial and final regulatory flexibility analyses do not apply.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[12] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each Federal banking agency must consider, consistent with the principle of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions, including for good cause.[13] For the reasons described above, the OCC finds good cause exists under section 302 of RCDRIA to publish this final rule with an immediate effective date.

F. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act [14] requires the Federal

[1] 5 U.S.C. 553.
[2] 5 U.S.C. 553(b)(B).
[3] 5 U.S.C. 553(b)(B); 553(d)(3).
[4] 5 U.S.C. 553(d).
[5] 5 U.S.C. 553(d)(1).
[6] 5 U.S.C. 801 *et seq.*
[7] 5 U.S.C. 801(a)(3).
[8] 5 U.S.C. 804(2).
[9] Based on data as of February 28, 2023.
[10] 5 U.S.C. 808(2).
[11] 5 U.S.C. 601 *et seq.*
[12] 12 U.S.C. 4802(a).
[13] 12 U.S.C. 4802(b)(1).
[14] 12 U.S.C. 4809.

banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The OCC has sought to present the final rule in a simple and straightforward manner.

G. Unfunded Mandates

As a general matter, the Unfunded Mandates Act of 1995 (UMRA), 2 U.S.C. 1531 *et seq.,* requires the preparation of a budgetary impact statement before promulgating a rule that includes a 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 in any one year. However, the UMRA does not apply to final rules for which a general notice of proposed rulemaking was not published. *See* 2 U.S.C. 1532(a). Therefore, because the OCC has found good cause to dispense with notice and comment for this final rule, the OCC has not prepared a budgetary impact statement for the final rule under the UMRA.

List of Subjects in 12 CFR Part 24

Community development, Credit, Investments, Low and moderate income housing, Manpower, National banks, Reporting and recordkeeping requirements, Rural areas, Small businesses.

Authority and Issuance

For the reasons stated in the **SUPPLEMENTARY INFORMATION** section, the Office of the Comptroller of the Currency amends 12 CFR part 24 as follows:

PART 24—COMMUNITY AND ECONOMIC DEVELOPMENT ENTITIES, COMMUNITY DEVELOPMENT PROJECTS, AND OTHER PUBLIC WELFARE INVESTMENTS

■ 1. The authority citation for part 24 continues to read as follows:

Authority: 12 U.S.C. 24(Eleventh), 93a, 481 and 1818.

■ 2. Revise Appendix 1 to Part 24—CD–1—National Bank Community Development (Part 24) Investments to read as follows:

Appendix 1 to Part 24—CD–1—National Bank Community Development (Part 24) Investments

BILLING CODE 4810–33–P

Office of the Comptroller of the Currency

CD-1 – National Bank Community Development (Part 24) Investments

For Official Use Only

OMB Number
1557-0194

A national bank or national bank subsidiary may make an investment directly or indirectly designed primarily to promote the public welfare under the community development investment authority in 12 USC 24(Eleventh) and its implementing regulation 12 CFR 24 (Part 24). Part 24 contains the OCC standards for determining whether an investment is designed to promote the public welfare and procedures that apply to those investments. National banks must submit the completed form to provide an after-the-fact notice or to request prior approval of a public welfare investment to the Community Affairs Department, Office of the Comptroller of the Currency, Washington, DC 20219. Please contact the Community Affairs Department at (202) 649-6420 or CommunityAffairs@occ.treas.gov for more information.

PLEASE PROVIDE THE FOLLOWING INFORMATION ABOUT THE INVESTING BANK.

Bank name:	Mailing address *(street or P.O. box)*:
Bank charter number:	City, State, ZIP Code:
Telephone number:	Fax number:
E-mail address:	URL:

CONTACT FOR INFORMATION:

Name of bank contact responsible for form's information:	Name of bank contact responsible for CD investment (if different):
Mailing address *(street or P.O. box)*:	Mailing address *(street or P.O. box)*:
City, State, ZIP Code:	City, State, ZIP Code:
Telephone number:	Telephone number:
Fax number:	Fax number:
E-mail address:	E-mail address:

PLEASE INDICATE THE PROCESS THE BANK REQUESTS BY CHECKING THE APPROPRIATE BOX, BELOW.

After-the-fact notice (12 CFR 24.5(a)) - complete sections 1 and 2. ☐

Prior approval (12 CFR 24.5(b)) - complete section 2. ☐

Section 1 – After-The-Fact Notice Only (12 CFR 24.5(a))

A bank may provide an after-the-fact notice of its Part 24 investment if the bank responds affirmatively to all of the following requirements.

The bank is "well-capitalized," as defined in 12 CFR 24.2(i). Yes ☐ No ☐

The bank has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System. Yes ☐ No ☐

The bank's most recent Community Reinvestment Act rating is satisfactory or outstanding. Yes ☐ No ☐

The bank is not under a cease and desist order, consent order, formal written agreement, or Prompt Corrective Action directive.

Yes ☐ No ☐

Including this investment, the bank's aggregate outstanding investments and commitments under Part 24 do not exceed 5 percent of its capital and surplus, unless the OCC has provided written approval of a written request by the bank allowing the bank to provide after-the-fact notices for investments that would raise the aggregate amount of the bank's Part 24 investments beyond 5 percent of its capital and surplus.

Yes ☐ No ☐

The investment does not involve properties carried on the bank's books as "other real estate owned." Yes ☐ No ☐

The OCC has not determined, in published guidance, that the investment is inappropriate for the after-the-fact notification.

Yes ☐ No ☐

Has the bank responded affirmatively to all of the above requirements in order to provide an after-the-fact notice of its Part 24 investment? [The OCC may have provided written notification that the bank may submit Part 24 after-the-fact notices. If so, please provide the date or a copy of the OCC's written notification.]

Yes ☐ (The bank may make an investment authorized by 12 USC 24(Eleventh) and this part and notify the OCC within 10 working days by submitting a completed after-the-fact notice.)

No ☐ (The bank must seek prior OCC approval of its investment and submit a completed investment proposal before making the investment.)

(To complete the after-the-fact notice process or to request prior OCC approval, please proceed to section 2 of this form.)

Section 2 — All Requests

1. **Please indicate how the bank's investment is consistent with Part 24 requirements for public welfare investments, under 12 CFR 24.3.**

   a. Check at least one of the following that applies to the bank's investment:

   The investment primarily benefits low- and moderate-income individuals. ☐

   The investment primarily benefits low- and moderate-income areas. ☐

   The investment primarily benefits other areas targeted by a governmental entity for redevelopment. ☐

   The investment would receive consideration under 12 CFR 25.23 as a "qualified investment" for purposes of the Community Reinvestment Act. ☐

2. **Please indicate how the bank's investment is consistent with Part 24 requirements for investment limits under 12 CFR 24.4 by responding to the following questions.**

   a. Dollar amount of the bank's investment that is the subject of this submission: _____

   b. Percentage of the bank's capital and surplus represented by the bank's investment that is the subject of this submission: _____%.

   c. Percentage of the bank's capital and surplus represented by the aggregate outstanding Part 24 investments and commitments, including this investment: _____%.

   d. Does this investment expose the bank to unlimited liability?

   Yes ☐ (This investment cannot be made under Part 24.)

   No ☐

3. **Please attach a brief description of the bank's investment. (*See* 12 CFR 24.5(a)(3)(i) and (b)(2)(i)). Include the following information in the description.**

   a. The name of the community and economic development entity (CEDE) into which the bank's investment has been (or will be) made.

   b. The type of bank investment (equity, debt, or other).

   c. The activity or activities of the CEDE in which the bank has invested (or will invest). (*See* examples of qualifying investment activities described in 12 CFR 24.6 (a), (b), (c), and (d).)

   d. How the investment is structured so that it does not expose the bank to unlimited liability, such as by describing the structure of the CEDE (*e.g.*, CDC subsidiary, multi-bank CDC, multi-investor CDC, limited partnership, limited liability company, community development bank, community development financial institution, community development entity, community development venture capital fund, community development lending consortia, community development closed-end mutual funds, non-diversified closed-end investment companies, or any other CEDE) and by providing any other relevant information.

   e. The geographic area served by the CEDE.

f. The total funding or other support by community development partners involved in the project (*e.g.*, government or public agencies, nonprofits, other investors), if known.

g. Supplemental information (*e.g.*, prospectus, annual report, Web address that contains information about the CEDE in which the investment is or will be made), if available.

4. Evidence of qualification is readily available for examination purposes.

The bank maintains information concerning this investment in a form readily accessible and available for examination that supports the certifications contained in this form and demonstrates that the investment meets the standards set out in 12 CFR 24.3, including, where applicable, the criteria of 12 CFR 25.23.

Yes ☐ No ☐

5. Certification

The undersigned hereby certifies that the foregoing information in this form is accurate and complete. It is further certified that the undersigned is authorized to file this form on Part 24 investments for the bank.

Name: _____

Title: _____

Signature: _____

Date: _____

Under the Paperwork Reduction Act, 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.

Form Part 24 Page 5

THE SPACE BELOW MAY BE USED TO DESCRIBE THE BANK'S CD INVESTMENT AS REQUESTED IN SECTION 2, QUESTION 3.

CD-1 (Expiration Date: 08/31/2025)

Benjamin W. McDonough,

Senior Deputy Comptroller and Chief Counsel.

[FR Doc. 2023–20187 Filed 9–18–23; 8:45 am]

BILLING CODE 4810–33–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1221; Project Identifier MCAI–2023–00070–T; Amendment 39–22543; AD 2023–18–02]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2020–06–10, which applied to certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. AD 2020–06–10 required repetitive inspections for cracking of the vertical stiffeners of the left- and right-hand sides of the window frames and corrective actions if necessary. Since the FAA issued AD 2020–06–10, it was determined that certain compliance times need to be reduced. This AD

retains the requirements of AD 2020–06–10, with amended compliance times, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 24, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 24, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1221; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For the EASA AD incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2023–1221.

FOR FURTHER INFORMATION CONTACT: Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3667; email *Timothy.P.Dowling@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2020–06–10, Amendment 39–19879 (85 FR 17490, March 30, 2020) (AD 2020–06–10). AD 2020–06–10 applied to certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. AD 2020–06–10 required repetitive inspections for cracking of the vertical stiffeners of the left- and right-hand sides of the window frames and corrective actions if necessary, as specified in EASA AD 2019–0173, dated July 18, 2019 (EASA AD 2019–0173). The FAA issued AD 2020–06–10 to address cracking of the vertical stiffeners of the left- and right-hand sides of the window frames, which could affect the structural integrity of the airplane.

The NPRM published in the **Federal Register** on June 27, 2023 (88 FR 41518). The NPRM was prompted by AD 2023–0009, dated January 16, 2023, issued by EASA (EASA AD 2023–0009) (also referred to as the MCAI), which superseded EASA AD 2019–0173. Since EASA AD 2019–0173 was issued, it was determined that certain compliance times need to be reduced, based on further analysis. The MCAI states that, during an inspection, cracking was found on the frame of the right-hand side sliding window in the flight deck. This condition, if not corrected, could lead to reduced structural integrity of the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1221.

In the NPRM, the FAA proposed to retain the requirements of AD 2020–06–10, with amended compliance times, as specified in EASA AD 2023–0009. The FAA is issuing this AD to address cracking of the vertical stiffeners of the left- and right-hand sides of the window frames, which could affect the structural integrity of the airplane.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from one commenter, United Airlines, who supported the NPRM without change.

Conclusion

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 referenced above. 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 this product. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0009 specifies procedures for repetitive inspections for cracking of the vertical stiffeners of the left- and right-hand sides of the window frame and corrective actions if necessary. Corrective actions include modification, rework, and repair. 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 1,525 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2020–06–10.	11 work-hours × $85 per hour = $935.	$0	$935	$1,425,875 per inspection cycle.

* Table does not include estimated costs for reporting.

The FAA estimates that it would take about 1 work-hour per product to comply with the reporting requirement in this AD. The average labor rate is $85 per hour. Based on these figures, The FAA estimates the cost of reporting the inspection results on U.S. operators to be $129,625, or $85 per product.

The FAA estimates the following costs to do any necessary on-condition modifications that would be required based on the results of any required

actions. The FAA has no way of determining the number of aircraft that might need this on-condition modification:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
5 work-hours × $85 per hour = $425	(*)	*$425

*The FAA has received no definitive data on which to base the parts cost estimates for the on-condition modification specified in this AD.

The FAA has received no definitive data that would enable the agency to provide cost estimates for the other on-condition actions specified in this AD.

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 a 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 currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, 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,

(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:

■ a. Removing Airworthiness Directive (AD) 2020–06–10, Amendment 39–19879 (85 FR 17490, March 30, 2020); and

■ b. Adding the following new AD:

2023–18–02 Airbus SAS: Amendment 39–22543; Docket No. FAA–2023–1221; Project Identifier MCAI–2023–00070–T.

(a) Effective Date

This airworthiness directive (AD) is effective October 24, 2023.

(b) Affected ADs

This AD replaces AD 2020–06–10, Amendment 39–19879 (85 FR 17490, March 30, 2020) (AD 2020–06–10).

(c) Applicability

This AD applies to Airbus SAS Model airplanes specified in paragraphs (c)(1) through (4) of this AD, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2023–0009, dated January 16, 2023 (EASA AD 2023–0009).

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report of cracking found on the frame of the right-hand side sliding window in the flight deck, and a determination that certain compliance times need to be reduced. The FAA is issuing this AD to address cracking of the vertical stiffeners of the left- and right-hand sides of the window frames, which could affect the structural integrity of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0009.

(h) Exceptions to EASA AD 2023–0009

(1) Where EASA AD 2023–0009 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2023–0009 refers to August 1, 2019 (the effective date of EASA AD 2019–0173), this AD requires using May 4, 2020 (the effective date of AD 2020–06–10).

(3) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0009.

(4) Paragraph (3) of EASA AD 2023–0009 specifies to report inspection results to Airbus within a certain compliance time. For this AD, report inspection results (in case of findings only) at the applicable time

specified in paragraph (h)(4)(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 90 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 90 days after the effective date of this AD.

(5) Where paragraph (5) of EASA AD 2023–0009 specifies credit for certain actions, this AD provides credit for using the torque values specified in Section 13 of the Airbus technical adaptations (TAs) identified in paragraphs (h)(5)(i) through (vi) of this AD, when installing a certain eccentric referenced in ''Airbus SB A320–53–1402 original issue'' or ''Airbus SB A320–53–1403 original issue,'' as specified in the applicable TA, before the effective date of this AD.

(i) Airbus TA 80662272/007/2019, Issue 1, dated August 29, 2019.

(ii) Airbus TA 80662272/008/2019, Issue 1, dated August 29, 2019.

(iii) Airbus TA 80662272/009/2019, Issue 1, dated August 29, 2019.

(iv) Airbus TA 80662272/010/2019, Issue 1, dated August 29, 2019.

(v) Airbus TA 80696258/006/2019, Issue 1, dated October 29, 2019.

(vi) Airbus TA 80696258/007/2019, Issue 1, dated October 29, 2019.

(6) Where Table 1 of EASA AD 2023–0009 specifies configurations, replace the text ''post SB'' with ''post embodiment of SB'' and replace the text ''pre SB'' with ''pre embodiment of SB.''

(i) Special Flight Permit

Special flight permits, as described in 14 CFR 21.197 and 21.199, may be issued to operate the airplane to a location where the requirements of this AD can be accomplished, but concurrence by the Manager, International Validation Branch, FAA, is required before issuance of the special flight permit.

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* 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 responsible Flight Standards Office, as appropriate. If sending information directly to 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.*

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

(ii) AMOCs approved previously for AD 2020–06–10 are approved as AMOCs for the corresponding provisions of EASA AD 2023–0009 that are required by paragraph (g) of this AD.

(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, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (j)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Additional Information

For more information about this AD, contact Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY; telephone 206–231–3667; email *Timothy.P.Dowling@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0009, dated January 16, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0009, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

(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: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on September 1, 2023.

Victor Wicklund,

Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–20174 Filed 9–18–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–1076; Project Identifier MCAI–2020–01201–A; Amendment 39–22544; AD 2023–18–03]

RIN 2120–AA64

Airworthiness Directives; Viking Air Limited (Type Certificated Previously Held by Bombardier Inc. and de Havilland, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Viking Air Limited (Viking) (type certificate previously held by Bombardier Inc. and de Havilland, Inc.) Model DHC–3 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as corrosion, wear, and fatigue-related degradation in aging aircraft. This AD requires incorporating into the existing maintenance records for your airplane the actions and associated thresholds and intervals, including life limits, specified in a supplemental inspection and corrosion control manual for Model DHC–3 airplanes. This AD also requires completing all the initial tasks identified in this manual and reporting corrosion findings to Viking. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 24, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 24, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2020–1076; 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 MCAI, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

• For service information identified in this final rule, contact Viking Air Limited Technical Support, 1959 de Havilland Way, Sidney, British Columbia, Canada V8L 5V5; phone: (800) 663–8444; fax: (250) 656–0673; email: *technical.support@vikingair.com;* website: *vikingair.com/support/service-bulletins.*

• You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2020–1076.

FOR FURTHER INFORMATION CONTACT: Deep Gaurav, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (516) 228–7321; email: *9-avs-nyaco-cos@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 Viking Model DHC–3 airplanes. The NPRM published in the **Federal Register** on February 8, 2022 (87 FR 7059). The NPRM was prompted by AD CF–2018–04, dated January 19, 2018, issued by Transport Canada, which is the aviation authority for Canada (referred to after this as the MCAI). The MCAI states that Viking developed a supplementary inspection and corrosion control program for aging airplanes, which identifies specific locations of an airplane that must be inspected to ensure corrosion-related degradation does not result in an unsafe condition.

The MCAI requires doing all inspections specified in Part 2 of Viking DHC–3 Otter Supplemental Inspection and Corrosion Control Manual, PSM 1–3–5, Revision IR, dated December 21, 2017 (Viking PSM 1–3–5, Revision IR), doing applicable corrective actions using Part 3 of Viking PSM 1–3–5, Revision IR, and reporting to Viking Level 2 and Level 3 corrosion as specified in Part 3 of Viking PSM 1–3–5, Revision IR.

Corrosion, wear, and fatigue-related degradation, if not addressed, could lead to structural failure with consequent loss of control of the airplane.

In the NPRM, the FAA proposed to require establishing a corrosion prevention and control program to identify and correct corrosion and cracking. In the NPRM, the FAA also proposed to require completing all of the initial tasks identified in the program and reporting corrosion findings to Viking.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2020–1076.

The FAA issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Viking Model DHC–3 airplanes. The SNPRM published in the **Federal Register** on June 28, 2023 (88 FR 41863). The SNPRM was prompted by the FAA's decision to revise the proposed actions specified in the NPRM and to reopen the comment period to allow the public the chance to comment on whether the proposed AD would have a significant economic impact on a substantial number of small entities. In the SNPRM, the FAA proposed to require incorporating into the existing maintenance records for your airplane the actions and associated thresholds and intervals, including life limits, specified in Parts 2 and 3 of Viking PSM 1–3–5, Revision IR, completing all the initial tasks identified in Viking PSM 1–3–5, Revision IR, and reporting to Viking any Level 2 or Level 3 corrosion findings. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

These products have been approved by the aviation authority of another country and are 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 referenced above. 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 products. Except for minor editorial changes, this AD is adopted as proposed in the SNPRM.

ADs Mandating Airworthiness Limitations (ALS)

The FAA has previously mandated airworthiness limitations by issuing ADs that require revising the ALS of the existing maintenance manual or instructions for continued airworthiness to incorporate new or revised inspections. This AD, however, requires establishing and incorporating new inspections into the existing maintenance records required by 14 CFR 91.417(a)(2) or 135.439(a)(2) for your airplane. The FAA does not intend this as a substantive change. Requiring incorporation of the new ALS requirements into the existing maintenance records, rather than requiring individual repetitive inspections and replacements, allows operators to record AD compliance once after updating the existing maintenance records, rather than recording compliance after every inspection and part replacement.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Viking PSM 1–3–5, Revision IR, which specifies procedures for inspecting areas of the airplane that are particularly susceptible to corrosion, wear, and fatigue-related degradation. Viking PSM 1–3–5, Revision IR, also specifies repetitive inspection intervals, defines the different levels of corrosion, and provides corrective action if corrosion is found.

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 also reviewed Viking DHC–3 Otter Service Bulletin V3/0010, Revision NC, dated March 19, 2020. The service bulletin provides a list of new inspection tasks that have been added to the DHC–3 maintenance program in Viking PSM 1–3–5, Revision IR.

Impact on Intrastate Aviation in Alaska

In light of the heavy reliance on aviation for intrastate transportation in Alaska, the FAA has fully considered the effects of this final rule (including costs to be borne by affected operators) from the earliest possible stages of AD development. As previously stated, 14 CFR part 39 requires operators to correct an unsafe condition identified on an airplane to ensure operation of that airplane in an airworthy condition. The FAA has determined that the need to correct corrosion-related degradation in aging aircraft, which could lead to structural failure with consequent loss of control of the airplane, outweighs any impact on aviation in Alaska.

Costs of Compliance

The FAA estimates that this AD affects 68 airplanes of U.S. registry. The FAA also estimates that it will take about 1 work-hour per airplane at a

labor rate of $85 per work-hour to revise the existing maintenance records.

Based on these figures, the FAA estimates the cost of this AD on U.S. operators to be $5,780 or $85 per airplane.

The FAA estimates it will take about 1 work-hour to report any Level 2 corrosion found during the initial or subsequent inspections or any Level 3 corrosion found during the initial or subsequent inspections, for an estimated cost of $85 per airplane.

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 a 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 currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, 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 Flexibility Determination

The Regulatory Flexibility Act of 1980, Public Law 96–354, 94 Stat. 1164 (5 U.S.C. 601–612) (RFA) establishes as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.

To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

The FAA published an Initial Regulatory Flexibility Analysis (IRFA) for this rule to aid the public in commenting on the potential impacts to small entities. The FAA did not receive any public comments on the IRFA. The purpose of this Final Regulatory Flexibility Analysis (FRFA) is to provide the reasoning underlying the FAA's determination. A FRFA must contain the following:

(1) A statement of the need for, and objectives of, the rule;

(2) A statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

(3) The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;

(4) A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

(5) A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

(6) A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

1. Need for and Objectives of the Rule

The NPRM proposed to adopt a new AD for all Viking Model DHC–3 airplanes. This AD results from MCAI originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product.

The objective of this final rule is to require incorporating into the existing maintenance records for your airplane the actions and associated thresholds and intervals, including life limits, specified in a supplemental inspection and corrosion control manual for Model DHC–3 airplanes. This final rule also requires completing all the initial tasks identified in this manual and reporting corrosion findings to Viking.

2. Significant Issues Raised in Public Comments

The FAA received no public comments on the SNPRM.

3. Response to SBA Comments

The Chief Counsel for Advocacy of the SBA did not file any comments in response to the proposed rule. Thus, the FAA did not make any changes to the proposed rule in the final rule.

4. Description and Estimate of the Number of Small Entities

The RFA defines small entities as small businesses, small governmental jurisdictions, or small organizations. In 5 U.S.C. 601(3), the RFA defines ''small business'' to have the same meaning as ''small business concern'' under section 3 of the Small Business Act. The Small Business Act authorizes the SBA to define ''small business'' by issuing regulations.

SBA (2022) has established size standards for various types of economic activities, or industries, under the North American Industry Classification System (NAICS).[1] These size standards generally define small businesses based

[1] Small Business Administration (SBA). 2022. Table of Size Standards. Effective July 14, 2022. *https://www.sba.gov/document/support-table-size-standards.*

on the number of employees or annual receipts.

The FAA identified 68 de Havilland Model DHC–3 ''Otter'' airplanes that would be affected by the final rule AD. These 68 airplanes are registered to 32 private firms and 5 individuals. The individuals are excluded from this analysis as they presumably are not small entities under the RFA.

The 32 private firms own 63 airplanes. Of these firms, the FAA was able to obtain the data necessary to classify 21 of them.[2] All but one firm qualify as small entities under the RFA. Thus, the FAA estimates that this rule would impact 20 small entities. For these 20 small entities, the results of the cost impact analysis are shown in Table 1, ''Cost Impact on Small Entities.''

5. Projected Reporting, Recordkeeping, and Other Compliance Requirements

AD costs per airplane are 1 work hour plus $85 reporting costs for initial inspection, for a total of $170. The AD cost per small entity is shown in the ''Cost'' column of Table 1 and cost impact is measured by AD cost as a percentage of revenues. As the table shows, the mean cost impact is 0.1% of annual revenues, with a maximum impact of 0.46% of annual revenues, and a minimum impact below 0.01%.

TABLE 1—COST IMPACT ON SMALL ENTITIES

Firm	No. A/C	Revenue ($1,000)	Cost ($1,000)	Cost/ revenue (%)	NAICS code	Size standard	NAICS industry
SUMMIT LEASING LLC	3	110	0.2	0.00	532490	$35 mn	Other Comm'l and Industrial Mach. and Equip. Rental & Leasing.
KATMAI AIR LLC	2	117	0.2	0.00	532411	$40 mn	Comm'l Air, Rail, and Water Transp. Equip. Rental & Leasing.
JESPERSEN AIRCRAFT SERVICES INC	1	113	1.9	0.00	481219	$22 mn	Other Nonscheduled Air Transportation.
DOYON AIR TRANSPORT LLC	1	127	1.0	0.01	488999	$22 mn	All Other Support Activities for Transportation.
RED LEASING LLC	2	359	0.2	0.01	532490	$35 mn	Other Comm'l and Industrial Mach. and Equip. Rental & Leasing.
RAINBOW KING LODGE INC	1	209	0.2	0.02	721199	$8 mn	All Other Traveler Accommodation.
PANTECHNICON AVIATION LTD	1	235	0.2	0.02	532411	$40 mn	Comm'l Air, Rail, and Water Transp. Equip. Rental & Leasing.
EMERALD AIR SERVICE INC	1	250	1.0	0.02	481219	$22 mn	Other Nonscheduled Air Transportation.
BLUE AIRCRAFT LLC	2	750	0.2	0.02	483000	1500 emp	Scheduled Passenger Air Transportation.
TALON AIR SERVICE INC	1	520	0.2	0.02	481219	$22 mn	Other Nonscheduled Air Transportation.
BALD MOUNTAIN AIR SERVICE INC	1	700	0.2	0.03	481219	$22 mn	Other Nonscheduled Air Transportation.
NORTHWEST SEAPLANES INC	1	750	0.3	0.05	481111	1500 emp	Scheduled Passenger Air Transportation.
TALKEETNA AIR TAXI INC	6	4,600	0.2	0.07	481211	1500 emp	Nonscheduled Chartered Passenger Air Transportation.
GOLDEN EAGLE OUTFITTERS INC	1	960	0.2	0.07	713990	$8 mn	All Other Amusement and Recreation Industries.
MUNICH HANS W DBA	1	998	0.2	0.08	481219	$22 mn	Other Nonscheduled Air Transportation.
DESTINATION ALASKA ADVENTURE CO LLC.	1	1,300	0.3	0.09	481211	1500 emp	Nonscheduled Chartered Passenger Air Transportation.
RUSTAIR INC	6	10,224	0.2	0.13	532411	$40 mn	Comm'l Air, Rail, and Water Transp. Equip. Rental & Leasing.
KENMORE AIR HARBOR LLC	11	51,500	0.2	0.15	481111	1500 emp	Scheduled Passenger Air Transportation.
RAPIDS CAMP LODGE INC	1	7,000	0.3	0.29	721214	$8 mn	Recreational and Vacation Camps (except Campgrounds).
BANK OF UTAH TRUSTEE	1	90,000	0.5	0.46	522110	$750 mn in assets.	Commercial Banking.
Total	45	170,822	7.7	.....	.....		
Average	.....	8,541	0.38	0.06	.....		
Median	.....	725	0.17	0.02	.....		

Notes: 1. The size standard is the maximum size for the NAICS industry considered by the Small Business Administration to be a small entity. 2. AD costs per airplane are 1 work-hour × $85 + $85 reporting costs for initial inspection, for a total of $170.

Costs under 1% of revenues for all of the small entities lead the FAA to conclude that this rule does not have a significant impact on a substantial number of small entities.

6. Significant Alternatives Considered

As part of the FRFA, the FAA is required to consider regulatory alternatives that may be less burdensome.

The FAA did not find any significant regulatory alternatives to this AD that would still accomplish the safety objectives of this AD.

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 have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the RFA.

List of Subjects in 14 CFR Part 39

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

[2] Firm revenue and employee count are drawn from online sources, including: Dun & Bradstreet, Inc. (*www.dnb.com*); Manta Media, Inc. (*www.manta.com*); Buzzfile Media, Inc. (*www.buzzfile.com*); Datanyze, Inc. (*www.datanyze.com*); Moody's Analytics (*start.cortera.com*); *GeneralLiabilityInsure.com* (*generalliabilityinsure.com*); Kona Equity (*www.konaequity.com*); and ZoomInfo Technologies LLC (*www.zoominfo.com*).

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:

2023–18–03 Viking Air Limited (Type Certificate Previously Held by Bombardier Inc. and de Havilland, Inc.): Amendment 39–22544; Docket No. FAA–2020–1076; Project Identifier MCAI–2020–01201–A.

(a) Effective Date

This airworthiness directive (AD) is effective October 24, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Viking Air Limited (type certificate previously held by Bombardier Inc. and de Havilland, Inc.) Model DHC–3 airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 2700, Flight Control System.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as corrosion, wear, and fatigue-related degradation in aging aircraft. The FAA is issuing this AD to detect and address corrosion and cracking. This condition, if not addressed, could lead to structural failure with consequent loss of control of the airplane.

(f) Compliance

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

(g) Required Actions

(1) Within 90 days after the effective date of this AD, incorporate into the existing maintenance records required by 14 CFR 91.417(a)(2) or 135.439(a)(2), as applicable for your airplane, the actions and associated thresholds and intervals, including life limits, specified in Parts 2 and 3 of Viking DHC–3 Otter Supplemental Inspection and Corrosion Control Manual, PSM 1–3–5, Revision IR, dated December 21, 2017 (Viking PSM 1–3–5, Revision IR). Do each initial task within 6 months after the effective date of this AD or at the threshold for each applicable task specified in Part 3 of Viking Product Support Manual PSM 1–3–5, Revision IR, whichever occurs later. Where Viking PSM 1–3–5, Revision IR, specifies contacting Viking regarding a component's alloy and heat treat condition, this AD requires contacting the Manager, International Validation Branch, FAA, Transport Canada, or Viking's Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

Note 1 to paragraph (g)(1): Viking DHC–3 Otter Service Bulletin V3/0010, Revision NC, dated March 19, 2020, contains additional information related to this AD.

(2) After the action required by paragraph (g)(1) of this AD has been done, no alternative actions and associated thresholds and intervals, including life limits, are allowed unless they are approved as specified in paragraph (i) of this AD.

(h) Reporting

(1) For inspections done after the effective date of this AD, report to Viking any Level 2 or Level 3 corrosion, as specified in Viking PSM 1–3–5, Revision IR, at the times specified in and in accordance with part 3, paragraph 5, of Viking PSM 1–3–5, Revision IR.

(2) For inspections done before the effective date of this AD, within 30 days after the effective date of this AD report to Viking any Level 2 or Level 3 corrosion, as specified in Viking PSM 1–3–5, Revision IR, in accordance with part 3, paragraph 5, of Viking PSM 1–3–5, Revision IR.

(i) 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, mail it to the address identified in paragraph (j)(2) of this AD or email to: *9-AVS-AIR-730-AMOC@faa.gov*. If mailing information, also submit information by email.

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved specifically for this AD by the Manager, International Validation Branch, FAA.

(j) Additional Information

(1) Refer to Transport Canada AD CF–2018–04, dated January 19, 2018, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2020–1076.

(2) For more information about this AD, contact Deep Gaurav, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (817) 228–3731; 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 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) Viking DHC–3 Otter Supplemental Inspection and Corrosion Control Manual, PSM 1–3–5, Revision IR, dated December 21, 2017.

(ii) [Reserved]

(3) For service information identified in this AD, contact Viking Air Limited Technical Support, 1959 de Havilland Way, Sidney, British Columbia, Canada V8L 5V5; phone: (800) 663–8444; fax: (250) 656–0673; email: *technical.support@vikingair.com;* website: *vikingair.com/support/service-bulletins*.

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

(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: *www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued on September 1, 2023.

Victor Wicklund,

Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–20188 Filed 9–18–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 12

[CBP Dec. 23–11]

RIN 1515–AE82

Extension and Amendment of Import Restrictions Imposed on Archaeological and Ethnological Material of Cambodia

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations to reflect an extension of import restrictions on certain archaeological and ethnological material of Cambodia, the addition of certain categories of archaeological and ethnological material of Cambodia to the existing import restrictions, and the clarification of certain categories of archaeological material of Cambodia. The United States has entered into an agreement with Cambodia that supersedes the existing agreement and amends the import restrictions that became effective on September 19, 2018. The restrictions, originally imposed by Treasury Decision (T.D.) 99–88 and last extended by CBP Dec. 18–11 for an additional five-year period, will continue with these amendments through September 19, 2028. The Designated List of archaeological and ethnological material of Cambodia to which the restrictions apply is reproduced below, with the amendments described.

DATES: Effective on September 19, 2023.

FOR FURTHER INFORMATION CONTACT: For legal aspects, W. Richmond Beevers, Chief, Cargo Security, Carriers and Restricted Merchandise Branch, Regulations and Rulings, Office of Trade, (202) 325–0084, *otrculturalproperty@cbp.dhs.gov.* For operational aspects, Julie L. Stoeber, Chief, 1USG Branch, Trade Policy and Programs, Office of Trade, (202) 945–7064, *1USGBranch@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Convention on Cultural Property Implementation Act (Pub. L. 97–446, 19 U.S.C. 2601 *et seq.*) (CPIA), which implements the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)) (the Convention), allows for the conclusion of an agreement between the United States and another party to the Convention to impose import restrictions on eligible archaeological and ethnological materials. Under the CPIA and the applicable U.S. Customs and Border Protection (CBP) regulations, found in § 12.104 of title 19 of the Code of Federal Regulations (19 CFR 12.104), the restrictions are effective for no more than five years beginning on the date on which an agreement enters into force with respect to the United States (19 U.S.C. 2602(b)). This period may be extended for additional periods, each extension not to exceed five years, if it is determined that the factors justifying the initial agreement still pertain and no cause for suspension of the agreement exists (19 U.S.C. 2602(e); 19 CFR 12.104g(a)).

In certain limited circumstances, the CPIA authorizes the imposition of restrictions on an emergency basis (19 U.S.C. 2603). The emergency restrictions are effective for no more than five years from the date of the State Party's request and may be extended for three years where it is determined that the emergency condition continues to apply with respect to the covered material (19 U.S.C. 2603(c)(3)). These restrictions may also be continued pursuant to an agreement concluded within the meaning of the CPIA (19 U.S.C. 2603(c)(4)). Additionally, after any restriction enters into force, either through an agreement or emergency action, CBP will by regulation promulgate (and when appropriate revise) a list of the archaeological or ethnological material of the State Party covered by the agreement or by such emergency action (19 U.S.C. 2604).

On December 2, 1999, the former United States Customs Service published Treasury Decision (T.D.) 99–88 in the **Federal Register** (64 FR 67479) amending 19 CFR 12.104g(b) to reflect the imposition of emergency restrictions on the importation of certain Khmer stone archaeological material of the Kingdom of Cambodia from the 6th century through the 16th century A.D.

On September 19, 2003, the United States entered into the ''Memorandum of Understanding Between the Government of the United States of America and the Government of the Kingdom of Cambodia Concerning the Imposition of Import Restrictions on Khmer Archaeological Material'' (2003 MOU). The 2003 MOU provided for import restrictions on certain Khmer archaeological material from the 6th century through the 16th century A.D. and continued to include the archaeological material then subject to the emergency restrictions.

On September 22, 2003, CBP published a final rule, CBP Decision (CBP Dec.) 03–28, in the **Federal Register** (68 FR 55000), amending 19 CFR 12.104g(a) to reflect the imposition of these restrictions and including a list designating the types of archaeological material covered by the restrictions. Consistent with the requirements of 19 U.S.C. 2602(b) and 19 CFR 12.104g, these restrictions were effective for a period of five years.

The import restrictions were subsequently extended three times, and the designated list amended once, in accordance with 19 U.S.C. 2602(e) and 19 CFR 12.104g(a). On September 19, 2008, CBP published a final rule (CBP Dec. 08–40) in the **Federal Register** (73 FR 54309), which amended 19 CFR 12.104g(a) to reflect the extension of these import restrictions for an additional period of five years and to revise the designated list to reflect the addition of new categories of objects (glass and bone) and additional subcategories of stone and metal objects from the Bronze Age (c. 1500–500 B.C.) and the Iron Age (c. 500 B.C.–A.D. 550), covering archaeological material from the Bronze Age through the Khmer Era (16th century A.D.). On September 16, 2013, CBP published CBP Dec. 13–15 in the **Federal Register** (78 FR 56832), which amended 19 CFR 12.104g(a) to reflect the extension of these import restrictions for an additional period of five years.

On September 19, 2018, pursuant to a Memorandum of Understanding concluded on September 12, 2018 (2018 MOU), in which the Governments of the United States and Cambodia agreed to extend the import restrictions for another five years, CBP published CBP Dec. 18–11 in the **Federal Register** (83 FR 47283), which amended § 12.104g(a) to reflect the extension of these import restrictions for an additional period of five years.

On December 21, 2022, the United States Department of State proposed in the **Federal Register** (87 FR 78184), to extend the 2018 MOU. On May 10, 2023, after consultation with and recommendation by the Cultural Property Advisory Committee, the Acting Assistant Secretary for Educational and Cultural Affairs, United States Department of State, made the determinations necessary to extend and amend the 2018 MOU.

On August 30, 2023, the Governments of the United States and Cambodia signed a new agreement to extend the import restrictions, include additional categories of archaeological and ethnological material, and clarify existing categories of archaeological material, titled ''Agreement between the Government of the United States of America and the Government of the Kingdom of Cambodia to Extend and Amend the Memorandum of Understanding between the Government of the United States of America and the Government of the Kingdom of Cambodia Concerning the Imposition of Import Restrictions on Categories of Archaeological Material of Cambodia'' (2023 Agreement). The 2023 Agreement entered into force upon signature and supersedes the 2018 MOU. Pursuant to the 2023 Agreement, the amended

import restrictions continue through September 19, 2028.

Accordingly, CBP is amending 19 CFR 12.104g(a) to reflect the amendment of the Designated List of cultural property described in CBP Dec. 03–28 and last revised by CBP Dec. 08–40. The amendments include the expansion of dates for archaeological material, clarified descriptions of certain categories of archaeological material, and the addition to the archaeological material section of a category for wood and subcategories for sima, boundary markers, seals and weights, and coins. The amendments also include the addition of an ethnological material section. The restrictions on the importation of archaeological and ethnological material will be in effect through September 19, 2028. Importation of such material of Cambodia, as described in the Designated List below, will be restricted through that date unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met.

The Designated List and additional information may also be found at the following website address: *https://eca.state.gov/cultural-heritage-center/cultural-property-advisory-committee/current-import-restrictions* by selecting the material for ''Cambodia.''

Designated List of Archeological and Ethnological Material of Cambodia

To fulfill the terms of the 2023 Agreement, the Designated List contained in T.D. 99–88 and last revised by CBP Dec. 08–40, is amended to reflect the addition to the archaeological material section of a category for wood, subcategories for sima, boundary markers, seals and weights, and coins, as well as the expansion of dates for archaeological material and clarified descriptions of certain categories of archaeological material. The amendments also include the addition of an ethnological material section.

The Designated List includes archaeological and ethnological material. Archaeological material ranges in date from approximately 2,500 B.C. to A.D. 1750. Ethnological material ranges in date from A.D. 1400 to 1891. For the reader's convenience, CBP is reproducing the Designated List contained in T.D. 99–88 and last revised by CBP Dec. 08–40 in its entirety with these changes.

The list is divided into the following categories of objects:

I. Archaeological Material
A. Stone
B. Metal
C. Ceramics
D. Glass
E. Bone
F. Wood
II. Ethnological Material
A. Architectural Materials
B. Manuscripts
C. Religious Objects

I. Archaeological Material

Restricted archaeological material from Cambodia includes the categories listed below. The following list is representative only.

A. Stone

This category consists largely of materials made of sandstone, including many color shades (gray to greenish to black, pink to red and violet, and some yellowish tones) and varying granulosity. Due to oxidation and iron content, the stone surface can become hard and take on a different color from the stone core. These surface colors range from yellowish to brownish to different shades of gray. This dense surface can be polished. Some statues and reliefs are coated with a kind of clear shellac or lacquer of different colors (black, red, gold, yellow, brown). The surface of sandstone pieces can also be quite rough. Chipped surfaces can be white or gray in color. In the absence of any systematic technical analysis of ancient Khmer stonework, no exact description of other stone types can be provided. It is clear that other types of stone were also used (some volcanic rock, rhyolite, and schist, etc.), but these are nonetheless exceptional. Some quartz objects are also known. Precious and semi-precious stones were also used as applied decor or in jewelry settings.

Different types of stone degradation can be noted. Eroded surfaces result from sanding (loss of surface grains), contour scaling (detachment of surface plaques along contour lines), flaking, and exfoliation. The stone can also split along sedimentation layers. Chipping or fragmentation of sculpted stone is also common.

Stone objects included here come under several periods: Bronze Age (c. 2500–500 B.C.), Iron Age (c. 500 B.C.–A.D. 550), pre-Angkorian (6th–9th century), Angkorian (9th–15th century), and post-Angkorian (15th century–1750 A.D.). Many stone objects can be firmly assigned to one of these periods; some, notably architectural elements and statues, can be further assigned a specific style and a more precise date within the given period.

1. Sculpture

a. Architectural Elements—Stone was used for religious architecture in the pre-Angkorian and Angkorian periods. The majority of ancient Khmer temples were built almost entirely in stone. Even for those temples built primarily in brick, numerous decorative elements in stone were also employed. Only small portions of early post-Angkorian edifices were built in stone. The architectural elements that follow are therefore characteristic of pre-Angkorian and Angkorian times. Post-Angkorian forms are also included. The state of the material varies greatly, with some objects being well preserved, while others are severely eroded or fragmented. The sculpture of some pieces remains unfinished.

i. *Pediments*—Pediments are large decorative stone fixtures placed above temple doorways. They are triangular or round in shape and composed of two or more separate blocks that are fitted together and sculpted with decorative motifs. The ensemble can range from approximately 1–3 meters in width and 1–3 meters in height. Motifs include floral scrolls, medallions, human figures, and animals. A whole scene from a well-known story can also be represented.

ii. *Lintels*—Lintels are rectangular monoliths placed directly above temple entrance gates or doorways, below the pediments described above. They are decorated with motifs similar to those of pediments. They can reach up to nearly one meter in height and one- and one-half meters in width.

iii. *False Doors*—Three of the four doorways of a temple sanctuary are frequently ''false doors''; that is, though they are sculpted to look like doors, they do not open. They bear graphic and floral motifs, sometimes integrating human and animal figures. These doors can reach up to more than two meters in height and more than one meter in width. They can be monolithic or composed of separate blocks fitted together.

iv. *Columnettes and Door Jambs*—Columnettes (or colonettes) are decorative columns placed on either side of a temple door entrance. Door jambs are decorative panels placed on either side of a temple entrance door. They can be sculpted in deep relief out of a temple doorway and therefore remain attached to the doorway on their back side. The earliest columnettes are round and sculpted with bands which themselves are sculpted with decorative motifs. Later in the Angkorian period, the columnettes are octagonal in shape and bear more complex and abundant sculpted decor on the concentric bands. This decor includes graphic designs (pearls, diamond shapes, flowers, etc.) repeated at regular intervals along the length of the column. The base of the column is square and is also sculpted with diverse motifs and figures. The

columnettes can reach around 25 cm. in diameter and more than two meters in height. Door jambs can reach more than two meters in height.

v. *Pilasters*—Pilasters are decorative rectangular supports projecting partially from the wall on either side of a temple doorway. They are treated architecturally as columns with a base, shaft, and capital. Motifs include floral scrolls and graphic designs of pearls, diamond shapes, etc., as well as human or animal figures. They range in width from approximately 20–30 cm. and can reach a height of more than two meters.

vi. *Antefixes*—Antefixes are decorative elements placed around the exterior of each level of temple tower. They are small free-standing sculptures and can take multiple forms, including but not limited to graphic designs, animal figures, human figures in niches, and miniature models of temples.

vii. *Balustrade Finials*—Long balustrades in the form of mythical serpents are found in many Angkorian temples. Often, these line either side of the entrance causeways to temples. The ends of the balustrade take the form of the serpent's multiple cobra-like heads.

viii. *Wall Reliefs*—Much of the surface area of most temples is sculpted with decorative reliefs. This decor includes graphic designs and floral motifs as well as human or animal figures. The figures can range in size from just a few centimeters to more than one meter in height. They can be integrated into the decor or set off in niches. Narrative scenes can also be represented.

ix. *Other Decorative Items*—Other decorative items include wall spikes, roof tile finials, sculpted steps, and other architectural decorations.

x. *Simas*—Simas are often decorated and carved stone pillars placed around the vihara of Buddhist monasteries at each of the eight compass directions marking the place where monks performed rituals. Sima forms are typically a decorative pillar with a conical top carved in various shapes. Some sima forms are spherical. The tops of simas are often gently peaked and may have Buddhist iconography. Decorative carved motifs typically include animals, Buddha's life stories, worshipers, and/or vegetal motifs.

b. Free-Standing Sculptures—The pre-Angkorian and Angkorian periods are characterized by extensive production of statuary in stone. Some stone statuary was also produced during the post-Angkorian period. This statuary is relatively diverse, including human figures ranging from less than one half meter to nearly three meters in height, as well as animal figures. Some figures, representations of Hindu gods, have multiple arms and heads. Figures can be represented alone or in groups of two or three. When male and female figures are presented together as an ensemble, the female figures are often disproportionately smaller than their male counterparts. Some are part-human, part-animal. Figures can be standing, sitting, or riding animal mounts. Many figures are represented wearing crowns or special headdresses and holding attributes such as a baton or a conch shell. Clothing and sometimes jewelry are sculpted into the body. Though statues are generally monolithic, later post-Angkorian statues of Buddha can have separate arms sculpted in wood and attached to the stone body. Many statues were once lacquered in black, dark brown, red, or gold colors and retain lacquer traces. Some yellow lacquer is also found.

i. *Human and Hybrid (Part-Human, Part-Animal) Figures*—Examples include statues of the eight-armed god and the four-armed god, representations of Buddha in various attitudes or stances, and female and male figures or deities, including parts (heads, hands, crowns, or decorative elements) of statuary and groups of figures. Examples include tantric Buddhist figures or representations of Hindu gods.

ii. *Animal Figures*—Examples include bulls, elephants, lions, and small mammals such as squirrels.

iii. *Votive Objects and Non-figural Sculpture*—Various abstract sculptures were also the object of religious representation from pre-Angkorian to post-Angkorian times. Examples include ritual phallic symbols (linga, lingam) and sculpted footprints of Buddha.

iv. *Pedestals*—Pedestals for statues can be square, rectangular, round, or octagonal. They vary greatly in size and can be decorated with graphic and floral decor, as well as animal or human figures. They are usually made of numerous components fitted together, including a base and a top section into which the statue is set.

v. *Foundation Deposit Stones*—Sacred deposits were placed under statues, as well as under temple foundations and in temple roof vaults, from pre-Angkorian to post-Angkorian times. Marks on these stones indicate sacred configurations, which could contain deposits such as gold or precious stones.

c. Stelae

i. *Sculpted Stelae*—Free-standing stelae, sculpted with shallow or deep reliefs, served as objects of worship and sometimes as boundary stones or boundary markers from pre-Angkorian to post-Angkorian times. Examples include stelae with relief images of gods and goddesses, Buddhas, figures in niches, and other symbols.

ii. *Inscriptions*—Texts recording temple foundations or other information were inscribed on stone stelae from pre-Angkorian to post-Angkorian times. Such texts can also be found on temple doorjambs, pillars, and walls. The stelae are found in various shapes and sizes and can also bear decorative reliefs, for example a bull seated on a lotus flower.

d. Sculpture in Brick—Brick was used mainly in pre-Angkorian and some relatively early Angkorian religious architecture. Yet, typically, while the bodies of buildings were in brick, some of the decorative elements listed above—pediments, lintels, etc., were in stone. The brick, of light orange color, was usually sculpted with a preliminary relief, which was then covered over with white stucco, itself sculpted along brick contours. Some brick reliefs seem to have been fully sculpted and not meant to be covered in stucco. Brick temple reliefs include graphic design, as well as floral or animal decor. Human and animal figures can also be represented.

e. Boundary Markers—Boundary markers were typically carved from a solid block of stone and reach approximately one meter in height. Boundary markers typically date from the 10th through 13th centuries A.D. Boundary markers were decorated in either Buddhist or Hindu iconography. Hindu decorative themes often portray depictions of Vishnu, while Buddhist decorative themes often portray the Buddha or Lokeshvara, sometimes with an additional deity featuring a domed or pointed top as a stupa, symbolizing Nirvana.

2. Jewelry

In the Bronze and Iron Ages, beads were made from semi-precious stones such as agate, carnelian, and occasionally garnet. Agate beads are banded stone, black to light brown to white in their bands. These are usually carved into tubular shapes. Carnelian beads are reddish orange and glassy. These are usually ball-shaped. Bronze and Iron Age stone bracelets have triangular or rectangular cross-sections.

3. Chipped and Ground Tools

During the Bronze and Iron Ages, chipped and ground tools such as adzes, whetstones, and arrowheads were made of metamorphic rock.

B. Metal

This category consists mainly of bronze objects. No singular alloy is characteristic of Cambodian bronzes, which contain varying degrees of

copper, zinc, lead, iron, and tin. Surface colors can range from dark to light brown to goldish; a green patina is found on many objects. Some bronzes are also gilt. Some artwork in silver and gold also survives but is much less common.

Most objects were cast using ''lost wax'' casting with a ''clay core'' technique. This technique begins with a clay core, which is covered with a layer of wax before being covered with an outer layer of clay. The wax is then melted out with hot metal, which then hardened in the mold. Each casting is unique because the mold must be destroyed to obtain the metal object, Decor can be chiseled into the finished metal surface. As early as the Bronze and Iron Ages, these objects demonstrate a very high degree of technical skill. The ''repoussé'' technique, by which metal is beaten into shape in a concave mold, was also used.

Most of the objects presented here can be assigned to one of the periods defined for stone objects described previously: Bronze Age (c. 2500–500 B.C.), Iron Age (c. 500 B.C.–A.D. 550), pre-Angkorian (6th–9th century), Angkorian (9th–15th century), and post-Angkorian (15th century–A.D. 1750). Some pieces, in particular statuary and ritual or domestic accessories with motifs akin to architectural decor in stone, can also be assigned to specific styles and corresponding time periods within the larger historical periods.

1. Statues and Statuettes

Khmer metal statuary is comparable to Khmer stone statuary in both thematic and stylistic treatment (see general description of free-standing sculpture above). Statues can be represented alone or in groups ranging from human figures on animal mounts to triads, to more complex ensembles including architectural structures and decor. Though some colossal statues are known in both pre-Angkorian and Angkorian times, metal statues are, generally, relatively smaller in scale than their stone counterparts. Colossal statues can reach more than two meters in height; fragments demonstrate that one reclining figure measured some six meters in length. Such colossal pieces are nonetheless rare.

Statuettes as small as 15 cm. are common; larger statues more typically reach around one meter in height. Small-scale statues are generally composed of a single cast; separate pieces can be placed together, for example on a single pedestal, to form an ensemble. Larger works can be composed of multiple pieces fitted together with joints which can be concealed by chiseled decor. Some small statuettes are solid. Others are composed of two plaques, one for the front of the piece and the other for the back; the plaques are filled with a resin- or tar-based substance and soldered together. Larger pieces are hollow. Bronze statuaries were most prevalent in the Bayon period (late 12th to early 13th century).

Post-Angkorian bronze statues and statuettes, like their stone counterparts, take on certain characteristics of Siamese sculpture but can nonetheless usually be identified as Khmer due to certain types of decor and bodily form which maintain or develop from a specific Angkorian tradition.

a. Human and Hybrid (Part-Human, Part-Animal) Figures—Examples include, but are not limited to, standing male figures, Buddhas, four-armed male figures, female figures, gods, and goddesses, all in various attitudes and dress, including fragments of sculpture such as hands, arms, and heads.

b. Animal Figures—Animal representations in metal, typically bronze or silver, resemble those in stone in both thematic and stylistic treatment. Statues and statuettes include primarily bulls, lions, and elephants with one or three trunks. Other animals, such as horses, are also represented but are less common. Known colossal animal images date from 600 B.C. to the late 12th to early 13th century. Other animal figures, such as the mythical multiheaded serpent and mythical birds and monkeys, are also frequently found as decor of ritual or domestic objects.

c. Pedestals—Pedestals in bronze often appear to be simplified and reduced versions of their stone counterparts. One innovation of sculpting the base in openwork is to be noted.

2. Other Ritual and Domestic Objects

a. Special Objects Used in Ritual and Royal Pageantry—Special ritual objects include bells, bronze lotus flowers, conch shells, palanquin hooks, and musical instruments such as tambourines, etc.

b. Containers—Ritual and domestic containers include such items as perfume holders, oil lamps or bowls, lime pots, and boxes with decorative or sculptural features.

c. Decorative Elements from Ritual or Domestic Objects—In addition to the decorative accessory items noted below, there exist insignia finials for banner poles which often take the form of small human or animal figures.

d. Jewelry—Jewelry, including but not limited to rings, bracelets, arm bands, necklaces, earrings, decorative head pieces, and belts, could have been worn not only by people but also by statues. Bronze and Iron Age bracelets may be decorated with scrolls, spirals, and the heads of buffalo/cows. Different types of rings can be noted: ring-stamps, rings with ornamental settings, rings with settings in the form of a bull or other animal, and rings with settings for stones.

e. Instruments—Diverse percussion instruments, including varying sizes of bells, drums, gongs, and cymbals, were made in bronze. These may carry geometric designs and/or images of humans and animals.

f. Animal Fittings—In addition to bells to be suspended around the necks of animals, common to both the Angkorian and the post-Angkorian periods, various kinds of decorative animal harness accessories are known in post-Angkorian times.

g. Seals and Weights—In lead and tin. Seals may be in the form of amulets, pendants, ring seals, or other designs. Weights may be molded into snail shaped weights or may be in round or square token forms.

3. Architectural Elements

Metal architectural elements include ceiling or wall plaques sculpted with flowers or other motifs, floral plaques, and panels.

4. Weapons and Tools

Metal weapons and tools include arrow heads, daggers, spear tips, swords, helmets, and sickles.

5. Coins

Rare coinage from the Funan area of Southern Cambodia is included. Coinage dates from the 1st through 6th centuries A.D. In gold, silver, gilded silver, or tin. Designs vary, but coins often bear the image of a rising sun, a deer, a rooster, a Garuda, a team of oxen, and other designs. Inscriptions may be present and in Kharosthi script or Sanskrit.

C. Ceramics

Bronze and Iron Age ceramics are primarily earthenwares with varying colors and surface treatments. Later ceramics include both glazed and unglazed stonewares. Stonewares, and particularly glazed wares, are characteristic of the Angkorian period (9th to 15th century). Khmer ceramic production primarily concerned functional vessels (vases, pots, etc.) but also included sculptures of figurines and architectural or other decorative elements. Angkorian period vessels were generally turned on a wheel and fired in kilns. Vessels range in size from

around five to at least 70 cm. in height. Glaze colors are fairly limited and include creamy white, pale green (color of Chinese tea), straw-yellow, reddish-brown, brown, olive, and black. Light colors are generally glossy, while darker colors can be glossy or matte. Some two-colored wares, primarily combining pale green and brown, are also known. Decoration is relatively subtle, limited to incisions of graphic designs (criss-crosses, striations, waves, etc.), some sculpted decor such as lotus petal shapes, and molding (ridges, grooves, etc.); some applied work is also seen. Most decoration is found on shoulders and necks, as on lids; footed vessels are typically beveled at the base. Many wasters (imperfect pieces) are found and are also subject to illicit trade.

1. Sculpture

Ceramic sculpture known to have been produced in Cambodia proper largely concerns architectural elements. Though some figurines are known and are of notable refinement, statuary and reliefs in ceramics seem to be more characteristic of provincial production.

a. Architectural Elements—Some pre-Angkorian, Angkorian, and post-Angkorian period buildings, primarily but not exclusively royal or upper-class habitation, were roofed with ceramic tiles. The tiles include undecorated flat tiles and convex and concave pieces fitted together; a sculpted eave tile was placed as a decoration at the end of each row of tiles. These pieces were produced in molds and can be earthenware or stoneware (the latter unglazed or glazed). The unglazed pieces are orange in color; the glazed pieces are creamy white to pale green. Spikes placed at the crest of roof vaults can also be made in ceramics. These spikes were fit into a cylinder, also made of ceramics, which was itself fitted into the roof vault. Architectural ceramics sometimes have human heads and anthropomorphic or zoomorphic features.

b. Figurines and Ritual Objects—Figurines, statuettes, or plaques can include human, hybrid (part-human, part-animal), and animal figures. These are typically small in size (around 10 cm.). Ritual objects found in Cambodia proper are limited primarily to pieces in the shape of a conch shell, used for pouring sacral water or as blowing horns.

2. Vessels

a. Lidded Containers—Examples include round lidded boxes with incised or sculpted decoration, bulbous vases with lids, and jars with conical multi-tiered lids. Lids themselves include conical shapes and convex lids with knobs.

b. Lenticular Pots—Pots of depressed globular form are commonly referred to as lenticular pots. The mouth of the vessel is closed with a stopper.

c. Animal-shaped Pots—The depressed globular form can take animal shapes, with applied animal head, tail, or other body parts that can serve as handles. The animal-shaped pot is also found in other forms. Animal-shaped pots often contain remains of white lime, a substance used in betel nut chewing. Shapes include bulls, elephants, birds, horses, and other four-legged creatures.

d. Human-shaped Pots—Anthropomorphic vessels often have some applied and incised decoration representing human appendages, features, or clothing. The vessels are usually gourd-shaped bottles.

e. Bottles—This category includes a variety of vessels with raised mouths.

f. Vases—A variety of vases are grouped together under this general heading. Some are flat based and bulbous or conical. Others have pedestal feet. Some are characterized by their elongated necks. The ''baluster vases,'' for which Khmer ceramics are particularly known, have pedestal feet, conical bodies, relatively long necks, and flared mouths.

g. Spouted pots—These are kendi vessels, usually in the ''baluster vase'' form, that have short pouring spouts attached to the shoulder. Some spouted pots also have ring handles on the opposite shoulder.

h. Large jars—Large barrel-shaped jars or vats have flat bases, wide mouths, short necks, and flattened everted rims. They are always iron glazed.

i. Bowls—Bowls with broad, flat bases and flaring walls that are either straight or slightly concave, ending in plain everted or incurving rims, usually have green or yellowish glaze, although some brown-glazed bowls are known. Some are decorated with incised lines just below the rim. Most have deep flanges above the base; some are plain. Small hemispherical cups on button bases bear brown glaze. Another form is the bowl on a pedestal foot.

D. Glass

Bronze and Iron Age glass beads are usually very small (1–2 mm. across) and come in a range of colors from blue, green, red, and white. Other artifacts made of glass include spiral earrings and triangular bangle bracelets. The bracelets are light to dark green or blue-green and translucent.

E. Bone

Bone (and sometimes ivory or horn) beads, bangles, pendants, and combs are found at Bronze and Iron Age sites.

F. Wood

Archaeological wooden objects include architectural materials, free standing statues, and decorative wood used for religious and domestic purposes. The earliest wooden Buddhist images were produced during the pre-Angkorian period in the region of southern provinces, especially located in the Mekong delta, like the Angkor Borei site. Wooden archaeological materials date from 2500 B.C.–A.D. 1750. However, most architectural materials, wooden statues and decorative objects were found from the 9th century until A.D. 1750.

1. Architectural Elements

Includes wooden beams and ceiling panels. Ceiling panels are often decorated with floral motifs.

2. Human and Hybrid (Part-Human, Part-Animal) Figures

Examples include free-standing sculptures including Buddhist sculptures, human and hybrid (half-human, half-animal) figures. Free standing sculpture was often on a rectangular, round, or square pedestal base. Bases may or may not have decoration.

3. Animal Figures

Examples include birds, bulls, elephants, lions, and mythical animals.

4. Domestic Objects

Includes wooden tools and implements used for farming and fishing, and weapons.

II. Ethnological Material

Restricted ethnological material from Cambodia includes the categories listed below. The following list is representative only.

A. Architectural Materials

1. Wooden Architectural Materials

Includes carved wooden architectural elements from monasteries and pagodas, dating from A.D. 1400 through 1891. Architectural pieces (some of which may be lacquered) include apexes; ceilings; columns; decorative balusters; doors; finials; panel paintings; pediments and pediment facia boards; pilasters; pillars; roofs, roof supports, and eaves; wall plaques; wall bars; and windows. Some carved architectural material may be decorated with animal, animal/human hybrid, or other mythical figures.

2. Stone Architectural Materials

Simas are often decorated and carved stone pillars placed around the vihara of Buddhist monasteries at each of the eight compass directions marking the place where monks performed rituals. Sima forms are typically a decorative pillar with a conical top carved in various shapes. Some sima forms are spherical. The tops of simas are often gently peaked and may have Buddhist iconography. Decorative carved motifs typically include animals, Buddha's life stories, worshipers, and/or vegetal motifs. Simas that date from A.D. 1400 through 1891 are included.

B. Manuscripts

Includes handwritten manuscripts on paper or palm leaf dating from A.D. 1400 through 1891. May be bound or in single sheets or leaves.

1. Palm Leaf Manuscripts

Palm leaf manuscripts can be in single leaves or bound into volumes. The scripts are typically Khmer Mul script or Pali-Khmer. The text on palm leaf manuscripts tends to be incised and blackened. Palm leaf manuscripts typically discuss Buddhist scripture, sermons, legal writings, classical literary texts, secular topics, and poetry. Includes materials used to bind palm leaf manuscripts.

2. Paper Manuscripts

Paper manuscripts can be single sheets or in a folded book form. Paper was usually crafted from mulberry bark. Paper can be in a natural cream color with text written in black ink, or it can be blackened, and text written either with white chalk, a yellow gamboge ink or gold ink. Two main styles of Khmer script found on paper manuscripts include aksar chrieng (slanted script) and aksar mul (round script). Paper manuscripts typically discuss Buddhist scripture, sermons, prophesies, and medicine.

C. Religious Objects

1. Wooden Statues and Statuettes

Includes statues of adorned and unadorned Buddhas dating from A.D. 1400 through 1891. May be seated or standing. Bases may be carved, often with a lotus design. Wooden statues may be decorated with red lacquer, black lacquer, gold leaf, paint, and/or incrustations of glass. Standing statues typically range from 80 cm. to three meters in height. Smaller statuettes typically range from 50 to 70 cm. in height.

2. Metal Statues and Statuettes

Includes statues of adorned and unadorned Buddhas dating from A.D. 1400 through 1891. May be seated or standing. Bases may be carved, often with a lotus design. Heights vary, typically between 14 to 40 cm. Often crafted in bronze or silver.

3. Religious Objects

Includes both symbolic and anthropomorphic objects, bells, chariot fixtures, percussion instruments including varying sizes of gongs and cymbals, ritual candle holders (popil), and betel containers made of bronze dating from A.D. 1400 through 1891.

Inapplicability of Notice and Delayed Effective Date

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure under 5 U.S.C. 553(a)(1). For the same reason, a delayed effective date is not required under 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

Executive Order 12866

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 because it pertains to a foreign affairs function of the United States, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury's authority (or that of his/her delegate) to approve regulations related to customs revenue functions.

Troy A. Miller, the Senior Official Performing the Duties of the Commissioner, having reviewed and approved this document, has delegated the authority to electronically sign this document to the Director (or Acting Director, if applicable) of the Regulations and Disclosure Law Division for CBP, for purposes of publication in the **Federal Register**.

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise, Reporting and recordkeeping requirements.

Amendment to the CBP Regulations

For the reasons set forth above, part 12 of title 19 of the Code of Federal Regulations (19 CFR part 12) is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

■ 2. In § 12.104g, the table in paragraph (a) is amended by revising the entry for Cambodia to read as follows:

§ 12.104g Specific items or categories designated by agreements or emergency actions.

(a) * * *

State party	Cultural property	Decision No.
*	* * * * * *	*
Cambodia	Archaeological material of Cambodia ranging from approximately 2,500 B.C. to A.D. 1750, and ethnological material of Cambodia ranging from approximately A.D. 1400 to 1891.	CBP Dec. 23–11.
*	* * * * * *	*

* * * * *

Robert F. Altneu,

Director Regulations & Disclosure Law Division, Regulations & Rulings, Office of Trade U.S. Customs and Border Protection.

Approved:

Thomas C. West, Jr.,

Deputy Assistant Secretary of the Treasury for Tax Policy.

[FR Doc. 2023–20335 Filed 9–18–23; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 14

[Docket No. FDA–2023–N–3497]

Advisory Committee; Board of Tea Experts; Termination and Technical Amendment to the Citation for the Federal Advisory Committee Act

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the termination of the Board of Tea Experts by the Federal Tea Tasters Repeal Act of 1996. This document removes the Board of Tea Experts from the Agency's list of standing advisory committees. FDA is also updating the statutory citation to the Federal Advisory Committee Act to reflect recodification. This technical change aligns with the desire of Congress to incorporate various provisions that were enacted separately over a period of years; reorganize them; conforming style and terminology; modernizing obsolete language; and correcting drafting errors to remove ambiguities, contradictions, and other imperfections without changing the meaning of or effect of existing law.

DATES: This rule is effective September 19, 2023.

FOR FURTHER INFORMATION CONTACT: Michael Ortwerth, Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002, 301–796–8220; or *ACOMSSubmissions@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Board of Tea Experts was established on March 2, 1897, by the Tea Importation Act of 1897 (Pub. L. 54–358, section 2, March 2, 1897, 29 Stat. 604). The Board was responsible for making recommendations to the Secretary of the Treasury to fix and establish uniform standards of purity, quality, and fitness for consumption of all kinds of teas imported into the United States. The Board was terminated by the Federal Tea Tasters Repeal Act of 1996 (Pub. L. 104–128, section 3, April 9, 1996, 110 Stat. 1198). This document aligns FDA's list of standing advisory committees with existing law by removing the Board of Tea Experts.

Additionally, with the passage of the Act of December 27, 2022 (Pub. L. 117–286, 136 Stat. 4196), Congress made revisions in title 5 of the U.S. Code, as necessary to keep the title current and to make technical amendments to improve the U.S. Code. In doing so, it recodified the Federal Advisory Committee Act to chapter 10 of the U.S. Code. Thus, the appropriate regulatory citation to the Federal Advisory Committee Act is now 5 U.S.C. 1001 *et seq.* With this final rule, the new citation is updated in the authority citation of part 14 (21 CFR part 14).

Under 5 U.S.C. 553(b)(4)(B) and (d)(3) and 21 CFR 10.40(d) and (e), the Agency finds good cause to dispense with notice and public comment procedures and to proceed to an immediate effective date on this rule. Notice and public comment and a delayed effective date are unnecessary and not in the public interest as the Board was terminated by statute in 1996, and this final rule merely removes the name of the Board of Tea Experts from the list of standing advisory committees in § 14.100 (21 CFR 14.100) and updates the authority citation of 21 CFR part 14 to appropriately cite the Federal Advisory Committee Act (5 U.S.C. 1001 *et seq.*). This is a technical amendment to conform the citation to the recodification enacted on December 27, 2022, and does not substantively alter the legal authority underlying part 14.

Therefore, the Agency is amending the authority citation of part 14 and § 14.100(a) as set forth in the regulatory text of this document.

List of Subjects in 21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 14 is amended as follows:

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

■ 1. The authority citation for part 14 is revised to read as follows:

Authority: 5 U.S.C. 1001 *et seq.;* 15 U.S.C. 1451–1461; 21 U.S.C. 41–50, 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264, 284m, 284m–1; Pub. L. 107–109, 115 Stat. 1419.

§ 14.100 [Amended]

■ 2. Amend § 14.100 by removing paragraph (a)(1) and redesignating paragraphs (a)(2) through (5) as paragraphs (a)(1) through (4).

Dated: September 12, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–20012 Filed 9–18–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 550

Publication of Ethiopia Sanctions Regulations Web General License 4

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general license.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing one general license (GL) issued pursuant to the Ethiopia Sanctions Regulations: GL 4, which was previously made available on OFAC's website.

DATES: GL 4 was issued on November 12, 2021. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Compliance, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: *https://ofac.treasury.gov.*

Background

On November 12, 2021, OFAC issued GL 4 to authorize certain transactions otherwise prohibited by Executive Order (E.O.) 14046 of September 17, 2021, ''Imposing Sanctions on Certain

Persons With Respect to the Humanitarian and Human Rights Crisis in Ethiopia'' (86 FR 52389). On February 9, 2022, OFAC incorporated the prohibitions of E.O. 14046 into the Ethiopia Sanctions Regulations, 31 CFR part 550. GL 4 was made available on OFAC's website (*https://ofac.treasury.gov*) when it was issued. GL 4 is now expired. The text of this GL is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 14046 of September 17, 2021

Imposing Sanctions on Certain Persons With Respect to the Humanitarian and Human Rights Crisis in Ethiopia

GENERAL LICENSE NO. 4

Authorizing the Wind Down of Transactions Involving Hidri Trust or Red Sea Trading Corporation

(a) Except as provided in paragraph (b) of this general license, all transactions and activities prohibited by Executive Order (E.O.) 14046 that are ordinarily incident and necessary to the wind down of transactions involving Hidri Trust or Red Sea Trading Corporation are authorized through 12:01 a.m. eastern standard time, December 14, 2021.

Note to paragraph (a): OFAC's 50 Percent Rule does not apply to persons blocked solely pursuant to the blocking sanctions in section 2(a)(i)(A) of E.O. 14046.

(b) This general license does not authorize:

(1) Any debit to an account on the books of a U.S. financial institution of any blocked person under E.O. 14046; or

(2) Any transactions or activities otherwise prohibited by E.O. 14046, or prohibited by any part of 31 CFR chapter V, statute, or other E.O., or involving any blocked person other than the blocked persons identified in paragraph (a) of this general license.

Bradley T. Smith,

Acting Director, Office of Foreign Assets Control.

Dated: November 12, 2021.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

[FR Doc. 2023–20160 Filed 9–18–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 583

Publication of Global Magnitsky Sanctions Regulations Web General Licenses 1, 2, and Subsequent Iterations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing four general licenses (GLs) issued pursuant to the Global Magnitsky Sanctions Regulations: GLs 1, 1A, 2, and 2A, each of which was previously made available on OFAC's website.

DATES: GL 1 was issued on December 9, 2019. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Compliance, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: *https://ofac.treasury.gov.*

Background

On December 9, 2019, OFAC issued GL 1 to authorize certain transactions otherwise prohibited by the Global Magnitsky Sanctions Regulations, 31 CFR part 583 (''the Regulations''). Subsequently, on December 18, 2019, OFAC issued GL 1A, which superseded GL 1. On July 31, 2020, OFAC issued GL 2, also authorizing certain transactions otherwise prohibited by the Regulations. On September 25, 2020, OFAC issued GL 2A, which superseded GL 2. Each GL was made available on OFAC's website (*https://ofac.treasury.gov*) when it was issued. Each of these GLs is now expired. The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Global Magnitsky Sanctions Regulations

31 CFR Part 583

GENERAL LICENSE NO. 1

Authorizing Certain Activities Necessary to the Wind Down of Transactions Involving Ventspils Freeport Authority, Ventspils Attistibas Agentura, Biznesa Attistibas Asociacija, and Latvijas Tranzita Biznesa Asociacija

(a) Except as provided in paragraph (b) of this general license, all transactions and activities prohibited by the Global Magnitsky Sanctions Regulations, 31 CFR part 583, that are ordinarily incident and necessary to the wind down of transactions involving, directly or indirectly, one or more of the following entities, or any entity in which one or more of the following entities owns, directly or indirectly, a 50 percent or greater interest, are authorized through 12:01 a.m. eastern standard time, January 8, 2020:

- Ventspils Freeport Authority;
- Ventspils Attistibas Agentura (Ventspils Development Agency);
- Biznesa Attistibas Asociacija (Business Development Association); or
- Latvijas Tranzita Biznesa Asociacija (Latvian Transit Business Association).

(b) This general license does not authorize:

(1) Any debit to an account on the books of a U.S. financial institution of the entities listed in paragraph (a), or any entity in which one or more of the entities in paragraph (a) owns, directly or indirectly, a 50 percent or greater interest;

(2) Any transactions or dealings otherwise prohibited by the Global Magnitsky Sanctions Regulations, or any other part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the blocked persons described in paragraph (a) of this general license; or

(3) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V, or any Executive order except as authorized by paragraph (a) of this general license.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: December 9, 2019.

OFFICE OF FOREIGN ASSETS CONTROL

Global Magnitsky Sanctions Regulations

31 CFR Part 583

GENERAL LICENSE NO. 1A

Authorizing Certain Activities Necessary to the Wind Down of Transactions Involving Ventspils Attistibas Agentura, Biznesa Attistibas Asociacija, and Latvijas Tranzita Biznesa Asociacija

(a) Except as provided in paragraph (b) of this general license, all transactions and activities prohibited by the Global Magnitsky Sanctions Regulations, 31 CFR part 583, that are ordinarily incident and necessary to the wind down of transactions involving, directly or indirectly, one or more of the following entities, or any entity in which one or more of the following entities owns, directly or indirectly, a 50 percent or greater interest, are authorized through 12:01 a.m. eastern standard time, January 8, 2020:

- Ventspils Attistibas Agentura (Ventspils Development Agency);
- Biznesa Attistibas Asociacija (Business Development Association); or
- Latvijas Tranzita Biznesa Asociacija (Latvian Transit Business Association).

(b) This general license does not authorize:

(1) Any debit to an account on the books of a U.S. financial institution of the entities listed in paragraph (a), or any entity in which one or more of the entities in paragraph (a) owns, directly or indirectly, a 50 percent or greater interest;

(2) Any transactions or dealings otherwise prohibited by the Global Magnitsky Sanctions Regulations, or any other part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the blocked persons described in paragraph (a) of this general license; or

(3) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V, or any Executive order except as authorized by paragraph (a) of this general license.

(c) Effective December 18, 2019, General License 1, dated December 9, 2019, is replaced and superseded in its entirety by this General License 1A.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: December 18, 2019.

OFFICE OF FOREIGN ASSETS CONTROL

Global Magnitsky Sanctions Regulations

31 CFR Part 583

GENERAL LICENSE NO. 2

Authorizing Certain Wind Down and Divestment Transactions and Activities Related to Blocked Subsidiaries of the Xinjiang Production and Construction Corps (XPCC)

(a) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by the Global Magnitsky Sanctions Regulations, 31 CFR part 583 (GMSR), that are ordinarily incident and necessary to the wind down of transactions involving any entity in which the XPCC owns, directly or indirectly, a 50 percent or greater interest (Blocked XPCC Subsidiary), are authorized through 12:01 a.m. eastern daylight time, September 30, 2020.

(b) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by the GMSR that are ordinarily incident and necessary to (1) divest or transfer debt, equity, or other holdings in any Blocked XPCC Subsidiary to a non-U.S. person, or (2) facilitate the transfer of debt, equity, or other holdings in any Blocked XPCC Subsidiary by a non-U.S. person to another non-U.S. person, are authorized through 12:01 a.m. eastern daylight time, September 30, 2020.

(c) The transactions and activities authorized in paragraph (b) include facilitating, clearing, and settling transactions that are ordinarily incident and necessary to a U.S. person's divestment to a non-U.S. person of debt, equity, or other holdings in any Blocked XPCC Subsidiary.

(d) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to any other part of 31 CFR chapter V;

(2) Any debit to the account of any Blocked XPCC Subsidiary on the books of a U.S. financial institution;

(3) U.S. persons to sell debt, equity, or other holdings to; to purchase or invest in debt, equity, or other holdings in; or to facilitate such transactions with, directly or indirectly, any person whose property and interests in property are blocked pursuant to the GMSR, including any Blocked XPCC Subsidiary, other than purchases of or investments in debt, equity, or other holdings in any Blocked XPCC Subsidiary that are ordinarily incident and necessary to the divestment or transfer of investments in debt, equity, or other holdings in any Blocked XPCC Subsidiary as described in paragraph (b); or

(4) Any transactions or dealings involving the property or interests in property of any person whose property and interests in property are blocked pursuant to the GMSR, including the XPCC, or any person whose property and interests in property are blocked pursuant to any other part of 31 CFR chapter V, other than Blocked XPCC Subsidiaries.

(e) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the name of this general license, the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email (preferred) to *OFACReport@treasury.gov*.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: July 31, 2020.

OFFICE OF FOREIGN ASSETS CONTROL

Global Magnitsky Sanctions Regulations

31 CFR Part 583

GENERAL LICENSE NO. 2A

Authorizing Certain Wind Down and Divestment Transactions and Activities Related to Blocked Subsidiaries of the Xinjiang Production and Construction Corps (XPCC)

(a) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by the Global Magnitsky Sanctions Regulations, 31 CFR part 583 (GMSR), that are ordinarily incident and necessary to the wind down of transactions involving any entity in which the XPCC owns, directly or indirectly, a 50 percent or greater interest (Blocked XPCC Subsidiary), are authorized through 12:01 a.m. eastern standard time, November 30, 2020.

(b) Except as provided in paragraph (d) of this general license, all transactions and activities otherwise prohibited by the GMSR that are ordinarily incident and necessary to (1) divest or transfer debt, equity, or other holdings in any Blocked XPCC Subsidiary to a non-U.S. person, or (2) facilitate the transfer of debt, equity, or other holdings in any Blocked XPCC Subsidiary by a non-U.S. person to another non-U.S. person, are authorized through 12:01 a.m. eastern standard time, November 30, 2020.

(c) The transactions and activities authorized in paragraph (b) include facilitating, clearing, and settling transactions that are ordinarily incident and necessary to a U.S. person's divestment to a non-U.S. person of debt, equity, or other holdings in any Blocked XPCC Subsidiary.

(d) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to any other part of 31 CFR chapter V;

(2) Any debit to the account of any Blocked XPCC Subsidiary on the books of a U.S. financial institution;

(3) U.S. persons to sell debt, equity, or other holdings to; to purchase or invest in debt, equity, or other holdings in; or to facilitate such transactions with, directly or indirectly, any person whose property and interests in property are blocked pursuant to the GMSR, including any Blocked XPCC Subsidiary, other than purchases of or investments in debt, equity, or other holdings in any Blocked XPCC Subsidiary that are ordinarily incident and necessary to the divestment or transfer of investments in debt, equity, or other holdings in any Blocked XPCC Subsidiary as described in paragraph (b); or

(4) Any transactions or dealings involving the property or interests in property of any person whose property and interests in property are blocked pursuant to the GMSR, including the XPCC, or any person whose property and interests in property are blocked pursuant to any other part of 31 CFR chapter V, other than Blocked XPCC Subsidiaries.

(e) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the name of this general license, the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email (preferred) to *OFACReport@treasury.gov*.

(f) Effective September 25, 2020, General License No. 2, dated July 31, 2020, is replaced and superseded in its entirety by this General License 2A.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: September 25, 2020.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

[FR Doc. 2023–20161 Filed 9–18–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2023–0768]

Special Local Regulations; Clearwater Offshore Nationals/Race World Offshore; Gulf of Mexico; Clearwater, FL

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

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce special local regulations for the Clearwater offshore Nationals/Race World Offshore on September 24, 2023, to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Seventh Coast Guard District identifies the regulated area for this event in Clearwater, FL. During the enforcement periods, the operator of any vessel in the regulated area must comply with directions from the Patrol Commander or any designated representative.

DATES: The regulations in 33 CFR 100.703 will be enforced from 11:30 a.m. until 4 p.m., on September 24, 2023, for the location identified in Item 6 in table 1 to § 100.703.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Marine Science Technician First Class Mara Brown, Sector St. Petersburg Prevention Department, Coast Guard; telephone (813) 228–2191, email *mara.j.brown@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations in 33 CFR 100.703, table 1 to § 100.703, Item No. 6, for the Clearwater Offshore Nationals/Race World Offshore regulated area from 11:30 a.m. until 4 p.m., on September 24, 2023. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for recurring marine events, Sector St. Petersburg, § 100.703, table 1 to § 100.703, Item No. 6, specifies the location of the regulated area for the Clearwater Offshore Nationals/Race World Offshore which encompasses portions of the Gulf of Mexico near Clearwater, FL. During the enforcement periods, as reflected in § 100.703(c), if you are the operator of a vessel in the regulated area you must comply with directions from the Patrol Commander or any designated representative.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners, marine information broadcasts, or both.

Dated: September 13, 2023.

Michael P. Kahle,

Captain, U.S. Coast Guard, Captain of the Port St. Petersburg.

[FR Doc. 2023–20223 Filed 9–18–23; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[MB Docket Nos. 03–185 and 22–261; FCC 23–25; FR ID 171698]

Establishing Rules for Digital Low Power Television and Television Translator Stations

AGENCY: Federal Communications Commission

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collections adopted in the Report and Order in MB Docket Nos. 03–185, 22–261 FCC 23–25, *Establishing Rules for Digital Low Power Television and Television Translator Stations,* which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of those rules.

DATES: The amendments to 47 CFR 74.703, 74.734, 74.735, 74.751, 74.763, and 74.784, published at 88 FR 30654 on May 12, 2023, are effective September 19, 2023.

FOR FURTHER INFORMATION CONTACT: Emily Harrison, Media Bureau, Video Division, at (202) 418–1665 or *Emily.Harrison@fcc.gov.* For information regarding the Paperwork Reduction Act (PRA) information collection requirements contained in the PRA, contact Cathy Williams, Office of Managing Director, at (202) 418–2918 or *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that OMB approved the information collection requirements in 47 CFR 74.703, 74.734, 74.735, 74.751, 74.763, and 74.784, on September 7, 11, and 12, 2023. These rules were modified in the Report and Order in MB Docket Nos. 03–185, 22–261, FCC 23–25, *Establishing Rules for Digital Low Power Television and Television Translator Stations,* published at 88 FR 30654 on May 12, 2023. The Commission publishes this document as an announcement of the compliance date of the rules. Rule amendments adopted in the Report and Order which did not require OMB approval became effective on June 12, 2023.

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval on September 7, 11, and 12, 2023, for the information collection requirements contained in 47 CFR 74.703, 74.734, 74.735, 74.751, 74.763, and 74.784. Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Numbers for the information collection requirements in these rules are 3060–1311, 3060–0236, 3060–0248 and 3060–0250.

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

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

OMB Control Number: 3060–0250.

OMB Approval Date: September 7, 2023.

OMB Expiration Date: September 30, 2026.

Title: Sections 73.1207, 74.784, and 74.1284, Rebroadcasts.

Form No.: N/A.

Respondents: Businesses or other for-profit entities, Not for-profit institutions and State, local or Tribal Governments.

Number of Respondents and Responses: 6,462 respondents and 11,012 responses.

Estimated Time per Response: 0.50 hours.

Frequency of Response: Recordkeeping requirement; on occasion reporting requirement; semi-annual reporting requirement; third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in sections 154(i) and 325(a) of the Communications Act of 1934, as amended.

Total Annual Burden: 5,506 hours.

Annual Cost Burden: No cost.

Needs and Uses: The Commission adopted on April 17, 2023, the Report and Order (*R&O*), *In the Matter of Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Update of Parts 74 of the Commission's Rules Related to Low Power Television and Television Translator Stations,* MB Docket Nos. 03–185 and 22–261, FCC 23–25 (88 FR 30654 on May 12, 2023). The *R&O* adopted the following revision to 47 CFR 74.784(b):

Section 74.784(b) states that a licensee of a low power television or TV translator station shall not rebroadcast the programs of any other TV broadcast station without obtaining prior consent of the station whose signals or programs are proposed to be retransmitted. Section 74.784(b) requires licensees of low power television and TV translator stations to notify the Commission when rebroadcasting programs or signals of another station. This notification shall include the call letters of each station rebroadcast. The licensee of the low power television or TV translator station shall certify that written consent has been obtained from the licensee of the station whose programs are retransmitted. This notification shall be provided by email to *TVRebroadcast@fcc.gov,* the Media Bureau, Video Division's email box.

The information collection requirements contained in 47 CFR 73.1207 and 74.1284 remain the same. They are as follows:

Section 73.1207 requires that licensees of broadcast stations obtain written permission from an originating station prior to retransmitting any program or any part thereof. A copy of the written consent must be kept in the station's files and made available to the FCC upon request. Section 73.1207 also specifies procedures that broadcast stations must follow when rebroadcasting time signals, weather bulletins, or other material from non-broadcast services.

Section 74.1284 requires that the licensee of a FM translator station obtain prior consent to rebroadcast programs of any broadcast station or other FM translator. The licensee of the FM translator station must notify the Commission of the call letters of each station rebroadcast and must certify that written consent has been received from the licensee of that station. Also, AM stations are allowed to use FM translator stations to rebroadcast the AM signal. FM translator stations are low power facilities licensed for the limited purpose of retransmitting the signals of either a full power radio station or another translator station. *See* 47 CFR 74.1201.

OMB Control Number: 3060–0236.

OMB Approval Date: September 11, 2023.

OMB Expiration Date: September 30, 2026.

Title: Section 74.703, Interference.

Form Number: N/A.

Respondents: Businesses or other for-profit entities, State, local or Tribal Governments and Not for-profit institutions.

Number of Respondents/Responses: 50 respondents and 50 responses.

Estimated Hours per Response: 2 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 100 hours.

Total Annual Cost: $100,000.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in section 154(i) of the Communications Act of 1934, as amended.

Needs and Uses: The Commission adopted on April 17, 2023, the Report and Order (*R&O*), *In the Matter of Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Update of Parts 74 of the Commission's Rules Related to Low Power Television and Television Translator Stations,* MB Docket Nos. 03–185 and 22–261, FCC 23–25. The *R&O* adopted the following revision to 47 CFR 74.703(h):

Section 74.703(h) requires in each instance where suspension of operation is required, the licensee shall submit a full report to the FCC via a Resumption of Operations notice in the Commission's Licensing and Management System (LMS) after operation is resumed, containing details of the nature of the interference, the source of the interfering signals, and the remedial steps taken to eliminate the interference.

The Commission is reinstating OMB control number 3060–0236 back into the Office of Management and Budget's (OMB) inventory. However, the Commission adopted on October 25, 2021, the Order (*Order*), *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auction,* GN Docket No. 12–268 (86 FR 66193, November 22, 2021). The *Order* adopted a number of changes, including removing 47 CFR 74.703(f) and (g). This means that collection 3060–0236 now only covers the information collection requirements covered under 47 CFR 74.703(h).

OMB Control Number: 3060–0248.

OMB Approval Date: September 12, 2023.

OMB Expiration Date: September 30, 2026.

Title: Section 74.751, Modification of Transmission Systems.

Form No.: N/A.

Respondents: Businesses or other for-profit entities, Not for-profit institutions and State, local or Tribal Governments.

Number of Respondents and Responses: 400 respondents and 400 responses.

Estimated Time per Response: 0.50 hours.

Frequency of Response: On occasion reporting requirement; Recordkeeping requirement.

Total Annual Burden: 200 hours.

Annual Cost Burden: No cost.

Needs and Uses: The Commission adopted on April 17, 2023, the Report and Order (*R&O*), *In the Matter of Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Update of Parts 74 of the Commission's Rules Related to Low Power Television and Television Translator Stations,* MB Docket Nos. 03–185 and 22–261, FCC 23–25. The *R&O* adopted the following revisions to 47 CFR 74.751:

Section 74.751(a) requires licensees of low power TV or TV translator stations to send written notification to the FCC of equipment changes which may be made at licensee's discretion without the use of a formal application.

Section 74.751(b)(4) requires low power TV or TV translator stations to file an application in the Commission's Licensing and Management System (LMS) on FCC Form 2100, Schedule C, requesting authorization for all antenna relocations.

Section 74.751(c) provides that notwithstanding the requirement in 47 CFR 74.751(b)(4), a station may file in LMS a correction of geographic coordinates where the change is 3 seconds or fewer in latitude and/or 3 seconds or fewer in longitude, provided there is no physical change in location and no other licensed parameters are changed. An exhibit should be attached to the application(s) specifying it is a coordinate correction. Stations seeking to correct coordinates by less than 3 seconds of latitude and/or longitude may do so without paying a filing fee.

Section 74.751(d) requires that licensees of low power TV or TV translator stations place in the station records a certification that the installation of new or replacement transmitting equipment complies in all respects with the technical requirements of this section and the station authorization.

OMB Control Number: 3060–1311.

OMB Approval Date: September 7, 2023.

OMB Expiration Date: September 30, 2026.

Title: Sections 74.734, 74.735, and 74.763, Electronic Filings.

Form No.: N/A.

Respondents: Businesses or other for-profit entities, Not for-profit institutions and State, local or Tribal Governments.

Number of Respondents and Responses: 50 respondents and 250 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: On occasion reporting requirement; Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 500 hours.

Annual Cost Burden: $250,000.

Needs and Uses: The Commission adopted on April 17, 2023, the Report and Order (*R&O*), *In the Matter of Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Update of Parts 74 of the Commission's Rules Related to Low Power Television and Television Translator Stations,* MB Docket Nos. 03–185 and 22–261, FCC 23–25. The *R&O* adopted a number of revisions to the Commission's rules to specify electronic rather than paper submission in the following instances:

Section 74.734(a)(4) requires that a notification must be made with the Commission via a Change of Control Point Notice in the Commission's Licensing and Management System (LMS) providing the name, address, and telephone number of person(s) who may be called to secure suspension of operation of a transmitter promptly should the FCC deem such action necessary.

Section 74.735(c)(4) requires that all azimuth plane patterns be plotted in a PDF attachment to the application in LMS in a size sufficient to be easily viewed. Section 74.735(c)(6) requires that all azimuth plane patterns be plotted in a PDF attachment to the application in LMS in a size sufficient to be easily viewed. Section 74.735(c)(7) requires that if a matrix pattern is submitted in the LMS application form, similar tabulations must be provided as necessary in the form of a spreadsheet attachment to the application in LMS to accurately represent the pattern.

Section 74.763(b) provides that in the event that causes beyond the control of the low power or translator station licensee make it impossible to continue operating, the licensee may discontinue operation for a period of not more than 30 days without further authority from the FCC. Section 74.763(b) requires that no later than the tenth day of discontinued operation, notification must be sent electronically via a Suspension of Operations Notice filing in the Commission's LMS database. In the event normal operation is restored before the end of the 30 day period, the licensee must notify the FCC of the date that normal operations resumed by filing a Resumption of Operations Notice filing in LMS. Finally, § 74.763(b) requires that if causes beyond the control of the licensee make it impossible to comply within the allowed period, a licensee may make a request for Special Temporary Authority via LMS no later than the 30th day for such additional time as may be necessary.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2023–20172 Filed 9–18–23; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1812, 1813, 1816, 1819, 1823, 1832, and 1852

[Notice: (23–089)]

RIN 2700–AE71

Federal Acquisition Regulation Supplement: Revision of the Definition of ''Commercial Item'' (NFS Case 2022–N003)

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: National Aeronautics and Space Administration (NASA) is issuing a final rule amending the NASA Federal Acquisition Regulation Supplement (NFS) to conform to changes in the Federal Acquisition Regulation (FAR) that reflect an updated ''commercial item'' definition pursuant to a section of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232).

DATES: *Effective:* October 19, 2023.

FOR FURTHER INFORMATION CONTACT: Andrew O'Rourke, NASA HQs, Office of Procurement Management and Policy Division, LP–011, 300 E Street SW, Washington, DC 20456–0001. Telephone 202–358–4560; facsimile 202–358–3082.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule amends the NASA FAR Supplement (NFS) to change instances of ''commercial item(s)'' with commercial product(s), commercial services(s), or both commercial product(s) and commercial service(s) to match similar actions taken in the Federal Acquisition Regulation (FAR). FAR Case 2018–018 was published as a final rule at 86 FR 61017 on November 4, 2021, to implement section 836 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232) to separate the definition of ''commercial item'' into the definitions of ''commercial product'' and ''commercial service.''

It is important to note that the amendment to separate ''commercial item'' with ''commercial product'' and ''commercial service'' does not expand or shrink the universe of products or services that the Government may procure using NFS part 1812, nor does it change the terms and conditions vendors must comply with.

This rule does not add any new solicitation provisions or contract clauses. This rule merely replaces the term ''commercial item(s)'' with ''commercial product(s),'' ''commercial service(s),'' ''commercial product(s) or commercial service(s),'' or ''commercial product(s) and commercial service(s)'' in the NFS including in part 1852, as appropriate. It does not add any new burdens because the case does not add or change any requirements with which vendors must comply.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

''Publication of proposed regulations'', 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because NASA is not issuing a new regulation; rather, this rule is merely an editorial change and will provide consistent language to the FAR (pursuant to section 836 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232)) throughout the NFS. The rule does not expand or shrink the universe of products or services that the Government may procure using NFS part 1812, nor does it change the terms and conditions vendors must comply with. These requirements affect only the internal operating procedures of the Government.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804. requirements with which vendors must comply.

IV. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a ''major 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 cannot take effect until 60 days after it is published in the **Federal Register**. This rule has been reviewed and determined by OMB not to be a ''major rule'' under 5 U.S.C. 804(2).

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to this rule, because an opportunity for public comment is not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see Section II. of this preamble). Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 1812, 1813, 1816, 1819, 1823, 1832, and 1852

Government procurement.

Erica Jones,

NASA FAR Supplement Manager.

Accordingly, 48 CFR parts 1812, 1813, 1816, 1819, 1823, 1832, and 1852 are amended as follows:

■ 1. The authority citation for parts 1812, 1813, 1816, 1819, 1823, 1832 and 1852 continues to read as follows:

Authority: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

PARTS 1812, 1813, 1816, 1819, 1823, 1832, and 1852—[AMENDED]

■ 2. In parts 1812, 1816, 1819, 1823, 1832, and 1852 revise all references to ''Commercial Items'' to read ''Commercial Products and Commercial Services.''

■ 3. Amend Part 1832, by—

■ a. Revising the subpart heading of 1832.1.

■ b. Revising the heading to section 1832.111.

■ c. Revising the subpart heading of 1832.4.

The revisions read as follows:

Subpart 1832.1—Other Than Commercial Products and Services Financing

* * * * *

1832.111 Contractor clauses for other than commercial purchases

Subpart 1832.4—Advance Payments for Other Than Commercial Products and Commercial Services

* * * * *

[FR Doc. 2023–17720 Filed 9–18–23; 8:45 am]

BILLING CODE 7510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220523–0193; RTID 0648–XD337]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; General Category September Time Period Quota Transfer and Closure

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

ACTION: Temporary rule; quota transfer and closure.

SUMMARY: NMFS is transferring 21.7 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the General category September time period resulting in an adjusted September time period subquota of 210 mt and a Reserve category quota of 5.7 mt. NMFS is also simultaneously closing the General category fishery for large medium and giant (*i.e.,* measuring 73 inches (185 centimeters)) curved fork length or greater) BFT for the September time period. This action also waives the previously scheduled restricted-fishing days (RFDs) for the remainder of the September time period. With the RFDs waived during the closure, fishermen aboard General category permitted vessels and Highly Migratory Species (HMS) Charter/Headboat permitted vessels may tag and release BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs. On October 1, 2023, the fishery will reopen automatically and previously scheduled RFDs for October will resume.

DATES: The transfer is effective September 17, 2023, through September 30, 2023. The closure is effective 11:30 p.m., local time, September 17, 2023, through September 30, 2023.

FOR FURTHER INFORMATION CONTACT: Larry Redd, Jr., *larry.redd@noaa.gov,* 301–427–8503, and Ann Williamson, *ann.williamson@noaa.gov,* 301–427–8503.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

As described in § 635.27(a), the current baseline U.S. BFT quota is 1,316.14 metric tons (mt) (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area). The baseline quotas for the General and Reserve categories are 710.7 mt and 38.2 mt, respectively. The General category baseline quota is suballocated to different time periods. Relevant to this action, the baseline subquota for the

September time period is 188.3 mt. To date, NMFS has published one action that resulted in adjustments to the Reserve category quota, resulting in an adjusted Reserve category quota of 27.4 mt (88 FR 48136, July 26, 2023). In this action, NMFS is transferring 21.7 mt from the Reserve category to the General category September time period. This transfer results in 210 mt (188.3 mt + 21.7 mt = 210 mt) being available for the General category September time period. This transfer also results in 5.7 mt (27.4 mt − 21.7 mt = 5.7 mt) being available in the Reserve category through the remainder of the 2023 fishing year, or until modified in a later action.

Transfer of 21.7 mt From the Reserve Category to the General Category

Under § 635.27(a)(8), NMFS has the authority to transfer quota among fishing categories or subcategories after considering the determination criteria provided under § 635.27(a)(7). NMFS has considered all of the relevant determination criteria and their applicability to this inseason quota transfer. These criteria include, but are not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(7)(i)), biological samples collected from BFT landed by General category fishermen and provided by BFT dealers continue to provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT in the General category would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS considered the catches of the General category quota to date and the likelihood of overharvests and an earlier closure of the General category if no adjustment is made (§ 635.27(a)(7)(ii) and (ix)). To date, preliminary landings data indic ate that the General category has landed approximately 132.5 mt for the September time period. Without a quota transfer at this time, the General category would have exceeded the available quota and NMFS would have needed to close the General category fishery earlier. If this had happened, participants would have had to stop BFT fishing activities while commercial-sized BFT remain available in the areas where General category permitted vessels operate. A quota transfer of 21.7 mt at this time provides limited additional opportunities to harvest the U.S. BFT quota while avoiding a large exceedance.

Regarding the projected ability of the vessels fishing under the General category to harvest the additional amount of BFT quota transferred before the end of the fishing year (§ 635.27(a)(7)(iii)), NMFS considered General category landings over the last several years and landings to date this year. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors. Current reports indicate the General category has already harvested almost all of the transferred 21.7 mt. Thus, this quota transfer would allow fishermen to take advantage of the availability of BFT on the fishing grounds and provide a reasonable opportunity to harvest the available U.S. BFT quota.

NMFS also considered the estimated amounts by which quotas for other gear categories of the fishery might be exceeded (§ 635.27(a)(7)(iv)) and the ability to account for all 2023 landings and dead discards. In the last several years, total U.S. BFT landings have been below the available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. NMFS anticipates having sufficient quota to account for landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations.

NMFS also considered the effects of the adjustment on the BFT stock and the effects of the transfer on accomplishing the objectives of the FMP (§ 635.27(a)(7)(v) and (vi)). This transfer would be consistent with established quotas and subquotas, which are implemented consistent with ICCAT Recommendation 22–10, ATCA, and the objectives of the 2006 Consolidated HMS FMP and amendments. In establishing these quotas and subquotas and associated management measures, ICCAT and NMFS considered the best scientific information available, objectives for stock management and status, and effects on the stock. This quota transfer is in line with the established management measures and stock status determinations. Another principal consideration is the objective of providing opportunities to harvest the available General category quota without exceeding the annual quota. This consideration is based on the objectives of the 2006 Consolidated HMS FMP and its amendments, and includes achieving optimum yield on a continuing basis and optimizing the ability of all permit categories to harvest available BFT quota allocations (related to § 635.27(a)(7)(x)). Specific to the General category, this includes providing opportunities equitably across all time periods.

Given these considerations, NMFS is transferring 21.7 mt of the available 27.4 mt of Reserve category quota to the General category September time period subquota. Therefore, NMFS adjusts the General category September time period subquota to 210 mt and the Reserve category quota to 5.7 mt for the remainder of the 2023 fishing year, or until modified by a later action.

Closure of the September 2023 General Category Fishery

Under § 635.28(a)(1), NMFS files a closure action with the Office of the Federal Register for publication when a BFT quota (or subquota) is reached or is projected to be reached. Retaining, possessing, or landing BFT under that quota category is prohibited on or after the effective date and time of a closure notice for that category until the opening of the relevant subsequent quota period or until such date as specified.

To date, reported landings for the General category September time period total approximately 132.5 mt. Based on these landings data, NMFS has determined that the adjusted General category September time period subquota of 210 mt is projected to be reached and exceeded shortly. Therefore, retaining, possessing, or landing large medium or giant (*i.e.,* measuring 73 inches (185 cm) curved fork length or greater) BFT by persons aboard vessels permitted in the Atlantic Tunas General category and HMS Charter/Headboat permitted vessels (while fishing commercially) must cease at 11:30 p.m. local time on September 17, 2023. This action applies to Atlantic Tunas General category (commercial) permitted vessels and HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT and is taken consistent with the regulations at § 635.28(a)(1). The General category will automatically reopen October 1, 2023, for the October through November 2023 time period, with a default daily retention limit of one BFT per vessel.

Adjustment of Daily Retention Limit for Selected Dates

On May 25, 2023 (88 FR 33839), NMFS published a final rule implementing RFDs every Tuesday, Friday, and Saturday from July 1 through November 30, 2023. Since the fishery will be closed for the remainder of the September time period, NMFS waives the previously scheduled RFDs

for the remainder of that time period. Previously scheduled RFDs will resume on October 1, 2023.

With the RFDs waived during the closure, consistent with § 635.23(a)(4), fishermen aboard General category permitted vessels and HMS Charter/Headboat permitted vessels may tag and release BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. All BFT that are released must be handled in a manner that will maximize their survival, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the ''Careful Catch and Release'' brochure available at *https://www.fisheries.noaa.gov/resource/outreach-and-education/careful-catch-and-release-brochure/.*

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustments, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat category vessel owners are required to report their own catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing *https://www.hmspermits.noaa.gov* or by using the HMS Catch Reporting app, or calling (888) 872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

After the fishery reopens on October 1, depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments are necessary to ensure available subquotas are not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may access *https://www.hmspermits.noaa.gov,* for updates on quota monitoring and inseason adjustments.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act and regulations at 50 CFR part 635 and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS (AA) finds that pursuant to 5 U.S.C. 533(b)(B), there is good cause to waive prior notice and opportunity to provide comment on this action, as notice and comment would be impracticable and contrary to this action for the following reasons. Specifically, the regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Providing prior notice and opportunity for public comment on this quota transfer and closure of the General category is impracticable and contrary to the public interest as the General category fishery is currently underway for the September time period. Based on General category catch rates, a delay in this action would likely result in BFT landings exceeding the adjusted September 2023 General category quota. Subquota exceedance may result in the need to reduce quota for the General category later in the year and thus could affect later fishing opportunities. NMFS could not have proposed this action earlier, as it needed to consider and respond to updated landings data, in deciding to transfer a portion of the Reserve category quota to the General category quota. This action does not raise conservation and management concerns. Transferring quota from the Reserve category to the General category does not affect the overall U.S. BFT quota, and available data show the adjustment would have a minimal risk of exceeding the ICCAT-allocated quota. NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the U.S. BFT quota and the inseason adjustment criteria.

For all of the above reasons, the AA finds that pursuant to 5 U.S.C. 553(d), there is good cause to waive the 30-day delay in effective date.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: September 13, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–20148 Filed 9–14–23; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 88, No. 180
Tuesday, September 19, 2023

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 624

[Docket No. FHWA–2020–0006]

RIN 2125–AF89

Interstate System Access

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: FHWA proposes and requests comments on regulations governing changes in access to the Dwight D. Eisenhower National System of Interstate and Defense Highways (Interstate System). As a condition of funding for Federal-aid highway projects, Federal law prohibits State departments of transportation (State DOT) from adding any point of access to or from the Interstate System without the approval of the Secretary of Transportation (Secretary). This proposed rule would codify and clarify existing policies and practices regarding State DOT requests for and FHWA approval of changes in access to the Interstate System.

DATES: Comments must be received on or before October 19, 2023. Late comments will be considered to the extent practicable. In compliance with the Paperwork Reduction Act, FHWA is also seeking comments on a new information collection. All comments relating to the information collection requirements should be submitted to the Office of Management and Budget (OMB) and to FHWA at the addresses listed in the **ADDRESSES** section on or before October 19, 2023.

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

- *Fax:* 1–202–493–2251;
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590;
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or
- *Electronically through the Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments.

Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attn: Desk Officer for FHWA. It is requested that comments sent to the OMB also be sent to the FHWA rulemaking docket identified in the heading of this document.

Instructions: All submissions must include the agency name, docket name, and docket number (FHWA–2020–0006) or Regulatory Identification Number (RIN) for this rulemaking (2125–AF89). Note that all comments received will be posted without change to: *https://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Clayton Wellman, Office of Preconstruction, Construction and Pavements (HICP–10), (202) 366–4658, or via email at *Clayton.Wellman@dot.gov*, or Mr. Lev Gabrilovich, Office of the Chief Counsel (HCC–30), (202) 366–3813, or via email at *Lev.Gabrilovich@dot.gov.* Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document and all comments received may be viewed online through the Federal eRulemaking portal at *www.regulations.gov* using the docket number listed above. Electronic retrieval help and guidelines are also available at *https://www.regulations.gov.* An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *www.FederalRegister.gov* and the Government Publishing Office's website at *www.GovInfo.gov.*

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period and after DOT has had the opportunity to review the comments submitted.

Background and Legal Authority

It is in the national interest to preserve and enhance the Interstate System to meet the needs of the 21st century by ensuring that it provides the highest level of service in terms of safety and mobility. Full control of access along the Interstate mainline and ramps, along with control of access on the crossroad at interchanges, is critical to such service. Under 23 U.S.C. 111 (section 111), all agreements between the Secretary and State DOTs for the construction of projects on the Interstate System shall provide that the State will not add any points of access to, or exit from, the project in addition to those approved by the Secretary in the plans for such project, without the prior approval of the Secretary. Any change to an access point can potentially add or remove access from the Interstate System. Therefore, FHWA historically has interpreted the addition of an access point to include the addition of a new, or modification of an existing, interchange or access point along the Interstate System.[1]

The Secretary has delegated authority to administer section 111 to the Federal Highway Administrator pursuant to 49 CFR 1.85(a)(1). Section 111(e) allows FHWA to delegate to a State DOT authority to approve interstate justification reports (IJR) pertaining to certain changes in access to the Interstate System.

[1] *See, e.g.,* 2017 Interstate Access Policy, dated May 22, 2017 (*https://www.fhwa.dot.gov/programadmin/fraccess.cfm*).

Statement of the Problem

To facilitate implementation of these statutory requirements regarding changes in access to the federally-funded Interstate System, FHWA recognizes a need to codify and clarify current practices, as set forth in FHWA policy, in regulations. When considering a request for a change in access to the Interstate System, FHWA examines the safety, operations, and engineering (SO&E) aspects of the requested change in access. Historically, FHWA has done this by relying on the information provided in an IJR submitted by the State DOT. The IJR contains the project layouts, technical analyses, and other information supporting the change in access request. To date, FHWA has determined whether to approve the request based on the factors listed in FHWA's policy on Access to the Interstate System (Policy).

FHWA initially developed and published the Policy in October 1990 *(55 FR 42673)* due to numerous requests by States for additional clarity regarding the justification and documentation necessary to substantiate proposed changes in access to the Interstate System. FHWA issued subsequent revisions in February 1998, August 2009, and May 2017. The February 11, 1998, revision (63 FR 7045) reflected the planning requirements of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA, Pub. L. 102–240) as implemented in 23 CFR part 450, to clarify coordination between the access request and environmental processes, and to update language. FHWA issued the 2009 Interstate Access Policy (2009 Policy), published August 27, 2009 (74 FR 43743), to reflect the direction provided in Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU, Pub. L. 109–59) to clarify the operational and safety analysis and assessment of impacts that provides the basis for proposed changes in access to the Interstate System. The 2009 Policy also updated language at various locations to reference Federal laws, regulations, and FHWA policies. Finally, FHWA issued the 2017 Interstate Access Policy (2017 Policy), dated May 22, 2017 (*https://www.fhwa.dot.gov/programadmin/fraccess.cfm*), to reduce duplication with other project reviews. The 2017 Policy focused on the technical feasibility of any change in access in support of FHWA's determination of safety, operational, and engineering acceptability. These changes allow State DOTs to prepare and submit an IJR demonstrating that the change in access will not have a significant adverse impact on the safety and operation of the Interstate facility (which includes mainline lanes, existing, new, or modified ramps, and ramp intersections with crossroad) or on the local street network based on both the current and the planned future traffic projections without including additional documentation related to other activities in the project development (*i.e.,* planning, preliminary design, environmental analysis, final design, right-of-way acquisition, and construction) process. Codifying and clarifying current practices under the 2017 Policy in regulations, as proposed, will facilitate implementation of the statutory requirements regarding changes in access to the Interstate System. This process is separate from the de-designation of Interstate segments that are processed through FHWA's Office of Planning, Environment, and Realty, and this rulemaking would not preclude de-designation.

Interstate System Access Regulation Proposed at 23 CFR Part 624

This proposed rule would establish requirements for the justification and documentation necessary for a State DOT to substantiate proposed changes in access to the Interstate System. These requirements are consistent with the existing policies and practices described above. It would facilitate decisionmaking regarding proposed changes in access to the Interstate System in a manner that considers safety, operations, and engineering. Consistent with 23 U.S.C. 109(a) and (b) and 23 U.S.C. 111, new or modified points of access for facilities subject to a Federal-aid project agreement must be approved by FHWA. To facilitate these approvals, such new or modified points of access would be required to be developed in accordance with the requirements of this proposed rule. In addition, new or modified points of access must comply with the requirements in 23 CFR part 625, Design Standards for Highways.

FHWA's decision to approve new or revised access points to the Interstate System must be supported by information justifying and documenting the proposed change in access. Therefore, the decision to approve a request is dependent on the IJR demonstrating that the proposed change in access will not result in a significant adverse impact on the Interstate System traffic operations or the safety in the project's area of influence. In addition, the proposed access must connect to a public road only, provide for all traffic movements, be designed to meet or exceed current standards, and demonstrate that the change in access can be clearly and adequately signed.

This proposed rule would identify the requirements for the change in access request and documentation necessary to substantiate any request that is submitted by a State DOT to FHWA for approval. Once the State DOT's analysis is completed, it would be required to be documented in the form of a standalone IJR and submitted by the State DOT to FHWA for a SO&E determination. FHWA expects that an IJR will be clearly written for someone who is not familiar with the project, the area, or the State. The technical analysis presented in the IJR enables FHWA to make an informed decision about safety and operational impacts of the change in access to the Interstate System and make the SO&E determination based on those impacts.

The proposed rule would not alter or restrict the option for FHWA to delegate approval authority for the determination of SO&E acceptability of IJRs to a State DOT pursuant to 23 U.S.C. 111(e). Nor would it alter a State DOT's ability to assume FHWA environmental review responsibilities under 23 U.S.C. 326 (State assumption of responsibility for categorical exclusions) or 23 U.S.C. 327 (Surface transportation Project Delivery Program). As discussed in the section-by-section analysis, under the proposed rule, FHWA may grant final approval of an Interstate System change in access request once certain conditions are met. There must be a favorable SO&E determination, and the applicable transportation planning, conformity, congestion management process, and National Environmental Policy Act (NEPA) procedures must be completed. In addition, the alternative selected and approved in the NEPA decision must also be the subject of a favorable SO&E determination. FHWA retains approval authority for final approval of changes in access to the Interstate System under the proposed rule.

The section-by-section analysis provides a detailed discussion of the proposed rule.

Section-by-Section Discussion

Section 624.1 Purpose

In § 624.1, FHWA proposes to set forth the purpose of part 624. Specifically, the purpose is to prescribe requirements and procedures for State requests for, and FHWA consideration of, changes in access to the Interstate System. Both aspects of changes in access are reflected throughout this proposal.

Section 624.3 Applicability

In § 624.3(a), FHWA proposes to specify the conditions under which proposed part 624 would be applicable. Historically, FHWA has applied the Policy to changes in access regardless of the funding source. This Policy was not applied to toll roads incorporated into the Interstate System, except for segments where Federal-aid highway funds have been expended or would be used for roadway improvements, or where the toll road section has been added to the Interstate System under the provisions of 23 U.S.C. 103(c)(4)(A). In this rulemaking, the proposed applicability aligns with 23 U.S.C. 111(a), which ties the requirement for approval of changes in access along the Interstate System to the project agreement. On roadway segments where Federal-aid highway funds or other funds administered under Title 23 have never been used and will not be used for the modified access, there is no project agreement and the provisions of 23 U.S.C. 111(a) do not apply. Therefore, under § 624.3(a)(1), applicability of the proposed rule is limited to Interstate System segments for which Federal-aid highway funds or other funds administered under Title 23 have been used in the past or are used to develop a project. As used in the proposed rule, a segment is the section of Interstate that falls within the project limits specified in the project agreement for the use of Title 23 funds.

In proposed § 624.3(b), FHWA would clarify that the requirements of this part are not applicable to ramps providing access to safety rest areas, information centers, weigh stations, and truck inspection stations located within the Interstate right-of-way when such areas are accessible to vehicles only to and from the Interstate System. This section does not change the requirements of this part for connections from other public facilities, which may be allowed if an exception is granted in accordance with § 624.7(f).

In proposed § 624.3(c), FHWA would clarify that the requirements of this part are not applicable to connections between managed lanes and general-purpose lanes on the same Interstate highway.

Section 624.5 Definitions

In § 624.5, FHWA proposes definitions for 11 terms specific to the Interstate System access approval process. *Access point* is proposed to mean any permanent (including those metered or closed at times) connection to the through lanes or shoulders, collector-distributor roads, or ramps on the Interstate System, including ''locked gate access.'' This definition is consistent with the definition included in the 1990 and 1998 policies. The 2009 and 2017 policies changed the definition to focus on breaks in the control of access to the Interstate System right-of-way. Under a risk-based approach to stewardship and oversight, FHWA believes the focus should return to permanent connections to the Interstate through lanes or shoulders, collector-distributor roads, or ramps. *Area of influence* is proposed to mean the geographic extent to which a proposed change in access will affect traffic operations and safety. *Change in access* is proposed to mean the addition of a new, or modification of an existing, interchange or access point along the Interstate System. *Interchange* is proposed to mean a system of interconnecting roadways in conjunction with one or more grade separations that provides for the movement of traffic between two or more roadways or highways on different levels. *Interstate Justification Report (IJR)* is proposed to mean a technical report that documents the SO&E aspects of a proposed change in access to the Interstate System and demonstrates that the proposal meets the provisions of part 624. *Interstate System* has the meaning given in 23 U.S.C. 101 and for purposes of part 624, we propose that it includes: mainline lanes; shoulders; existing, new or modified ramps; collector-distributor roads; and ramp termini. *Partial interchange* is proposed to mean an interchange that does not provide for each of the eight basic movements (or four basic movements in the case of a three-legged interchange). *Programmatic agreement (PA)* is proposed to mean an agreement between FHWA and a State DOT under 23 U.S.C. 111(e) to allow a State to review an IJR and make the SO&E determination. *Public road* as proposed has the meaning given in 23 U.S.C. 101(a)(22). *Safety, Operations, and Engineering (SO&E) determination* is proposed to mean the technical determination of whether the proposed location, configuration, geometric design, and signing related to the proposed change in access may be reasonably expected to serve the anticipated traffic of the Interstate System in a manner that is conducive to safety, durability, and economy of maintenance. *Safety rest area* as proposed reflects the definition in 23 CFR 752.3(a). That definition in the FHWA regulations governing landscape and roadside development refers to a roadside facility safely removed from the traveled way with parking and such facilities for the motorist deemed necessary for rest, relaxation, comfort, and information needs. The definition adds that the term is synonymous with ''rest and recreation areas.''

FHWA requests comments on the proposed definitions. In addition, FHWA requests comments on additional terms relating to changes in access to the Interstate System that could benefit from definition in part 624.

Section 624.7 Interstate System Access Requirements

In § 624.7, FHWA proposes to specify the requirements applicable to Interstate System access. In § 624.7(a), FHWA proposes to require that proposed changes in access shall not result in a significant adverse impact on the Interstate System traffic operations or the safety for all roadway users in the project's area of influence, consistent with FHWA's goal of reducing fatal and serious injury crashes on the entire roadway network. The 2009 Policy stated, ''An operational and safety analysis has concluded that the proposed change in access does not have a significant adverse impact on the safety and operation of the Interstate facility (which includes mainline lanes, existing, new, or modified ramps, ramp intersections with crossroad) or on the local street network based on both the current and the planned future traffic projections.'' Since 2009, there has been confusion regarding the applicability of the ''or'' statement contained in this sentence in the 2009 Policy and carried forward in the 2017 policy. Questions have been raised about whether the ''or'' statement applied to the safety analysis, operational analysis, or both and whether a request for a change in access would be denied because the operational or safety analysis for either the Interstate System or the local roads was adversely impacted. To address these questions, FHWA proposes to clarify in § 624.7(a) that any change in access to the Interstate System shall not result in a significant adverse impact on the traffic operations of the Interstate System or the safety for all roadway users in the project's area of influence. To ensure safety for all roadway users in the project's area of influence, all users must be considered when reviewing an access request. To that end, the existing and projected land use along the crossroad should be examined and opportunities to improve connectivity for pedestrian and bicycle travel should be considered as part of the access modification.

FHWA also proposes to ensure that the traffic and safety data used to

develop the safety and operational analysis for inclusion in the IJR is reasonably current. The traffic data available for the analysis is generally no more than 3 years old since metropolitan planning organizations (MPO) are required to update their models on a 3-year cycle. However, to account for the project development process (*i.e.,* planning, preliminary design, environmental analysis, final design, right-of-way acquisition, and construction) and to minimize the need to revise an analysis that was started at the end of the MPO modeling cycle, the proposed rule would specify that traffic data used in the State DOT's analysis may be no more than 5 years old. Where microsimulation modeling is used for the analysis, even more current traffic data may be useful.

With multiple operational analysis tools and methodologies available, FHWA does not require the specific use of any tool. Regardless of which tool type is selected, it is important to understand the limitations of the chosen tool(s) and apply the tools in a manner which supports a verifiable, reproducible, and accurate analysis. This includes the effective calibration of the chosen tool(s) and proper interpretation of the output. In addition, it is important to provide documentation of the operational analysis in the IJR that gives sufficient information for an independent review of the conditions and does not require the use of any specific traffic analysis tool software. FHWA encourages the use of appropriate tools in a scope commensurate with the project complexity.

For the safety evaluation, an analysis of recent crash data is useful for determining if the elements under study (freeway through lanes, interchange ramps, crossroads, and intersections) within the project area are experiencing more or greater severity of crashes than what would be considered typical for the conditions relevant to the facility. This information is helpful for identifying potential factors contributing to poor safety performance and how those conditions could be improved as part of the build proposal(s). Crash data more than 5 years old does not provide an accurate assessment of the safety performance conditions of the facility because there may have been significant changes in travel patterns and conditions as evidenced by the need for proposed changes in access. FHWA believes the 5-year requirement for traffic and safety data proposed in this rule provides State DOTs with sufficient flexibility that accounts for project development processes and ensures that the analysis is based on reasonably current data.

The safety analysis should assess the safety performance of the overall project (both Interstate and local roads) within the project's area of influence. The scope of the analysis and the tools and methodologies used for the assessment should be commensurate with the scope and complexity of the proposed project. More complex projects have greater risk for introducing unintended negative safety consequences and therefore a more robust analysis may be necessary.

The intent of the safety analysis is to guide project design decisions in an effort to: identify and mitigate any existing safety risk features that may be contributing to the number and severity of crashes; implement effective and efficient design choices that reduce future safety risks; and implement designs consistent with known human factors design guidance. Safety has traditionally been considered in highway projects within a standards-based framework. Recent advancements in the development and use of statistical models within a data driven safety analysis framework allow for a more thorough understanding of the quantitative relationship between design features and safety performance.

With multiple safety analysis tools and methodologies available, FHWA does not require the specific use of any tool. FHWA encourages the use of appropriate tools in a scope commensurate with the project complexity. If applying safety predictive models, it is important that the analysis consider the boundaries and conditions for which the model was developed. Not all conditions and scenarios have safety predictive models available.

The safety analysis should assess safety performance (number and severity of crashes) under the proposed build and no-build scenarios. Predictive safety analysis tools may be applied on individual segments or components of the project, and it may be possible to sum the results for the entire project. If using predictive safety analysis tools, it is important to acknowledge the complexities of safety modeling and the potential variability from actual results.

Instances may arise where the Interstate System could incur expected or predicted increases to overall crashes, or specific crash severity types, while the overall project crash impacts are reduced. FHWA expects agencies to carefully evaluate and discuss the tradeoffs between increased crashes on one facility versus another and will take this into account when making the SO&E determination.

In § 624.7(b), FHWA proposes to require that access to the Interstate System must connect only to a public road, consistent with FHWA practice since 1990. The American Association of State Highway and Transportation Officials (AASHTO) *A Policy on Design Standards—Interstate System* has been adopted as the standard for the Interstate System. See § 625.4(a)(2). Since 1988, this standard has included the following provision related to access control to the Interstate System: ''Access is to be achieved by interchanges at select public roads.'' (AASHTO, *A Policy on Design Standards—Interstate System,* page 2). Requiring that access points connect to a public road assures that the access to the Interstate System will not be closed by private interests and that a public agency has the ability to make necessary improvements to maintain the safety and traffic operations of the interchange and the Interstate System. The proposed rule would specifically prohibit connections directly to private developments, parking lots, or private roads.

In § 624.7(c), FHWA proposes to prohibit access from outside of the Interstate System right-of-way to safety rest areas, information centers, weigh stations, and truck inspection stations located within the right-of-way. Such prohibition is consistent with FHWA's implementation of the 2009 Policy as documented in the Interstate System Access Informational Guide, 2010, available at *https://www.fhwa.dot.gov/design/interstate/pubs/access/access.pdf.* Also, as noted in the AASHTO document, *A Policy on Geometric Design of Highways and Streets,* 2018, ''a rest area is not intended to be used for social or civic gatherings or for such active forms of recreation as boating, swimming, or organized games.'' (Section 3.6.2, page 3–187). In addition, the AASHTO document, *A Policy on Design Standards—Interstate System,* 2016, states that access to the Interstate System is to be achieved by interchanges at selected public roads. (AASHTO, *A Policy on Design Standards—Interstate System,* page 2). Access to rest areas from outside the Interstate right-of-way is prohibited to ensure that the rest area is not used as an interchange to access a local road network, jeopardizing its intended function of reducing driver fatigue and for the convenience of highway users. These facilities should only be accessible to vehicles to and from the Interstate System.

In § 624.7(d), FHWA proposes to require that each interchange provides for all traffic movements, consistent

with the Policy since 1990 and the AASHTO document, *A Policy on Design Standards—Interstate System,* 2016, which has been adopted as a design standard. *See* § 625.4(a)(2). In § 624.7(e), FHWA proposes to require that the proposed change in access shall be designed to meet the standards in accordance with part 625 of this title or have approved exceptions, and shall comply with part 655 of this title, Traffic Operations, consistent with the Policy since 1990.

In § 624.7(f), FHWA proposes to grant exceptions on a case by case basis to the requirements in § 624.7(b) through (d) for the situations referenced in paragraphs (f)(1) through (f)(4). In § 624.7(f)(1), FHWA could grant exceptions for locked gate access to private property for public safety. Locked gate access is sometimes necessary for use by maintenance or utility forces in remote areas, between widely spaced interchanges for emergency management or medical personnel, hazardous materials response and evacuations at industrial sites, or for temporary construction access. In § 624.7(f)(2), FHWA could grant exceptions to allow locked gate access from an information center, weigh station, and truck inspection station to a local road as needed for public safety, such as locked gate access from a truck inspection station to a minor local road to access repair services in a remote area. In § 624.7(f)(3), FHWA could grant exceptions for access from a safety rest area to an adjacent, publicly owned conservation and recreation area if access to this area is available only through the safety rest area, as provided under 23 CFR 752.5(d). Section 752.5(d), in FHWA's regulations governing safety rest areas, allows FHWA to permit access from safety rest areas to adjacent publicly owned conservation and recreation areas if access to these areas is only available through the rest area and if these areas or their usage does not adversely affect the safety rest area facilities. In proposed § 624.7(f)(4), FHWA could grant exceptions for partial interchanges where they are necessary to provide special access (*e.g.,* to managed lanes or park and ride lots), or where factors such as social, economic, and environmental impacts of a full interchange justify the exception.

Section 624.9 Approval Process

Proposed § 624.9(a) sets out the approval process for a change in access to the Interstate System. In § 624.9(a), FHWA proposes to require that a State DOT proposing a change in access submit electronically a request letter and an IJR to FHWA demonstrating that the proposed change in access meets the requirements of part 624. FHWA would not accept requests from other parties besides a State DOT. In § 624.9(b), FHWA proposes that approval of a change in access requires a SO&E determination and a final approval. The SO&E determination is separate from the NEPA process and final approval could not be granted until the NEPA process is complete. In § 624.9(c), FHWA proposes that the SO&E determination shall be based on the safety, operational, and engineering aspects of the request as documented in an IJR submitted by the State DOT in accordance with the requirements of proposed § 624.11. In § 624.9(c), FHWA also proposes that all SO&E determinations shall be made by FHWA except where an approved PA is in effect. When an approved PA is in effect, the State DOT shall make a SO&E determination on behalf of FHWA in accordance with 23 U.S.C. 111(e) and 23 CFR 624.13 for specific types of Interstate System access.

In § 624.9(d), FHWA proposes that if a favorable SO&E determination is made, FHWA would consider whether final approval of a proposed change in access to the Interstate System is appropriate. Further, FHWA proposes that final approval may only be granted by FHWA if the following conditions are met: (1) applicable transportation planning, conformity, congestion management process, and NEPA procedures have been completed; and (2) the alternative covered by the favorable SO&E determination is of the same scope and design as the alternative selected and approved in the NEPA decision. FHWA could not issue final approval of access until the NEPA procedures have been completed because the final approval is a major Federal action subject to NEPA. However, FHWA could make a SO&E determination in advance of the NEPA decision.

In § 624.9(e), FHWA proposes that if a proposed change in access to the Interstate System has not progressed to construction within 5 years of an affirmative SO&E determination, FHWA may require a State DOT to provide verification that the requirements of § 624.7 continue to be met based on current and projected future conditions. The 2009 Policy discussed reevaluating a proposal if the project did not proceed to construction within 8 years. This limit was reduced to 3 years in the 2017 Policy to coincide with the timeframe for written NEPA re-evaluation for draft and final environmental impact statements (EIS) pursuant to 23 CFR 771.129(a) and (b). FHWA has determined that linking these two timeframes is not appropriate because the 3-year NEPA requirement applies only in situations where an EIS is developed and not every Interstate access modification request requires an EIS. As mentioned above, traffic and safety data that is up to 5 years old is adequate to make SO&E determinations. Therefore, FHWA now proposes to set the limit for a proposed change in access to progress to construction without State DOT verification under § 624.7 at 5 years after an affirmative SO&E determination. FHWA selected this duration because traffic and safety data that is older than 5 years introduces higher risk in the analysis of SO&E acceptability. The 5 year threshold for proceeding to construction will provide a maximum of 10 years [5 years (project development) + 5 years (verification)] from the time the traffic data was collected. Within this time period, some areas could see significant change in travel patterns and conditions, which may warrant a reconsideration of whether the technical assumptions that formed the basis of FHWA's prior approval are still valid. In addition, this timeframe would allow for two Long-Range Transportation Plan updates for most MPOs. *See* 23 U.S.C. 134(i)(1).

Section 624.11 Interstate Justification Report

Proposed § 624.11 addresses the IJR. In § 624.11(a), FHWA proposes to require that the IJR be a standalone report. We expect that all information necessary to make the SO&E determination would be in the IJR. Relevant information from other documents must be included in the IJR, rather than referenced.

In § 624.11(b), FHWA proposes to prescribe the minimum information that must be included in the IJR, except as provided under § 624.11(d), so that FHWA can make a determination regarding the SO&E aspects of the proposed change in access request. These requirements are consistent with long-standing practice as documented in the 2010 Interstate System Access Informational Guide.

In § 624.11(b)(1), FHWA proposes to require a proposed project description and overview along with a location map with applicable distances to adjacent interchanges.

In § 624.11(b)(2), FHWA proposes to require preliminary design documents sufficient for FHWA to determine the geometric viability of the proposed project. Specifically, FHWA proposes to require that the IJR include, at a

minimum, the design criteria, existing geometry overlaid with clearly labeled proposed geometry plan views, lane configuration schematics, typical sections, control-of-access lines, interchange spacing, ramp spacing, and other design features necessary to evaluate the proposed design. The geometric design criteria needed would vary based on the stage of development and complexity of the proposal.

In § 624.11(b)(3), FHWA proposes requirements for the limits of the operational and safety analysis for the proposed change in access included in the IJR. In § 624.11(b)(3)(i) and (ii), FHWA proposes that the operational and safety analysis must include at least the first adjacent existing or proposed interchanges and intersections to evaluate the impacts on the roadway network. A preliminary understanding of the traffic conditions should be gained prior to selecting the limits of the network. Based on the complexity of the proposal, logical traffic breaks should be selected within the system rather than adhering to only the minimum requirements.

In § 624.11(b)(4), FHWA proposes to require that a conceptual signing plan showing the type and location of the signs proposed to support the proposed design be included in the IJR. This plan is necessary for FHWA to determine if the proposed interchange can be adequately and clearly signed.

In § 624.11(c), FHWA proposes to specify the additional information that must be included in the IJR when a proposed change in access will not provide for all traffic movements at an interchange (also known as a partial interchange) in accordance with proposed § 624.7(d). In § 624.11(c)(1), FHWA proposes to require that the IJR must provide a full-interchange option and compare the SO&E to the proposed partial interchange option. The IJR must justify the necessity for a partial interchange alternative. In § 624.11(c)(2), FHWA proposes that the IJR must describe why a partial interchange is proposed and include the proposed mitigation to compensate for missing movements, such as wayfinding signage, local intersection improvements, mitigation of driver expectation leading to wrong-way movements on ramps, and other proposed strategies as necessary. In § 624.11(c)(3), FHWA proposes that the IJR must discuss if the future provision of a full interchange will be precluded by the proposed design.

In § 624.11(d), FHWA proposes to consider the complexity of a change in access when determining the extent of the safety and operational analysis and the format of the IJR. Due to the variation in complexity of projects, coordination between FHWA and a State DOT is necessary to determine the level of analysis needed based on the context of a specific project. Projects that include the addition of left-turn storage lanes, right-turn storage lanes and through lanes along the crossroad at the terminus of existing ramps are not changes in access and would not require IJRs. State DOTs are encouraged to coordinate with FHWA to determine what constitutes a change in access.

Section 624.13 Programmatic Agreement

In § 624.13, FHWA proposes the process a State DOT must use if they wish to enter into a PA with FHWA that would delegate to the State DOT responsibility for making SO&E determinations on behalf of FHWA in accordance with 23 U.S.C. 111(e) and section 1318(d) of the Moving Ahead for Progress in the 21st Century Act (MAP–21). FHWA also proposes that, if delegated, SO&E determinations must be made in accordance with the requirements of this part. The process identified in this section is consistent with the FHWA memorandum, ''Programmatic Agreement for Processing Interstate Access Requests—Revised'' (PA Memo) dated April 26, 2016, available at *https://www.fhwa.dot.gov/design/interstate/160426.cfm.* FHWA intends to update the PA template to incorporate the regulatory provisions and citations after the final rule is published.

In § 624.13(a), FHWA proposes to specify the types of access requests that a State DOT, through a PA with FHWA, may assume delegated authority to make SO&E acceptability determinations on behalf of FHWA. The State DOT may assume all or any portion of the allowed types of access requests. The types of access requests, including new freeway-to-crossroad (service) interchanges, modifications to existing freeway-to-crossroad (service) interchanges, and completion of basic movements at freeway-to-crossroad (service) interchanges, are consistent with 23 U.S.C. 111(e).

In § 624.13(b), FHWA proposes to specify the information the State DOT must provide in the PA request. In § 624.13(b)(1), FHWA proposes that the State DOT must provide the types of access requests for which they wish to assume the responsibility of SO&E determinations. In § 624.13(b)(2), FHWA proposes that the State DOT must also describe the controls and resources they have available to effectively implement the PA and address the considerations identified in proposed § 624.13(c).

In § 624.13(c)(1), FHWA proposes that upon receipt of a State DOT's request to enter into a PA, FHWA will verify that the State DOT has developed and implemented appropriate controls and processes, and that the State DOT has the necessary resources and commits to conduct future actions in compliance with the requested PA in order to assume responsibility for SO&E determinations on behalf of FHWA. FHWA also proposes a list of specific factors that will be considered.

In § 624.13(c)(1)(i), FHWA proposes to examine whether the State DOT has in place or has modified policies, standard operating procedures (SOP), and processes that are necessary to implement the PA. In § 624.13(c)(1)(ii), FHWA proposes to examine whether State DOT processes and guidance have been developed and implemented to support the development, analysis, documentation, review, and potential processing of Interstate System access changes under the terms of the PA. In § 624.13(c)(1)(iii), FHWA proposes to examine documentation demonstrating the process, guidance, assistance, and oversight that State DOTs will provide to support local agencies who may propose changes in Interstate System access. In § 624.13(c)(1)(iv), FHWA proposes to examine documentation demonstrating whether the State DOT has the technical expertise and resources (*e.g.,* training, analysis tools) for State DOT staff to analyze, review, and process proposed changes in Interstate System access under the terms of the PA. In § 624.13(c)(1)(v), FHWA proposes to examine documentation demonstrating whether the State DOT has procedures in place governing oversight, monitoring, and annual reporting to FHWA to ensure that changes in access to the Interstate System are processed in a manner that is consistent with the terms of the PA. In § 624.13(c)(1)(vi), FHWA proposes that any other factors deemed necessary by the Secretary will be examined.

In § 624.13(c)(2), FHWA proposes to establish, with input from the State DOT, the scope and conditions for the State DOT's review of access requests and the process by which the State DOT will make the SO&E determination.

In § 624.13(d), FHWA proposes that the PA will require that the State DOT submit electronically an annual report to FHWA that at a minimum summarizes specific information about SO&E determinations under the PA. In § 624.13(d)(1), FHWA proposes to require a State DOT to submit a list of all the SO&E determinations made in

the previous calendar year. In § 624.13(d)(2), FHWA proposes to require a State DOT to submit a summary of anticipated changes in access to be evaluated under the PA in the coming calendar year. In § 624.13(d)(3), FHWA proposes to require that the report assess the effectiveness and verify that all changes in access to the Interstate System processed through the PA were evaluated and processed consistent with the terms of the PA. In § 624.13(d)(4), FHWA proposes to require that the report identify any areas where improvements are needed and what actions the State DOT is taking to implement those improvements. In § 624.13(d)(5), FHWA proposes that the report will include actions taken by the State DOT as part of its quality control efforts.

In § 624.13(e), FHWA proposes that once all concerns have been addressed to the satisfaction of the Secretary, the PA may be executed.

FHWA requests comments on the proposed rule. Please follow the instructions in the **ADDRESSES** section of this Notice to submit comments. Additional information about commenting is available under ''Electronic Access and Filing'' in the **SUPPLEMENTARY INFORMATION** section of this document.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Rulemaking Policies and Procedures

The Office of Management and Budget (OMB) has not designated this rulemaking a significant action under section 3(f) of Executive Order (E.O.) 12866. Accordingly, OMB has not reviewed it. This proposed rule would codify existing policy, processes and procedures relating to new or modified access to the Interstate System. In addition, this proposed rule complies with E.O. 12866 and E.O. 13563 to improve regulation. This proposed rule is not anticipated to adversely affect, in any material way, any sector of the economy. In addition, this proposed rule would not create a serious inconsistency with any action taken or planned by another agency or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. This proposed rule also does not raise any novel legal or policy issues. FHWA anticipates that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not necessary.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 60l–612), FHWA has evaluated the effects of this proposed rule on small entities, such as local governments and businesses. Based on the evaluation, FHWA anticipates that this action would not have a significant economic impact on a substantial number of small entities. The proposed rule would codify the processes that are currently in-use by State DOTs when changes in access to the Interstate System are sought, and States are not included in the definition of small entity set forth in 5 U.S.C. 601. FHWA believes the projected impact upon small entities that utilize Federal-aid highway program funding for the development of highway improvement projects on the National Highway System would be negligible. Therefore, FHWA certifies that the proposed action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

FHWA has determined that this NPRM would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48) (UMRA). This proposed rule would not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $155 million or more in any one year (when adjusted for inflation). Further, in compliance with the Unfunded Mandates Reform Act, FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and Tribal governments and the private sector. In addition, the definition of ''Federal Mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or Tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility.

Executive Order 13132 (Federalism Assessment)

FHWA has analyzed this proposed rule in accordance with the principles and criteria contained in E.O. 13132. FHWA has determined that this proposed rule would not have sufficient federalism implications to warrant the preparation of a federalism assessment. FHWA has also determined that this action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), a person is not required to respond to a collection of information by a Federal Agency unless the collection displays a valid OMB control number. Federal agencies must obtain OMB approval for each collection of information they conduct, sponsor, or require through regulations, among others. This proposed rule would have new collection of information requirements that would require the submittal of two reports that State DOTs have submitted to FHWA for years under existing policy: the IJR and the PA annual report. The IJR provides the justification and documentation necessary to substantiate any proposed change in access to the Interstate System and facilitates FHWA's decisionmaking giving consideration to the SO&E aspects of the proposed change. The PA annual report was established under PA procedures to track IJRs that have received SO&E determinations and the processes used to make those determinations under the PA. Accordingly, FHWA has forwarded an Information Collection Request (ICR) for the proposed new collection of information described below to the OMB for review and comment. The ICR describes the nature of the collection of information and its expected burden.

In compliance with the PRA, FHWA also requests comments on the proposed new collection of information:

Title: Interstate System Access—Reports.

Type of Request: New collection.

OMB Control Number: 2125—New.

Form Number: The collection of information would not use any standard forms.

Requested Expiration Date of Approval: Three years from the date of approval.

Summary of the Collection of Information: The proposed regulations in §§ 624.11 and 624.13(d), respectively, would require State DOTs to submit two reports; the IJR and the PA annual report. The IJR has been submitted under existing policy since 1990, 55 FR 42670 (October 22, 1990). It provides the justification and documentation necessary to substantiate any proposed changes in access to the Interstate System and facilitates FHWA's decisionmaking, giving consideration to the SO&E aspects of the proposed change. The IJR must include a description and overview of the proposed change, preliminary design

documents, operational and safety analyses evaluating the impact on the Interstate System and local road network, and a conceptual plan showing the type and location of proposed signs. The IJR for a proposed partial interchange must include additional information. The PA annual report has been submitted since 2013, when PA procedures were first established, to track IJRs that have received SO&E determinations and the processes used to make those determinations under the PA. Under proposed § 624.13(d), a PA must require that the State DOT electronically submit an annual report to FHWA summarizing its performance under the PA.

Description of the Need for the Information: As discussed under the ''Background and Legal Authority'' heading of this preamble, FHWA is authorized to approve any points of access to, or exit from, the Interstate System for those routes for which Federal-aid highway funds or other funds administered under Title 23 have been used in the past or will be used to develop a project, in accordance with 23 U.S.C. 111. Additional authority is found in section 1318(d) of MAP–21, and 23 U.S.C. 111(e). Full control of access along the Interstate mainline and ramps, along with control of access on the crossroad at interchanges, is critical to ensuring that the Interstate System provides the highest level of service in terms of safety and mobility. Collecting information in the form of an IJR allows FHWA to adequately review proposed changes in access to the Interstate System and determine the safety and mobility impacts prior to making a decision of acceptability of a proposed construction project. In addition, information collected in the IJRs is streamlined to remove duplication amongst other programs within FHWA and reduce administrative burdens to State DOTs.

The proposed requirements for the submission of IJRs and PA annual reports to FHWA align with the DOT priority of Safety.[2]

Proposed Use of the Information: FHWA's decision to approve change in access points to the Interstate System must be supported by technical information indicating that the proposed change in access will not have a significant adverse impact on the safety and operation of the Interstate facility. FHWA is proposing to require in 23 CFR 624.9(a) that when a State DOT requests a change in access, such technical information be submitted to FHWA in the form of an IJR that meets the requirements of proposed 23 CFR 624.11, together with a letter requesting the change in access. FHWA staff in the division office (field) will review the IJR to determine whether the request is consistent with FHWA policy and applicable requirements and whether to recommend concurrence. The IJR may be shared with staff in FHWA's Resource Center and Headquarters for technical assistance, depending on the complexity of the analysis where supplemental technical expertise is needed. For changes in access that require FHWA Headquarters concurrence, such as system interchanges (freeway-to-freeway) or partial interchanges the IJR is transmitted to FHWA Headquarters, Office of Infrastructure, to make the determination on the IJR.

A State DOT has the option of entering into a PA with FHWA to make SO&E determinations on IJRs. If a State DOT has an approved PA then they are required to submit a PA annual report, which is used to monitor the performance of the PA. FHWA staff in the field will review the annual report as part of their oversight of the PA process.

Description of the Respondents (Including Estimated Number and Proposed Frequency of Responses to the Collection of Information): The respondents are 52 State DOTs. State DOTs will only submit IJRs if they are requesting Interstate System access. The IJRs are submitted based on need; as a result, there is no expectation that all respondents will submit IJRs annually. Based on historical data, a maximum of 30 annual responses are expected with this collection. The PA annual reports are submitted from State DOTs that have an approved PA with FHWA. It is estimated that five PA annual reports will be submitted yearly with this collection.

Estimate of the Total Response Burden Resulting from the Collection of Information: FHWA estimates the total burden for IJR collections to be approximately 3,900 hours and $214,500 annually for State DOTs. It is estimated that the total burden for IJR reviews will be approximately 990 hours and $65,340 annually for FHWA.

FHWA estimates the total burden for the PA annual reports collection to be approximately 50 hours and $2,750 annually for State DOTs. It is estimated that the total burden for reviews of the PA annual reports collection will be approximately 10 hours and $660 annually for FHWA.

Public Comments Requested: FHWA requests comments on any aspect of this information collection, including: (1) whether the proposed collection is necessary for FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including through the use of electronic technology, without reducing the quality of the collected information. FHWA will summarize and/or include comments on these points in the request for OMB's clearance of this information collection.

National Environmental Policy Act

FHWA has analyzed this proposed rule for the purposes of the NEPA (42 U.S.C. 4321, *et seq.*) and has determined that it qualifies for a categorical exclusion (CE) under 23 CFR 771.117(c)(20), which applies to the promulgation of regulations, and that no unusual circumstances are present under 23 CFR 771.117(b). Categorically excluded actions meet the criteria for CEs under the Council on Environmental Quality regulations and under 23 CFR 771.117(a) and normally do not require any further NEPA approvals by FHWA. This proposed rule would not affect the NEPA process for Interstate access requests, and if it is promulgated as proposed, FHWA would not grant a project final approval until the NEPA process was completed.

Executive Order 13175 (Tribal Consultation)

FHWA has analyzed this proposed rule under E.O. 13175 and believes that it would not have substantial direct effects on one or more Indian Tribes, would not impose substantial direct compliance costs on Indian Tribal governments, and would not preempt Tribal law. This proposed rule would not impose any direct compliance requirements on Indian Tribal governments nor would it have any economic or other impacts on the viability of Indian Tribes. Therefore, the funding and consultation requirements of E.O. 13175 do not apply and a Tribal summary impact statement is not required.

Executive Order 12898 (Environmental Justice)

E.O. 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. FHWA has determined that

[2] *See, e.g., https://www.transportation.gov/safety.*

this proposed rule does not raise any environmental justice issues.

Regulation Identifier Number

A RIN is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 624

Interstate access process, Interstate Justification Report, Programmatic Agreement.

Issued under authority delegated in 49 CFR 1.81 and 1.85.

Shailen P. Bhatt,

Administrator, Federal Highway Administration.

■ In consideration of the foregoing, FHWA proposes to amend title 23 of the Code of Federal Regulations by adding part 624 as follows:

PART 624—INTERSTATE SYSTEM ACCESS

Sec.
624.1 Purpose.
624.3 Applicability.
624.5 Definitions.
624.7 Interstate System access requirements.
624.9 Approval process.
624.11 Interstate Justification Report.
624.13 Programmatic agreement.

Authority: 23 U.S.C. 109(a) and (b) and 111; 23 CFR 1.32; 49 CFR 1.85.

§ 624.1 Purpose.

To prescribe requirements and procedures for State requests for and FHWA consideration of changes in access to the Interstate System.

§ 624.3 Applicability.

(a) Except as provided in paragraph (b) and (c) of this section, this part is applicable to all segments designated as part of the Dwight D. Eisenhower National System of Interstate and Defense Highways (Interstate System) for which Federal-aid highway funds or other funds administered under title 23 have been used in the past or are used to develop a project.

(b) This part is not applicable to ramps providing access to safety rest areas, information centers, weigh stations, and truck inspection stations located within the Interstate right-of-way when such areas are accessible to vehicles only to and from the Interstate System. Connections from other public facilities to facilities within the Interstate System right-of way, if an exception is granted in accordance with § 624.7(f), are subject to the requirements of this part.

(c) This part is not applicable to connections between managed lanes and general-purpose lanes on the same Interstate highway.

§ 624.5 Definitions.

The following terms used in this part are defined as follows:

Access point. Any permanent connection (including those metered or closed at times) to the through lanes or shoulders, collector-distributor roads, or ramps on the Interstate System, including ''locked gate access''.

Area of influence. The geographic extent to which a proposed change in access will affect traffic operations and safety.

Change in access. The addition of a new, or modification of an existing, interchange or access point along the Interstate System.

Interchange. A system of interconnecting roadways in conjunction with one or more grade separations that provides for the movement of traffic between two or more roadways or highways on different levels.

Interstate Justification Report (IJR). A technical report that documents the safety, operations, and engineering aspects of a proposed change in access to the Interstate System and demonstrates that the proposal meets the provisions of this part.

Interstate System. The term ''Interstate System'' as defined in 23 U.S.C. 101, and includes mainline lanes; shoulders; existing, new, or modified ramps; collector-distributor roads; and ramp termini. For purposes of this part, the Interstate System shall be limited to those routes for which Federal-aid highway funds or other funds administered under title 23 have been used in the past or will be used to develop a project.

Partial interchange. An interchange that does not provide for each of the eight basic movements (or four basic movements in the case of a three-legged interchange).

Programmatic agreement (PA). Agreement between FHWA and a State department of transportation (DOT) under 23 U.S.C. 111(e) to allow a State to review and make the Safety, Operations, and Engineering (SO&E) determination.

Public road. The term ''public road'' as defined in 23 U.S.C. 101.

Safety, Operations, and Engineering (SO&E) determination. Technical determination of whether the proposed location, configuration, geometric design, and signing related to the proposed change in access may be reasonably expected to serve the anticipated traffic of the Interstate System in a manner that is conducive to safety, durability, and economy of maintenance.

Safety rest area. The term ''safety rest area'' as defined in § 752.3(a) of this chapter.

§ 624.7 Interstate System access requirements.

(a) The proposed change in access to the Interstate System shall not result in a significant adverse impact on the Interstate System traffic operations or the safety for all roadway users in the project's area of influence, as demonstrated by operational and safety analyses based on both the current and future traffic projections using traffic and safety data that is no more than 5 years old.

(b) Interstate System access points shall connect only to a public road. Connections directly to private developments, parking lots, or private roads are prohibited.

(c) Connections from outside of the Interstate System right-of-way to safety rest areas, information centers, weigh stations, and truck inspection stations located within the Interstate System right-of-way are prohibited.

(d) Each interchange shall provide for all traffic movements.

(e) A proposed change in access shall be designed to meet the standards in accordance with part 625 of this chapter or have approved exceptions and shall comply with part 655 of this chapter.

(f) On a case by case basis, FHWA may grant exceptions to the requirements in paragraphs (b) through (d) of this section for:

(1) Locked gate access to private property for purposes of public safety;

(2) Locked gate access from an information center, weigh station, and truck inspection station to a local road for the purposes of public safety;

(3) Access from a safety rest area to an adjacent publicly owned conservation and recreation area if access to this area is available only through the safety rest area as allowed under § 752.5(d) of this chapter; or

(4) A partial interchange where necessary to provide special access, such as to managed lanes or park and ride lots, or where factors such as the social, economic, and environmental impacts of a full interchange justify an exception.

§ 624.9 Approval process.

(a) To propose a change in access to the Interstate System, the State DOT

shall submit electronically to FHWA a request letter and an IJR complying with § 624.11 demonstrating that the proposed change in access meets the requirements of this part. Change in access requests will not be accepted from other parties besides a State DOT.

(b) Approval of a change in access to the Interstate System requires a SO&E determination and a final approval.

(c) The SO&E determination shall be based on the safety, operations, and engineering aspects of the request as documented in an IJR meeting the requirements of this part. FHWA shall make the SO&E determination, except where FHWA has delegated to a State DOT the authority to make the SO&E determination on behalf of FHWA by entering into a programmatic agreement that meets the requirements of § 624.13.

(d) If a favorable SO&E determination is made, FHWA will consider whether final approval is appropriate for the proposed change in access to the Interstate System. Final approval may only be granted by FHWA and constitutes a major Federal action under the National Environmental Policy Act (NEPA). Final approval may be granted if the following conditions are met:

(1) Applicable transportation planning, conformity, congestion management process, and NEPA procedures have been completed.

(2) The alternative covered by the favorable SO&E determination is of the same scope and design as the alternative selected and approved in the NEPA decision.

(e) If the project has not progressed to construction within 5 years of receiving an affirmative SO&E determination, FHWA may require the State DOT to provide verification that the requirements of § 624.7 continue to be met based on current and projected future conditions.

§ 624.11 Interstate Justification Report.

(a) The IJR shall be a standalone report. Relevant information from other documents (such as feasibility studies, NEPA documents or preliminary engineering reports) must be included in the appropriate section of the IJR.

(b) At a minimum, an IJR submitted to FHWA shall include all of the following, except as provided under paragraph (d) of this section.

(1) A description and overview of the proposed change in access including a project location map and distances to adjacent interchanges.

(2) Preliminary design documents sufficient to demonstrate the geometric viability of the proposal. The design documents shall include the design criteria, existing geometry overlaid with clearly labeled proposed geometric plan views, lane configuration schematics, typical sections, control-of-access lines, interchange spacing, ramp spacing, and other design features necessary to evaluate the proposed design.

(3) Operational and safety analyses that evaluate the impact of the proposed change in access on the Interstate System and local road network extending to the following area of influence limits at a minimum:

(i) Along the Interstate System, and interchanging freeway if applicable, to the adjacent existing or proposed interchange on either side of the proposed change in access, extending further as needed to ensure the limits of the analysis are appropriate to fully understand the impact of the proposed change in access on the Interstate System.

(ii) Along each crossroad to the first major intersection on either side of the proposed change in access, extending further as needed to demonstrate the safety and operational impacts that the proposed change in access and other transportation improvements may have on the local road network.

(4) A conceptual plan showing the type and location of the signs proposed to support the proposed design.

(c) The IJR for a proposed partial interchange shall meet the following additional requirements.

(1) The IJR shall include a full-interchange option with a comparison of the operational and safety analyses to the partial interchange option. The IJR shall justify the necessity for a partial interchange alternative.

(2) The IJR shall describe why a partial interchange is proposed and include the mitigation proposed to compensate for the missing basic movements, including wayfinding signage, local intersection improvements, mitigation of driver expectation leading to wrong-way movements on ramps, and other proposed strategies as necessary.

(3) The IJR shall describe whether future provision of a full interchange is precluded by the proposed design.

(d) FHWA will consider the complexity of a change in access when determining the extent of the safety and operational analysis and the format of the IJR.

§ 624.13 Programmatic agreement.

A State DOT may submit to FHWA a written request to enter into a programmatic agreement (PA) with FHWA that delegates to the State DOT the authority to make the SO&E determination on behalf of FHWA in accordance with 23 U.S.C. 111(e) and the requirements of this part.

(a) A PA may allow a State DOT to make the SO&E determination for all or any part of the following types of change in access requests:

(1) New freeway-to-crossroad (service) interchanges;

(2) Modifications to existing freeway-to-crossroad (service) interchanges; and

(3) Completion of basic movements at freeway-to-crossroad (service) interchanges.

(b) The State DOT request to enter into a PA with FHWA shall include:

(1) The types of changes in access listed in paragraph (a) of this section for which the State DOT would like to make SO&E determinations; and

(2) A discussion of controls the State DOT has implemented, resources available, and actions that would be taken if the PA is approved, as needed to address the considerations outlined in paragraph (c) of this section.

(c) Upon receipt of the request, FHWA will:

(1) Verify that appropriate controls and processes have been developed and implemented by the State DOT, and that the State DOT has the necessary resources and commits to conduct future actions in compliance with the terms of the requested PA. FHWA will examine:

(i) State DOT policies, standard operating procedures, and processes, either in place or modified as needed to carry out the requirements of the PA;

(ii) Documentation demonstrating the processes and guidance that have been developed and implemented to support the development, analysis, documentation, review, and potential processing of each type of proposed change in access to the Interstate System to which the terms of the PA would apply;

(iii) Documentation demonstrating the process, guidance, assistance, and oversight the State DOT will provide to support local agencies (*e.g.,* cities, counties, toll authorities, metropolitan planning organizations (MPOs)) that may propose or submit requests to the State DOT for changes in access to the Interstate System to which the terms of the PA would apply;

(iv) Documentation demonstrating that the State DOT has the expertise and resources (*e.g.,* training, analysis tools) needed to carry out the requirements of the PA;

(v) Documentation of State DOT procedures to provide the necessary oversight, monitoring and annual reporting to the FHWA to ensure the changes in access to the Interstate

System are processed consistent with the terms of the PA; and

(vi) Any other factors deemed necessary by the Secretary.

(2) Establish, with input from the State DOT, the scope and conditions for the State DOT's review of change in access requests and the process by which the State DOT will make the SO&E determination.

(d) A PA shall require that the State DOT submit electronically an annual report to FHWA summarizing its performance under the PA. The report shall, at a minimum:

(1) Include the results of all changes in access to the Interstate System that were processed and received a SO&E determination under the terms of the PA for the previous calendar year;

(2) Summarize the changes in access to the Interstate System that the State DOT plans to process in the coming calendar year;

(3) Assess the effectiveness of and verify that all changes in access to the Interstate System processed through this agreement were evaluated and processed in a manner consistent with the terms of this PA;

(4) Identify any areas where improvements are needed and what actions the State DOT is taking to implement those improvements; and

(5) Include actions taken by the State DOT as part of its quality control efforts.

(e) When all concerns have been addressed to the satisfaction of the Secretary, the PA may be executed.

[FR Doc. 2023–20218 Filed 9–18–23; 8:45 am]

BILLING CODE 4910–RY–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2023–0069; FRL–10579–08–OCSPP]

Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities (August 2023)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petition and request for comment.

SUMMARY: This document announces the Agency's receipt of an initial filing of a pesticide petition requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before October 19, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2023–0069, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Charles Smith, Registration Division (RD) (7505T), main telephone number: (202) 566–2427, email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the request before responding to the petitioner. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petition described in this document contains data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this document, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available at *https://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of

regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

A. Notice of Filing—Amended Tolerance Exemptions for Inerts (Except PIPS)

PP IN–11755. EPA–HQ–OPP–2023–0368. Spring Regulatory Sciences (6620 Cypresswood Dr., Suite 250, Spring, TX 77379), on behalf of Sasol Chemicals (USA) LLC, (12120 Wickchester Lane, Houston, TX 77224), requests to amend an exemption from the requirement of a tolerance for residues of fatty acids, C16–18 and C18–unsatd., esters with polyethylene glycol mono-Me ether (CAS Reg. No. 518299–31–5) by adding its use as an inert ingredient (surfactant and related adjuvants of surfactants) limited to 25% by weight in pesticide formulations under 40 CFR 180.910. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

B. Amended Tolerances for Non-Inerts

PP 2F9013. EPA–HQ–OPP–2022–0732. Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419, proposes to remove established tolerances in 40 CFR 180.438 for residues of the insecticide lambda-cyhalothrin in or on the following raw agricultural plant commodities: Canola, refined oil at 2.0 parts per million (ppm); canola, seed at 1.0 ppm; sunflower, forage at 0.2 ppm; sunflower, seed, hulls at 0.50 ppm; sunflower, refined oil at 0.30 ppm; and sunflower, seed at 0.2 ppm. The ICI Method 81 (PRAM 81) is used to measure and evaluate the chemical lambda-cyhalothrin. *Contact:* RD.

C. New Tolerances for Non-Inerts

1. *PP 3E9047.* EPA–HQ–OPP–2023–0407. Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419–8300, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide mandipropamid (benzeneacetamide, 4-chloro-N-[2-[3-methoxy-4-(2-propynyloxy)phenyl]ethyl]-alpha-(2-propynyloxy)) in or on: Papaya, whole fruit at 0.8 ppm; papaya, peel at 3 ppm; papaya, pulp at 0.015 ppm. The quantitation is by high performance liquid chromatography with triple quadruple mass spectrometric detection (LC–MS/MS) is used to measure and evaluate the chemical mandipropamid. *Contact:* RD.

2. *PP 3F9055.* EPA–HQ–OPP–2023–0269. ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, Ohio 44077, requests to establish a tolerance in 40 CFR part 180 for residues of the herbicide Flazasulfuron, 1-(4,6-dimethoxypyrimidin-2-yl)-3-(3-trifluoromethyl-2-pyridylsulfonyl) urea in or on avocado at 0.01 ppm. The Liquid Chromatography-MS/MS is used to measure and evaluate the chemical flazasulfuron. *Contact:* RD.

Authority: 21 U.S.C. 346a.

Dated: September 11, 2023.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2023–20266 Filed 9–18–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

48 CFR Parts 3016 and 3052

[Docket No. DHS–2012–0050]

RIN 1601–AA65

Homeland Security Acquisition Regulation, Subcontractor Labor Hour Rates Under Time and Materials Contracts (HSAR Case 2010–001); Withdrawal

AGENCY: Office of the Chief Procurement Officer, Department of Homeland Security (DHS).

ACTION: Notice of withdrawal of proposed rule.

SUMMARY: The Department of Homeland Security (DHS) is withdrawing its proposed rule titled Homeland Security Acquisition Regulation (HSAR) Subcontractor Labor Hour Rates Under Time and Materials Contracts (HSAR Case 2010–001) and providing this notice of cancellation. The notice of proposed rulemaking proposed to amend the Homeland Security Acquisition Regulation (HSAR) parts 3016 and 3052 to require DHS contracts for time and material or labor hours (T&M/LH) to include separate labor hour rates for subcontractors and a description of the method that will be used to record and bill for labor hours for both contractors and subcontractors. DHS is withdrawing this proposed rule because of differing agency priorities and the staleness of the public comments. DHS will not take any further action on this proposal.

DATES: The proposed rule published on August 21, 2012 (75 FR 50449) is withdrawn effective September 19, 2023.

ADDRESSES: Mail: Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation, ATTN: Catherine Benavides, 245 Murray Drive, Bldg. 410 (RDS), Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Benavides, Procurement Analyst, DHS, Office of the Chief Procurement Officer, Acquisition Policy and Legislation at (202) 897–8301 or email *HSAR@hq.dhs.gov.* When using email, include HSAR Case 2010–001 in the ''Subject'' line.

SUPPLEMENTARY INFORMATION: On August 21, 2012, the Department of Homeland Security (DHS) proposed to amend the Department of Homeland Security Acquisition Regulation (HSAR), 48 CFR chapters 3016 and 3052 to propose regulations to require DHS contracts for T&M/LH to include separate labor hour rates for subcontractors and a description of the method that will be used to record and bill for labor hours for both contractors and subcontractors. DHS is withdrawing this proposed rule because it is not a mandated requirement to set agency specific procedures. DHS is withdrawing this proposed rule and will not take any further action on this proposal.

Paul Courtney,

Chief Procurement Officer, Department of Homeland Security.

[FR Doc. 2023–20276 Filed 9–18–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2022–0100; FXES11130600000–223–FF06E00000]

RIN 1018–BG79

Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of the Gray Wolf in the State of Colorado; Final Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notification of the availability of a final environmental impact statement and draft record of decision.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a final environmental impact statement (EIS) and draft record of decision (ROD) under the National Environmental Policy Act of 1969, as amended, for our intended action of establishing a nonessential experimental

population (NEP) of the gray wolf (*Canis lupus*) in the State of Colorado. The State of Colorado (Colorado Parks and Wildlife, or CPW) requested that the Service establish an NEP in conjunction with their State-led gray wolf reintroduction effort. Establishment of this NEP under section 10(j) of the Endangered Species Act of 1973, as amended, would provide for allowable, legal, purposeful, and incidental take of the gray wolf within the State of Colorado, while also providing for the conservation of the species. In the FEIS, we analyzed the environmental consequences of a range of alternatives for our proposed rule. The action would be implemented through a final rule.

DATES: The Service will issue a record of decision no sooner than 30 days after publication of this announcement of the availability of the final EIS in the **Federal Register**.

ADDRESSES: *Document availability:* The final EIS, draft ROD, and other supporting documents are available on the internet at *https://www.regulations.gov* in Docket No. FWS–R6–ES–2022–0100 and on the Service's website at *https://www.fws.gov/coloradowolf,* or from the office listed in **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Liisa Niva, Acting Field Supervisor, U.S. Fish and Wildlife Service, Colorado Ecological Services Field Office, 134 Union Boulevard, Suite 670, Lakewood, CO 80228; telephone 303–236–4773; email *Colorado_wolf_10j@fws.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.

SUPPLEMENTARY INFORMATION: We announce the availability of the final environmental impact statement (EIS) and our draft record of decision (ROD) for the proposed establishment of a nonessential experimental population (NEP) of the gray wolf (*Canis lupus*) in the State of Colorado under section 10(j) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). We developed the final EIS in compliance with the agency decision making requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as amended. Our final EIS provides updates, as needed, to information presented in the draft EIS, including revisions in response to issues raised in comments received during the public review period. We have described and evaluated all alternatives in our final EIS. Our draft decision is based on our review of the alternatives and their environmental consequences, as described in the final EIS.

Background

On July 21, 2022 (87 FR 43489), we published a notification of intent to prepare an environmental impact statement (EIS) for this action and held public scoping meetings, in person on August 2, 3, and 4, and virtually on August 10, 2022. Cooperating agencies included multiple Federal and State agencies, Tribal Governments, and local governments. We also participated in Tribal working groups and Tribal coordination meetings. Additionally, we shared information with the public through a dedicated website, emails, in-person meetings, and webinars.

We published the proposed rule and noticed the availability of the draft EIS on February 17, 2023 (88 FR 10258), which opened a 60-day public comment period for both documents. During the public comment period, we hosted four in-person informational public meetings on March 14, 15, 16, and 28, and a virtual public meeting on March 22, 2023. The public comment period closed on April 18, 2023. We received 4,290 pieces of correspondence during the public comment period, with 1 correspondence having 16,233 signatures. We developed our final EIS after assessing and considering all comments, both individually and collectively. Our response to the substantive comments that we received are provided as an appendix to the final EIS.

Authors

The primary authors of this notice are the staff members of the Colorado Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Marjorie Nelson,

Acting Assistant Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023–20175 Filed 9–15–23; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 88, No. 180
Tuesday, September 19, 2023

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and approval under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding these information collections are best assured of having their full effect if received by October 19, 2023. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Iowa Commercial Horticulture Food Crop Survey.

OMB Control Number: 0535–0264.

Summary of Collection: The primary objectives of the National Agricultural Statistics Service (NASS) are to prepare and issue official State and national estimates of crop and livestock production, disposition and prices, economic statistics, and environmental statistics related to agriculture and to conduct the Census of Agriculture and its follow-on surveys. This project will target Iowa's edible horticulture crop producers using a sample of all Iowa operations on the NASS list frame known to produce edible horticulture crops.

General authority for these data collection activities is granted under U.S.C. Title 7, Section 2204. This survey will be conducted on a full cost recovery basis with the Iowa State University Extension & Outreach (ISU) in cooperation with the Iowa Department of Agriculture and Land Stewardship (IDALS).

Need and Use of the Information: For this survey period, NASS will collect data on how the COVID–19 pandemic disrupted many things, including food supply chains. The Iowa Horticulture industry would like to understand how the COVID–19 pandemic affected the long-term viability of farms that produce specialty crops. Anecdotally, it is understood that at the beginning of the pandemic specialty crop producers who delivered products direct to consumers benefited, as did pick-your-own operations. Some who sold to farmers markets benefit while others lost sales, depending on whether and how their market chose to open in the 2020 season. Repeating the survey for the 2023 growing season with additional questions regarding the impact of the pandemic will help them understand the state of specialty crop production in Iowa as the pandemic shifts into a new phase.

Description of Respondents: The Iowa Commercial Horticulture Food Crop Survey will be a census of all Iowa operations known to produce edible horticulture crops that include fruits, nuts, vegetables, berries, herbs, honey, maple syrup, and mushrooms.

Number of Respondents: 3,200.

Frequency of Responses: Reporting: One a year.

Total Burden Hours: 1,093.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–20260 Filed 9–18–23; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology Comments regarding these information collections are best assured of having their full effect if received by October 19, 2023. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to

the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Specialty Crops Market News Reports.

OMB Control Number: 0581–0006.

Summary of Collection: Section 203(g) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621) directs and authorizes the collection of information and disseminating of market information including adequate outlook information on a market-area basis for the purpose of anticipating and meeting consumer requirements, aiding in the maintenance of farm income and bringing about balance between production and utilization of agriculture products.

Market News provides all interested segments of the market chain with timely, accurate information from an unbiased third party. Equal access to timely and reliable market information tends to equalize the competitive position of all market participants. In the absence of Market News information and reports, small and medium sized market participants with limited resources for developing and collecting information are at a competitive disadvantage to larger participants who might be able to afford very sophisticated information systems.

Need and Use of the Information: AMS will collect market information on some 411 specialty crops for prices and supply. The Specialty Crops Market News Division reports are used by academia and various government agencies for regulatory and other purposes, but are primarily used by the specialty crops trade, which includes packers, processors, brokers, retailers, producers, and associated industries. Members of the specialty crops industry regularly make it clear that they need and expect AMS to issue price and supply market reports for commodities of regional, national, and international significance in order to assist in making immediate production and marketing decisions and as a guide to the amount of product in the supply channel.

In addition, AMS buys hundreds of millions of dollars of specialty crops products each year for domestic feeding programs, and Specialty Crops Market News Division data is a critical component of the decision-making process. The absence of these data would deny primary and secondary users information that otherwise would be available to aid them in their production, marketing decisions, analyses, research and knowledge of current market conditions. The omission of these data could adversely affect prices, supply, and demand.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 2,761.

Frequency of Responses: Reporting: Weekly; Monthly.

Total Burden Hours: 50,071.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–20267 Filed 9–18–23; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

[Docket ID FSA–2023–0018]

Information Collection Requests; Generic Clearance for the Collection of Qualitative Customer Feedback on the Service Delivery (0560–0286)

AGENCY: Farm Service Agency, U.S. Department of Agriculture (USDA).

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA), the Farm Production and Conservation (FPAC) is requesting comments from all interested individuals and organizations on an extension of a currently approved Generic Clearance for the Collection of Qualitative Customer Feedback on the Service Delivery (0560–0286). The Farm Service Agency (FSA) initially received the PRA approval for this information collection request and has expanded it to cover all four of the agencies in the U.S. Department of Agriculture (USDA) Farm Production and Conservation (FPAC) mission area. FPAC uses the approval to cover the surveys, window pop-up surveys, focus groups, beta testing new or revised electronic systems, comment cards, and other information collection instruments or methods, which are designed to get customer feedback on service delivery for various programs administered by any of the FPAC agencies. This request for approval broadly addresses the need for information about what our customers think of our services so that we can improve service delivery; specific information collection activities will be incorporated into the approval as the need for the information is identified. For example, when we implement a new program and provide information about the services for the program on our website, we may provide a voluntary customer service questionnaire about how well the program is working for our customers, specifically within the area of customer service.

DATES: We will consider comments that we receive by November 20, 2023.

ADDRESSES: We invite you to submit comments on this notice. You may submit comments through the Federal eRulemaking Portal by going to *http://www.regulations.gov* and searching for Docket ID FSA–2023–0018.

Comments will be available on *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mary Ann Ball, (202) 205–5851, *maryann.ball@usda.gov.* Individuals who require alternative means of communication should contact the USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Customer Feedback on Farm Service Agency Service Delivery (FastTrack).

OMB Control Number: 0560–0286.

Expiration Date of Approval: January 31, 2024.

Type of Request: Extension.

Abstract: FSA initially received the PRA approval for this information collection request and has expanded it to cover all of the agencies in the USDA FPAC mission area. FPAC includes the following four agencies: the FPAC Business Center, the Farm Service Agency (FSA), the National Resources Conservation Service (NRCS), and the Risk Management Agency (RMA). The program staff have created several feedback instruments (customer surveys) and submitted them to the FPAC information collection coordinator for approval under the current approved information collection of 0560–0286, Generic Clearance for the Collection of Qualitative Customer Feedback on Service Delivery. The program staff continue to use fast track approval to submit new customer instruments to the information collection coordinator for approval, which takes less time than going through a regular Paperwork Reduction Act process.

As a result, program staff are able to quickly implement certain types of surveys and related collection of information using OMB control number of 0560–0286. For example, when we implement a new program and provide information about the programs on our website, we may provide a voluntary customer service questionnaire about how well the program is working for our

customers, specifically within the area of customer service.

The information collection provides a means to gather qualitative customer and stakeholder feedback in an efficient, timely manner that is consistent with the commitment to improving service delivery. By qualitative feedback, we mean information, generally from customers, that provides useful insights on perceptions and opinions based on experiences with service delivery from one of the FPAC agencies. Such information does not include statistical surveys that yield quantitative results that can be generalized to the population. The qualitative feedback will:

- Provide insights into customer or stakeholder perceptions, experiences, and expectations,
- Provide an early warning of issues with service, and
- Focus attention on areas where communication, training, or changes in operations might improve delivery of products or services.

The collection will allow for ongoing, collaborative, and actionable communication between the FPAC agencies and customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management. The solicitation of feedback will target areas such as: timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on FPAC agency services will be unavailable.

We will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low burden for respondents (based on considerations of total burden hours, total number of respondents, or burden hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are noncontroversial and do not raise issues of concern to other Federal agencies;
- The collections are targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the FPAC agencies;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as religious beliefs, sexual behavior and attitudes, and other matters that are commonly considered private.

Additionally, we are including surveys, focus groups, webinars, and other information collection instruments to cover a beta testing or testing of a newly developed information system or online application for any FPAC Business Center, FSA, RMA, or NRCS programs to ensure it is meeting the customers' needs when applying for payments or benefits electronically. This will be an expansion of this information collection request and is being included to streamline the timing of our conversion from paper-based forms to encourage electronic submission of information.

There are no changes to the annual burden hours in this collection. For the following estimated total annual burden on respondents, the formula used to calculate the total burden hours is the estimated average time per response multiplied by the estimated total annual number of responses.

Estimate of Average Time to Respond: Public reporting burden for collecting information under this notice is estimated to average 11 minutes (0.17734 hours) per response, including the time for reviewing instructions, searching existing data sources, and completing and reviewing the collection of information. Specifically, it will be 10 minutes per customer feedback survey, 15 minutes per comment card, and 3 hours per focus group and for beta testing.

Respondents: Individuals and households; businesses; organizations; and State, local, or Tribal government.

Estimated Number of Respondents: 210,500.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 210,500.

Estimated Total Annual Burden Hours on Respondents: 37,333 hours.

Requesting Comments

We are requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the FPAC agencies, including whether the information will have practical utility;

(2) Evaluate the accuracy of the estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected;

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, 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 or 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.

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or the USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://ww.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by: (1) mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; (2) fax: (202) 690–7442; or (3) email: *program.intake@usda.gov.*

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Zach Ducheneaux,

Administrator, Farm Service Agency.

[FR Doc. 2023–20210 Filed 9–18–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

Hiawatha National Forest Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Hiawatha National Forest Resource Advisory Committee (RAC) will hold a public meeting according to the details shown below. The Committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the Committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act as well as to make recommendations on recreation fee proposals for sites on the Hiawatha National Forest within Chippewa County, consistent with the Federal Lands Recreation Enhancement Act.

DATES: An in-person meeting will be held on September 25, 2023, at 9:30 a.m. through 4:30 p.m., eastern daylight time (EDT).

Written and Oral Comments: Anyone wishing to provide in-person comments must pre-register by 11:59 p.m. EDT on September 15, 2023. Written public comments will be accepted by 11:59 p.m. EDT on September 15, 2023. Comments submitted after this date will be provided to the Forest Service, but the Committee may not have adequate time to consider those comments prior to the meeting.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: This meeting will be held in person at the St. Ignace District Ranger Office, located at W1900 US–2, St. Ignace, MI 49781. RAC information and meeting details can be found by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: Written comments must be sent by email to *rita.mills@usda.gov or* via mail (*i.e.,* postmarked) to Rita Mills, Hiawatha National Forest, 820 Rains Drive, Gladstone, MI 49837. The Forest Service strongly prefers comments be submitted electronically.

Oral Comments: Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. EDT, September 20, 2023, and speakers can only register for one speaking slot. Oral comments must be sent by email to *rita.mills@usda.gov* or via mail (*i.e.,* postmarked) to Rita Mills, Hiawatha National Forest, 820 Rains Drive, Gladstone, MI 49837.

FOR FURTHER INFORMATION CONTACT: Shannon Rische, Designated Federal Officer (DFO), by phone at 906–428–5839 or email at *shannon.rische@usda.gov* or Rita Mills, RAC Coordinator, at 906–241–0258 or email at *rita.mills@usda.gov*

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Make funding recommendations;
2. Plan outreach efforts for additional chairs;
3. Plan field trip;
4. Introduce new Forest Supervisor and District Ranger; and
5. Schedule the next meeting.

The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date to be scheduled on the agenda. Written comments may be submitted to the Forest Service up to 14 days after the meeting date listed under **DATES**.

Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, by or before the deadline, for all questions related to the meeting. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

Meeting Accommodations: The meeting location is compliant with the Americans with Disabilities Act, and the USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation to the person listed under the **FOR FURTHER INFORMATION CONTACT** section or contact USDA's TARGET Center at (202) 720–2600 (voice and TTY) or USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

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.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: September 12, 2023.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2023–20212 Filed 9–18–23; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; American Community Survey Methods Panel: 2024 Sexual Orientation and Gender Identity Test

AGENCY: Census Bureau, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, invites 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. The purpose of this notice is to allow for 60 days of public comment on the proposed revision of the American Community Survey Methods Panel Tests, prior to the submission of the information collection request (ICR) to OMB for approval.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before November 20, 2023.

ADDRESSES: Interested persons are invited to submit written comments by email to *acso.pra@census.gov.* Please reference American Community Survey SOGI Test in the subject line of your comments. You may also submit comments, identified by Docket Number USBC–2023–0007, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Elizabeth Poehler, ADC for Survey Methods, U.S. Census Bureau, 301–763–9305, *elizabeth.poehler@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The American Community Survey (ACS) is an ongoing monthly survey that collects detailed housing and socioeconomic data from about 3.5 million addresses in the United States and about 36,000 addresses in Puerto Rico each year. The ACS also collects detailed socioeconomic data from about 195,000 residents living in group quarters facilities in the United States and Puerto Rico each year. Data is collected via self-response modes (internet and paper) as well as interviewer-administered modes via telephone and in person. Resulting tabulations from this data collection are provided on a yearly basis. The ACS allows the Census Bureau to provide timely and relevant housing and socioeconomic statistics, even for low levels of geography.

The Census Bureau plans to request Office of Management and Budget (OMB) approval to conduct a test of sexual orientation and gender identity questions on the ACS. The test is referred to as the 2024 ACS Sexual Orientation and Gender Identity (SOGI) Test. Federal agencies have expressed interest in and identified legal uses for this information, including civil rights and equal employment enforcement.

The Census Bureau proposes to test question wording, response categories, and placement of sexual orientation and gender identity questions on the questionnaire. Of specific interest is how the questions perform when completed by proxy respondents. In the ACS, one person at an address typically answers questions about everyone living there. When one person answers a survey about others, we call this ''proxy reporting.'' Questions on sexual orientation and gender identity are not currently asked on any federal surveys that use proxy reporting. The test will build on existing qualitative research conducted throughout the federal government and private sector, including work by the Federal Interagency Working Group on Measuring SOGI, the Measuring SOGI Research Group as part of the Federal Committee on Statistical Methodology, and the National Academies of Sciences, Engineering, and Medicine (NASEM).

We are proposing to test up to two versions of the questions using a nationally representative, split-panel test. A sample of housing units will be selected for this test; housing units in sample for the ACS will not be eligible. We are also proposing to test a variation in display of the questions in the internet mode. A follow-up reinterview will also be conducted to assess the reliability and quality of responses.

Building on recommendations from NASEM and OMB Best Practices, the Census Bureau proposes to test a two-step gender identity question: first asking about sex assigned at birth and then asking about current gender. These questions will replace the existing question on sex.

The proposed 'sex assigned at birth' question would ask: What sex was <Name> assigned at birth? *Mark (X) ONE box.* The Census Bureau is proposing to omit the text, ''on your original birth certificate'' from the sex assigned at birth question as proposed by NASEM and OMB. Asking the question without this phrase has been used by some federal surveys and cognitively tested without issue (Asking About SOGI in the CPS: Cognitive Interview Results (*census.gov*)). Removing the reference to the birth certificate is more culturally sensitive to non-English speakers, some of whom may not have a birth certificate or have seen it. In recent years, many people who have a designation of X on their birth certificate were assigned male or female at birth before their parents chose to use X instead. Removing the birth certificate reference may help parents of those children answer this question. The Census Bureau also proposes to keep the existing order of the male and female categories to address a serious concern about how an inconsistency in the order of male/female categories across Census Bureau surveys could lead to interviewers accidentally selecting the wrong response category. Keeping the male/female order also minimizes the number of changes being tested at once.

The 'current gender' question will be asked only of people who are 15 and older. The proposed question is: What is <Name's> current gender? The response categories will be Male, Female, Transgender, Nonbinary, and ''This person uses a different term'' (with a space to write in a response). The proposed question stem aligns with the NASEM report recommendations. It refers to the subject of the question in the stem so that respondents are not left to reason what the question is asking based solely on the response options. The wording is also more concise when administered in the proxy version of the question as shown above.

The Census Bureau proposes to add ''nonbinary'' as a response option. Estimates suggest that over one million adults in the U.S. use this term to describe themselves. In previous research (*e.g.,* CPS pretesting), respondents have commented that this category should be added and that not every person who is nonbinary considers themselves transgender. Data on the nonbinary population was also part of requests from federal agencies.

The OMB best practices suggest using a 'mark all that apply' instruction for the gender question. However, most federal surveys do not use 'mark all that apply' for this question. Additionally, the California Health Interview Survey (CHIS) decided not to implement 'mark all that apply' in part due to concerns about ''the potential for increases in

gender minority reporting from those who do not primarily identify as non-cisgender'' artificially inflating estimates. Given the lack of consensus in this area, the Census Bureau proposes to test two treatments. A treatment that allows only one response category to be marked will be compared to a treatment that allows multiple categories to be marked.

Consistent with recommendations, a verification question will also be asked for anyone whose answer to the 'sex assigned at birth' question and 'current gender' question does not match. In addition, for evaluation purposes, the Census Bureau is considering asking the verification question to a sample of respondents whose answers are the same in the two questions. The Census Bureau is also proposing to add an open-ended write-in question to gather additional information about a person's gender identity for research purposes.

The 'sexual orientation' question will be asked only of people who are 15 and older. The proposed question is: Which of the following best represents how <Name> thinks of themselves? With response categories of: Gay or lesbian, Straight—that is not gay or lesbian, Bisexual, and This person uses a different term (with space to write-in a response). This question is in alignment with current recommendations of how to ask about sexual orientation, however it omits an explicit ''I don't know'' response category. This approach follows the conventions of the ACS, which does not offer an explicit ''don't know'' response option for any topics in the survey to minimize item nonresponse and increase data quality. Respondents can skip this question on the internet and paper modes. Interviewers can mark ''don't know'' and ''refusal'' in the computer-assisted personal interview (CAPI) instrument.

To help address sensitivity in interviewer-led modes, especially if other household members are present, the Census Bureau is also proposing to use a flashcard for in-person interviews and use numbered response categories for both in person and telephone interviews so that respondents can indicate a response category number to select the appropriate category or categories.

Both the 'current gender' and 'sexual orientation' question allow a write-in response. In the internet mode we will test two versions of the write in. In the first version the respondent will see the question, response categories, and the write-in field when they get to the screen with the question. In the second version, the respondent will only see the question and response categories when they get to the screen with the question. If the respondent selects the ''This person uses a different term'' category, then the write-in space will display, and the respondent can provide a write-in response. This display experiment will be embedded within the question wording experiment.

A follow-up content reinterview is also proposed for this test. A subset of the ACS questions will be re-asked in the reinterview to measure response reliability. For half of the reinterview sample, we will reinterview the sample respondent as the original interview, for the other half we will reinterview another adult member of the household. This will allow us to compare response reliability for proxy vs. self-responses. We will also compare the reliability of the SOGI questions to other questions in the ACS.

II. Method of Collection

Data collection for the test will mirror the data collection protocol for the ACS, which includes internet, paper, telephone, and in-person interviewing. In addition, a content follow-up reinterview will be conducted, most likely by telephone, though other modes such as internet are being considered. Interviews will be administered in English and Spanish.

III. Data

OMB Control Number: 0607–0936.

Form Number(s): ACS–1, ACS–1(SP), ACS CAPI(HU).

Type of Review: Regular submission, Request for a Revision of a Currently Approved Collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: We estimate that 271,680 sampled housing units will respond to the test of the 480,000 housing units sampled for the test. Additionally, responding housing units are eligible for a content follow-up reinterview. We estimate that 65,280 sampled housing units will also complete the reinterview.

Estimated Time per Response: 40 minutes for the average household questionnaire and 20 minutes for the content follow-up reinterview.

Estimated Total Annual Burden Hours: 203,015 hours.

	Estimated number of respondents	Estimated burden (in hours)	Total estimated burden hours
ACS interview	271,680	0.667	181,211
Content Follow-up Reinterview	65,280	0.334	21,804
Total			203,015

Estimated Total Annual Cost to Public: $0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S. Code, Sections 141, 193, and 221.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include, or summarize, each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may 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.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–20256 Filed 9–18–23; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Automated Export System (AES)

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 November 21, 2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau, Department of Commerce.

Title: Automated Export System (AES).

OMB Control Number: 0607–0152.

Form Number(s): Automated Export System (AES).

Type of Request: Regular submission, request for extension without change of a currently approved collection.

Number of Respondents: 17,025,219.

Average Hours per Response: 3 minutes per AES transaction.

Burden Hours: 851,261.

Needs and Uses: The Census Bureau requires mandatory filing of all export information via the Automated Export System (AES). This requirement is mandated through Public Law 107–228 of the Foreign Trade Relations Act of 2003. This law authorizes the Secretary of Commerce with the concurrences of the Secretary of State and the Secretary of Homeland Security to require all persons who file export information according to title 13, United States Code (U.S.C.), chapter 9, to file such information through the AES. With this submission, the Census Bureau is requesting continued clearance of the AES program.

The AES is the primary instrument used for collecting export trade data, which are used by the Census Bureau for statistical purposes. The AES provides the means for collecting data on U.S. exports. Title 13, U.S.C., chapter 9, sections 301–307, mandates the collection of these data. The regulatory provisions for the collection of these data are contained in the Foreign Trade Regulations (FTR), title 15, Code of Federal Regulations (CFR), part 30. The official export statistics collected from these tools provide the basic component for the compilation of the U.S. position on merchandise trade. These data are an essential component of the monthly totals provided in the U.S. International Trade in Goods and Services (FT–900) Press Release, a principal federal economic indicator, and a primary component of the Gross Domestic Product. The published export data enable the private and public sector to develop practical marketing strategies as well as provide a means to assess the impact of exports on the domestic economy. These data are used in the development of U.S. Government economic and foreign trade policies, including export control purposes under the Export Control Reform Act of 2018, 50 U.S.C. 4801–4852. The Bureau of Industry and Security (BIS), U.S. Customs and Border Protection (CBP), and other enforcement agencies use these data to detect and prevent the export of certain items by unauthorized parties to unauthorized destinations or end users.

In order to publish accurate export trade statistics, the Census Bureau is responsible for maintaining the FTR, which implements the provisions for filing export information in the AES. In addition to the publication of the FT–900, the Census Bureau releases data on imports of steel mill products in advance of the regular monthly trade statistics release. This exception to the normal procedure was initially approved by the OMB in January 1999 and had been subsequently extended annually through means of a separately submitted memo. This exception has permitted the public release of preliminary monthly data on imports of steel under the provisions of the OMB's Statistical Policy Directive No. 3 on the Compilation, Release and Evaluation of Principal Federal Economic Indicators. With the revision to the AES Program in 2019, the Census Bureau eliminated the need for an annual approval from OMB since it is included in the Information Collection Request (ICR).

With this submission, the Census Bureau is requesting continued clearance of the AES program as a result of the publication of a final rule in the **Federal Register** on August 10, 2023 (88 FR 54234) adding a conditional data element to the AES called the Directorate of Defense Trade Controls Category XXI Determination Number. The final rule will require on the effective date of November 8, 2023 AES filers (the U.S. Principal Party in Interest (USPPI) or the authorized agent) to report the DDTC Category XXI Determination Number only when the DDTC United States Munitions List (USML) Category XXI is selected in the DDTC USML Category Code field in the AES. In calendar year 2022, 156,195 (0.6%) AES records consisted of USML Category XXI commodities.

The Census Bureau published a notice of proposed rulemaking in the **Federal Register** on May 3, 2023 (88 FR 27815) inviting public comments on our plans to add the conditional data element. The Census Bureau gave the public 60 days to comment, and at the conclusion of the 60 days, no comments were received. In the final rule published on August 10, 2023, the Census Bureau sought public comments regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

The information collected via the AES conveys what is being exported (description and commodity classification number); how much is exported (quantity, shipping weight, and value); how it is exported (method of transport, exporting carrier, and whether containerized); who the parties to the transaction are (USPPI, authorized agent, and intermediate and ultimate consignees); from where (State of origin and port of export); to where (port of unloading and country of ultimate destination); and when a commodity is exported (date of exportation). Profile information on the USPPI and the authorized agent provides a contact for verification of the information.

The data collected from the AES serves as the official record of export transactions and is used by the U.S. Federal Government and the private sector. The Federal Government uses

every data element in the AES. The mandatory filing requirement of the export information in AES enables the Federal Government to produce more complete, accurate and timely export statistics. The Census Bureau delegated the authority to enforce the FTR to the BIS's Office of Export Enforcement along with the Department of Homeland Security's CBP and Homeland Security Investigations (HSI). The mandatory use of the AES also facilitates the enforcement by the BIS of the Export Administration Regulations for the detection and prevention of exports of national security sensitive commodities to unauthorized destinations; the enforcement by the CBP of the U.S. Department of State's International Traffic in Arms Regulations for the exports of defense articles; the validation by the Census Bureau of the Kimberly Process Certificate for the exports of rough diamonds; and enforcement and compliance by other federal agencies (*i.e.,* Environmental Protection Agency, Drug Enforcement Agency, etc.) of regulations pertaining to export requirements.

Other Federal agencies use these data to develop the components of the merchandise trade figures used in the calculations for the balance of payments and Gross Domestic Product accounts to evaluate the effects of the value of U.S. exports; and to prepare for and assist in trade negotiations under the General Agreement on Tariffs and Trade. Collection of these data also eliminates the need for conducting additional surveys for the collection of information because the AES shows the relationship of the parties to the export transaction (as required by the Bureau of Economic Analysis (BEA). The Bureau of Labor Statistics also uses the AES data as a source for developing the export price index and by the U.S. Department of Transportation for administering the negotiation of reciprocal arrangements for transportation facilities between the U.S. and other countries. Additionally, a collaborative effort amongst the Census Bureau, the National Governors' Association and other data users resulted in the development of export statistics requiring the State of origin to be reported on the AES. This information enables State governments to focus activities and resources on fostering the exports of goods that originate in their States.

The International Trade Administration relies heavily on the preliminary import statistics of steel mill products provided by the Census Bureau. As a part of the Government's steel initiative, the Department of Commerce was instructed by the Administration to monitor steel imports. The early release of preliminary statistics on steel mill imports allows the steel industry to identify trends and potential shifts in trade patterns and take appropriate action. A variety of parties, including government officials and the public with an interest in imports of steel products continue to use this monitoring system heavily. The FTR, subpart F addresses the general requirements for filing import entries with CBP in the ACE in accordance with 19 CFR, which is the source of the import data on steel mill products.

Export statistics collected from the AES aid private sector companies, financial institutions, and transportation entities in conducting market analysis and market penetration studies for the development of new markets and market-share strategies. Port authorities, steamship lines, airlines, aircraft manufacturers, and air transport associations use these data for measuring the volume and effect of air or vessel shipments and the need for additional or new types of facilities.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 United States Code, chapter 9, section 301.

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 0607–0152.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–20227 Filed 9–18–23; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Generic Clearance Improving Customer Experience (OMB Circular A–11, Section 280 Implementation)

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 April 20, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: Office of the Secretary, Department of Commerce.

Title: Improving Customer Experience (OMB Circular A–11, Section 280 Implementation).

OMB Control Number: 0690–0035.

Form Number(s): None.

Type of Request: Regular Submission, extension without change of a currently approved collection.

Number of Respondents: 300,000.

Average Hours per Response: Varied, dependent upon the data collection method used. The possible response time to complete a questionnaire or survey may be 3 minutes or up to 2 hours to participate in an interview or focus group.

Burden Hours: 27,725.

Needs and Uses: The results will be used to improve the delivery of Federal services and programs. It will also provide government-wide data on customer experience that can be displayed on *www.performance.gov* to help build transparency and accountability of Federal programs to the customers they serve.

Affected Public: Collections will be targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future. For the purposes of this request, ''customers'' are individuals, businesses, and organizations that interact with a Federal Government agency or program, either directly or via

a federal contractor. This could include individuals or households; businesses or other for-profit organizations; not-for-profit institutions; State, local or tribal governments; Federal government; and Universities.

Frequency: Varied.

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 0690–0035.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–20271 Filed 9–18–23; 8:45 am]

BILLING CODE 3510–17–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Eligibility Questionnaire for HAVANA Act Payments

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 June 13, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: Office of the Secretary, Department of Commerce.

Title: Eligibility Questionnaire for HAVANA Act Payments.

OMB Control Number: 0690–0037.

Form Number(s): CD–350.

Type of Request: Regular submission, extension of approved information collection.

Number of Respondents: 20.

Average Hours per Response: 1 hour (30 minutes claimant/30 minutes physician).

Burden Hours: 20.

Needs and Uses: An individual wishing to make a claim under the HAVANA Act IFR will fill out the ''Patient Demographics'' portion of the Eligibility Questionnaire (CD–350) and provide it to a physician currently certified with the American Board of Psychiatry and Neurology (ABPN), the American Osteopathic Board of Neurology and Psychiatry (AOBNP), the American Board of Physical Medicine and Rehabilitation (ABPMR) or the American Osteopathic Board of Physical Medicine and Rehabilitation (AOBPMR). The board-certified physician will complete the form after examining the individual and reviewing their records and will fax or email the completed form to the Department. The physician's findings will be instrumental in determining the individual's eligibility for payment under the HAVANA Act.

As noted in the IFR, the Department believes that many respondents to this information are already known to the Department due to prior reporting. Nevertheless, the Department notes that this form, which will be available on *www.commerce.gov/havana-act,* can be completed by any Department covered employee, covered individual, or covered dependent as a way of beginning an application for a HAVANA Act payment. Respondents to this information collection are individuals who believe they are eligible for payment under the HAVANA Act (Section I of the form) and physicians responsible for evaluating their symptoms and impairment (Section II of the form).

Affected Public: Individuals or Federal Government personnel.

Frequency: One-time payment.

Respondent's Obligation: Voluntary.

Legal Authority: HAVANA Act of 2021 (Pub. L. 117–46).

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 0690–0037.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary of Economic Affairs, Commerce Department.

[FR Doc. 2023–20236 Filed 9–18–23; 8:45 am]

BILLING CODE 3510–17–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; Import, End-User, Delivery Verification Certificates and Firearms Entry Clearance Requirements

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of Information Collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites 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. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before November 20, 2023.

ADDRESSES: Interested persons are invited to submit comments by email to Mark Crace, IC Liaison, Bureau of Industry and Security, at *mark.crace@bis.doc.gov* or to *PRAcomments@doc.gov.* Please reference OMB Control Number 0694–0093 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Mark Crace, IC Liaison, Bureau of Industry and Security, phone 202–482–8093 or by email at *mark.crace@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information addresses three activities: (1) Import Certificates/End Use Certificates, (2) Delivery Verification, and (3) Firearms Entry Clearance Requirements.

Import Certificates or End-User Certificates (IC/EUC)—The IC/EUC, BIS–645P, is obtained by the foreign importer and transmitted to the U.S. exporter. They are issued by the government of the country of ultimate destination to exercise legal control over the disposition of the items covered by the IC/EUC. The control exercised by the government issuing the IC/EUC is in addition to the conditions and restrictions placed on the transaction by BIS.

Delivery Verification—The Delivery Verification Certificate (DV) is required by BIS as part of its export control program. The license holder is responsible for having the ultimate consignee complete the BIS–647P, Delivery Verification Certificate Form when the goods are delivered. BIS uses the DV procedure on an ''as needed'' basis. The DV is usually required when there is suspicion of violation of the EAR. Therefore, if the exporter cannot supply the DV, BIS must be notified to determine if an exception is legitimate. Otherwise, the exporter would be in violation of the EAR.

Firearms Entry Clearance Requirements—This entry clearance requirement is necessary due to the changes by the President in determining that certain items no longer warrant control under United States Munitions List (USML) Category I—Firearms, Close Assault Weapons and Combat Shotguns; Category II—Guns and Armament; and Category III—Ammunition/Ordnance would be controlled under the Commerce Control List (CCL). As the State Department previously collected this same type of information, the Department of Commerce controls the CCL and must now take over this collection of information.

II. Method of Collection

Submitted electronically or in paper form.

III. Data

OMB Control Number: 0694–0093.

Form Number(s): BIS–645P, BIS 647–P.

Type of Review: Regular submission, extension of a current information collection. *Affected Public:* Business or other for-profit organizations.

Estimated Number of Respondents: 11,776.

Estimated Time per Response: 1 to 30 minutes.

Estimated Total Annual Burden Hours: 1630.

Estimated Total Annual Cost to Public: 0.

Respondent's Obligation: Mandatory.

Legal Authority: §§ 748.9, 748.10, 748.12, 748.14, Part 748 Supplement No. 5, 758.10, 762.5(d), 762.6, 764.2(g)(2), and of the Export Administration Regulations (EAR).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may 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.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–20258 Filed 9–18–23; 8:45 am]

BILLING CODE 3510–33–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; Rated Orders Under the Defense Priorities and Allocations System (DPAS)

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites 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. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before November 20, 2023.

ADDRESSES: Interested persons are invited to submit comments by email to Mark Crace, IC Liaison, Bureau of Industry and Security, at *mark.crace@bis.doc.gov* or to *PRAcomments@doc.gov.* Please reference OMB Control Number 0694–0092 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Mark Crace, IC Liaison, Bureau of Industry and Security, phone 202–482–8093 or by email at *mark.crace@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This information is necessary to support the execution of the President's priorities and allocations authority under the Defense Production Act of 1950 (DPA), as amended (50 U.S.C. 4501, *et seq.*), and the priorities authorities under the Selective Service Act of 1948 (50 U.S.C. 3816), delegated to the Secretary of Commerce and implemented by the Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700). The purpose of this authority is to ensure preferential acceptance and priority performance of contracts and orders for all materials, services, and facilities, including construction materials, the authority for which has not been delegated to other agencies under Executive Order 13603 (referred to as ''industrial resources'') in support of approved national defense programs.

II. Method of Collection

Submitted electronically or in paper form.

III. Data

OMB Control Number: 0694–0092.

Form Number(s): None.

Type of Review: Regular submission, extension of a current information collection.

Affected Public:

Estimated Number of Respondents: 1,436,538. Business or other for-profit organizations.

Estimated Time per Response: 1 to 16 minutes.

Estimated Total Annual Burden Hours: 45,432.

Estimated Total Annual Cost to Public: 1,590,120.

Respondent's Obligation: Mandatory.

Legal Authority: Defense Protection Act of 1950 (DPA).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may 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.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–20221 Filed 9–18–23; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Section Membership Opportunities for the United States-India CEO Forum

AGENCY: International Trade Administration (ITA), Department of Commerce

ACTION: Notice.

The Department of Commerce, ITA, is amending the Notice published at 88 FR 57418 (August 23, 2023), regarding the dates for submission of applications for appointment to the U.S. Section of the U.S.-India CEO Forum (''Forum''). ITA will accept applications for membership on the U.S. Section of the Forum for terms that will begin upon appointment and will expire on December 31, 2024. Immediate consideration will now be given to applications received by September 29, 2023. ITA will accept nominations under this notice on an ongoing basis during the charter term to fill vacancies as they arise.

ITA also notes that the following sectors are the subject of ongoing U.S.-India government engagements and is particularly seeking applicants representing:

- Healthcare in the context of tackling current and future public health emergencies and bolstering public health efforts;
- Critical and emerging technologies that are the focus of the U.S.-India initiative on Critical and Emerging Technologies (iCET), announced by President Biden and Prime Minister Modi in May 2022 to elevate and expand the strategic technology partnership and defense industrial cooperation between the governments, businesses, and academic institutions of the United States and India; and
- Long-term institutional investment, including, but not limited to, pension and endowment funds.

ADDRESSES: For inquiries and an application, please contact Noor Sclafani, International Trade Specialist, Office of South Asia, U.S. Department of Commerce, by email at *noor.sclafani@trade.gov.*

FOR FURTHER INFORMATION CONTACT: Noor Sclafani, International Trade Specialist, Office of South Asia, U.S. Department of Commerce, telephone: (202) 823–1840.

SUPPLEMENTARY INFORMATION: Please refer to Notice published at 88 FR 57418 (August 23, 2023).

Dated: September 14, 2023.

Valerie Dees,

Director, Office of South Asia.

[FR Doc. 2023–20274 Filed 9–18–23; 8:45 am]

BILLING CODE 3510–HE–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; Alaska Crab Arbitration

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites 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. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before November 20, 2023.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Please reference OMB Control Number 0648–0516 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Gabrielle Aberle, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668. Telephone 907–586–7356.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS), Alaska Regional Office, is requesting extension of a currently approved information collection for the Arbitration System for the Crab Rationalization Program.

The Crab Rationalization Program allocates Bering Sea and Aleutian Islands (BSAI) crab resources among

harvesters, processors, and coastal communities. Under the Crab Rationalization Program, eligible License Limitation Program license holders were issued crab quota shares (QS), which are long term shares, based on their qualifying license histories. The QS yield annual individual fishing quota (IFQ) that is an exclusive harvest privilege for a portion of the total allowable catch. Processor quota shares (PQS) are long term shares issued to processors. The PQS yield annual individual processor quota (IPQ) that is an exclusive privilege to receive, for processing, a portion of the crab harvested with Class A IFQ.

This information collection for the Arbitration System is necessary for NMFS to manage the Crab Rationalization Program crab fisheries in the BSAI. This information collection is implemented under the Crab Rationalization Program and required by regulations at 50 CFR 680.20. NMFS requires that harvesters and processors abide by an Arbitration System established to stabilize prices and negotiations during the crab harvest season. The Arbitration System is necessary to reduce contention in price negotiations. The information collected is necessary for NMFS to verify the membership of the arbitration organizations and maintain the Arbitration System.

The Arbitration System was designed to fairly and equitably resolve price, delivery terms, performance standards, and other disputes in the event that IFQ and IPQ holders are unable to reach agreement on arbitration proceedings. The Arbitration System is also designed to minimize the potential for antitrust violations. The Arbitration System includes a provision for open negotiations among IPQ and IFQ holders, as well as various negotiation approaches, including a share matching approach, a lengthy season approach where parties may postpone binding arbitration until during the season, and a binding arbitration procedure to resolve price disputes between an IPQ holder and eligible IFQ holders. The Arbitration System also provides for dissemination of market information to facilitate negotiations, coordination of matching Class A IFQ held by harvesters to IPQ held by processors, and the opportunity to use the binding arbitration process to resolve terms of price and delivery. Certain aspects of the Arbitration System are required of catcher vessel owners who hold QS/IFQ and PQS/IPQ holders and operate regardless of whether participants in the fishery actually initiate binding arbitration in order to resolve terms of price or delivery.

This information collection contains five components of the Arbitration System that are submitted to NMFS. Four are submitted annually: the Annual Arbitration Organization Report, the Market Report, the Non-binding Price Formula Report, and the Cost Allocation Agreement. The Contract Arbitrator Report is submitted if any arbitrations occur within a fishery.

The Annual Arbitration Organization Report is compiled by each of the two arbitration organizations; one organization represents the processors, and the second represents the harvesters. This report includes information on the arbitration organization and its management personnel, the crab QS fisheries to which the report applies, the ownership interest and the QS/IFQ or PQS/IPQ held by each member; and the arbitration process.

The Cost Allocation Agreement provides combined shared arbitration accounting costs. Federal regulations for the Crab Rationalization Program require that the crab arbitration costs are shared equally between IPQ holders and Class A IFQ holders—processors pay half and fishermen pay half.

The arbitration organizations use contracted parties to meet the requirements of the Market Report, Nonbinding Price Formula Report, and Contractor Arbitrator Report.

The Non-binding Price Formula Report is a pre-season report that is designed to serve as a starting point for negotiations between fishermen and processors, or as a starting point for an arbitrator in evaluating offers in an arbitration process. This report documents how each formula was developed.

The Market Report provides an analysis of the market for products of a specific crab fishery and reports on activities occurring within three months prior to its generation. The purpose of this report is to provide background information on each crab fishery, the products generated by each fishery, and position of those products in the marketplace; discuss the historical division of wholesale revenue; and provide the methods for predicting wholesale prices before the fishery occurs.

The Contract Arbitrator Report documents arbitration proceedings if they occur within a fishery.

II. Method of Collection

The information is submitted by email, mail, delivery, or fax.

III. Data

OMB Control Number: 0648–0516.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Individuals or households; Business or other for-profit organizations.

Estimated Number of Respondents: 2.

Estimated Time Per Response: Annual Arbitration Organization Report: 6 hours; Cost Allocation Agreement: 16 hours.

Estimated Total Annual Burden Hours: 28 hours.

Estimated Total Annual Cost to Public: $177,015 in recordkeeping and reporting costs.

Respondent's Obligation: Mandatory.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may 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.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–20279 Filed 9–18–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD363]

Marine Mammals; File No. 27460

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Jose Pablo Vazquez-Medina, Ph.D., University of California at Berkeley, 3040 Valley Life Sciences Bldg., #3140, Berkeley, CA 94720, has applied in due form for a permit to import specimens of marine mammals for scientific research.

DATES: Written comments must be received on or before October 19, 2023.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 27460 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 27460 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Erin Markin, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant proposes to receive, import, and export biological samples from up to 200 pinnipeds (excluding walrus) and 200 cetaceans annually. Sources of foreign and domestic parts may include subsistence harvests, captive animals, other authorized researchers or curated collections, bycatch from legal commercial fishing operations, and foreign stranded animals. The samples will be used to generate cell lines and examine the effects of stress hormones and organic pollutants on marine mammal cellular and tissue functions. The permit would be valid for 5 years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: September 12, 2023.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–20180 Filed 9–18–23; 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; Central Gulf of Alaska Rockfish Program: Permits and Reports

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites 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. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before November 20, 2023.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Please reference OMB Control Number 0648–0545 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Gabrielle Aberle, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK, 99802–1668. Telephone 907–586–7356.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS), Alaska Regional Office, is requesting extension of a currently approved information collection.

This information collection contains requirements for the Central Gulf of Alaska Rockfish Program (Rockfish Program) and is necessary for NMFS to administer and monitor compliance with the management provisions of the Rockfish Program. This information collection is required in Rockfish Program regulations at 50 CFR part 679.

The Rockfish Program is a limited access privilege program developed to enhance resource conservation and improve economic efficiency in the Central Gulf of Alaska rockfish fisheries. The rockfish fisheries are conducted in Federal waters near Kodiak, Alaska, by trawl vessels and longline vessels. The Rockfish Program assigns quota share (QS) to License Limitation Program (LLP) licenses for rockfish primary and secondary species based on legal landings associated with that LLP.

Each year, an LLP license holder assigns the LLP license with rockfish QS to a rockfish cooperative. Each rockfish cooperative receives an annual cooperative fishing quota (CQ), which is an amount of primary and secondary rockfish species the cooperative is able to harvest in that fishing year.

This collection contains the information collection requirements submitted by the rockfish cooperatives for an annual rockfish CQ permit, inter-cooperative quota transfers, and vessel check-in/check-out and termination of fishing reports.

The Application for Rockfish Cooperative Fishing Quota is submitted annually by a rockfish cooperative to receive the cooperative's annual CQ

permit. The application collects rockfish cooperative identification information, LLP holder and ownership documentation for the members of the cooperative applying for QS, identification information for vessels of the cooperative members, shoreside processor associate identification information, certifications of the cooperative representative and processor associate(s) and required attachments.

The Application for Inter-Cooperative Transfer of CQ is used by a rockfish cooperative to transfer CQ to another rockfish cooperative. The information collected includes information on the QS to be transferred. This information is used by NMFS to monitor transfers to ensure they do not exceed ownership or use caps for the fishery.

The Rockfish Program vessel check-in report must be submitted before a vessel authorized to fish under the cooperative's permit starts fishing for the cooperative, and a check-out report when a vessel stops fishing for the cooperative during the fishing season. The check-in and check-out reports are necessary so that NMFS's catch accounting system can identify catch by a vessel that should accrue to a rockfish cooperative quota allocation from catch that occurs in other, non-Rockfish Program fisheries.

A rockfish cooperative may choose to terminate its CQ permit through a termination of fishing report submitted to NMFS. This notifies NMFS that all vessels fishing for the cooperative have completed fishing in the Rockfish Program for the year.

II. Method of Collection

The information is collected by mail, fax, delivery, and electronically through eFISH on the NMFS Alaska Region website at *https://alaskafisheries.noaa.gov/webapps/efish/login.*

III. Data

OMB Control Number: 0648–0545.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 7.

Estimated Time Per Response: Application for Rockfish Cooperative Fishing Quota: 2 hours; Application for Inter-Cooperative Transfer of Rockfish Cooperative Quota: 10 minutes; Rockfish Program Vessel Check-In/Check-Out and Termination of Fishing Report: 10 minutes.

Estimated Total Annual Burden Hours: 35 hours.

Estimated Total Annual Cost to Public: $35 in recordkeeping and reporting costs.

Respondent's Obligation: Required to Obtain or Retain Benefits; Mandatory.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may 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.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–20278 Filed 9–18–23; 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; American Lobster—Annual Trap Transfer Program

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 April 21, 2023 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration, Commerce.

Title: American Lobster—Annual Trap Transfer Program.

OMB Control Number: 0648–0673.

Form Number(s): None.

Type of Request: Regular (extension of a current information collection).

Number of Respondents: 204.

Average Hours Per Response: 10 minutes.

Total Annual Burden Hours: 17.

Needs and Uses: This request is for an extension of a currently approved information collection.

The American lobster resource and fishery are cooperatively managed by the states and NMFS under the authority of the Atlantic Coastal Fisheries Cooperative Management Act, according to the framework established by the Atlantic States Marine Fisheries Commission (ASMFC) in Amendment 3 of its Interstate Fishery Management Plan (ISFMP). This collection of information is in response to several addenda to Amendment 3 of the ISFMP that work to reduce trap fishing effort through limited entry fishing and trap allocation limit reductions. The Trap Transfer Program is intended to foster economic flexibility for the lobster industry while reducing fishing effort on the American lobster resource. The regulations implementing the FMP in the EEZ are specified at 50 CFR part 697.

This collection of information is being conducted to help mitigate the economic burden of scheduled trap allocation reductions in Lobster Conservation Management Areas 2 and 3 on Federal lobster permit holders through the Annual Lobster Trap Transfer Program, which allows all qualified Federal lobster permit holders to buy and sell trap allocation from Areas 2, 3, or Outer Cape Cod. NMFS collects application forms from Lobster permit holders who wish to transfer trap allocation from these areas during a 2-

month period (from August 1 through September 30) each year; and the revised allocations resulting from the transfers become effective for each participating lobster permit at the start of the following Federal lobster fishing year, on May 1. Both the seller and buyer of the traps are required to sign the application form, date the document, and clearly show that the seller has sufficient allocation to transfer and that the buyer has sufficient room under the applicable trap cap. There were no modifications to this collection.

Affected Public: Business or other for-profit organizations.

Frequency: As-needed.

Respondent's Obligation: Required to Obtain or Retain Benefits.

Legal Authority: Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5101 *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 0648–0673.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–20277 Filed 9–18–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD350]

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 88 State of Florida's State Reef Fish Survey (SRFS) Topical Working Group Scoping Webinar for Gulf of Mexico Red Grouper.

SUMMARY: The SEDAR 88 assessment of Gulf of Mexico red grouper will consist of a series of webinars. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 88 SRFS Topical Working Group Scoping Webinar will be held October 5, 2023, from 9 a.m. to 11 a.m., eastern.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT** below) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; phone: (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and State and Federal agencies.

The items of discussion in the webinar are as follows:

Participants will discuss what SRFS data may be available for use in the assessment of Gulf of Mexico red grouper.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: September 14, 2023.

Diane M. DeJames-Daly,

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

[FR Doc. 2023–20207 Filed 9–18–23; 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; NOAA Dr. Nancy Foster Scholarship Program

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites 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. The purpose of this notice is to allow for 60 days of public comment preceding submission of the information collection request to OMB for review and approval.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before November 20, 2023.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Please reference OMB Control Number 0648–0432 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Seaberry Nachbar, NOAA Dr. Nancy Foster Scholarship Program Manager, NOAA, 99 Pacific Street, Monterey, CA 93940, 831–647–4204, *Seaberry.Nachbar@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request for extension of an existing information collection.

NOAA's Office of National Marine Sanctuaries administers the Dr. Nancy Foster Scholarship Program, authorized by 16 U.S.C. 1445c–1 and 16 U.S.C. 1445, recognizes outstanding achievement in master's and doctoral degrees in oceanography, marine biology, or maritime archaeology—this can include but is not limited to ocean and/or coastal: engineering, social science, marine education, marine stewardship, resource management disciplines—and particularly to encourage women and members of minority groups to apply. The scholarship supports independent graduate level research through financial support of graduate degrees in such fields. Gender and minority status are not considered when selecting award recipients. However, special outreach efforts are employed to solicit applications from women and members of minority groups. Scholarships are distributed by disciplines, institutions, and geography, and by degree sought, with selections within distributions based on financial need, the potential for success in a graduate level studies program (academic achievement), and the potential for achieving research and career goals. Data collection in the form of a full application, letters of recommendation, grade point average documents, research outline, a letter of financial need statement, and a declaration statement are all required to apply for the scholarship. Applicants submit this information through *Grants.gov* system. This information is used for the review and selection of the individuals who will receive scholarship funds.

Selected awardees will also be requested to prepare a biographical sketch and photograph for NOAA's scholarship web page. Awardees are requested to prepare annual progress reports and participate in pre- and post-evaluations and one exit interview.

II. Method of Collection

Information for the application is collected through an application submission, either electronically through the *Grants.gov* platform or if internet is not available, applicants may submit applications via mail. Information from selected awardees is collected orally.

III. Data

OMB Control Number: 0648–0432.

Form Number(s): None.

Type of Review: Regular (extension of an approved collection).

Affected Public: Individuals.

Estimated Number of Respondents: 190.

Estimated Time per Response: Application and transcripts: 8 hours; Letters of recommendation: 45 minutes; Biographical sketch and photograph of awardees: 1 hour; Annual progress reports: 4 hours; Pre- and post-evaluations and exit interview: 10 minutes each.

Estimated Total Annual Burden Hours: 570 burden hours.

Estimated Total Annual Cost to Public: $3,800.

Respondent's Obligation: Voluntary.

Legal Authority: 16 U.S.C. 1445c–1 and 16 U.S.C. 1445c.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may 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.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–20282 Filed 9–18–23; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD369]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Summer Flounder, Scup, and Black Sea Bass Monitoring Committee will hold a public webinar meeting.

DATES: The meeting will be held on Friday, October 6, 2023, from 9 a.m. until 11 a.m. EDT. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar. Connection information will be posted prior to the meeting at *www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Summer Flounder, Scup, and Black Sea Bass Monitoring Committee will meet

via webinar, jointly with the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup, and Black Sea Bass Technical Committee. The purpose of this meeting is for both groups to receive a detailed presentation on the data inputs and methodological framework of the Recreational Demand Model. The Monitoring and Technical Committees will meet again in November 2023 to use this model for projecting recreational harvest and for considering management measure recommendations for these three species.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: September 14, 2023.

Diane M. DeJames-Daly,

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

[FR Doc. 2023–20208 Filed 9–18–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy (USMA)

AGENCY: Department of the Army, DoD.

ACTION: Notice of committee meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976, the Department of Defense announces that the following Federal advisory committee meeting will take place.

DATES: The meeting will be held on Monday, October 16, 2023, Time 9:00 a.m.–11:30 a.m. Members of the public wishing to attend the meeting will be required to show a DoD government photo ID or submit to and pass a background check prior to entering West Point in order to gain access to the meeting location.

ADDRESSES: The meeting will be held in the Haig Room, Jefferson Hall, 758 Cullum Road, West Point, New York 10996.

FOR FURTHER INFORMATION CONTACT: Mrs. Deadra K. Ghostlaw, the Designated Federal Officer for the committee, in writing at: USMA G1/Adjutant General's Office, ATTN: Deadra K. Ghostlaw, 646 Swift Road, West Point, NY 10996; by email at: *deadra.ghostlaw@westpoint.edu* or *BoV@westpoint.edu;* or by telephone at (845) 938–6534.

SUPPLEMENTARY INFORMATION: The committee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150. The USMA BoV provides independent advice and recommendations to the President of the United States on matters related to morale, discipline, curriculum, instruction, physical equipment, fiscal affairs, academic methods, and any other matters relating to the Academy that the Board decides to consider.

Purpose of the Meeting: This is the 2023 Annual Meeting of the USMA BoV. Members of the Board will be provided updates on Academy issues. Agenda: Introduction; Board Business: Approve Minutes from the July BoV Meeting, select Spring 2024 meeting date, Open Discussion; Superintendent Remarks; Line of Effort (LOE) 1: Develop Leaders of Character Who Live Honorably, Lead Honorably, and Demonstrate Excellence; LOE 3: Build and Retain a Diverse and Talented Team; LOE 5: Strengthen Partnerships.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165 and subject to the availability of space, this meeting is open to the public. Seating is on a first to arrive basis. Attendees are requested to submit their name, affiliation, and daytime phone number seven business days prior to the meeting to Mrs. Ghostlaw, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Pursuant to 41 CFR 102–3.140d, the committee is not obligated to allow a member of the public to speak or otherwise address the committee during the meeting, and members of the public attending the committee meeting will not be permitted to present questions from the floor or speak to any issue under consideration by the committee. Because the committee meeting will be held in a Federal Government facility on a military post, security screening is required. A DoD government photo ID is required to enter post. Without a DoD ID, members of the public must first go to the Visitor Control Center in the Visitor Center and undergo a background check before being allowed access to the installation. Members of the public then need to park in Buffalo Soldier Field parking lot and ride the north-bound Central Post Area (CPA) shuttle bus to Thayer Road, get off at the Thayer Road Extension and walk up the road to the Guard Station; a member of the USMA staff will meet members of the public wishing to attend the meeting at 8:30 a.m. and escort them to the meeting location. Please note that all vehicles and persons entering the installation are subject to search and/or an identification check. Any person or vehicle refusing to be searched will be denied access to the installation. Members of the public should allow at least an hour for security checks and the shuttle ride. The United States Military Academy, Jefferson Hall, is fully handicap accessible. Wheelchair access is available at the south entrance of the building. For additional information about public access procedures, contact Mr. Espinal, the committee's Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the committee, in response to the stated agenda of the open meeting or in regard to the committee's mission in general. Written comments or statements should be submitted to Mrs. Ghostlaw, the committee Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number and must be received by the Designated Federal Official at least seven business days prior to the meeting to be considered by the committee. The Designated Federal Official will review all timely submitted written comments or statements with the committee Chairperson and ensure the comments are provided to all members of the committee before the meeting. Written comments or statements received after this date may not be provided to the committee until its next meeting.

Pursuant to 41 CFR 102–3.140d, the committee is not obligated to allow a member of the public to speak or otherwise address the committee during the meeting. However, the committee Designated Federal Official and Chairperson may choose to invite certain submitters to present their comments verbally during the open portion of this meeting or at a future meeting. The Designated Federal Officer, in consultation with the committee Chairperson, may allot a

specific amount of time for submitters to present their comments verbally.

James W. Satterwhite Jr.,

Army Federal Register Liaison Officer.

[FR Doc. 2023–20179 Filed 9–18–23; 8:45 am]

BILLING CODE 3711–02–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0043]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by October 19, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil*.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Exceptional Family Member Program; DD Form 2792, ''Family Member Medical Summary,'' and DD Form 2792–1, ''Special Education/Early Intervention Summary''; OMB Control Number 0704–0411.

Type of Request: Extension.

Number of Respondents: 98,608.

Responses per Respondent: 1.

Annual Responses: 98,608.

Average Burden per Response: 9.5 minutes.

Annual Burden Hours: 15,617.

Needs and Uses: This information collection is necessary to identify any special medical (DD Form 2792) and/or educational (DD Form 2792–1) needs of military dependents to ensure the needs are considered when being assigned to a new location. The purpose of this information collection is to (1) enroll sponsors into the Exceptional Family Member Program (EFMP), (2) consider the special needs of family members and the availability of medical and educational services through the Family Member Travel Screening (FMTS) process, and (3) advise civilian employees about the availability of medical and educational services to meet the special needs of their family members in overseas locations.

The sponsor or family member completes the demographics section on both collections, a qualified medical provider completes the medical summary on the DD 2792, and the special education or early intervention staff completes the early intervention/special education summary of the DD 2792–1. On the DD2792, the sponsor or family member provides authorization for disclosure of the medical information and certifies the accuracy of the information. On the DD 2792–1, the sponsor or family member authorizes the release of information. The information is provided to EFMP medical personnel for enrollment in the program, and both medical and educational screening personnel for their determination of the availability of medical and education resources necessary to meet the family member's needs. The medical and/or educational recommendation is supplied to the appropriate Military Department's personnel department in determining the future assignment for the service member.

This information collection may also be used to identify available medical and educational resources to DoD civilian employees who are considering a job overseas to assist them in deciding whether to relocate overseas with a family member who has special medical or educational needs.

Affected Public: Individuals or households.

Frequency: Triennial.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: September 13, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–20254 Filed 9–18–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0054]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by October 19, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: DoD Child Development Program (CDP)—Family Information; DD Form 2602, ''Department of Defense Child Development Program Request for Care Record'', and DD Form 2652, ''Application for Department of Defense Child Care Fees''; OMB Control Number 0704–0515.

Type of Request: Extension.

Number of Respondents:

DD 2606: 12,500.

DD 2652: 50,000.

Total: 62,500.

Responses per Respondent: 1.

Annual Responses:

DD 2606: 12,500.

DD 2652: 75,000.

Total: 62,500.

Average Burden per Response: 5 minutes.

Annual Burden Hours:

DD 2606: 1,042.

DD 2652: 6,250.

Total: 7,292.

Needs and Uses: The DoD requires the information in the proposed collection for program planning and management purposes. This includes two collection instruments: DD Form 2606,

''Department of Defense Child Development Program Request for Care Record'', which is required for all patrons to apply for child care and collects general information regarding the sponsor and family, and DD Form 2652 ''Application for Department of Defense Child Care Fees'', which is utilized for patrons to apply for DoD child care subsidies based on total family income.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: September 13, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–20255 Filed 9–18–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0051]

Submission for OMB Review; Comment Request

AGENCY: United States Transportation Command (USTRANSCOM), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by October 19, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Global Air Transportation Execution System; OMB Control Number 0704–0530.

Type of Request: Extension.

Number of Respondents: 517,163.

Responses per Respondent: 1.

Annual Responses: 517,163.

Average Burden per Response: 2 minutes.

Annual Burden Hours: 17,239.

Needs and Uses: GATES is the single DoD port processing and manifesting system providing support for the global air and surface movement of personnel and materiel, to include processing and tracking from port to port. It supports USTRANSCOM air and surface port management, provides functionality for Defense Courier Divisions, SDDC/G3, and AMC/A4T, while providing billing information for Transportation Working Capital Fund (TWCF) accounting.

Affected Public: Individuals or households.

Frequency: As required.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: September 13, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–20252 Filed 9–18–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0050]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by October 19, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Application for Discharge of Member or Survivor of Group Certified to have Performed Active Duty with the Armed Forces of the United States; DD Form 2168; OMB Control Number 0704–0100.

Type of Request: Extension.

Number of Respondents: 500.

Responses per Respondent: 1.

Annual Responses: 500.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 250.

Needs and Uses: The purpose of this information collection is to assist the Secretary of a Military Department or United States Coast Guard (USCG) in

determining if an applicant was a member of a group that has been found to have performed active military service. If the information requested on the DD Form 2168, Application for Discharge of Member or Survivor of Member of Group Certified to Have Performed Active Duty with the Armed Forces of the United States, is compatible with that of a corresponding approved group and the applicant can provide supporting evidence, he or she will receive veteran's status in accordance with the provisions of DoD Directive 1000.20, as established by 38 U.S.C. 106. The information from the DD Form 2168 will be extracted by the appropriate military personnel office and used to complete the DD Form 214, ''Certificate for Release or Discharge from Active Duty.'' The Veterans Administration uses information on the DD Form 2168 to verify benefits eligibility. The form can be electronically accessed and downloaded from the following Defense Link Publication site: *http://www.dod.gov/pubs/.*

Affected Public: Individuals or Households.

Frequency: On occasion.

Respondent's Obligation: Voluntary, but required to receive benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: September 13, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–20251 Filed 9–18–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2019–OS–0103]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by October 19, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Overseas Citizen Population Survey; OMB Control Number 0704–0539.

Type of Request: Extension.

Number of Respondents: 18,000.

Responses per Respondent: 1.

Annual Responses: 18,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 4,500.

Needs and Uses: The primary objective of the Overseas Citizen Population Survey (OCPS), conducted on behalf of FVAP, is to refine FVAP's methodology for estimating the number of overseas U.S. civilians who are eligible to vote and who have registered and participated in the past. These estimates are then used to address the question of whether the registration and voting propensity of the overseas civilian population differs from that of comparable domestic or military populations. Subsequent to each federal election year, FVAP must report to Congress voter registration and participation rates for Uniformed Services voters and overseas citizens. Previous attempts to collect information on the overseas citizen population to identify and measure its voter registration and participation rates in Federal elections suffered from significant bias; this effort is focused on refining a well-established method to report voter registration and participation rates from a more well-defined subgroup of overseas civilians. Conducting this research will help FVAP meet its federal and congressional mandates in terms of reporting annually on its activities and overall voter registration and participation rates after each general federal election. The data obtained through this study is also intended to provide insights into existing barriers to UOCAVA voting and recommendations for addressing these challenges. To obtain the necessary information, the OCPS uses data collected from a sample of registered overseas civilian voters in conjunction with previous country level estimates developed by FVAP research and establishes a research method to assist FVAP in reporting voter registration and participation rates for general federal elections.

Affected Public: Individuals and Households.

Frequency: Biennially.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: September 13, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–20253 Filed 9–18–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Record of Decision for the Final Environmental Impact Statement for Proposed Land Acquisition at Washington Navy Yard (WNY), Washington, District of Columbia

AGENCY: Department of the Navy (DoN), Department of Defense (DoD).

ACTION: Notice of availability.

SUMMARY: After carefully weighing the strategic, operational, and environmental consequences of the proposed action, the DoN announces its decision to select Alternative 1A (Preferred Alternative) from the Final Environmental Impact Statement for Proposed Land Acquisition at WNY, Washington, DC (hereafter, Final EIS). This alternative will enable the DoN to improve the Antiterrorism (AT) posture, protect adjacent mission-critical activities from encroachment, and otherwise meet the purpose and need of this action. Additionally, this alternative allows the DoN to meet a long-term need of relocating the existing museum. Construction and operation of the relocated museum will provide a location for a new, world-class museum for public enjoyment and bring potential retail and commercial amenities to the local area.

ADDRESSES: The complete text of the Record of Decision (ROD), along with the August 2023 Final EIS and supporting documents is available on the project website at: *https://ndw.cnic.navy.mil/WNY-Land-Acquisition/1/.*

FOR FURTHER INFORMATION CONTACT: Naval Facilities Engineering System Command Washington, Attn: EIS Project Manager, 1314 Harwood Street SE, Washington, DC 20374.

SUPPLEMENTARY INFORMATION: The selected alternative involves the DoN exchanging certain underutilized properties (approximately 15 acres) within the WNY Southeast Corner, via lease and/or transfer, with a private developer to obtain acquisition rights of the approximately 6-acre Southeast Federal Center (SEFC) E Parcels. General Services Administration will then transfer ownership of the SEFC E Parcels to the DoN via a federal-to-federal transfer. The DoN may enter into a lease agreement with a non-federal entity to relocate the existing National Museum of the U.S. Navy to the SEFC E Parcels. The land exchange of the SEFC E Parcels for the WNY Southeast Corner will require relocation of functions from the WNY Southeast Corner to other areas within the WNY. These relocations may require additional environmental analysis and National Environmental Policy Act planning. This alternative will also include future development on the WNY Southeast Corner by the private developer and in-kind considerations at the WNY, such as upgrades to the Riverwalk and piers to be provided by the developer.

Dated: September 13, 2023.

J.E. Koningisor,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2023–20154 Filed 9–18–23; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Free Application for Federal Student Aid (FAFSA®) Information To Be Verified for the 2024–2025 Award Year

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: For each award year, the Secretary publishes in the **Federal Register** a notice announcing the FAFSA information that an institution and an applicant may be required to verify, as well as the acceptable documentation for verifying FAFSA information. This is the notice for the 2024–2025 award year, Assistance Listing Numbers 84.007, 84.033, 84.063, and 84.268.

FOR FURTHER INFORMATION CONTACT: Vanessa Gomez, U.S. Department of Education, 400 Maryland Avenue SW, Room 2C179, Washington, DC 20202. Telephone: (202) 453–6708. Email: *Vanessa.Gomez@ed.gov*.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: If the Secretary selects an applicant for verification, the applicant's Institutional Student Information Record (ISIR) includes flags that indicate (1) that the applicant has been selected by the Secretary for verification and (2) the Verification Tracking Group (VTG) in which the applicant has been placed. The VTG indicates which FAFSA information needs to be verified for the applicant and, if appropriate, for the applicant's parent(s) or spouse. Beginning with the 2024–2025 award year, the Student Aid Report (SAR) is being replaced with the FAFSA Submission Summary. As was the case for the SAR, the FAFSA Submission Summary provided to the applicant will indicate that the applicant's FAFSA information has been selected for verification and direct the applicant to contact the institution for further instructions for completing the verification process.

To help institutions and applicants deal with the challenges resulting from the novel coronavirus disease (COVID–19) pandemic, the Secretary provided flexibilities to the verification regulations. On April 10, 2023, the federally declared national emergency related to the COVID–19 pandemic ended. As a result, these flexibilities expired at the end of the first payment period that began after April 10, 2023. Under 34 CFR 668.4, payment periods are defined for a student enrolled in an eligible program measured in standard terms, as the term, *i.e.,* semester, trimester, or quarter.

In accordance with the Fostering Undergraduate Talent by Unlocking Resources for Education (FUTURE) Act, much of the applicant's tax return information, including information from their spouse and parents, will come directly from the IRS and will not be viewable by the student and other contributors. Such information that is transferred and not edited will essentially be verified and need no further verification. However, for instances where income and tax information cannot be obtained directly from the IRS, the applicant would have to manually enter the necessary information into the FAFSA, and that manual entry may be subject to verification.

The following chart lists, for the 2024–2025 award year, the FAFSA information that an institution and an applicant and, if appropriate, the applicant's parent(s) or spouse may be required to verify under 34 CFR 668.56. The chart also lists the acceptable documentation that must, under § 668.57, be provided to an institution for that information to be verified.

FAFSA information	Acceptable documentation
Income information for tax filers ..... (a) Adjusted Gross Income (AGI) (b) Income Earned From Work (c) U.S. Income Tax Paid (d) Untaxed Portions of IRA Distributions (e) Untaxed Portions of Pensions (f) IRA Deductions and Payments (g) Tax Exempt Interest Income (h) Education Credits (i) Foreign Income Exempt from Federal Taxation	Items a through h, if transferred directly from the IRS and unchanged, do not need to be verified. When information is not transferred from the IRS, and for item i, the following documentation is sufficient for verification: (1) A transcript [1] obtained at no cost from the IRS or other relevant tax authority of a U.S. territory (Guam, American Samoa, the U.S. Virgin Islands) or commonwealth (Puerto Rico and the Northern Mariana Islands), or a foreign government, that lists 2022 tax account information of the tax filer; or (2) A copy of the income tax return [1] and the applicable schedules [1] that were filed with the IRS or other relevant tax authority of a U.S. territory, or a foreign government that lists 2022 tax account information of the tax filer. (3) If item d or e contains a rollover, collect a signed statement confirming the amount of the rollover in the untaxed pension or IRA distribution. Note that even if d or e are transferred as FTI, rollovers still need to be verified as they are manually entered.
Income information for tax filers with special circumstances ..... (a) Adjusted Gross Income (AGI) (b) Income Earned from Work (c) U.S. Income Tax Paid (d) Untaxed Portions of IRA Distributions (e) Untaxed Portions of Pensions (f) IRA Deductions and Payments (g) Tax Exempt Interest Income (h) Education Credits (i) Foreign Income Exempt from Federal Taxation	(1) For a student, or the parent(s) of a dependent student, who filed a 2022 joint income tax return and whose income is used in the calculation of the applicant's student aid index and who at the time the FAFSA was completed was separated, divorced, widowed, or married to someone other than the individual included on the 2022 joint income tax return— (a) A transcript obtained from the IRS or other relevant tax authority that lists 2022 tax account information of the tax filer(s); or (b) A copy of the income tax return and the applicable schedules that were filed with the IRS or other relevant tax authority that lists 2022 tax account information of the tax filer(s); and (c) A copy of IRS Form W–2 [2] for each source of 2022 employment income received or an equivalent document.[2] (2) For an individual who is required to file a 2022 IRS income tax return and has been granted a filing extension by the IRS beyond the automatic six-month extension for tax year 2022— (a) A signed statement listing the sources of any 2022 income and the amount of income from each source; (b) A copy of the IRS's approval of an extension beyond the automatic six-month extension for tax year 2022; [3] (c) A copy of IRS Form W–2 [2] for each source of 2022 employment income received or an equivalent document; [2] and (d) If self-employed, the signed statement must indicate the amount of estimated AGI and U.S. income tax paid for tax year 2022. (3) If d or e contains a rollover, collect a signed statement confirming the amount of the rollover in the untaxed pension or IRA distribution. Note that even if d or e are transferred as FTI, rollovers still need to be verified as they are manually entered. *Note:* An institution may require that, after the income tax return is filed, an individual granted a filing extension beyond the automatic 6-month extension submit tax information by obtaining a transcript from the IRS, or by submitting a copy of the income tax return and the applicable schedules that were filed with the IRS that lists 2022 tax account information. When an institution receives such information, it must be used to reverify the income and tax information reported on the FAFSA. (4) For an individual who was the victim of IRS tax-related identity theft— • A Tax Return DataBase View (TRDBV) transcript [1] obtained from the IRS; and • A statement signed and dated by the tax filer indicating that he or she was a victim of IRS tax-related identity theft and that the IRS has been made aware of the tax-related identity theft.

FAFSA information	Acceptable documentation
	Note: Tax filers may inform the IRS of the tax-related identity theft and obtain a TRDBV transcript by calling the IRS's Identity Protection Specialized Unit (IPSU) at 1–800–908–4490. Unless the institution has reason to suspect the authenticity of the TRDBV transcript provided by the IRS, a signature or stamp or any other validation from the IRS is not needed. (5) For an individual who filed an amended income tax return with the IRS, a signed copy of the IRS Form 1040X that was filed with the IRS for tax year 2022 or documentation from the IRS that include the change(s) made to the tax filer's 2022 tax information, in addition to one of the following— (a) Updated income and tax information from the IRS on an ISIR record with all tax information from the original tax return; (b) A transcript obtained from the IRS that lists 2022 tax account information of the tax filer(s); or (c) A signed copy of the 2022 IRS Form 1040 and the applicable schedules that were filed with the IRS.
Income information for non-tax filers Income Earned from Work	For an individual who has not filed and, under IRS or other relevant tax authority rules (e.g., the Republic of the Marshall Islands, the Republic of Palau, the Federated States of Micronesia, a U.S. territory or commonwealth or a foreign government), is not required to file a 2022 income tax return— (1) A signed and dated statement certifying— (a) That the individual is not required to file a 2022 income tax return; and (b) The sources and amounts of earnings, other income, and resources that supported the individual(s) for the 2022 tax year; (2) For individuals without a Social Security number (SSN), Individual Taxpayer Identification Number (ITIN), or Employer Identification Number (EIN), that they do not have an SSN, ITIN, or EIN; (3) A copy of IRS Form W–2[2] for each source of 2022 employment income received or an equivalent document[2]; and (4) Except for dependent students, verification of non-filing[4] for individuals who would file a return with a relevant tax authority other than the IRS dated on or after October 1, 2023. *Note:* The collection of documentation to verify income earned from work is also used to determine if the applicant (and the applicable spouse or parent) was required to file a U.S. income tax return for the 2022 tax year.
Family Size	Since family size is based on the number of individuals listed and claimed on the IRS tax return, if transferred directly from the IRS and unchanged, family size does not need to be verified. However, when information is not transferred from the IRS, or if the applicant updated their family size when presented with the opportunity to do so on their FAFSA, the following documentation is sufficient for verification: A statement signed by the applicant and, if the applicant is a dependent student, by one of the applicant's parents, that lists the name and age of each family member for the 2024–2025 award year and the relationship of that family member to the applicant. *Note:* Verification of family size is not required if— • For a dependent student, the family size indicated on the ISIR is two and the parent is single, separated, divorced, or widowed, or the household size indicated on the ISIR is three if the parents are married, remarried or unmarried and living together; or • For an independent student, the family size indicated on the ISIR is one and the applicant is single, separated, divorced, or widowed, or the household size indicated on the ISIR is two if the applicant is married or remarried.
Identity/Statement of Educational Purpose	(1) An applicant must appear in person and present the following documentation to an institutionally authorized individual to verify the applicant's identity: (a) An unexpired valid government-issued photo identification[5] such as, but not limited to, a driver's license, non-driver's identification card, other State-issued identification, or U.S. passport. The institution must maintain an annotated copy of the unexpired valid government-issued photo identification that includes— i. The date the identification was presented; and ii. The name of the institutionally authorized individual who reviewed the identification; and

FAFSA information	Acceptable documentation
	(b) A signed statement using the exact language as follows, except that the student's identification number is optional if collected elsewhere on the same page as the statement: *Statement of Educational Purpose* I certify that I _____ am (Print Student's Name) the individual signing this Statement of Educational Purpose and that the Federal student financial assistance I may receive will only be used for educational purposes and to pay the cost of attending for 2024–2025. (Name of Postsecondary Educational Institution) _____ (Student's Signature) (Date) _____ (Student's ID Number) (2) If an institution determines that an applicant is unable to appear in person to present an unexpired valid government-issued photo identification and execute the Statement of Educational Purpose, the applicant must provide the institution with— (a) A copy of an unexpired valid government-issued photo identification,[5] such as, but not limited to, a driver's license, non-driver's identification card, other State-issued identification, or U.S. passport that is acknowledged in a notary statement or that is presented to a notary; and (b) An original notarized statement signed by the applicant using the exact language as follows, except that the student's identification number is optional if collected elsewhere on the same page as the statement: *Statement of Educational Purpose* I certify that I _____ am (Print Student's Name) the individual signing this Statement of Educational Purpose and that the Federal student financial assistance I may receive will only be used for educational purposes and to pay the cost of attending _____ for 2024–2025. (Name of Postsecondary Educational Institution) _____ (Student's Signature) (Date) _____ (Student's ID Number)

[1] This footnote applies, where applicable, whenever an income tax return, the applicable schedules, or transcript is mentioned in the above chart.

The copy of the 2022 income tax return must include the signature of the tax filer, or one of the filers of a joint income tax return, or the signed, stamped, typed, or printed name and address of the preparer of the income tax return and the preparer's Social Security number, Employer Identification Number, or Preparer Tax Identification Number.

For a tax filer who filed an income tax return other than an IRS form, such as a foreign or Puerto Rican tax form, the institution must use the income information (converted to U.S. dollars) from the lines of that form that correspond most closely to the income information reported on a U.S. income tax return.

An individual who did not retain a copy of his or her 2022 tax account information, and for whom that information cannot be located by the IRS or other relevant tax authority, must submit to the institution—

a. Copies of all IRS Form W–2s for each source of 2022 employment income or equivalent documents; or

b. If the individual is self-employed or filed an income tax return with a government of a U.S. territory or commonwealth or a foreign government, a signed statement certifying the amount of AGI and income taxes paid for tax year 2022; and

c. Documentation from relevant tax authorities other than the IRS that indicates the individual's 2022 tax account information cannot be located; and

d. A signed statement that indicates that the individual did not retain a copy of his or her 2022 tax account information.

If an individual who was the victim of IRS tax-related identity theft is unable to obtain a TRDBV, the institution may accept an equivalent document provided by the IRS or a copy of the signed 2022 income tax return the individual filed with the IRS.

[2] An individual who is required to submit an IRS Form W–2 or an equivalent document but did not maintain a copy should request a duplicate from the employer who issued the original or from the government agency that issued the equivalent document. If the individual is unable to obtain a duplicate W–2 or an equivalent document in a timely manner, the institution may permit that individual to provide a signed statement, in accordance with 34 CFR 668.57(a)(6), that includes—

(a) The amount of income earned from work;

(b) The source of that income; and

(c) The reason why the IRS Form W–2, or an equivalent document, is not available in a timely manner.

[3] For an individual who was called up for active duty or for qualifying National Guard duty during a war or other military operation or national emergency, an institution must accept a statement from the individual certifying that he or she has not filed an income tax return or a request for a filing extension because of that service.

[4] If an individual is unable to obtain verification of non-filing from a relevant tax authority and, based upon the institution's determination, it has no reason to question the student's or family's good-faith effort to obtain the required documentation, the institution may accept a signed statement certifying that the individual attempted to obtain the verification of non-filing from the relevant tax authority and was unable to obtain the required documentation.

[5] An unexpired valid government-issued photo identification is one issued by the U.S. government, any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, a federally recognized American Indian and Alaska Native Tribe, American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau.

The individual FAFSA items that an applicant must verify are based upon the Verification Tracking Group to which the applicant is assigned as outlined in the following chart.

Verification tracking flag	Verification tracking group name	FAFSA information required to be verified
V1	Standard Verification Group	*Tax Filers* • Adjusted Gross Income. • Income Earned From Work. • U.S. Income Tax Paid. • Untaxed Portions of IRA Distributions. • Untaxed Portions of Pensions. • IRA Deductions and Payments. • Tax Exempt Interest Income. • Education Tax Credits. • Foreign Income Exempt from Federal Taxation. *Non-Tax Filers* • Income Earned from Work. *Tax Filers and Non-Tax Filers* • Family Size.
V2	Reserved	N/A.
V3	Reserved	N/A.
V4	Custom Verification Group	• Identity/Statement of Educational Purpose.
V5	Aggregate Verification Group	*Tax Filers* • Adjusted Gross Income. • Income Earned From Work. • U.S. Income Tax Paid. • Untaxed Portions of IRA Distributions. • Untaxed Portions of Pensions. • IRA Deductions and Payments. • Tax Exempt Interest Income. • Education Tax Credits. • Foreign Income Exempt from Federal Taxation. *Non-Tax Filers* • Income Earned from Work. *Tax Filers and Non-Tax Filers* • Family Size. • Identity/Statement of Educational Purpose.
V6	Reserved	N/A.

Other Sources for Detailed Information

We provide a more detailed discussion on the verification process in the following resources that will be available on the Knowledge Center web page at *https://fsapartners.ed.gov/knowledge-center:*

- *2024–2025 Application and Verification Guide.*
- *2024–2025 FAFSA Specifications Guide: Volume 6- ISIR Guide, Volume 7—Comment Codes.*
- *2024–2025 COD Technical Reference.*
- Program Integrity Information—Questions and Answers on Verification at *www2.ed.gov/policy/highered/reg/hearulemaking/2009/verification.html.*

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1070a, 1070b–1070b–4, 1087a–1087j, and 20 U.S.C. 1087–51—1087–58.

Nasser H. Paydar,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2023–20211 Filed 9–18–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–286–000.

Applicants: Earp Solar, LLC.

Description: Earp Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/13/23.

Accession Number: 20230913–5047.

Comment Date: 5 p.m. ET 10/4/23.

Docket Numbers: EG23–287–000.

Applicants: BCD 2023 Fund 1 Lessee, LLC.

Description: BCD 2023 Fund 1 Lessee, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/13/23.

Accession Number: 20230913–5049.

Comment Date: 5 p.m. ET 10/4/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER22–2721–002.

Applicants: Union Electric Company.

Description: Compliance filing: Compliance Filing to be effective 9/1/2023.

Filed Date: 9/13/23.

Accession Number: 20230913–5024.

Comment Date: 5 p.m. ET 10/4/23.

Docket Numbers: ER22–2721–003.

Applicants: Union Electric Company.

Description: Compliance filing: Compliance Filing to be effective 9/1/2022.

Filed Date: 9/13/23.

Accession Number: 20230913–5085.

Comment Date: 5 p.m. ET 10/4/23.

Docket Numbers: ER23–2020–001.

Applicants: California Independent System Operator Corporation.

Description: Compliance filing: 2023–09–13 Compliance Filing—Market Parameters to be effective 9/13/2023.

Filed Date: 9/13/23.

Accession Number: 20230913–5064.

Comment Date: 5 p.m. ET 10/4/23.

Docket Numbers: ER23–2487–001.

Applicants: Midcontinent Independent System Operator, Inc., Ameren Services Company.

Description: Tariff Amendment: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.17(b): 2023–09–13_Amendment Ameren Companies Request for Transmission Rate Incentives to be effective 9/25/2023.

Filed Date: 9/13/23.

Accession Number: 20230913–5082.

Comment Date: 5 p.m. ET 10/4/23.

Docket Numbers: ER23–2563–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment of WMPA, SA No. 7005; Queue No. AG1–099 in Docket No. ER23–2563–000 to be effective 10/4/2023.

Filed Date: 9/13/23.

Accession Number: 20230913–5072.

Comment Date: 5 p.m. ET 10/4/23.

Docket Numbers: ER23–2678–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment of ISA, SA No. 7041; Queue No. AE2–092 in Docket ER23–2678–000 to be effective 7/20/2023.

Filed Date: 9/13/23.

Accession Number: 20230913–5052.

Comment Date: 5 p.m. ET 10/4/23.

Docket Numbers: ER23–2824–000.

Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: Ostrea Solar Affected System Project Construction Agreement to be effective 9/14/2023.

Filed Date: 9/13/23.

Accession Number: 20230913–5042.

Comment Date: 5 p.m. ET 10/4/23.

Docket Numbers: ER23–2825–000.

Applicants: Northstar Trading Ltd.

Description: Baseline eTariff Filing: NorthStar Trading Ltd. submits tariff filing per 35.12: Baseline new to be effective 9/14/2023.

Filed Date: 9/13/23.

Accession Number: 20230913–5043.

Comment Date: 5 p.m. ET 10/4/23.

Docket Numbers: ER23–2826–000.

Applicants: Sparta Northstar Ltd.

Description: Baseline eTariff Filing: Baseline new to be effective 9/14/2023.

Filed Date: 9/13/23.

Accession Number: 20230913–5044.

Comment Date: 5 p.m. ET 10/4/23.

Docket Numbers: ER23–2827–000.

Applicants: Battery Utility of Ohio, LLC.

Description: Tariff Amendment: Notice of Cancellation of Market-Based Rate Tariff and Request for Waiver to be effective 9/14/2023.

Filed Date: 9/13/23.

Accession Number: 20230913–5061.

Comment Date: 5 p.m. ET 10/4/23.

Docket Numbers: ER23–2828–000.

Applicants: Southern California Edison Company.

Description: Tariff Amendment: Termination of 5149 Lancaster Energy DSA (GFID8469/SA No. 915) to be effective 11/13/2023.

Filed Date: 9/13/23.

Accession Number: 20230913–5053.

Comment Date: 5 p.m. ET 10/4/23.

Docket Numbers: ER23–2829–000.

Applicants: Omnis Pleasants, LLC.

Description: Compliance filing: Notice of Succession and Request for Waiver to be effective 12/31/9998.

Filed Date: 9/13/23.

Accession Number: 20230913–5056.

Comment Date: 5 p.m. ET 10/4/23.

Docket Numbers: ER23–2830–000.

Applicants: WSPP Inc.

Description: § 205(d) Rate Filing: List of Members Update 2023 to be effective 9/11/2023.

Filed Date: 9/13/23.

Accession Number: 20230913–5073.

Comment Date: 5 p.m. ET 10/4/23.

Docket Numbers: ER23–2831–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Designated Entity Agreement, SA No. 7061 between PJM and JCP&L to be effective 8/14/2023.

Filed Date: 9/13/23.

Accession Number: 20230913–5096.

Comment Date: 5 p.m. ET 10/4/23.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES23–68–000.

Applicants: Old Dominion Electric Cooperative.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Old Dominion Electric Cooperative.

Filed Date: 9/12/23.

Accession Number: 20230912–5211.

Comment Date: 5 p.m. ET 10/3/23.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH23–16–000.

Applicants: DTE Energy Company.

Description: DTE Energy Company submits FERC 65–B Notice of Change in Fact to Waiver Notification.

Filed Date: 9/13/23.

Accession Number: 20230913–5021.

Comment Date: 5 p.m. ET 10/4/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to

contact OPP at (202) 502–6595 or *OPP@ferc.gov*.

Dated: September 13, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–20213 Filed 9–18–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: September 21, 2023, 10:00 a.m.

PLACE: Room 2C, 888 First Street NE, Washington, DC 20426, Open to the public.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* *Note*—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed online at the Commission's website at *https://elibrary.ferc.gov/eLibrary/search* using the eLibrary link.

1104TH—MEETING

[Open Meeting; September 21, 2023; 10:00 a.m.]

Item No.	Docket No.	Company
	Administrative	
A–1	AD23–1–000	Agency Administrative Matters.
A–2	AD23–2–000	Customer Matters, Reliability, Security and Market Operations.
A–3	AD23–8–000	FERC–NERC–Regional Entity Joint Inquiry Into Winter Storm Elliot.
	Electric	
E–1	EL22–62–000	California Independent System Operator Corporation.
E–2	EL22–63–000	ISO New England Inc.
E–3	EL22–64–000	New York Independent System Operator, Inc.
E–4	EL22–65–000	Southwest Power Pool, Inc.
E–5	EL22–32–000, ER22–2029–000, (Consolidated), ER22–703–002, EL22–32–001.	PJM Interconnection, L.L.C.
E–6	EL23–89–000	*Brookfield Renewable Trading and Marketing LP* v. *ISO New England Inc.*
E–7	ER20–2705–001	Mankato Energy Center, LLC.
	ER20–2706–001	Mankato Energy Center II, LLC.
	EL21–36–000	Mankato Energy Center, LLC.
		Mankato Energy Center II, LLC.
	ER10–1874–012	Mankato Energy Center, LLC.
	ER10–2721–010	El Paso Electric Company.
	ER10–2861–009	Fountain Valley Power, L.L.C.
	ER12–1308–012	Palouse Wind, LLC.
	ER13–1504–010	SWG Arapahoe, LLC.
	ER15–1471–011	Blue Sky West, LLC.
	ER15–1672–010	Evergreen Wind Power II, LLC.
	ER16–2010–005	Hancock Wind, LLC.
	ER16–2561–005	Sunflower Wind Project, LLC.
	ER16–711–008	Pio Pico Energy Center, LLC.
	ER16–915–004	Comanche Solar PV, LLC.
	ER19–2287–002	Goal Line L.P.
	ER19–2289–002	KES Kingsburg, L.P.
	ER19–2294–002	Mesquite Power, LLC.
	ER19–2305–002	Valencia Power, LLC.
	ER19–9–006	Mankato Energy Center II, LLC.
E–8	ER22–2306–000	Black Hills Colorado Electric, LLC.
E–9	ER10–2502–010	Black Hills Colorado Electric, LLC.
	ER11–2724–010	Black Hills Colorado IPP, LLC.
	ER19–645–004	Black Hills Colorado Wind, LLC.
	ER18–2518–005	Black Hills Electric Generation, LLC.
	ER11–4436–008	Black Hills Power, Inc.
	ER10–2472–009	Black Hills Wyoming, LLC.
	ER10–2473–009	Cheyenne Light, Fuel and Power Company.
	ER10–1529–006	Northern Iowa Windpower, LLC.
E–10	ER22–2341–000	Alabama Power Company, Georgia Power Company, and Mississippi Power Company.
E–11	ER22–2162–001	Deseret Generation & Transmission Co-operative, Inc.
E–12	ER22–2348–000	Tucson Electric Power Company.
E–13	ER22–2352–000	Duke Energy Carolinas, LLC.
E–14	ER22–2340–000, ER22–2340–001	Basin Electric Power Cooperative.
E–15	ER22–2349–000	UNS Electric, Inc.

1104TH—MEETING—Continued

[Open Meeting; September 21, 2023; 10:00 a.m.]

Item No.	Docket No.	Company
E–16	ER23–2327–000	PJM Interconnection, L.L.C.
E–17	ER22–2351–000	Avista Corporation.
	Gas	
G–1	RP19–78–007, RP19–78–010, RP19–78–011, RP19–1523–010, RP19–1523–012.	Panhandle Eastern Pipe Line Company, LP.
	RP19–257–011, RP19–257–012 (consolidated).	Southwest Gas Storage Company.
G–2	OR19–22–000	West Texas Gulf Pipe Line Company LLC.
	OR19–32–000 (consolidated)	Permian Express Partners LLC.
	Hydro	
H–1	P–3820–015	Aclara Meters, LLC.
	Certificates	
C–1	CP20–55–000	Port Arthur LNG Phase II, LLC and PALNG Common Facilities Company, LLC.
C–2	CP22–25–000	Venture Global Calcasieu Pass, LLC.
C–3	OMITTED.	
C–4	CP22–138–000	Northern Natural Gas Company.
C–5	CP22–15–000	Texas Eastern Transmission, LP.
C–6	CP16–454–006	Rio Grande LNG, LLC.
	CP16–455–003, CP20–481–001	Rio Bravo Pipeline Company, LLC.
C–7	CP16–116–003	Texas LNG Brownsville LLC.

A free webcast of this event is available through the Commission's website. Anyone with internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The Federal Energy Regulatory Commission provides technical support for the free webcasts. Please call (202) 502–8680 or email *customer@ferc.gov* if you have any questions.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters but will not be telecast.

Issued: September 14, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–20356 Filed 9–15–23; 4:15 pm]

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 and Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR23–72–000.

Applicants: Northern Indiana Public Service Company.

Description: § 284.123 Rate Filing: Northern Indiana Public Service Company LLC Statement of Operating Conditions to be effective 9/13/2023.

Filed Date: 9/13/23.

Accession Number: 20230913–5031.

Comment Date: 5 p.m. ET 10/4/23.

Docket Numbers: RP23–1035–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: § 4(d) Rate Filing: Initial Rate Filing—Regional Energy Access Enhancement Project to be effective 10/15/2023.

Filed Date: 9/12/23.

Accession Number: 20230912–5092.

Comment Date: 5 p.m. ET 9/25/23.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: CP16–10–012.

Applicants: Mountain Valley Pipeline, LLC.

Description: Abbreviated Application of Mountain Valley Pipeline, LLC, for Limited Amendment to Certificate of Public Convenience and Necessity To Revise Initial Transportation Rates.

Filed Date: 9/12/23.

Accession Number: 20230912–5078.

Comment Date: 5 p.m. ET 10/3/23.

Docket Numbers: RP23–910–002.

Applicants: Sea Robin Pipeline Company, LLC.

Description: Compliance filing: Compliance Filing—RP23–910–000 to be effective 8/25/2023.

Filed Date: 9/13/23.

Accession Number: 20230913–5026.

Comment Date: 5 p.m. ET 9/25/23.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

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.

For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: September 13, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–20216 Filed 9–18–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14775–005]

Marine Renewable Energy Collaborative of New England; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for a hydrokinetic pilot project license to construct and operate the Bourne Tidal Hydrokinetic Test Site Project (Bourne Tidal Project, or project). The project would be located on the Cape Cod Canal in Barnstable County, Massachusetts. Commission staff has prepared an Environmental Assessment (EA) for the proposed project.

The EA contains staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major Federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the EA via the internet through the Commission's Home Page (*http://www.ferc.gov/*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Any comments should be filed within 45 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file comments 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. 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–14775–005.

If you have process questions, contact Robert Haltner at (202) 502–8612 or by email at *robert.haltner@ferc.gov.*

Dated: September 13, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–20215 Filed 9–18–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0750; FRL–11343–01–OCSPP]

Pesticide Registration Review; Proposed Interim Decision for Tetrachlorvinphos; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's proposed interim registration review decision for tetrachlorvinphos (hereafter referred to as TCVP) and opens a 60-day public comment period on the proposed interim decision and revised draft human health risk assessment for TCVP.

DATES: Comments must be received on or before November 20, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2017–0750, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information, contact: The Chemical Review Manager for the pesticide of interest identified in Table 1 in Unit IV.

For general information on the registration review program, contact: Melanie Biscoe, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–0701; email address: *biscoe.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including

environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager for the pesticide of interest identified in Table 1 in Unit IV.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI, and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at: *https://www.epa.gov/dockets/commenting-epa-dockets.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Background

Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed proposed interim or proposed final decisions for all pesticides listed in Table 1 in Unit IV. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

III. Authority

EPA is conducting its registration review of the chemicals listed in the Table 1 in Unit IV pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

IV. What action is the Agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's proposed interim registration review decision and opens a 60-day public comment period on the proposed interim registration review decision and revised draft human health risk assessment.

TABLE 1—PROPOSED INTERIM DECISION

Registration review case name and No.	Docket ID No.	Contact information
Tetrachlorvinphos Case 0321	EPA–HQ–OPP–2008–0316	Patricia Biggio, *biggio.patricia@epa.gov,* (202) 566–1938.

The registration review docket for a pesticide includes earlier documents related to the registration review case. For example, the review opened with a Preliminary Work Plan, for public comment. A Final Work Plan was placed in the docket following public comment on the Preliminary Work Plan.

The documents in the dockets describe EPA's rationales for conducting additional risk assessments for the registration review of the pesticide included in the Table in Unit IV, as well as the Agency's subsequent risk findings. The proposed interim registration review decision is supported by the rationales included in the risk assessments.

The registration review final rule at 40 CFR 155.58(a) provides for a minimum 60-day public comment period on all proposed interim registration review decisions. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the proposed interim decision and risk assessments. All comments should be submitted using the methods in **ADDRESSES** and must be received by EPA on or before the closing date. These comments will become part of the docket for the pesticide included in the Table in Unit IV. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and may provide a ''Response to Comments Memorandum'' in the docket. The interim registration review decision will explain the effect that any comments had on the interim registration review decision and risk assessments and provide the Agency's response to significant comments.

Background on the registration review program is provided at: *https://www.epa.gov/pesticide-reevaluation.*

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 13, 2023.

Mary Elissa Reaves,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2023–20281 Filed 9–18–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0805; FR ID 172272]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before October 19, 2023.

ADDRESSES: Comments should be sent 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. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0805.

Title: 700 MHz Eligibility, Regional Planning Requirements, and 4.9 GHz Guidelines (47 CFR 90.523, 90.527, and 90.1211).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit; Not-for-profit institutions; State, Local or Tribal government.

Number of Respondents and Responses: 1,175 respondents; 1,175 responses.

Estimated Time per Response: 1 hour—628 hours.

Frequency of Response: On occasion reporting and one-time reporting requirements; third party disclosure.

Obligation to Respond: Required to obtain or retain benefits (47 CFR 90.523, 90.527), and voluntary (47 CFR 90.1211). Statutory authority for this information collection is contained in 4(i), 11, 303(g), 303(r), 332(c)(7), and 337(f) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), and 337(f), unless otherwise noted.

Total Annual Burden: 35,660 hours.

Total Annual Cost: No Cost.

Needs and Uses: Section 90.523 requires that nongovernmental organizations that provide services which protect the safety of life or property obtain a written statement from an authorizing state or local government entity to support the nongovernmental organization's application for assignment of 700 MHz frequencies. *Section 90.527* requires 700 MHz regional planning regions to submit an initial plan for use of the 700 MHz general use spectrum in the consolidated narrowband segment 769–775 MHz and 799–805 MHz. Regional planning committees may modify plans by written request, which must contain the full text of the modification and certification that the modification was successfully coordinated with adjacent regions. Regional planning promotes a fair and open process in developing allocation assignments by requiring input from eligible entities in the allocation decisions and the application technical review/approval process. Entities that seek inclusion in the plan to obtain future licenses are considered third party respondents. *Section 90.1211* authorizes the fifty-five 700 MHz regional planning committees to develop and submit on a voluntary basis a plan on guidelines for coordination procedures to facilitate the shared use of the 4940–4990 MHz (4.9 GHz) band. The Commission has stayed this requirement indefinitely. Applicants are granted a geographic area license for the entire fifty MHz of 4.9 GHz spectrum over a geographical area defined by the boundaries of their jurisdiction—city, county or state. Accordingly, licensees are required to coordinate their operations in the shared band to avoid interference, a common practice when joint operations are conducted.

Commission staff use the information to assign licenses, determine regional spectrum requirements and to develop technical standards. The information is also used to determine whether prospective licensees operate in compliance with the Commission's rules. Without such information, the Commission could not accommodate regional requirements or provide for the efficient use of the available frequencies. This information collection includes rules to govern the operation

and licensing of the 700 MHz and 4.9 GHz bands rules and regulation to ensure that licensees continue to fulfill their statutory responsibilities in accordance with the Communications Act of 1934, as amended. Such information will continue to be used to verify that applicants are legally and technically qualified to hold licenses, and to determine compliance with Commission rules.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2023–20257 Filed 9–18–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue, NW, Washington DC 20551–0001, not later than October 4, 2023.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street, NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Gubin Optimum Trust, Moishe Gubin, as trustee, both of FortLauderdale, Florida;* to acquire voting shares of OptimumBank Holdings, Inc., and thereby indirectly acquire voting shares of OptimumBank, both of Fort Lauderdale, Florida.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414. Comments can also be sent electronically to *Comments.applications@chi.frb.org:*

1. *F. Austin Jones, individually, and as co-trustee of the David A. Jones Irrevocable Trust and the F. Austin Jones Irrevocable Trust, all of Grinnell, Iowa;* to retain voting shares of Grinnell Bancshares, Inc. and thereby indirectly retain voting shares of Grinnell State Bank, both of Grinnell, Iowa.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–20261 Filed 9–18–23; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than October 19, 2023.

A. Federal Reserve Bank of Richmond (Brent B. Hassell, Assistant Vice President) P.O. Box 27622, Richmond, Virginia 23261. Comments can also be sent electronically to *Comments.applications@rich.frb.org:*

1. *Atlantic Union Bankshares Corporation, Richmond, Virginia;* to acquire American National Bankshares Inc., and thereby indirectly acquire American National Bank & Trust Company, both of Danville, Virginia.

B. Federal Reserve Bank of Boston (Prabal Chakrabarti, Senior Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02210–2204. Comments can also be sent electronically to *BOS.SRC.Applications.Comments@bos.frb.org:*

1. *1831 Bancorp, MHC, and its wholly-owned subsidiary, 1831 Bancorp, Inc., both of Dedham, Massachusetts;* to acquire South Shore Bancorp, MHC and its wholly-owned subsidiary, South Shore Bancorp, Inc., and thereby indirectly acquire South Shore Bank, all of South Weymouth, Massachusetts.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–20262 Filed 9–18–23; 8:45 am]

BILLING CODE P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Notice of Board Meeting

DATES: September 26, 2023 at 9 a.m.

ADDRESSES: Telephonic. Dial-in (listen only) information: Number: 1–202–599–1426, Code: 726 107 825#; or via web: *https://teams.microsoft.com/l/meetup-join/19%3ameeting_OGI3OTFlOGItOWM2YS00Y2FmLWI1NmYtZTUwM2IwNGNkMjU4%40thread.v2/0?context=%7b%22Tid%22%3a%223f6323b7-e3fd-4f35-b43d-1a7afae5910d%22%2c%22Oid%22%3a%221a441fb8-5318-4ad0-995b-f28a737f4128%22%7d.*

FOR FURTHER INFORMATION CONTACT: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

SUPPLEMENTARY INFORMATION:

Board Meeting Agenda

Open Session

1. Approval of the August 22, 2023, Board Meeting Minutes
2. Monthly Reports
   (a) Participant Report

(b) Investment Report
(c) Legislative Report
3. Quarterly Reports
(d) Vendor Risk Management Report
4. Enterprise Risk Management Update

Closed Session

5. Information Covered Under 5 U.S.C. 552b (c)(6) and (c)(10)

Authority: 5 U.S.C. 552b (e)(1).

Dated: September 14, 2023.

Dharmesh Vashee,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2023–20217 Filed 9–18–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0001; Docket No. 2023–0053; Sequence No. 10]

Information Collection; Certain Federal Acquisition Regulation Part 28 Requirements

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on a revision concerning certain Federal Acquisition Regulation (FAR) part 28 requirements. DoD, GSA, and NASA invite comments on: whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through March 31, 2024. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by November 20, 2023.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection through *https://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

Instructions: All items submitted must cite OMB Control No. 9000–0001, Certain Federal Acquisition Regulation Part 28 Requirements. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

OMB Control No. 9000–0001, Certain Federal Acquisition Regulation Part 28 Requirements, Standard Forms (SF) 24, 25, 25–A, 25–B, 28, 34, 35, 273, 274, 275, 1414, 1415, 1416, and 1418

B. Need and Uses

DoD, GSA, and NASA are combining OMB Control Nos. by FAR part. This consolidation is expected to improve industry's ability to easily and efficiently identify burdens associated with a given FAR part. The review of the information collections by FAR part allows improved oversight to ensure there is no redundant or unaccounted for burden placed on industry. Lastly, combining information collections in a given FAR part is also expected to reduce the administrative burden associated with processing multiple information collections.

This justification supports the extension of OMB Control No. 9000–0001 and combines it with the previously approved information collections under OMB Control No. 9000–0045, with the new title ''Certain Federal Acquisition Regulation Part 28 Requirements''. Upon approval of this consolidated information collection, OMB Control No. 9000–0045 will be discontinued. The burden requirements previously approved under the discontinued number will be covered under OMB Control No. 9000–0001.

This clearance covers the information that offerors or contractors must submit to comply with the following FAR requirements:

- FAR 52.228–1, Bid Guarantee. This provision (or clause) requires offerors or contractors to furnish a bid guarantee in the proper form and amount when a performance bond or a performance and payment bond is also required. (SF 24, Bid Bond; SF 34, Annual Bid Bond).
- FAR 52.228–2, Additional Bond Security. This clause requires contractors to furnish additional bond security under certain circumstances. This clause is used both for construction and other than construction contracts. (SF 1414 Consent of Surety and SF 1415, Consent of Surety and Increase of Penalty).
- FAR 52.228–13, Alternative Payment Protections. This clause requires contractors to submit one of the payment protections listed in the clause by the contracting officer, in construction contracts greater than $35,000 but not exceeding $150,000.
- FAR 52.228–14, Irrevocable Letter of Credit. This clause requires offerors or contractors to provide certain information when they intend to use an irrevocable letter of credit (ILC) in lieu of a required bid bond, or to secure other types of required bonds such as performance and payment bonds. This clause is required in solicitations and contracts when a bid guarantee, or performance bond, or performance and payment bonds are required.
- FAR 52.228–15, Performance and Payment Bonds—Construction. This clause requires contractors to provide performance and payment bonds in construction contracts exceeding $150,000 (SF 25, Performance Bond; SF 25–A, Payment Bond; SF 25–B, Continuation Sheet (for SF's 24, 25, and 25–A); SF 273, Reinsurance Agreement for a Bonds Statute Performance Bond; SF 274, Reinsurance Agreement for a Bonds Statute Payment Bond).
- FAR 52.228–16, Performance and Payment Bonds—Other Than Construction. This clause requires contractors to furnish performance and payment bonds for other than construction contracts exceeding the simplified acquisition threshold only in certain circumstances. (SF 35, Annual Performance Bond; SF 275, Reinsurance Agreement in Favor of the United States; SF 1416, Payment Bond for Other Than Construction Contracts; SF 1418, Performance Bond for Other Than Construction Contracts).

• Standard Form (SF) 28, Affidavit of Individual Surety. This form is used by all executive agencies, including DoD, to obtain information from individuals wishing to serve as sureties to Government bonds. Offerors and contractors may use an individual surety as security for bonds required under a solicitation or contract for supplies or services (including construction). It is an elective decision on the part of the offeror or contractor to use individual sureties instead of other available sources of surety or sureties for Government bonds.

The Government retains the bid guarantees, bonds, or alternative payment protections until the contractor's obligation is fulfilled. The contracting officer uses the information on the SF 28 to determine the acceptability of individuals proposed as sureties.

C. Annual Burden

Respondents: 14,259.
Total Annual Responses: 14,269.
Total Burden Hours: 14,255.
Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0001, Certain Federal Acquisition Regulation Part 28 Requirements.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2023–20272 Filed 9–18–23; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0037; Docket No. 2023–0053; Sequence No. 9]

Information Collection; Presolicitation Notice and Response

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on an extension concerning presolicitation notice and response. DoD, GSA, and NASA invite comments on: whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through March 31, 2024. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by November 20, 2023.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection through *https://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

Instructions: All items submitted must cite OMB Control No. 9000–0037, Presolicitation Notice and Response. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0037, Presolicitation Notice and Response.

B. Need and Uses

This clearance covers the information that offerors must submit to comply with the following Federal Acquisition Regulation (FAR) requirements:

• FAR 14.205. For sealed bidding, presolicitation notices briefly describe requirements and provide other essential information to enable potential bidders to determine whether they have an interest in the invitation and if appropriate, respond by communicating their interest in receiving the invitation for bid.

• FAR 15.201(c). For contracting by negotiation, presolicitation notices provide a means of early exchanges of information about future acquisitions between Government and industry, to which potential offerors may respond with feedback concerning acquisition strategy, terms and conditions, and any other concerns or questions.

• FAR 36.213–2. For construction contracts, presolicitation notices are required for construction requirements in excess of the simplified acquisition threshold to communicate essential information on the requirements, to which potential bidders may respond by communicating their interest in receiving the invitation for bid.

Presolicitation notices are used by the Government to inform, and, where specified, solicit a response from potential offerors or bidders. The primary purposes of the notices are to improve small business access to acquisition information and enhance competition by identifying contracting and subcontracting opportunities.

The contracting officer will use the information as follows:

• For sealed bidding, to include interested bidders in the distribution of the invitations for bids; and

• For contracting by negotiation, to consider the industry feedback in shaping the acquisition strategy.

C. Annual Burden

Respondents: 143,218.

Total Annual Responses: 429,654.

Total Burden Hours: 34,372.

Obtaining copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0037, Presolicitation Notice and Response.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2023–20275 Filed 9–18–23; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for Office of Management and Budget (OMB) Review; Temporary Assistance for Needy Families (TANF) Data Reporting for Work Participation (OMB #0970–0338)

AGENCY: Office of Family Assistance; Administration for Children and Families; United States Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) is requesting to extend approval of the Temporary Assistance for Needy Families (TANF) Data Reporting for Work Participation, with proposed revisions. Revisions are intended to improve the clarity of the instructions, streamline reporting, and ensure all instructions are up-to-date.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about 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: This request includes the following information collections: work verification procedures, the Caseload Reduction Documentation Process, the TANF Data Report, the Separate State Program (SSP)-Maintenance of Effort (MOE) Data Report, and TANF sampling instructions. The data and information from these reports and processes are used–and will continue to be used–for program analysis and oversight, including the calculation and administration of the work participation rate and associated penalties. Congress provides federal funds to operate TANF programs in the states, the District of Columbia, Guam, Puerto Rico, the U.S. Virgin Islands, and for approved federally recognized tribes and Alaskan Native Villages. We are proposing to continue the same information collections with only changes to instructions to improve clarity and eliminate data elements and guidance that are no longer relevant. The Work Verification Plan Guidance has been updated to reflect current regulation. The TANF and SSP–MOE Data Report instructions were revised to streamline the data collection, reduce the burden on respondents by eliminating unnecessary data elements, and clarify confusing data elements. The TANF and SSP–MOE Data Report layouts were also updated to reflect the streamlined instructions. The TANF Sample Manual was revised to eliminate outdated and unused sections.

Respondents: The 50 states of the U.S., the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Total annual burden hours
Preparation and Submission of Data Verification Procedures sections 261.60–261.63	54	1	640	34,560
Caseload Reduction Documentation Process, ACF–202 sections 261.41 and 261.44	54	1	120	6,480
Reasonable Cause/Corrective Compliance Documentation Process sections 262.4, 262.6, and 262.7; section 261.51	54	2	240	25,920
TANF Data Report Part 265	54	4	2,100	453,600
SSP–MOE Data Report–Part 265	29	4	714	82,824
TANF Sampling and Statistical Methods Manual Part 265.5	30	4	48	5,760

Estimated Total Annual Burden Hours: 609,144.

Authority: 42 U.S.C. 601, 607, 609, 611, 613, and 1302.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–20165 Filed 9–18–23; 8:45 am]

BILLING CODE 4184–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–3636]

Food and Drug Administration Information Technology Strategy; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comment.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of an information technology (IT) strategic plan entitled the ''FDA Information Technology Strategy'' and a request for comment on this IT Strategy. As part of our User Fee Program commitments and Omnibus Bill requirements, FDA will develop and publish an FDA Data and Technology Strategic Plan by September 29, 2023. This plan will define and shape the future course of FDA's data and technology capabilities, building on the existing FDA Modernization Framework. The plan will also integrate Agency and center strategies.

DATES: Submit either electronic or written comments on the Strategy by October 30, 2023, to ensure that the Agency considers your comments on this Strategy for future iterations of the IT Strategy.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked, and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–N–3636 for ''FDA IT Strategy.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

Submit written requests for single copies of this IT strategy to the Office of Digital Transformation, Food and Drug Administration, FDA Library, 5630 Fishers Lane, Rm. 1087, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request or include a Fax number to which the strategy may be sent. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft strategy.

FOR FURTHER INFORMATION CONTACT: Casi Alexander, Office of Digital Transformation, Food and Drug Administration, FDA Library, 5630 Fishers Lane, Rm. 1087, Rockville, MD 20857, 240–402–5171, email: *Casi.Alexander@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a request for comment on its draft strategy, entitled ''FDA Information Technology Strategy''.

The Office of Digital Transformation (ODT) was established in September 2021 and reports directly to the Office of the Commissioner. ODT provides the vision and leadership in information technology, data, and cybersecurity needed to advance FDA's mission and strategic priorities. ODT has published a series of strategy documents known as the FDA Modernization Framework. The framework includes the Technology Modernization Action Plan, Data Modernization Action Plan, Enterprise Modernization Action Plan, Cybersecurity Modernization Action Plan, and the Leadership Modernization Action Plan. The FDA Modernization Framework aims to develop an integrated technology, data, cybersecurity, business, and leadership approach to advancing FDA's public health mission in collaboration with industry.

As part of FDA's fulfillment of requirements in section 3627 of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328), and commitments described in section IV.A.2. of the ''PDUFA Reauthorization Performance Goals and Program Enhancements Fiscal Years 2023–2027'' (PDUFA VI commitment letter), FDA will work with industry while developing a comprehensive framework for guiding the Agency's work and allocating annual technology budgets and resources. The FDA IT Strategy, covering Fiscal Years 2024–2026, defines and shapes the future course of FDA's data and technology capabilities as FDA transitions to the next phase of its journey. The Agency took a collaborative approach to strategy development by gathering input from numerous internal and external stakeholders that resulted in the draft FDA IT Strategy. Stakeholder input is crucial for developing a comprehensive plan that best meets the needs and goals of industry and the Agency. Comments on the strategy will be considered for future iterations of the FDA IT Strategy. Once adopted, this strategy will serve as the basis for developing an internal operational plan with objectives, tactics, and performance measures.

As part of this effort, FDA will hold an FDA Digital Transformation Symposium on December 4 to 7, 2023, to discuss this groundbreaking IT Strategy and encourage further collaboration, innovation, and transformation. On December 4 and 5, the Symposium will be shaped around the six new strategic goals, highlighting supporting objectives and initiatives. The FDA Digital Transformation Symposium will extend to December 6 and 7 to engage IT vendors in a Reverse Industry Day and other vendor-focused events. Registration information will be found on *www.FDA.gov* for this event.

II. Requested Feedback

Interested persons are invited to provide detailed comments to ODT (see **ADDRESSES**) on the specific IT Strategy Goals and Objectives within FDA's Agency-wide IT Strategy. To facilitate comment, FDA has developed a series of questions in this section. The questions are not meant to be exhaustive, and FDA is also interested in any other pertinent information stakeholders would like to share on this topic. FDA encourages stakeholders to provide the specific rationale and basis for their comments, including any available supporting data and information.

1. Which goals and objectives are most important to you? Why?
2. Describe up to five ways the FDA IT Strategy will impact your industry?
3. What gaps do you see in the FDA IT Strategy's goals or objectives?
4. What challenges or risks do you foresee in executing the FDA IT Strategy?

III. FDA IT Strategy Goals and Objectives

Goal 1: Create a Shared OneFDA Ecosystem: Establish greater access to trusted data and shared resources across Centers, Offices, and external stakeholders. Encourage and facilitate cross-functional investment in technology to support enterprise business objectives for speed, scale, and value through robust Agency level governance processes, enhanced collaboration channels, and technology products and services. Shift FDA's culture to make sharing across Centers and Offices and with external stakeholders (where appropriate) the norm—where prioritizing Agency-level public health outcomes improves results for everyone.

Objectives

- *Enhance Communication and Collaboration:* Foster information and resource sharing with internal and external stakeholders to achieve both Agency and specific stakeholder outcomes, using a variety of communication channels to reach broader audiences. Enable collaboration and develop strong partnerships across Centers and Offices through integrated technologies and platforms.
- *Promote Transparency:* Actively involve impacted stakeholders in IT solution planning, development, and execution to drive expected outcomes.
- *Optimize Investments:* Align the diverse needs across FDA to the overarching strategy through stronger financial fidelity, enhanced budget coordination, and improved financial planning. Ensure effective IT resource utilization, transparency in IT budget allocation, and measurement of results achieved.
- *Strengthen Governance:* Ensure the effective and efficient use of IT in enabling FDA to achieve mission outcomes through established standards, responsible procurement, and more robust decision-making and accountability mechanisms.

Goal 2: Strengthen IT Infrastructure: Continue to modernize and secure the foundational IT infrastructure for all IT services and solutions. Proactively provide the ability to adapt to changes in workload demand, detect issues before they impact stakeholders, and quickly resolve technology issues to avoid disruptions to day-to-day operations.

Objectives

- *Provide Flexible Infrastructure Offerings:* Provide a marketplace with usage-based models for users to identify and implement the infrastructure solutions based on their business requirements with an appropriate chargeback model.
- *Accelerate Cloud Adoption:* Empower users with cloud offerings to meet their mission needs, *e.g.,* scalability and agility. Provide best practice guidance on cloud models, *e.g.,* hybrid and transition strategies based on the unique needs across Centers and Offices.
- *Ensure Service Availability:* Provide stable access to IT services through proactive, continuous monitoring of IT infrastructure service performance (*e.g.,* Service Level Agreements, Operating Level Agreements) and feedback from FDA users to identify potential problems and implement targeted improvements.
- *Implement Zero Trust Approach:* Establish a comprehensive zero trust and risk-based approach to obtain optimal maturity level by upgrading, modernizing, and enhancing FDA's security and cyber defenses.

Goal 3: Modernize Enterprise Services and Capabilities: Optimize the IT services portfolio to support everyday needs with cross-cutting, mission-critical offerings and benefit from economies of scale. Ensure enterprise IT services are stable, resilient, and adaptive, with opportunities for stakeholders to tailor solutions, where appropriate, and feedback loops to drive continuous improvement.

Objectives

- *Increase Business Alignment:* Lead with a business-first approach to modernizing enterprise services and capabilities to ensure technology enables the capabilities defined in FDA's Business Capability Model and supporting business processes.
- *Scale Operations:* Develop and drive adoption of enterprise solutions for standard capabilities, *e.g.,* Finance/Budget, Human Resources, Acquisitions, Inspections, Freedom of Information Act requests, and Complaints Management with continuous user testing, while providing flexibility for customization where relevant. Manage the lifecycle of applications within the enterprise portfolio.
- *Increase Digital Maturity:* Maximize the use of technology (*e.g.,* data, automation) in core business areas and enable processes to improve their ability to adapt to changes and scale.
- *Improve Customer Experience:* Create customer-centric solutions that enhance satisfaction by improving accessibility to IT solutions, including external-facing systems (*e.g.,* Electronic Submission Gateway Next Generation), streamlining processes, and easing adoption. Increase stakeholder engagement with FDA IT services by prioritizing customer and employee feedback and establishing formal feedback loops.
- *Modernize FDA Cybersecurity Defenses:* Upgrade, enhance, and modernize FDA's critical cyber defenses and practices to address the evolving threat landscape where risks to FDA's critical assets, industry, and sensitive data exist.
- *Reduce Technology Debt:* Decommission legacy systems, applications, and End-of-Life devices and reinvest in enterprise solutions and business process improvements to minimize technical debt and enterprise risk.

Goal 4: Share Data for Mission Outcomes: Identify common data assets critical to stakeholders across FDA and make them widely available and consumable to drive operational efficiencies and excellence. Leverage valuable data assets and insights to develop new capabilities and services and enable public health innovation.

Objectives

- *Enhance Data Governance:* Implement Artificial Intelligence (AI)-powered best practices for governance and data management that improve data quality, security, and the speed and accuracy of insights and decisions.
- *Foster OneFDA Data Literacy:* Educate the workforce on best practices and the benefits of consuming, analyzing, and making data-based decisions.

• *Improve Data Visibility and Accessibility:* Prioritize which data assets to make widely available first based on value to the mission and the most significant number of stakeholders.

• *Enable Advanced Data Analytics:* Ensure experts can easily combine and analyze information from various internal and external sources to gain comprehensive insights.

• *Enhance Secure Data Exchange:* Improve interoperable and secure data exchange and collaboration across FDA and its public health partners.

Goal 5: Adopt AI and Mission-Driven Innovations: Drive exploration and address impacts of emerging technologies and trends, such as AI and virtual reality, on FDA's IT portfolio and regulatory operations. Proactively identify opportunities and risks to FDA's mission and inform responsible use of technology. Enhance partnerships with external experts to leverage these technologies and promptly respond to their impact.

Objectives

• *Balance Policy and Technology Value:* Develop ethical guidance for technology use while maximizing business value, such as Guidance on AI Strategy. Ensure responsible actions by conducting comprehensive research and analysis to fully understand technological advancements' potential impacts and implications on society.

• *Ensure Responsible Use of Innovations:* Deploy technological innovations, such as AI/Machine Learning, responsibly with an understanding of regulatory impacts and effective risk response strategies. Establish appropriate guardrails where necessary.

• *Provide Proactive Thought Leadership:* Lead as a partner in creating novel use cases for emerging technologies through a deep understanding of business processes, industry, and technology. Stay at the forefront of technological advancements by harnessing industry expertise and fostering collaboration.

• *Foster Innovation:* Create an environment where innovative approaches are encouraged, identified, shared, and evaluated for use in driving operational efficiency and developing new capabilities. Apply a structured process to manage the innovation lifecycle from ideation to investment to adoption (or project shutdown) to produce usable innovations.

Goal 6: Cultivate Talent and Leadership: Mature Agency-wide IT competencies to deepen technology expertise and keep pace with the accelerated rate of change in FDA's regulated industries and technology. Develop holistic leaders equipped to lead through change and drive FDA's digital transformation journey forward. Deliver enterprise IT services with an Agency-first mindset. Given the continued competition for talent, proactively build a robust talent pipeline for targeted roles leveraging a combination of recruitment, retention, and talent development strategies.

Objectives

• *Instill OneFDA Mindset:* Cultivate an Agency-first approach to IT so that decisions promote and protect the health of the American people first and foremost.

• *Attract and Retain Talent:* Build a diverse talent pipeline through a compelling employee value proposition and total compensation approach, talent acquisition, employee engagement, and talent development strategies. Drive improvements across the employee lifecycle from recruitment to retirement.

• *Hire and Develop Resilient Leaders:* Strengthen leadership competencies required to drive holistic transformational IT initiatives in a dynamic environment successfully.

• *Develop Skills for the Future of Work:* Develop IT skills and competencies required to deliver current and future IT services through upskilling, reskilling, and continuous learning.

IV. Electronic Access

Persons with access to the internet may obtain an electronic version of the IT Strategy at *https://www.regulations.gov*.

Dated: September 13, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–20136 Filed 9–18–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–3490]

Agency Information Collection Activities; Proposed Collection; Comment Request; Application for Participation in Food and Drug Administration Fellowship and Traineeship Programs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on ''Application for Participation in Food and Drug Administration Fellowship and Traineeship Programs.''

DATES: Either electronic or written comments on the collection of information must be submitted by November 20, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 20, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–N–3490 for ''Application for Participation in Food and Drug Administration Fellowship and Traineeship Programs.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Application for Participation in FDA Fellowship and Traineeship Programs

OMB Control Number 0910–0780—Extension

This information collection supports FDA fellowship and traineeship programs. Sections 1104, 1302, 3301, 3304, 3320, 3361, 3393, and 3394 of Title 5 of the United States Code authorize Federal Agencies to rate applicants for Federal jobs. The information collection involves brief online applications completed by applicants applying to FDA's Fellowship and Traineeship programs. These voluntary online applications will allow the Agency to easily and efficiently elicit and review information from students and healthcare professionals who are interested in becoming involved in FDA-wide activities. The process will reduce the time and cost of submitting written documentation to the Agency and lessen the likelihood of applications being misrouted within the Agency mail system. It will assist the Agency in promoting and protecting the public health by encouraging outside persons to share their expertise with FDA.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Medical Device Fellowship Program	250	1	250	1	250
FDA Traineeship Program	1,000	1	1,000	1	1,000
Total					1,250

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: September 14, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–20229 Filed 9–18–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–2286]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Voluntary National Retail Food Regulatory Program Standards

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by October 19, 2023.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0621. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Voluntary National Retail Food Regulatory Program Standards

OMB Control Number 0910–0621—Revision

This information collection helps support implementation of FDA's Voluntary National Retail Food Regulatory Program Standards (the Retail Program Standards). Regulatory Program Standards play a critical role in an integrated food safety system and serve as the foundation for mutual reliance between FDA and other regulatory agencies that work to ensure food safety. The Retail Program Standards define what constitutes a highly effective and responsive program for the regulation of foodservice and retail food establishments. The Retail Program Standards are intended to provide a foundation upon which continuous improvements can be made with the ultimate goal to reduce the occurrence of factors that cause and contribute to foodborne illness. In support of this goal, FDA works cooperatively with our State, local, Territorial, and Tribal partners using a risk-based approach to leverage limited resources. We engage in education and outreach efforts to facilitate collaboration with our partners in food safety. The Retail Program Standards represent an important component of a comprehensive strategic approach to help ensure the safety and security of the food supply at the retail level. Respondents to the information collection are State, local, Territorial, and Tribal governments.

The Retail Program Standards were revised most recently in August 2022 and include the following elements: (1) regulatory foundation; (2) trained regulatory staff; (3) inspection program based on Hazard Analysis and Critical Control Point principles; (4) uniform inspection program, (5) foodborne illness and food defense preparedness and response; (6) compliance and enforcement; (7) industry and community relations; (8) program support and resources; and (9) program assessment. These elements are enumerated and discussed on our website at *https://www.fda.gov/food/voluntary-national-retail-food-regulatory-program-standards/voluntary-national-retail-food-regulatory-program-standards-august-2022* along with worksheets and assessments that allow FDA to determine conformance with the Retail Program Standards. State, local, territorial, tribal, and Federal regulatory agencies that participate in the voluntary program are required to report information demonstrating that a program self-assessment, a risk factor study of the regulated industry, and an independent outside audit (verification audit) have been completed. The information also includes Form FDA 3958, ''Voluntary National Retail Food Regulatory Program Standards FDA National Registry Report,'' which may be completed electronically at *https://www.fda.gov/food/voluntary-national-retail-food-regulatory-program-standards/voluntary-national-retail-food-regulatory-program-standards-august-2022.*

Finally, we are revising the information collection to include additional Agency resources. We have created a dedicated emailbox at *retailfoodprotectionteam@fda.hhs.gov* to receive requests for program documentation and have developed the following instruments to support the standardization of food safety inspection officer candidates:

- Proposed Form FDA 5017, ''Standardized Retail Food Safety Inspection Officer Waiver of Annual Maintenance Requirement Form,'' pertains to requests for waivers from maintenance requirements, referenced in section 3–403 of the ''FDA Procedures for Standardization of Retail Food Safety Inspection Officers.'' FDA uses the information submitted on Form FDA 5017 to determine a food safety inspection officer's eligibility for restandardization.
- Proposed Form FDA 5018, ''Standardized Retail Food Safety Inspection Officer Annual Maintenance Form,'' provides verification that a food safety inspection officer has met program standardization requirements in accordance with section 3–403 of the ''FDA Procedures for Standardization of Retail Food Safety Inspection Officers.''
- Proposed Form FDA 5019, ''Standardized Food Safety Inspection Officer Nomination Form,'' allows FDA to collect qualification information from food safety inspection officer candidates.

In the **Federal Register** of August 30, 2023 (88 FR 42372) FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Voluntary national retail program standards (August 2022)	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Program self-assessments for element Nos. 1 through 8 ..	500	1	500	92.3	46,150
Program element No. 9; risk factor study and intervention strategy.	500	1	500	333	166,500
Program Verification audit	500	1	500	46.15	23,075
Program records; associated documentation/maintenance of worksheets, assessments, associated program tools.	500	1	500	94.29	47,145
FDA Form 3958; VNRFP National Registry Report	500	1	500	0.1 (6 minutes)	50
Requests for program documentation (dedicated email)	500	3	1,500	0.1 (6 minutes)	150
Proposed Form FDA 5017; Waiver of Annual Maintenance Requirement.	10	1	10	0.35 (21 minutes).	3.5
Proposed Form FDA 5018; Food Safety Inspection Officer Annual Maintenance.	130	1	130	0.35 (21 minutes).	43
Proposed Form FDA 5019; Food Safety Inspection Officer Nomination.	14	1	14	0.35 (21 minutes).	5
Total	.....	.....	4,154	.....	283,121.5

[1] There are no capital or operational and maintenance costs associated with this collection of information.

Our estimate of burden for the associated program activities as identified in table 1 is based on our experience with the information collection, along with other regulatory standards programs we administer. Upon reorganizing the collection to reflect the cumulative activities, we have accounted for burden that may be attributable recordkeeping for risk-factor studies and verification tasks that may have been previously overlooked. The burden we attribute to completing and submitting FDA Form 3958, ''Voluntary National Retail Food Regulatory Program Standards FDA National Registry Report,'' is exclusive of other program records, which we account for in row 4. We have also accounted for burden we assume will be attendant to the completion and submission of newly developed Agency forms. As a result of these changes and adjustments, the information collection reflects an increase of 235,776.5 hours and 1,654 responses annually.

Dated: September 14, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–20226 Filed 9–18–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–3743]

Agency Information Collection Activities; Proposed Collection; Comment Request; Electronic Records; Electronic Signatures

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection applicable to the electronic record signature provisions found in Agency regulations.

DATES: Either electronic or written comments on the collection of information must be submitted by November 20, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 20, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as

well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–N–3743 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Good Laboratory Practice Requirements for Nonclinical Laboratory Studies.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Electronic Records; Electronic Signatures—21 CFR Part 11

OMB Control Number 0910–0303—Revision

This information collection supports implementation of statutory and regulatory authorities that govern criteria for the acceptance of electronic records, electronic signatures, and handwritten signatures executed to electronic records as equivalent to paper records. Agency regulations in part 11 (21 CFR part 11), provide for the submission of records and reports and establish that information may be submitted to FDA electronically provided that we have stated our ability to accept the records electronically in an Agency-established public docket and that the other requirements of part 11 are met. The regulations apply to records in electronic form that are created, modified, maintained, archived, retrieved, or transmitted, under any records requirements set forth in Agency regulations and to electronic records submitted under requirements of the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, even if such records are not specifically identified in Agency regulations.

Regulations in part 11, subpart B (§§ 11.10 through 11.70) and) require the establishment of standard operating procedures to ensure appropriate use of and precautions for systems using electronic records and signatures, including the following: (1) § 11.10 specifies procedures and controls for persons who use closed systems to create, modify, maintain, or transmit electronic records; (2) § 11.30 specifies procedures and controls for persons who use open systems to create, modify, maintain, or transmit electronic records; and (3) § 11.50 specifies procedures and controls for persons who use electronic signatures.

Regulations in subpart C (§§ 11.100 through 11.300) require specific controls to ensure the security and integrity of electronic signatures based upon use of identification codes in combination with passwords.

On March 3, 2023 (88 FR 13018), we revised the regulations. Before using an electronic signature in an electronic record required by FDA, a person must submit a letter of nonrepudiation to FDA (§ 11.100(c)). Letters of nonrepudiation are required under § 11.100(c)(1) to certify that a person's electronic signatures are intended to be the legally binding equivalent of traditional handwritten signatures. The regulations were amended to update the address for submission of a certification in paper form and to provide an option for electronic submission. The regulations were also amended to communicate that information on where to submit the certification may be found on FDA's website, currently available at: *https://www.fda.gov/industry/about-esg/appendix-g-letters-non-repudiation-agreement.*

We estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
§ 11.100; submission of nonrepudiation letters	5,000	1	5,000	1	5,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section	Number of recordkeepers	Number of record per recordkeepers	Total annual records	Average burden per recordkeeping	Total hours
§ 11.10; controls for closed systems	2,500	1	2,500	20	50,000
§ 11.30; controls for open systems	2,500	1	2,500	20	50,000
§ 11.50; signature manifestations	5,000	1	5,000	20	100,000
§ 11.300; controls for identifications and passwords	5,000	1	5,000	20	100,000
Total					300,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have increased our estimated burden. We assume 5,000 nonrepudiation letters will be submitted annually. We arrived at this figure by looking at the average number of nonrepudiation letters received through March 2023. We further assume that half of the estimated respondents will establish controls for open systems and half will establish controls for closed systems. Finally, we assume all respondents will establish controls for the remaining technical specifications required by the regulations.

Dated: September 14, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–20233 Filed 9–18–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No.FDA–2023–D–2482]

Regulatory Considerations for Prescription Drug Use-Related Software; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Regulatory Considerations for Prescription Drug Use-Related Software.'' This draft guidance describes FDA's application of its drug labeling authorities to certain software outputs that are disseminated by or on behalf of a drug sponsor for use with a prescription drug or a prescription drug-led, drug-device combination product, which is assigned to the Center for Drug Evaluation and Research or the Center for Biologics Evaluation and Research as the lead center.

DATES: Submit either electronic or written comments on the draft guidance by December 18, 2023 to ensure that the Agency considers your comments on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–D–2482 for ''Regulatory Considerations for Prescription Drug Use-Related Software.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The

second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002, to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002, or to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Chris Wheeler, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3330, Silver Spring, MD 20993, 301–796–2500, *CDEROMP@fda.hhs.gov;* Anne Taylor, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7256, Silver Spring, MD 20993, 240–402–5683; or Sonja Fulmer, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5536, Silver Spring, MD 20993–0002, 240–402–5979, *digitalhealth@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Regulatory Considerations for Prescription Drug Use-Related Software.'' This draft guidance expands on and was developed in response to comments submitted in response to the **Federal Register** notice ''Prescription Drug-Use-Related Software; Establishment of a Public Docket; Request for Comments'' (November 20, 2018; 83 FR 58574). As explained in this draft guidance, prescription drug use-related software generally includes software that: (1) is disseminated by or on behalf of a drug sponsor and (2) produces an end-user output that supplements, explains, or is otherwise textually related to one or more of the sponsor's drug products. A software function is any distinct purpose of the software, and end-user output is any material (content) that the prescription drug use-related software presents to the end user (a patient, caregiver, or health care practitioner). As discussed in this draft guidance, FDA considers end-user output a type of prescription drug labeling.

This draft guidance, when finalized, will clarify how FDA intends to apply its drug labeling authorities to end-user output of prescription drug use-related software, how FDA intends to treat certain prescription drug use-related software as FDA-required labeling, and when and how sponsors should submit end-user output to FDA. Generally, the recommendations provided in this draft guidance are intended to align with ongoing Agency initiatives across all product centers, including digital health initiatives at the Center for Devices and Radiological Health. This draft guidance considers existing Agency policies for the regulation of software to ensure efficient, coordinated review in instances when prescription drug use-related software is reviewed by the Agency as a device.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Regulatory Considerations for Prescription Drug Use-Related Software.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no new collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 314 for new drug applications and abbreviated new drug applications have been approved under OMB control number 0910–0001. The collections of information in 21 CFR 601.2 and 601.12 for biologics license applications and supplemental applications have been approved under OMB control number 0910–0338. The collections of information in Form FDA 2253 have been approved under OMB control number 0910–0001. The collections of information for prescription drug product labeling requirements in 21 CFR 201.56 have been approved under OMB control number 0910–0572. The collections of information in 21 CFR 202.1 for prescription drug advertisements have been approved under OMB control number 0910–0686.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: September 14, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–20241 Filed 9–18–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–D–2318]

Demonstrating Substantial Evidence of Effectiveness Based on One Adequate and Well-Controlled Clinical Investigation and Confirmatory Evidence; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Demonstrating Substantial Evidence of Effectiveness Based on One Adequate and Well-Controlled Clinical Investigation and Confirmatory Evidence.'' This guidance complements the 2019 draft guidance for industry entitled ''Demonstrating Substantial Evidence of Effectiveness for Human Drug and Biological Products'' (the 2019 Effectiveness draft guidance) and the 1998 guidance for industry entitled ''Providing Clinical Evidence of Effectiveness for Human Drug and Biological Products'' (the 1998 Effectiveness guidance). Although FDA's evidentiary standard has not changed since 1998, there is a need for more Agency guidance to describe how one adequate and well-controlled clinical investigation and confirmatory evidence can be used to meet the substantial evidence requirement.

DATES: Submit either electronic or written comments on the draft guidance by December 18, 2023 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–D–2318 for ''Demonstrating Substantial Evidence of Effectiveness Based on One Adequate and Well-Controlled Clinical Investigation and Confirmatory Evidence.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Eithu Lwin, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6236, Silver Spring, MD 20993–0002, 301–796–0728; or Anne Taylor, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7242, Silver Spring, MD 20993–0002, 240–402–8113.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Demonstrating Substantial Evidence of Effectiveness Based on One Adequate and Well-Controlled Clinical Investigation and Confirmatory Evidence.'' This guidance complements the 2019 draft guidance entitled ''Demonstrating Substantial Evidence of Effectiveness for Human Drug and

Biological Products'' issued on December 20, 2019 (84 FR 70196) and the 1998 guidance entitled ''Providing Clinical Evidence of Effectiveness for Human Drug and Biological Products'' issued on May 15, 1998 (63 FR 27093).

In 1962, Congress required for the first time that new drugs be shown to be effective as well as safe. A new drug's effectiveness must be established by substantial evidence. FDA has interpreted this substantial evidence requirement as generally requiring two adequate and well-controlled clinical investigations, each convincing on its own, to establish effectiveness.

In 1997, Congress amended section 505(d) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(d)) to make clear that FDA may consider data from one adequate and well-controlled investigation and confirmatory evidence to constitute substantial evidence if FDA determines that such data are sufficient to establish effectiveness. FDA issued the 1998 Effectiveness guidance in response to this legislative change. In 2019, the Agency concluded that more guidance was needed on the flexibility in the amount and type of evidence needed to meet the substantial evidence standard and issued the 2019 Effectiveness draft guidance, which discussed a number of approaches that can yield evidence that meets the statutory standard for substantial evidence.

Although both the 1998 Effectiveness guidance and the 2019 Effectiveness draft guidance provide examples of how a single adequate and well-controlled clinical investigation and confirmatory evidence can be used to support a marketing application, these guidances are not intended to provide a comprehensive discussion of meeting the substantial evidence standard based on one adequate and well-controlled clinical investigation and confirmatory evidence. Thus, there is a need for more Agency guidance to describe how one adequate and well-controlled clinical investigation and confirmatory evidence can be used to meet the substantial evidence requirement.

When one adequate and well-controlled clinical investigation and confirmatory evidence are considered together to assess effectiveness, the quality and quantity of the confirmatory evidence are also important considerations. Confirmatory evidence should be evidence generated from quality data derived from an appropriate source. The quantity of confirmatory evidence needed in a development program will be impacted by the features of, and results from, the single adequate and well-controlled clinical investigation that the confirmatory evidence is intended to substantiate.

This draft guidance describes these considerations in greater detail. It also provides examples of the types of evidence that could be considered confirmatory evidence that can be used with one adequate and well-controlled clinical investigation to demonstrate substantial evidence of effectiveness. Finally, the draft guidance includes recommendations for early engagement with the Agency for sponsors who intend to establish substantial evidence of effectiveness with one adequate and well-controlled clinical investigation and confirmatory evidence.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Demonstrating Substantial Evidence of Effectiveness Based on One Adequate and Well-Controlled Clinical Investigation and Confirmatory Evidence.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no new collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR parts 58, 312, 314, and 601 have been approved under OMB control numbers 0910–0119, 0910–0014, 0910–0001, and 0910–0338, respectively. In addition, the collections of information pertaining to FDA's guidance entitled ''Formal Meetings Between the FDA and Sponsors or Applicants of PDUFA Products'' have been approved under OMB control number 0910–0001.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: September 14, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–20228 Filed 9–18–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Interorgan signal.

Date: October 19–20, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Nijaguna Prasad, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institutes of Health, National Institute on Aging, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, (301) 496–9667, *prasadnb@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 14, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–20239 Filed 9–18–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Digestive Diseases

and Nutrition C Study Section, October 11, 2023, 05:30 p.m. to October 13, 2023, 05:00 p.m., National Institutes of Health, NIDDK, Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 which was published in the **Federal Register** on September 07, 2023, 61605.

The meeting notice is amended to change the start date of the meeting from 10/11–13/2023 to 11/1–3/2023. The meeting is closed to the public.

Dated: September 14, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–20245 Filed 9–18–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 1009 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: Environmental Health Sciences Review Committee.

Date: October 4–5, 2023.

Time: 10:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Science, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Varsha Shukla, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Science, Keystone Building, 530 Davis Drive, Room 3094, Durham, NC 27713, 984–287–3288, *Varsha.shukla@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Environmental Health Sciences Review Committee.

Date: October 25–26, 2023.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Science, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Varsha Shukla, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Science, Keystone Building, 530 Davis Drive, Room 3094, Durham, NC 27713, 984–287–3288, *Varsha.shukla@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: September 14, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–20248 Filed 9–18–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group; Training and Workforce Development Study Section—D.

Date: October 12, 2023.

Time: 9:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, Maryland 20892 (Virtual Meeting).

Contact Person: Marc Rigas, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institutes of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18C, Bethesda, Maryland 20892, 301–827–0648, *marc.rigas@nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: September 14, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–20244 Filed 9–18–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; NHLBI Mentored Clinical and Basic Science Study Section.

Date: October 19–20, 2023.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW, Washington, DC 20015 (Hybrid Meeting).

Contact Person: Rajiv Kumar, Ph.D., Chief, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6705 Rockledge Drive, Bethesda, MD 20892, (301) 827–4612, *rajiv.kumar@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 13, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–20157 Filed 9–18–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Asthma Education Prevention Program Coordinating Committee.

The meeting will be held as a virtual meeting and is open to the public. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The meeting can be accessed from the NIH Videocast at the following link: *https://videocast.nih.gov/watch=52355.*

Name of Committee: National Asthma Education Prevention Program Coordinating Committee

Date: September 22, 2023.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: Programmatic and Scientific Updates.

Place: National Institutes of Health, Rockledge II, 6705 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Virtual Access: https://videocast.nih.gov/watch=52355.

Contact Person: Susan Shero, MS, Program Officer, Center for Translational Research and Implementation Science, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20892, 301–496–1051, *susan.shero@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's homepage: *https://www.nhlbi.nih.gov/advisory-and-peer-review-committees/national-asthma-education-and-prevention-program-coordinating,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 13, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–20158 Filed 9–18–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Bioinformatics Drug Repositioning and Combination Therapy for AD.

Date: October 23, 2023.

Time: 12:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mariel Jais, Ph.D., M.D., Scientific Review Officer, Scientific Review Branch, National Institutes of Health, National Institute on Aging, 7201 Wisconsin Avenue, RM: 2E400, Bethesda, MD 20892, *mariel.jais@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 14, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–20246 Filed 9–18–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: January 10, 2024.

Open: January 10, 2024, 8:30 a.m. to 12:00 p.m.

Agenda: Call to order; Announcements; Consideration of Summary Minutes for May 2023 Council, Future Council Dates; Report from the Director; Speakers; Concept Clearance.

Place: National Institutes of Health, Building 31, C Wing 6th Floor Conference Room, 31 Center Drive, Bethesda, MD 20892.

Open: January 10, 2024, 1:00 p.m. to 2:30 p.m.

Agenda: KUH Open session.

Place: National Institutes of Health, Building 31, C Wing 6th Floor Conf. Room B (KUH), 31 Center Drive, Bethesda, MD 20892.

Open: January 10, 2024, 1:00 p.m. to 2:15 p.m.

Agenda: DEM Open session.

Place: National Institutes of Health, Building 31, C Wing 6th Floor Conf. Room F&G (DEM), 31 Center Drive, Bethesda, MD 20892.

Open: January 10, 2024, 1:00 p.m. to 2:30 p.m.

Agenda: DDN Open session.

Place: National Institutes of Health, Building 31, C Wing 6th Floor Conf. Room A (DDN), 31 Center Drive, Bethesda, MD 20892.

Closed: January 10, 2024, 2:15 p.m. 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Building 31, C Wing 6th Floor Conf. Room A (DDN), 31 Center Drive, Bethesda, MD 20892.
Closed: January 10, 2024, 2:15 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Building 31, C Wing 6th Floor Conf. Room B (KUH), 31 Center Drive, Bethesda, MD 20892.
Closed: January 10, 2024, 2:15 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Building 31, C Wing 6th Floor Conf. Room F&G (DEM), 31 Center Drive, Bethesda, MD 20892.
Closed: January 10, 2024, 3:45 p.m. to 4:00 p.m.
Agenda: Reports of Subcommittees and Consideration of Applications.
Place: National Institutes of Health, Building 31, C Wing 6th Floor Conf. Room F&G, 31 Center Drive, Bethesda, MD 20892.
Contact Person: Karl F. Malik, Ph.D., Director Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 7329, MSC 5452, Bethesda, MD 20892, (301) 594–4757, *malikk@niddk.nih.gov.*

Information is also available on the Institute's/Center's home page: *www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 14, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–20242 Filed 9–18–23; 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 1009 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: Oncology 1—Basic Translational Integrated Review Group; Basic Mechanisms of Cancer Health Disparities Study Section.
Date: October 10–11, 2023.
Time: 9:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Sulagna Banerjee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (612) 309–2479, *sulagna.banerjee@nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Kidney and Urological Systems Function and Dysfunction Study Section.
Date: October 12–13, 2023.
Time: 8:00 a.m. to 8:30 p.m.
Agenda: To review and evaluate grant applications.
Place: EVEN Hotel Rockville, Previously Holiday Inn, 1775 Rockville Pike, Rockville, MD 20852.
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: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Imaging Probes and Contrast Agents Study Section.
Date: October 12–13, 2023.
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: Donald Scott Wright, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892, (301) 435–8363, *wrightds@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Human Complex Mental Function Study Section.
Date: October 12–13, 2023.
Time: 9:00 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20852.
Contact Person: Joanna Szczepanik, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000D, Bethesda, MD 20892, (301) 827–2242, *szczepaj@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Auditory System Study Section.
Date: October 12–13, 2023.
Time: 9:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Brian H Scott, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–827–7490, *brianscott@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer Nanotechnology.
Date: October 12–13, 2023.
Time: 9:30 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Raj K. Krishnaraju, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892 (301), 435–1047, *kkrishna@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurogenesis and Cell Fate Study Section.
Date: October 12, 2023.
Time: 10:00 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Adem Can, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7850, Bethesda, MD 20892, (301) 435–1042, *cana2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–NS–22–070–HEAL Initiative: Development and Validation of Non-Rodent Mammalian Models of Pain.
Date: October 12, 2023.
Time: 10:00 a.m. to 2:00 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: Jennifer Kielczewski, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1042, *jennifer.kielczewski@nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Innovations in Nanosystems and Nanotechnology Study Section.
Date: October 12–13, 2023.
Time: 10:00 a.m. to 8:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joseph Thomas Peterson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–408–9694, *petersonjt@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 14, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–20250 Filed 9–18–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Lifestyle Intervention for Late-midlife Adults.

Date: October 13, 2023.

Time: 1:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Janetta Lun, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institutes of Health, National Institute on Aging, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 827–4588, *janetta.lun@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 14, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–20247 Filed 9–18–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Primate Aging Database.

Date: October 26, 2023.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kaitlyn Noel Lewis-Hardell, Ph.D., Scientific Review Officer, National Institute on Aging, Scientific Review Branch, 7201 Wisconsin Ave., Rm. 2E405, Bethesda, MD 20814, (301) 555–1234, *kaitlyn.hardell@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 14, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–20249 Filed 9–18–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of Biomedical Research Workforce Development and Education Applications.

Date: October 13, 2023.

Time: 10:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, Maryland 20892 (Virtual Meeting).

Contact Person: Marc Rigas, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institutes of General Medical Sciences, National Institute of Health, 45 Center Drive, Room 3AN18C, Bethesda, Maryland 20892, 301–827–0648, *marc.rigas@nih.gov.*

Name of Committee: National Institute of General Medical Sciences Initial Review Group; Training and Workforce Development Study Section—B.

Date: November 2–3, 2023.

Time: 9:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Bethesdan Hotel, Tapestry Collection by Hilton, 8120 Wisconsin Avenue, Bethesda, Maryland 20892 (Hybrid Meeting).

Contact Person: Latarsha J. Carithers, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12C, Bethesda, Maryland 20892, 301–594–4859, *latarsha.carithers@nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of NIGMS IDeA Networks of Biomedical Research Excellence (INBRE) Applications.

Date: November 2, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, Maryland 20892 (Virtual Meeting).

Contact Person: Saraswathy Seetharam, Ph.D., Scientific Review Officer, Office Scientific Review, National Institute of General Medical Sciences, National Institutes Health, 45 Center Drive, Room 3AN12C, Bethesda, Maryland 20892, 301–594–2763, *seetharams@nigms.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Renewal of Centers of Biomedical Research Excellence (COBRE) (Phase 2).

Date: November 30, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, Maryland 20892 (Virtual Meeting).

Contact Person: Jason M. Chan, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of General Medical Sciences, 45 Center Drive, MSC 6200, Bethesda, Maryland 20892, 301–594–3663, *jason.chan2@nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: September 14, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–20240 Filed 9–18–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2023 Notice of Supplemental Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, Department of Health and Human Services (HHS).

ACTION: Notice of intent to award supplemental funding.

SUMMARY: This notice is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA) is supporting administrative supplements (in scope of the parent award) for the 58 Community Mental Health Services Block Grant (MHBG) recipients funded in FY 2023. The total amount of available funding is $8,292,318. The 58 MHBG recipients are eligible to receive up to $142,971 for a total of $8,292,318. If all eligible MHBG recipients do not apply, remaining funds will be redistributed to applicants. The funding amount per recipient may be adjusted if any MHBG recipients decline the funding. These recipients have a project end date of September 30, 2024. The supplemental funding will be used for providing and/or obtaining training and technical assistance, or workforce development meetings and activities.

FOR FURTHER INFORMATION CONTACT: Asha Stanly, MHBG Program Coordinator, CMHS State and Consumer Protection Grants Branch, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, MD 20857, telephone 240–276–1845; email: *Asha.Stanly@samhsa.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Funding Opportunity Title: FY 2023 Community Mental Health Services Block Grant

Assistance Listing Number: 93.958

Authority: The Community Mental Health Services Block Grant program is authorized under Section 1920 of the Public Health Service Act, as amended.

Justification: Eligibility for this supplemental funding is limited to the 58 MHBG recipients because it will be used to expand and enhance the training, technical assistance and workforce efforts of the recipients.

This is not a formal request for application. Assistance will only be provided to the 58 MHBG recipients funded in FY 2023 based on the receipt of a written statement from the SMHA confirming their interest in receiving these supplemental funds.

Dated: September 13, 2023.

Ann Ferrero,

Public Health Analyst.

[FR Doc. 2023–20176 Filed 9–18–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2023–0022]

Next Generation Network Priority Services User Requirements

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: 60-Day notice and request for comments; new collection (request for a new OMB control number), 1670–NEW.

SUMMARY: The DHS CISA Emergency Communications Division (ECD) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance.

DATES: Comments are encouraged and will be accepted until November 20, 2023.

ADDRESSES: You may submit comments, identified by docket number Docket # CISA–2023–0022, at:

○ *Federal eRulemaking Portal: https://www.regulations.gov.* Please follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number Docket # CISA–2023–0022. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.*

SUPPLEMENTARY INFORMATION: Executive Order 12862 directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. To work continuously to ensure that programs are effective and meet customers' needs, Cybersecurity Infrastructure Agency Emergency Communications Division (hereafter ''the Agency'') seeks to obtain OMB approval of a generic clearance to collect qualitative feedback on service delivery. Qualitative feedback means information that provides useful insights on perceptions and opinions but are not statistical surveys that yield quantitative results that can be generalized to the population of study.

This collection of information is necessary to enable the Agency to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with the commitment on improving service delivery. The information collected from customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with the Agency's programs. This feedback will provide insights into customer or stakeholder perceptions, experiences, and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training, or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Improving agency programs requires ongoing assessment of service delivery, meaning a systematic review of the operation of a program compared to a set of explicit or implicit standards, as a way of contributing to the continuous improvement of the program. The Agency will collect, analyze, and interpret information gathered through this generic clearance to identify strengths and weaknesses of current services and make improvements in service delivery based on feedback. The respondent pool consists of, but not

limited to, federal, state, local, tribal, territorial and industry users of emergency communications priority services. The solicitation of feedback will target areas such as: timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this generic clearance process if it meets the following conditions:

- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency. (If released, appropriate Agency procedures will be followed);
- Information gathered will not be used for the purpose of substantially informing influential policy decisions;
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study;
- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future; and

With the exception of information needed to provide renumeration for participants of focus groups and cognitive laboratory studies, personally identifiable information (PII) is collected only to the extent necessary and is not retained.

If these conditions are not met, the Agency will submit an information collection request to OMB for approval through the normal PRA process.

To obtain approval for a collection that meets the conditions of this generic clearance, a standardized form will be submitted to OMB along with supporting documentation (*e.g.,* a copy of the comment card). The submission will have automatic approval unless OMB identifies issues within 5 business days.

The types of collections that this generic clearance covers include, but are not limited to:

- Customer comment cards/ complaint forms.
- Focus Groups of customers, potential customers, delivery partners, or other stakeholders.
- Cognitive laboratory studies, such as those used to refine questions or assess usability of a website;
- Qualitative customer satisfaction surveys (*e.g.,* post-transaction surveys; opt-out web surveys).
- In-person observation testing (*e.g.,* website or software usability tests).

The Agency has established a manager/managing entity to serve for this generic clearance and will conduct an independent review of each information collection to ensure compliance with the terms of this clearance prior to submitting each collection to OMB.

If appropriate, agencies will collect information electronically and/or use online collaboration tools to reduce burden.

Small business or other small entities may be involved in these efforts, but the Agency will minimize the burden on them of information collections approved under this clearance by sampling, asking for readily available information, and using short, easy-to-complete information collection instruments. Without these types of feedback, the Agency will not have timely information to adjust its services to meet customer needs. If a confidentiality pledge is deemed useful and feasible, the Agency will only include a pledge of confidentiality that is supported by authority established in statute or regulation, that is supported by disclosure and data security policies that are consistent with the pledge, and that does not unnecessarily impede sharing of data with other agencies for compatible confidential use. If the agency includes a pledge of confidentiality, it will include a citation for the statute or regulation supporting the pledge.

There are no program changes since the previous OMB approval.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

Title: Next Generation Network Priority Services User Requirements.

OMB Number: 1670–NEW.

Frequency: Annually.

Affected Public: Federal, state, local, tribal, territorial, and industry users of emergency communications priority services.

Number of Annualized Respondents: 50,000 for survey; 200 for focus groups.

Estimated Annual Time per Respondent: 15 minutes for survey; 60 minutes for focus groups.

Total Burden Hours: 12,500 minutes for survey; 400 minutes for focus groups.

Total Annual Cost: $523,727.

Annualized Respondent Cost: $0.

Total Annualized Respondent Out-of-Pocket Cost: $0.

Total Annualized Government Cost: $972,397.

Robert J. Costello,

Chief Information Officer, Department of Homeland Security, Cybersecurity and Infrastructure Security Agency.

[FR Doc. 2023–20150 Filed 9–18–23; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX22LQ00UN80423; OMB Control Number 1028–NEW]

Agency Information Collection Activities; Assessment of Flooding Impacts and Climate Inequities

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995

(PRA), the U.S. Geological Survey (USGS) is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before October 19, 2023.

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 information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments on this information collection request (ICR) by mail to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–NEW Assessment of Flooding Impacts and Climate Inequities in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact John Warner by email at *jcwarner@usgs.gov,* or by telephone at 508–457–2237. 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 PRA (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval. We may not conduct or sponsor, nor are you required to respond to a collection of information unless it displays a currently valid OMB control number.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on May 8, 2023, 88 FR 29686. 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 the agency might 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 personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: We will investigate social vulnerability to coastal storm flooding in urban neighborhoods to assess inequities in the burden of flood risk. Recent flood disasters arising from severe coastal storms and hurricanes (*i.e.,* Hurricane Ida in 2021) have demonstrated the critical importance of incorporating rainfall into assessments of coastal flood risk. Climate change is leading to increased rainfall intensity and more frequent coastal flooding, which is increasing risk for residents of low-lying areas such as basement apartments, who are often low-income or from minority racial groups. We will collect data on vulnerability to flooding from rainfall and coastal storms through interviews, focus group discussions (FGD), and household/small business surveys. Participants will be drawn from residents and businesses in the Jamaica Bay watershed in and around Brooklyn, New York. Participants are being identified through snowball sampling and contact with community leaders. Participants will share their experiences, concerns, and responses to flooding events and risks, through individual interviews or focus groups. Interviews will be recorded, transcribed, and analyzed using qualitative data analysis software such as Atlas.ti.

Title of Collection: Assessment of Flooding Impacts and Climate Inequities.

OMB Control Number: 1028–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Residents and businesses.

Total Estimated Number of Annual Respondents: 475: 20 resident interviews or FGD participants, 5 small business interviews; 300 household surveys, 150 small business surveys.

Total Estimated Number of Annual Responses: 475: 20 resident interviews or FGD participants, 5 small business interviews; 300 household surveys, 150 small business surveys.

Estimated Completion Time per Response: 2 hours for resident interviews or FGDs, 1 hour or less for small business interviews, 0.5 hour for household surveys and 0.5 hours for small business surveys.

Total Estimated Number of Annual Burden Hours: 270 hours.

20 resident interviews/FGD × 2 hrs = 40 hrs.

5 small business interviews × 1hr = 5 hrs.

300 household surveys × 0.5 hr = 150 hrs.

150 small business surveys × 0.5 hr = 75 hrs.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995.

Jane Denny,

Acting Center Director, USGS Woods Hole Coastal & Marine Science Center.

[FR Doc. 2023–20265 Filed 9–18–23; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036578; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Nevada, Las Vegas, Las Vegas, NV

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Nevada, Las Vegas has completed an inventory of human remains and associated funerary objects and has determined that there is no cultural affiliation between the human

remains and associated funerary objects and any Indian Tribe. The human remains and associated funerary objects were removed from an unknown county in Arizona.

DATES: Disposition of the human remains and associated funerary objects in this notice may occur on or after October 19, 2023.

ADDRESSES: Dr. Daniel Benyshek, University of Nevada, Las Vegas, 4505 S Maryland Parkway, Las Vegas, NV 89154, telephone (702) 895–2070, email *Daniel.Benyshek@unlv.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Nevada, Las Vegas. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the University of Nevada, Las Vegas.

Description

Human remains representing, at minimum, two individuals were removed from an unknown county in northern Arizona (Accession # *AHUR 28*). The two associated funerary objects are one stone point and one piece of chert.

Aboriginal Land

The human remains and associated funerary objects in this notice were removed from a known geographic location (*i.e.,* northern Arizona). This location is the aboriginal land of one or more Indian Tribes. The following information was used to identify the aboriginal land: a final judgment of the Indian Claims Commission.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, the University of Nevada, Las Vegas has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- The two objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- No relationship of shared group identity can be reasonably traced between the human remains and associated funerary objects and any Indian Tribe.
- The human remains and associated funerary objects described in this notice were removed from the aboriginal land of the Ak-Chin Indian Community; Chemehuevi Indian Tribe of the Chemehuevi Reservation, California; Cocopah Tribe of Arizona; Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Fort McDowell Yavapai Nation, Arizona; Fort Mojave Indian Tribe of Arizona, California, & Nevada; Fort Sill Apache Tribe of Oklahoma; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Havasupai Tribe of the Havasupai Reservation, Arizona; Hopi Tribe of Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Kickapoo Tribe of Oklahoma; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Navajo Nation, Arizona, New Mexico, & Utah; Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes); Pascua Yaqui Tribe of Arizona; Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; San Juan Southern Paiute Tribe of Arizona; Tohono O'odham Nation of Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; and the Yavapai-Prescott Indian Tribe.

Requests for Disposition

Written requests for disposition of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains and associated funerary objects described in this notice to a requestor may occur on or after October 19, 2023. If competing requests for disposition are received, the University of Nevada, Las Vegas must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. The University of Nevada, Las Vegas is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9 and 10.11.

Dated: September 11, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–20195 Filed 9–18–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036582; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Nevada, Las Vegas, Las Vegas, NV

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Nevada, Las Vegas has completed an inventory of human remains and has determined that there is no cultural affiliation between the human remains and any Indian Tribe. The human remains were removed from Lincoln County, NV.

DATES: Disposition of the human remains in this notice may occur on or after October 19, 2023.

ADDRESSES: Dr. Daniel Benyshek, University of Nevada, Las Vegas, 4505 S Maryland Parkway, Las Vegas, NV 89154, telephone (702) 895–2070, email *Daniel.Benyshek@unlv.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Nevada, Las Vegas. The National Park Service is not responsible for the determinations in this notice.

Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the University of Nevada, Las Vegas.

Description

Human remains representing, at minimum, three individuals were removed from Lincoln County, NV (Accession #s *AHUR 119B (Mt. Irish Site), AHUR 172 (Cathedral Gorge Site), and FHUR 14 (Crystal Spring Ranch Site)*). No associated funerary objects are present.

Aboriginal Land

The human remains in this notice were removed from known geographic locations. These locations are the aboriginal lands of one or more Indian Tribes. The following information was used to identify the aboriginal land: a final judgment of the Indian Claims Commission.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, the University of Nevada, Las Vegas has determined that:

- The human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- No relationship of shared group identity can be reasonably traced between the human remains and any Indian Tribe.
- The human remains described in this notice were removed from the aboriginal land of the Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes); Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band; and Wells Band); and the Yomba Shoshone Tribe of the Yomba Reservation, Nevada.

Requests for Disposition

Written requests for disposition of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains described in this notice to a requestor may occur on or after October 19, 2023. If competing requests for disposition are received, the University of Nevada, Las Vegas must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains are considered a single request and not competing requests. The University of Nevada, Las Vegas is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9 and § 10.11.

Dated: September 11, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–20199 Filed 9–18–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036581; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Nevada, Las Vegas, Las Vegas, NV

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Nevada, Las Vegas has completed an inventory of human remains and has determined that there is no cultural affiliation between the human remains and any Indian Tribe. The human remains were removed from Mineral County, NV.

DATES: Disposition of the human remains in this notice may occur on or after October 19, 2023.

ADDRESSES: Dr. Daniel Benyshek, University of Nevada, Las Vegas, 4505 S Maryland Parkway, Las Vegas, NV 89154, telephone (702) 895–2070, email *Daniel.Benyshek@unlv.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Nevada, Las Vegas. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the University of Nevada, Las Vegas.

Description

Human remains representing, at minimum, one individual were removed from Mineral County, NV (Accession # *AHUR 7 (Unknown Site)*). No associated funerary objects are present.

Aboriginal Land

The human remains in this notice were removed from a known geographic location (*i.e.,* Mineral County, NV). This location is the aboriginal land of one or more Indian Tribes. The following information was used to identify the aboriginal land: a final judgment of the Indian Claims Commission.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, the University of Nevada, Las Vegas has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- No relationship of shared group identity can be reasonably traced between the human remains and associated funerary objects and any Indian Tribe.
- The human remains and associated funerary objects described in this notice were removed from the aboriginal land of the Confederated Tribes of the Warm Springs Reservation of Oregon; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; Walker River Paiute Tribe of the Walker River Reservation, Nevada; Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada; and the Yomba Shoshone Tribe of the Yomba Reservation, Nevada.

Requests for Disposition

Written requests for disposition of the human remains in this notice must be

sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains described in this notice to a requestor may occur on or after October 19, 2023. If competing requests for disposition are received, the University of Nevada, Las Vegas must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains are considered a single request and not competing requests. The University of Nevada, Las Vegas is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9 and § 10.11.

Dated: September 11, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–20198 Filed 9–18–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036573; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of California, Davis, Davis, CA, and University of California, Berkeley, Berkeley, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of California, Davis (UC Davis) and the University of California, Berkeley (UC Berkeley) have completed an inventory of human remains and associated funerary objects and have determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Solano County, CA.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after October 19, 2023.

ADDRESSES: Megon Noble, NAGPRA Project Manager, University of California, Davis, 412 Mrak Hall, One Shields Avenue, Davis, CA 95616, telephone (530) 752–8501, email *mnoble@ucdavis.edu* and Alex Lucas, University of California, Berkeley, Office of Government and Community Relations, 200 California Hall, Berkeley, CA 94720, telephone (510) 570–0964, email *nagpra-ucb@berkeley.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of UC Davis and UC Berkeley. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by UC Davis and UC Berkeley.

Description

Human remains representing, at minimum, 107 individuals were removed from Solano County, CA. In 1965, CA–SOL–11 (UC Davis Accession 16) was excavated by Walt Brown and Jay Ruby as a part of two UC Davis Field Schools. The 3,263 associated funerary objects are comprised of 3,219 objects that can be located in the collections and 44 objects that cannot be located at this time. The 3,219 locatable associated funerary objects are 50 lots consisting of worked shells (including beads and pendants); 27 lots consisting of worked bones (awls, pendants, and other worked bones); 19 lots consisting of worked stone (pendants, beads, and other worked stone); 25 projectile points; 167 lots consisting of groundstones; 1,602 lots consisting of stone debitage; 128 lots consisting of chipped stones (bifaces, scrapers, cores, and flake tools); 17 lots consisting of fired clay/ceramics; 643 lots consisting of unmodified animal bones; 446 lots consisting of unmodified shells; 25 lots consisting of charcoal; four lots consisting of plant materials (seeds, nuts, acorn caps); 18 lots consisting of ochre; 26 lots consisting of ash; two lots consisting of miscellaneous minerals; and 20 lots consisting of unmodified stones. The 44 currently missing associated funerary objects are one lot consisting of worked shells; two lots consisting of worked bones; two projectile points; two lots consisting of groundstones; 11 lots consisting of stone debitage; seven lots consisting of chipped stones; two lots consisting of miscellaneous pieces of fired clay; six lots consisting of unmodified animal bones; one lot consisting of unmodified shells; two lots consisting of charcoal; one lot consisting of unmodified stones; and seven lots consisting of unknown materials.

During May–June of 1946, University of California, Berkeley student William Clifford Massey removed three associated funerary objects from CA–SOL–11, which were subsequently appropriated by the University and accessioned into the Phoebe A. Hearst Museum of Anthropology collection. The three associated funerary objects are a stone point, one lot of stone flakes, and one lot of shells.

On October 1, 1949, as part of the California Archaeological Survey, University of California, Berkeley student Arnold R. Pilling removed three associated funerary items from CA–SOL–11, which were subsequently appropriated by the University and accessioned into the Phoebe A. Hearst Museum of Anthropology. The three associated funerary objects are a scraper, a blade, and a mortar.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, biological, geographical, historical, linguistic, and oral traditional.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, UC Davis and UC Berkeley have determined that:

- The human remains described in this notice represent the physical remains of 107 individuals of Native American ancestry.
- The 3,269 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably

traced between the human remains and associated funerary objects described in this notice and the Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California; Kletsel Dehe Wintun of the Cortina Rancheria (*Previously* listed as Kletsel Dehe Band of Wintun Indians); and the Yocha Dehe Wintun Nation, California.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after October 19, 2023. If competing requests for repatriation are received, UC Davis and UC Berkeley must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. UC Davis and UC Berkeley are responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, § 10.10, and § 10.14.

Dated: September 11, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–20189 Filed 9–18–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036576; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Nevada, Las Vegas, Las Vegas, NV

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Nevada, Las Vegas has completed an inventory of human remains and has determined that there is no cultural affiliation between the human remains and any Indian Tribe. The human remains were removed from Washoe County, NV.

DATES: Disposition of the human remains in this notice may occur on or after October 19, 2023.

ADDRESSES: Dr. Daniel Benyshek, University of Nevada, Las Vegas, 4505 S Maryland Parkway, Las Vegas, NV 89154, telephone (702) 895–2070, email *Daniel.Benyshek@unlv.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Nevada, Las Vegas. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the University of Nevada, Las Vegas.

Description

Human remains representing, at minimum, 22 individuals were removed from the Falcon Hill Site in Washoe County, NV (Accession #s *AHUR 39, AHUR 40, AHUR 41, AHUR 42, AHUR 43, AHUR 44, AHUR 45, AHUR 46, AHUR 47, AHUR 48, AHUR 49, AHUR 50, AHUR 51, AHUR 52, AHUR 53, AHUR 54, AHUR 55, AHUR 56, AHUR 57, and AHUR 58*). No associated funerary objects are present.

Aboriginal Land

The human remains in this notice were removed from a known geographic location. This location is the aboriginal land of one or more Indian Tribes. The following information was used to identify the aboriginal land: a final judgment of the Indian Claims Commission.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, the University of Nevada, Las Vegas has determined that:

- The human remains described in this notice represent the physical remains of 22 individuals of Native American ancestry.
- No relationship of shared group identity can be reasonably traced between the human remains and associated funerary objects and any Indian Tribe.
- The human remains described in this notice were removed from the aboriginal land of the Confederated Tribes of the Warm Springs Reservation of Oregon; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; Walker River Paiute Tribe of the Walker River Reservation, Nevada; Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches); and the Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada.

Requests for Disposition

Written requests for disposition of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains described in this notice to a requestor may occur on or after October 19, 2023. If competing requests for disposition are received, the University of Nevada, Las Vegas must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains are considered a single request and not competing requests. The University of Nevada, Las Vegas is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9 and § 10.11.

Dated: September 11, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–20193 Filed 9–18–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036583; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Nevada, Las Vegas, Las Vegas, NV

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Nevada, Las Vegas has completed an inventory of human remains and has determined that there is no cultural affiliation between the human remains and any Indian Tribe. The human remains were removed from Humboldt County, NV.

DATES: Disposition of the human remains in this notice may occur on or after October 19, 2023.

ADDRESSES: Dr. Daniel Benyshek, University of Nevada, Las Vegas, 4505 S Maryland Parkway, Las Vegas, NV 89154, telephone (702) 895–2070, email *Daniel.Benyshek@unlv.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Nevada, Las Vegas. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the University of Nevada, Las Vegas.

Description

Human remains representing, at minimum, two individuals were removed from Humboldt County, NV (Accession #s *AHUR 6 (Lake Winnemucca Site), FHUR 60 (Orvada Site)*). No associated funerary objects are present.

Aboriginal Land

The human remains and associated funerary objects in this notice were removed from known geographic locations. These locations are the aboriginal lands of one or more Indian Tribes. The following information was used to identify the aboriginal land: a final judgment of the Indian Claims Commission.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, the University of Nevada, Las Vegas has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- No relationship of shared group identity can be reasonably traced between the human remains and any Indian Tribe.
- The human remains described in this notice were removed from the aboriginal land of the Confederated Tribes of the Warm Springs Reservation of Oregon; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; Shoshone-Bannock Tribes of the Fort Hall Reservation; Summit Lake Paiute Tribe of Nevada; Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band; and Wells Band); Walker River Paiute Tribe of the Walker River Reservation, Nevada; Winnemucca Indian Colony of Nevada; and the Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada.

Requests for Disposition

Written requests for disposition of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains described in this notice to a requestor may occur on or after October 19, 2023. If competing requests for disposition are received, the University of Nevada, Las Vegas must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains are considered a single request and not competing requests. The University of Nevada, Las Vegas is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9 and § 10.11.

Dated: September 11, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–20200 Filed 9–18–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036584; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Nevada, Las Vegas, Las Vegas, NV

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Nevada, Las Vegas has completed an inventory of human remains and has determined that there is no cultural affiliation between the human remains and any Indian Tribe. The human remains were removed from Elko County, NV.

DATES: Disposition of the human remains in this notice may occur on or after October 19, 2023.

ADDRESSES: Dr. Daniel Benyshek, University of Nevada, Las Vegas, 4505 S Maryland Parkway, Las Vegas, NV 89154, telephone (702) 895–2070, email *Daniel.Benyshek@unlv.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Nevada, Las Vegas. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the University of Nevada, Las Vegas.

Description

Human remains representing, at minimum, one individual were removed from Elko County, Nevada (Accession # *AHUR 62 (St. John's Seedling, Antelope Site)*). No associated funerary objects are present.

Aboriginal Land

The human remains in this notice were removed from a known geographic location. This location is the aboriginal land of one or more Indian Tribes. The

following information was used to identify the aboriginal land: a final judgment of the Indian Claims Commission.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, the University of Nevada, Las Vegas has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- No relationship of shared group identity can be reasonably traced between the human remains and any Indian Tribe.
- The human remains described in this notice were removed from the aboriginal land of the Confederated Tribes of the Goshute Reservation, Nevada and Utah; Confederated Tribes of the Warm Springs Reservation of Oregon; Eastern Shoshone Tribe of the Wind River Reservation, Wyoming; Shoshone-Bannock Tribes of the Fort Hall Reservation; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band; and Wells Band); and the Yomba Shoshone Tribe of the Yomba Reservation, Nevada.

Requests for Disposition

Written requests for disposition of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains described in this notice to a requestor may occur on or after October 19, 2023. If competing requests for disposition are received, the University of Nevada, Las Vegas must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains are considered a single request and not competing requests. The University of Nevada, Las Vegas is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9 and § 10.11.

Dated: September 11, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–20201 Filed 9–18–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036580; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Nevada, Las Vegas, Las Vegas, NV

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Nevada, Las Vegas has completed an inventory of human remains and has determined that there is no cultural affiliation between the human remains and any Indian Tribe. The human remains were removed from Mohave County, AZ.

DATES: Disposition of the human remains in this notice may occur on or after October 19, 2023.

ADDRESSES: Dr. Daniel Benyshek, University of Nevada, Las Vegas, 4505 S Maryland Parkway, Las Vegas, NV 89154, telephone (702) 895–2070, email *Daniel.Benyshek@unlv.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Nevada, Las Vegas. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the University of Nevada, Las Vegas.

Description

Human remains representing, at minimum, two individuals were removed from Mohave County, AZ (Accession #s *FHUR 61 (Mt. Trumble, 48.5 miles south of the Utah Border), and AHUR 1276 (South Bank, Mojave)*). No associated funerary objects are present.

Aboriginal Land

The human remains and associated funerary objects in this notice were removed from known geographic locations. These locations are the aboriginal lands of one or more Indian Tribes. The following information was used to identify the aboriginal land: a final judgment of the Indian Claims Commission.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, the University of Nevada, Las Vegas has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- No relationship of shared group identity can be reasonably traced between the human remains and associated funerary objects and any Indian Tribe.
- The human remains and associated funerary objects described in this notice were removed from the aboriginal land of the Chemehuevi Indian Tribe of the Chemehuevi Reservation, California; Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Fort McDowell Yavapai Nation, Arizona; Fort Mohave Indian Tribe of Arizona, California & Nevada; Havasupai Tribe of the Havasupai Reservation, Arizona; Hopi Tribe of Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Navajo Nation, Arizona, New Mexico, & Utah; and the Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes).

Requests for Disposition

Written requests for disposition of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who

shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains described in this notice to a requestor may occur on or after October 19, 2023. If competing requests for disposition are received, the University of Nevada, Las Vegas must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains are considered a single request and not competing requests. The University of Nevada, Las Vegas is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9 and 10.11.

Dated: September 11, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–20197 Filed 9–18–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036586; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: University of California, Berkeley, Berkeley, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of California, Berkeley intends to repatriate certain cultural items that meet the definition of objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from Sutter County, Yuba County, and western Placer County, CA.

DATES: Repatriation of the cultural items in this notice may occur on or after October 19, 2023.

ADDRESSES: Alexandra Lucas, Repatriation Coordinator, Government and Community Relations (Chancellor's Office), University of California, Berkeley. 200 California Hall, Berkeley, CA 94720, telephone (510) 570–0964, email *nagpra-ucb@berkeley.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of California, Berkeley. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the University of California, Berkeley.

Description

During the period from 1864 through 1957, 13 objects of cultural patrimony were removed from multiple identified sites in western Placer County, CA—CA-Pla-14, CA-Pla-17, CA-Pla-39, CA-Pla-4, and CA-Pla-414—and nine unknown locations in that county. Through 12 separate accessions, these objects were donated to the Lowie Museum (Phoebe A. Hearst Museum of Anthropology) at the University of California, Berkeley, by Darius Ogden Mills, Ellinor C. Davidson, Elmer J. Dawson, Franklin Fenenga, Robert Fleming Heizer, John Campbell Merriam, L. M. Layton, Loring J. Barker, Mrs. J. C. Hawver, the National Park Service, and Ralph L. Beals, as well as through the University of California Archaeological Survey, University appropriation, and other University collections. The 13 objects of cultural patrimony are one lot consisting of beads, one lot consisting of cartridges, one lot consisting of ceramics and glass, one lot consisting of clothing and textile components, one lot consisting of faunal remains, one lot consisting of floral remains, one lot consisting of metal, one lot consisting of nails, one lot consisting of ornaments, one lot consisting of plastic fragments, one lot consisting of shells, one lot consisting of worked faunal bones, and one lot consisting of worked and unworked stone.

During the period from sometime before 1881 through 1949, four objects of cultural patrimony were removed from multiple identified sites in Sutter County, CA—CA-Sut-10, CA-Sut-16, CA-Sut-5—and six unknown locations in that county. Through seven separate accessions, these objects were donated to the Lowie Museum by A. J. Blakeley, Clement W. Meighan, J. J. Coats, Jeremiah B. Lillard, and the Sacramento County Board of Education, as well as through the California Archaeological Survey, other University Collections, and University appropriation. The four lots of objects of cultural patrimony are one lot consisting of beads, one lot consisting of charmstones, one lot consisting of worked faunal bones, and one lot consisting of worked stone.

During the period 1860 through 1966, four objects of cultural patrimony were removed from multiple identified sites in Yuba County, CA—CA-Yub-10, CA-Yub-11, CA-Yub-12, CA-Yub-8, CA-Yub-9—and six unknown locations in that county. Through 12 separate accessions, these objects were donated to the Lowie Museum by Aileen W. Foulk, Bill Sundahl, Raymond Whiteley, C. M. Goethe, Geoffrey B. Bodman, Jeremiah B. Lillard, the Sacramento County Board of Education, John Campbell Merriam, and Stuart C. Way, as well as through University appropriation and other University collections. The four objects of cultural patrimony are one lot consisting of beads, one lot consisting of ornaments and pendants, one lot consisting of worked faunal bones, and one lot consisting of worked and unworked stone.

Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: geographical, linguistic, and expert opinion (in the form of Tribal traditional knowledge).

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the University of California, Berkeley has determined that:

- The 21 lots of cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and the United Auburn Indian Community of the Auburn Rancheria of California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after October 19, 2023. If competing requests for repatriation are received, the University of California, Berkeley must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The University of California, Berkeley is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, § 10.10, and § 10.14.

Dated: September 11, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–20191 Filed 9–18–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036579; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Nevada, Las Vegas, Las Vegas, NV

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Nevada, Las Vegas has completed an inventory of human remains and associated funerary objects and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any Indian Tribe. The human remains and associated funerary objects were removed from Nye County, NV.

DATES: Disposition of the human remains and associated funerary objects in this notice may occur on or after October 19, 2023.

ADDRESSES: Dr. Daniel Benyshek, University of Nevada, Las Vegas, 4505 S Maryland Parkway, Las Vegas, NV 89154, telephone (702) 895–2070, email *Daniel.Benyshek@unlv.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Nevada, Las Vegas. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the University of Nevada, Las Vegas.

Description

Human remains representing, at minimum, 12 individuals were removed from Nye County, NV (Accession #s *A200 (Bowman Site), AHUR 24 (Bowman Site), AHUR 25 (Bowman Site), AHUR 26 (Bowman Site), AHUR 27 (Bowman Site), AHUR 63 (Bowman Site), AHUR 64 (Bowman Site), AHUR 65 (Bowman Site), AHUR 72 (Bowman Site), AHUR 129 (Pahrump Valley Site), and FHUR 63 (Unknown Site)*). The 52 associated funerary objects include pottery sherds, stone tools, stone flakes, turquoise, faunal bone, shell, mineral, bone awls, sandstone, ochre, charcoal, shell disc beads, a bone tube, organic material, worked bones, lithics, lithic knives, projectile points, burned bone, obsidian flakes, a lithic drill, square shell beads, round shell beads, a flaked obsidian tool, flaked quartzite fragment, chert flakes, CCD flakes, flaked limestone, and mother of pearl.

Aboriginal Land

The human remains and associated funerary objects in this notice were removed from known geographic locations in Nye County, NV. These locations are the aboriginal lands of one or more Indian Tribes. The following information was used to identify the aboriginal land: a final judgment of the Indian Claims Commission.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, the University of Nevada, Las Vegas has determined that:

- The human remains described in this notice represent the physical remains of 12 individuals of Native American ancestry.
- The 52 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- No relationship of shared group identity can be reasonably traced between the human remains and associated funerary objects and any Indian Tribe.
- The human remains and associated funerary objects described in this notice were removed from the aboriginal land of the Confederated Tribes of the Warm Springs Reservation of Oregon; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes); Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band; and Wells Band); Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada; and the Yomba Shoshone Tribe of the Yomba Reservation, Nevada.

Requests for Disposition

Written requests for disposition of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains and associated funerary objects described in this notice to a requestor may occur on or after October 19, 2023. If competing requests for disposition are received, the University of Nevada, Las Vegas must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. The University of Nevada, Las Vegas is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9 and 10.11.

Dated: September 11, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–20196 Filed 9–18–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036575; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Nevada, Las Vegas, Las Vegas, NV

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Nevada, Las Vegas has completed an inventory of human remains and associated funerary objects and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any Indian Tribe. The human remains and associated funerary objects were removed from White Pine County, Nevada.

DATES: Disposition of the human remains and associated funerary objects in this notice may occur on or after October 19, 2023.

ADDRESSES: Dr. Daniel Benyshek, University of Nevada, Las Vegas, 4505 S Maryland Parkway, Las Vegas, NV 89154 telephone (702) 895–2070, email *Daniel.Benyshek@unlv.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Nevada, Las Vegas. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the University of Nevada, Las Vegas.

Description

Human remains representing, at minimum, one individual were removed from the Ely Site in White Pine County, NV (Accession # *FHUR 65*). The seven associated funerary objects are one lot consisting of faunal bones, an obsidian tool, a quartzite fragment, one lot consisting of chert flakes, one lot consisting of ochre, one lot consisting of charcoal, and one lot consisting of shell disc beads.

Aboriginal Land

The human remains and associated funerary objects in this notice were removed from a known geographic location. This location is the aboriginal land of one or more Indian Tribes. The following information was used to identify the aboriginal land: a final judgment of the Indian Claims Commission.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, the University of Nevada, Las Vegas has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The seven objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- No relationship of shared group identity can be reasonably traced between the human remains and associated funerary objects and any Indian Tribe.
- The human remains and associated funerary objects described in this notice were removed from the aboriginal land of the Confederated Tribes of the Goshute Reservation, Nevada and Utah; Confederated Tribes of the Warm Springs Reservation of Oregon; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; Skull Valley Band of Goshute Indians of Utah; Walker River Paiute Tribe of the Walker River Reservation, Nevada; Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches); and the Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada.

Requests for Disposition

Written requests for disposition of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains and associated funerary objects described in this notice to a requestor may occur on or after October 19, 2023. If competing requests for disposition are received, the University of Nevada, Las Vegas must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. The University of Nevada, Las Vegas is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9 and § 10.11.

Dated: September 11, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–20192 Filed 9–18–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036577; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Nevada, Las Vegas, Las Vegas, NV

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Nevada, Las Vegas has completed an inventory of human remains and associated funerary objects and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any Indian Tribe. The human remains and associated funerary objects were removed from an unknown county in Utah.

DATES: Disposition of the human remains and associated funerary objects in this notice may occur on or after October 19, 2023.

ADDRESSES: Dr. Daniel Benyshek, University of Nevada, Las Vegas, 4505 S Maryland Parkway, Las Vegas, NV 89154, telephone (702) 895–2070, email *Daniel.Benyshek@unlv.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Nevada, Las Vegas. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the University of Nevada, Las Vegas.

Description

Human remains representing, at minimum, two individuals were removed from an unknown county in Utah. (Accession # *AHUR 145 (Judd Ranch Site)*). While these ancestral remains are attributed to a named site, we are unable to identify this site and, consequently, we are unable to identify the county from which the human remains were removed. The eight associated funerary objects are one lot consisting of faunal bones, a ring, a glass fragment, a broche, one lot consisting of stone flakes, a stone tool, a snail shell, and a tool.

Aboriginal Land

The human remains and associated funerary objects in this notice were removed from a known geographic location (*i.e.,* the State of Utah). This location is the aboriginal land of one or more Indian Tribes. The following information was used to identify the aboriginal land: a final judgment of the Indian Claims Commission.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, the University of Nevada, Las Vegas has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- The eight objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- No relationship of shared group identity can be reasonably traced between the human remains and associated funerary objects and any Indian Tribe.
- The human remains and associated funerary objects described in this notice were removed from the aboriginal land of the Confederated Tribes of the Goshute Reservation, Nevada and Utah; Eastern Shoshone Tribe of the Wind River Reservation, Wyoming; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Navajo Nation, Arizona, New Mexico, & Utah; Northwestern Band of the Shoshone Nation; Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes); Shoshone-Bannock Tribes of the Fort Hall Reservation; Skull Valley Band of Goshute Indians of Utah; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and the Ute Mountain Ute Tribe.

Requests for Disposition

Written requests for disposition of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains and associated funerary objects described in this notice to a requestor may occur on or after October 19, 2023. If competing requests for disposition are received, the University of Nevada, Las Vegas must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. The University of Nevada, Las Vegas is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9 and § 10.11.

Dated: September 11, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–20194 Filed 9–18–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036574; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: U.S. Department of the Interior, Fish and Wildlife Service, Southwest Region, Albuquerque, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S Department of the Interior, Fish and Wildlife Service (USFWS) intends to repatriate a certain cultural item that meets the definition of a sacred object and that has a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural item was removed from Cherokee County, OK.

DATES: Repatriation of the cultural item in this notice may occur on or after October 19, 2023.

ADDRESSES: Victoria Owens, U.S Fish and Wildlife Service, P.O. Box 329, Albuquerque, NM 87103, telephone (505) 248–7897, email *victoria_owens@fws.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the USFWS. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the USFWS.

Description

One cultural item was removed from Tahlequah, Cherokee County, OK. Dennis R. ''Siera'' McPherron received the cultural item from William Smith, who was head of the Central Cherokee Medicine Council in the late 1980s. When the cultural item was seized by the USFWS in 2016, Mr. McPherron's traveling companion was Mr. Henry Vann, who is William Smith's nephew and a member of the United Keetoowah Band of Cherokee Indians in Oklahoma. The sacred item is a Golden Eagle feather.

Cultural Affiliation

The cultural item in this notice is connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of

shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: oral traditional and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the USFWS has determined that:

- The one cultural item described above is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and the United Keetoowah Band of Cherokee Indians in Oklahoma.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural item in this notice to a requestor may occur on or after October 19, 2023. If competing requests for repatriation are received, the USFWS must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural item are considered a single request and not competing requests. The USFWS is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, § 10.10, and § 10.14.

Dated: September 11, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–20190 Filed 9–18–23; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–860 (Fourth Review)]

Tin- and Chromium-Coated Steel Sheet From Japan; Notice of Commission Determination To Conduct a Full Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to the Tariff Act of 1930 to determine whether revocation of the antidumping duty order on tin- and chromium-coated steel sheet from Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date.

DATES: September 5, 2023.

FOR FURTHER INFORMATION CONTACT: Alejandro Orozco (202–205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

SUPPLEMENTARY INFORMATION: On September 5, 2023, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). The Commission found that both the domestic and respondent interested party group responses to its notice of institution (88 FR 35920, June 1, 2023) were adequate. A record of the Commissioners' votes will be available from the Office of the Secretary and at the Commission's website.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: September 13, 2023.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2023–20183 Filed 9–18–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Appointment of Individuals To Serve as Members of the Performance Review Board

AGENCY: United States International Trade Commission.

ACTION: Appointment of individuals to serve as members of performance review board.

DATES: *Applicable Date:* September 13, 2023.

FOR FURTHER INFORMATION CONTACT: Eric Mozie, Director of Human Resources, or Ronald Johnson, Deputy Director of Human Resources, U.S. International Trade Commission (202) 205–2651.

SUPPLEMENTARY INFORMATION: The Chairman of the U.S. International Trade Commission has appointed the following individuals to serve on the Commission's Performance Review Board (PRB):

Chair of the PRB: Commissioner Amy Karpel
Vice-Chair of the PRB: Commissioner Randolph Stayin
Member—John Ascienzo
Member—Dominic Bianchi
Member—Nannette Christ
Member—Catherine DeFilippo
Member—Katie Higginbothom
Member—Margaret Macdonald
Member—William Powers
Member—Keith Vaughn

This notice is published in the **Federal Register** pursuant to the requirement of 5 U.S.C. 4314(c)(4). Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

By order of the Chairman.

Issued: September 14, 2023.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2023–20280 Filed 9–18–23; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0111]

Agency Information Collection Activities; Proposed eCollection eComments Requested; National Crime Victimization Survey (NCVS)

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Office of Justice Programs, Bureau of Justice Statistics, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** on September 13, 2023, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until October 19, 2023.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Jennifer Truman, Statistician, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: *Jennifer.Truman@usdoj.gov;* telephone: 202–307–0765).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/*PRAMain. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection or the OMB Control Number 1121–0111. This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of this information collection:

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *Title of the Form/Collection:* National Crime Victimization Survey.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* The form numbers for the questionnaire are the NCVS–1 and NCVS–2. The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Persons 12 years or older living in sampled households located throughout the United States will be asked to respond. Abstract: The National Crime Victimization Survey (NCVS) provides national data on the level and change of criminal victimization both reported and not reported to police in the United States. The 2024 NCVS data collection will be a split sample design with the new and current instrument in order to phase-in the new NCVS instrument. The new NCVS instrument improves measurement of victimization and incident characteristics and includes two new periodic modules on police performance and community safety.

5. *Obligation to Respond:* Voluntary.

6. *Total Estimated Number of Respondents:* 182,504.

7. *Estimated Time per Respondent:* 25 minutes to complete the current NCVS instrument. 32 minutes to complete the new NCVS instrument. It will take the average non-interviewed respondent (*e.g.,* nonrespondent) an estimated 7 minutes to respond; the average follow-up interview is estimated at 15 minutes; and the average follow-up for a non-interview is estimated at 1 minute.

8. *Frequency:* Annual.

9. *Total Estimated Annual Time Burden:* 124,888 hours.

10. *Total Estimated Annual Other Costs Burden:* $0.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218 Washington, DC 20530.

Dated: September 14, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–20269 Filed 9–18–23; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP) Docket No. 1800]

Draft Programmatic Environmental Assessment for Grant Funding Programs

AGENCY: Office of Justice Programs.

ACTION: Notice of availability of a draft programmatic environmental assessment.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), the Department of Justice (DOJ) Office of Justice Programs (OJP) has completed a Draft Programmatic Environmental Assessment (PEA). The OJP provides federal leadership, grants, training, technical assistance and other resources to improve the nation's capacity to prevent and reduce crime, assist victims and uphold the rule of law by strengthening the criminal and juvenile justice systems. The PEA evaluates the potential environmental impacts of implementing OJP programs that provide funding to applicants in support of OJP's mission. NEPA requires that federal agencies consider the effects of a proposed action and any reasonable alternatives on the human environment. This Draft PEA evaluates the impacts that would result from the implementation of the Proposed Action as compared to the No Action

alternative. OJP is accepting comments on this Draft PEA as detailed below.

DATES: Comments must be submitted on or before October 19, 2023.

ADDRESSES: You may view an electronic version of the Draft PEA at *https://www.ojp.gov/sites/g/files/xyckuh241/files/media/document/ojppea.pdf,* or contact OJP (contact information below) to request a hardcopy. Comments must be in writing and may be submitted via email (preferred) or mail to the addresses below.

FOR FURTHER INFORMATION CONTACT: Emily Gallas, Office of Justice Programs, 810 7th St. NW, Washington, DC 20531; (202) 307–0790; *emily.gallas@usdoj.gov,* (Please reference ''Draft PEA, Docket 1800'' in the subject line.)

SUPPLEMENTARY INFORMATION:

I. Background

The National Institute of Justice (NIJ), a component of OJP, prepared a PEA that was issued in 2010 to evaluate the impacts of NIJ grant programs. This existing 2010 NIJ PEA has since been adopted by the Bureau of Justice Assistance, another component of OJP. Council on Environmental Quality guidance recommends that agencies re-examine existing NEPA analyses for long-term programs every five years. Consistent with this recommendation, OJP has reviewed its existing PEA and has determined that a new analysis is warranted based on the factors found in 40 CFR 1502.19. OJP has prepared an updated PEA that is intended to replace the 2010 NIJ PEA and will cover all of OJP's funding programs. OJP publishes this notice pursuant to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*

II. Proposed Action Description

The Proposed Action considered under this Draft PEA is for OJP to continue to provide funding to applicants to support its mission. OJP evaluates and funds approximately 7,000 projects per year nationwide. All activities considered under the Draft PEA support criminal justice activities and are funded under one of OJP's grant programs or other funding vehicles such as interagency agreements. The Draft PEA provides analysis of the following activities:

- *Construction:* Interior or exterior construction activities that involve minor renovation, new construction, or expansion of buildings and/or building systems.
- *Training:* Indoor classroom, laboratory, and computer training activities in support of education or attendance at conferences, workshops, and seminars at existing facilities. Firearms training activities at existing, established outdoor and indoor firing ranges. Activities may include funding individuals to attend a training or funding a training event/activity directly.
- *Routine Lab Work:* Indoor laboratory work using known or accepted methodology and industry standard equipment to achieve known outcomes.
- *Body Decomposition Research:* Research on body decomposition at forensic anthropological centers.
- *Standards Development Testing and Compliance Testing for Protective Equipment:* Indoor and outdoor laboratory testing activities completed in support of developing a standard or for testing a product for inclusion on the National Institute of Justice Compliant Products List.

The purpose of the Proposed Action is to allow OJP to better meet the needs of state, local, and tribal criminal justice professionals and local communities. OJP supports forensic science programs dedicated to research, development, testing, and evaluation in conjunction with capacity building and technical assistance. OJP provides funding for these activities to combat crime and promote justice across the country.

Emily Gallas,

Assistant General Counsel, OJP Office of the General Counsel.

[FR Doc. 2023–20177 Filed 9–18–23; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2006–0048]

NSF International: Grant of Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the final decision to expand the scope of recognition for NSF International as a Nationally Recognized Testing Laboratory (NRTL).

DATES: The expansion of the scope of recognition becomes effective on September 19, 2023.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2300 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of NSF International (NSF), as a NRTL. NSF's expansion covers the addition of one test site to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition, as well as for an expansion or renewal of recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including NSF, which details that NRTL's scope of recognition. These pages are available from the OSHA website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

NSF submitted an application, dated July 21, 2020 (OSHA–2006–0048–0016), to expand recognition as a NRTL to include one additional test site located at: 251 Airport Industrial Drive,

Ypsilanti, Michigan 48198 (NSF Ypsilanti). OSHA staff performed an on-site review of NSF's testing facilities at NSF Ypsilanti on May 3–4, 2023, in which assessors found some nonconformances with the requirements of 29 CFR 1910.7. NSF has addressed these issues sufficiently, and OSHA staff preliminarily determined that OSHA should grant the application.

OSHA published the preliminary notice announcing NSF's expansion application in the **Federal Register** on August 16, 2023 (88 FR 55737). The agency requested comments by August 31, 2023, but it received no comments in response to the notice. OSHA now is proceeding with this notice to grant expansion of NSF's scope of recognition.

To obtain or review copies of all public documents pertaining to the NSF expansion application, go to *www.regulations/gov* or contact the Docket Office at (202) 693–2350 (TTY (877) 889–5627. Docket No. OSHA–2006–0048 contains all materials in the record containing NSF's recognition.

II. Final Decision and Order

OSHA staff examined NSF's expansion application, conducted a detailed on-site assessment, and examined other pertinent information. Based on review of this evidence, OSHA finds that NSF meets the requirements of 29 CFR 1910.7 for expansion of recognition, subject to the specified limitations and conditions. OSHA, therefore, is proceeding with this final notice to grant NSF's scope of recognition. OSHA limits the expansion of NSF's recognition to include the site at Ypsilanti, Michigan as listed above. OSHA's recognition of the site limits NSF to performing product testing and certifications only to the test standards for which the site has the proper capability and programs, and for test standards in NSF's scope of recognition. This limitation is consistent with the recognition that OSHA grants to other NRTLs that operate multiple sites.

A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, NSF also must abide by the following conditions of the recognition:

1. NSF must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as a NRTL, and provide details of the change(s);

2. NSF must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

3. NSF must continue to meet the requirements for recognition, including all previously published conditions on NSF's scope of recognition, in all areas for which it has recognition.

OSHA hereby expands the NRTL scope of recognition for NSF to include one additional test site.

III. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393; Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–20162 Filed 9–18–23; 8:45 am]

BILLING CODE 4510–26–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 23–05]

Millennium Challenge Corporation Selection Criteria and Methodology Report for Fiscal Year 2024

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: The Millennium Challenge Act of 2003, as amended, requires the Millennium Challenge Corporation to publish a report that identifies the criteria and methodology that MCC intends to use to determine which candidate countries may be eligible to be considered for assistance under the Millennium Challenge Act for fiscal year 2024. The report is set forth in full below.

(Authority: 22 U.S.C. 7707(b)(2))

Dated: September 13, 2023.

Gina Porto Spiro,

Acting Vice President, General Counsel, and Corporate Secretary.

Millennium Challenge Corporation

Selection Criteria and Methodology Report for Fiscal Year 2024

This document explains how the Board of Directors (the Board) of the Millennium Challenge Corporation (MCC) will identify, evaluate, and select eligible countries for fiscal year (FY) 2024. Specifically, this document discusses the following:

(I) Which countries MCC will evaluate
(II) How the Board evaluates these countries
A. Overall evaluation
B. For selection of an eligible country for a first compact
C. For selection of an eligible country for a subsequent compact
D. For selection of an eligible country for a concurrent compact
E. For threshold program assistance
F. A note on potential transition to upper middle income country status after initial selection

This report is provided in accordance with section 608(b) of the Millennium Challenge Act of 2003, as amended (the Act), as more fully described in Appendix A.

(I) Which countries are evaluated?

MCC evaluates the policy performance of all candidate countries and statutorily-prohibited countries by dividing them into two income categories for the purposes of creating ''scorecards.'' These categories are used to account for the income bias that occurs when countries with more per capita resources perform better than countries with fewer. In FY 2024, those scorecard evaluation income categories [1] are:

- Countries whose gross national income (GNI) per capita is $2,145 or less; and
- Countries whose GNI per capita is between $2,146 and $4,465.

Appendix B lists all candidate countries and statutorily-prohibited countries for scorecard evaluation purposes.

(II) How does the Board evaluate these countries?

A. Overall Evaluation

The Board looks at three statutorily-mandated factors when it evaluates any candidate country for compact eligibility: (1) policy performance; (2) the opportunity to reduce poverty and generate economic growth; and (3) the availability of MCC funds.

(1) Policy Performance

Appendix C describes all 20 indicators, their definitions, what is required to ''pass,'' their source, and their relationship to the statutory criteria. Because of the importance of evaluating a country's policy performance in a comparable, cross-

[1] These income groups correspond to the definitions of low income countries and lower middle countries using the historical International Development Association (IDA) threshold published by the World Bank. MCC has used these categories to evaluate country performance since FY 2004. Our amended statute no longer uses those definitions for funding purposes, but we continue to use them for evaluation purposes.

country way, the Board relies to the maximum extent possible upon the best-available objective and quantifiable policy performance indicators. These indicators act as proxies for a country's commitment to just and democratic governance, economic freedom, and investing in its people, per MCC's founding statute. Comprised of 20 third-party indicators in the categories of ruling justly, encouraging economic freedom, and investing in people, MCC scorecards are created for all candidate countries and statutorily-prohibited countries. To ''pass'' most indicators on its scorecard, a country's score on each indicator must be above the median score *in its income group* (as defined above for scorecard evaluation purposes). For the inflation, political rights, civil liberties, and immunization rates [2] indicators, however, MCC has established minimum or maximum scores for ''passing.'' In particular, the Board considers whether a country:

- passed at least 10 of the 20 indicators, with at least one pass in each of the three categories,
- passed either the Political Rights or Civil Liberties indicator; and
- passed the Control of Corruption indicator.

While satisfaction of all three aspects means a country is termed to have ''passed'' the scorecard, the Board also considers whether the country performs ''substantially worse'' in any one policy category than it does on the scorecard overall.

The mandatory passing of either the Political Rights or Civil Liberties indicators is called the Democratic Rights ''hard hurdle'' on the scorecard, while the mandatory passing of the Control of Corruption indicator is called the Control of Corruption ''hard hurdle.'' Not passing either ''hard hurdle'' results in not passing the scorecard overall, regardless of whether at least 10 of the 20 other indicators are passed.

- *Democratic Rights ''hard hurdle:''* This hurdle sets a minimum bar for democratic rights below which the Board will not consider a country for eligibility. Requiring that a country pass *either* the Political Rights *or* Civil Liberties indicator creates a democratic incentive for countries, recognizes the importance democracy plays in driving poverty-reducing economic growth, and holds MCC accountable to working with the best governed, poorest countries. When a candidate country is only passing one of the two indicators comprising the hurdle (instead of both), the Board will also closely examine why it is not passing the other indicator to understand what the score implies for the broader democratic environment and trajectory of the country. This examination will include consultation with both local and international civil society experts, among others. The hurdle is an important signal of the importance MCC places on democratic governance and the role of MCC programs in helping democracies deliver development results for their citizens—a democratic dividend.
- *Control of Corruption ''hard hurdle:''* Corruption in any country is an unacceptable tax on economic growth and an obstacle to the private sector investment needed to reduce poverty. Accordingly, MCC seeks out partner countries that are committed to combatting corruption. It is for this reason that MCC also has the Control of Corruption ''hard hurdle,'' which helps ensure that MCC is working with countries where there is relatively strong performance in controlling corruption. Requiring the passage of the indicator incentivizes countries to demonstrate a clear commitment to controlling corruption, and allows MCC to better understand the issue by seeing how the country performs relative to its peers and over time.

Together, the 20 policy performance indicators are the predominant basis for determining which eligible countries will be selected for MCC assistance, and the Board expects a country to be passing its scorecard at the point the Board decides to select the country for a compact. The Board, however, also recognizes that even the best-available data has inherent challenges. Data gaps, real-time events versus data lags, the absence of narratives and nuanced detail, and other similar weaknesses affect each of these indicators. As such, the Board uses its judgment to interpret policy performance as measured by the scorecards. The Board may also consult other sources of information to enhance its understanding of the context underpinning a country's policy performance beyond scorecard issues (*e.g.,* specific policy issues related to trade, the treatment of civil society, other U.S. aid programs, financial sector performance, and security/foreign policy concerns). The Board uses its judgment on how best to weigh such information in assessing overall policy performance and making a final determination.

(2) The Opportunity To Reduce Poverty and Generate Economic Growth

While the Board considers a range of other information sources depending on the country, specific areas of attention typically include better understanding issues and trends in, and trajectory of:

- the state of democratic and human rights (especially vulnerable groups [3]);
- civil society's perspective on salient governance issues;
- the control of corruption and rule of law;
- the potential for the private sector (both local and foreign) to lead investment and growth;
- poverty levels within a country; and
- the country's institutional capacity.

Where applicable, the Board also considers MCC's own experience and ability to reduce poverty and generate economic growth in a given country—such as considering MCC's core areas of expertise and skills versus a country's needs, and MCC's capacity to work with a country.

This information provides greater clarity on the likelihood that MCC programs will have an appreciable impact on reducing poverty by generating economic growth in a given country. The Board has used such information to better understand when a country's performance on a particular indicator may not be up to date or is about to change. It has also used supplemental information to decline to select countries that are otherwise passing their scorecards. More details on this subject (sometimes referred to as ''supplemental information'') can be found on MCC's website: *www.mcc.gov/who-we-select/indicators.*

(3) The Availability of MCC Funds

The final factor that the Board must consider when evaluating countries is the availability of funds. The agency's budget is constrained, and often specifically limited, by provisions in the Act and in applicable appropriations acts. MCC has a continuous pipeline of countries in compact development, compact implementation, threshold programs, and program closure. Consequently, the Board factors in MCC's overall portfolio when making its selection decisions given current and projected funding availability for each planned or existing program.

* * * * *

The following subsections describe how the Board applies each of these three statutorily-mandated factors: selection of countries for a compact,

[2] A minimum score required to pass has been established for the immunization rates indicator only when the median score is above a 90 percent immunization rate. Countries must score above 90 percent or the median for their scorecard income pool, whichever is lower, in order to pass the indicator.

[3] For example: women; children; LGBTQI+ individuals; people with disabilities; and workers.

selection of countries for a subsequent compact, selection of countries for the threshold program, and selection of countries for a concurrent compact. A note follows on considerations for countries that might transition to upper middle income country status after initial selection.

B. Evaluation for Selection of Eligible Countries for a First Compact

When selecting eligible countries for a compact, the Board looks at all three statutorily-mandated aspects described in the previous section: (1) policy performance, first and foremost as measured by the scorecards and bolstered through supplemental information (as described in the previous section); (2) the opportunity to reduce poverty and generate economic growth, examined through the use of other supporting information (as described in the previous section); and (3) available funding.

At a minimum, the Board considers whether a country passes its scorecard. It also examines supporting evidence that a country's commitment to just and democratic governance, economic freedom, and investing in its people is on a sound footing and performance is on a positive trajectory (especially on the ''hard hurdles'' of Democratic Rights and Control of Corruption), and that MCC has the funds to support a meaningful compact with that country. Where applicable, previous threshold program information is also considered. For those countries currently developing or implementing a threshold program, the Board will examine the progress the country has made toward substantial implementation.

The Board then weighs the information described above across each of the three dimensions. During the compact development period following initial selection, the Board reevaluates a selected country based on this same approach.

C. Evaluation for Selection of Eligible Countries for a Subsequent Compact

Section 609(l) of the Act authorizes MCC to enter into ''one or more subsequent Compacts.'' MCC does not consider the eligibility of a country for a subsequent compact, however, before the country has completed its compact or is within 18 months of compact end date. Selection for a subsequent compact is not automatic and is intended for countries that (1) exhibit successful performance on their previous compact(s); (2) exhibit improved scorecard policy performance during the partnership; and (3) exhibit a continued commitment to further their sector reform efforts in any subsequent partnership. As a result, the Board has an even higher standard when selecting countries for subsequent compacts.

(1) Successful Implementation of the Previous Compact(s)

To evaluate the previous compact's success, the Board examines whether the compact succeeded within its budget and time limits, in particular by looking at three aspects:

- *The degree to which there is evidence of strong political will and management capacity:* Is the partnership characterized by the country ensuring that both policy reforms and the compact program itself are both being implemented to the best of that country's ability?
- *The degree to which the country has exhibited commitment and capacity to achieve program result*s: Are the financial and project results being achieved; to what degree is the country committing its own resources to ensure the compact is a success; to what extent is the private sector engaged (if relevant); and other compact-specific issues?
- *The degree to which the country has implemented the compact in accordance with MCC's core policies and standards:* Is the country adhering to MCC's policies and procedures, including in critical areas such as: remediating unresolved claims of fraud, corruption, or abuse of funds; procurement; and monitoring and evaluation?

Appendix D provides details on the specific information types examined and sources used in each of the three areas. Overall, the Board is looking for evidence that the previous compact(s) will be or has been completed on time and on budget, and that there is a commitment to continued, robust reform going forward.

(2) Improved Scorecard Policy Performance

The Board also expects the country to have improved its overall scorecard policy performance during the partnership, and to pass the scorecard in the year of selection for the subsequent compact. The Board focuses on the following:

- The overall scorecard pass/fail rate over time, and what this suggests about underlying policy performance, as well as an examination of the underlying reasons;
- The progress over time on policy areas measured by both hard-hurdle indicators—Democratic Rights and Control of Corruption—including an examination of the underlying reasons; and
- Other indicator trajectories deemed relevant by the Board.

In all cases, while the Board expects the country to be passing its scorecard, the Board also examines other sources of information to understand the nuance and reasons behind scorecard or indicator performance over time, including any real-time updates, methodological changes within the indicators themselves, shifts in the relevant candidate pool, or alternative policy performance perspectives (such as those gleaned through consultations with civil society and related stakeholders). The Board also consults other information sources to look at policy performance over time in areas not covered by the scorecard, but that the Board deemed to be important (such as trade and foreign policy concerns).

(3) A Commitment to Further Sector Reform

The Board expects that subsequent compacts will endeavor to tackle deeper policy reforms necessary to unlock an identified constraint to growth. Consequently, the Board considers MCC's own experience during the previous compact in considering how committed the country is to reducing poverty and increasing economic growth, and tries to gauge the country's commitment to further sector reform should it be selected for a subsequent compact. This includes:

- Assessing the country's delivery of policy reform during the previous compact (as described above);
- Assessing expectations of the country's ability and willingness to continue embarking on sector policy reform in a subsequent compact;
- Examining both other information sources describing the opportunity to reduce poverty by generating growth (as outlined in A.2 above), and the prior compact's relative success overall, as already discussed; and
- Finally, considering how well funding can be leveraged for impact, given the country's experience in the previous compact.

* * * * *

Through this overall approach to selection for a subsequent compact, the Board applies the three statutorily-mandated evaluation criteria (policy performance, the opportunity to reduce poverty and generate economic growth, and available funds) in a way that assesses the previous partnership from a compact success standpoint, a commitment to improved scorecard policy performance standpoint, and a commitment to continued sector policy

reform standpoint. The Board then weighs all the information described above in making its decision.

During the compact development period following initial selection, the Board reevaluates a selected country based on this same approach.

D. Evaluation for Concurrent Compacts

Section 609(k) of the Act authorizes MCC to enter into one additional concurrent compact with a country if one or both of the compacts with the country is for the purpose of regional economic integration, increased regional trade, or cross-border collaborations.

The fundamental criteria and process for the selection of countries for such compacts remains the same as those for the selection of countries for non-concurrent compacts: countries continue to be evaluated and selected individually, as described in sections II.A, II.B, II.C, and II.F.

Section 609(k) also requires as a precondition for a concurrent compact that the Board determine that the country is making ''considerable and demonstrable progress in implementing the terms of the existing Compact and supplementary agreements thereto.'' This statutory requirement is fully consistent with prior Board practice regarding the selection of a country for a non-concurrent compact. For a country where a concurrent compact is contemplated, the Board will take into account whether there is clear evidence of success, as relevant to the phase of the current compact. Among other information, the Board will examine the evaluation criteria described in Section II.C.1 above, notably:

- The degree to which there is evidence of strong political will and management capacity;
- The degree to which the country has exhibited commitment and capacity to achieve program results; and
- The degree to which the country has implemented the compact in accordance with MCC's core policies and standards.

In addition to providing information to the Board so it can make its determination regarding the country's progress in implementing its current compact, MCC will provide the Board with additional information relating to the potential for regional economic integration, increased regional trade, or cross-border collaborations for any country being considered for a concurrent compact. This information may include items such as:

- The current state of a country's regional integration, such as common financial and political dialogue frameworks, integration of productive value chains, and cross-border flows of people, goods, and services.
- The current and potential level of trade between a country and its neighbors, including analysis of trade flows and unexploited potential for trade, and an assessment of the extent and significance of tariff and non-tariff barriers, including information regarding the patterns of trade.
- The potential gains from cross-border cooperation between a country and its neighbors to alleviate bilateral and regional bottlenecks to economic growth and poverty reduction, such as through physical infrastructure or coordinated policy and institutional reforms.

The Board can then weigh all information as a whole—the fundamental selection factors described in sections II.A, II.B, II.C, and II.F, the information regarding implementation of the current compact, and any additional relevant information regarding potential regional integration—to determine whether or not to direct MCC to seek to enter into a concurrent compact with a country.

E. Evaluation for Threshold Program Assistance

The Board may also evaluate countries for participation in the threshold program. Threshold programs provide assistance to candidate countries exhibiting a significant commitment to meeting the criteria described in the previous subsections, but failing to meet such requirements. Specifically, in examining a candidate country's policy performance, the opportunity to reduce poverty and generate economic growth, and available funds, the Board will consider whether a country appears to be on a trajectory to becoming viable for compact eligibility in the medium or short term.

F. A Note on Potential Transition to Upper Middle Income Country (UMIC) Status After Initial Selection

Some candidate countries may have a high per capita income or a high growth rate that implies there is a chance they could transition to UMIC status during the life of an MCC partnership. It is not possible to accurately predict if or when such a transition may occur.

Nonetheless, such countries may have more resources at their disposal for funding their own growth and poverty reduction strategies. As a result, in addition to using the regular selection criteria described in the previous sections, the Board will use its discretion to assess both the need and the opportunity presented by partnering with such a country, in order to ensure that MCC's scarce grant funds are directed appropriately.

Specifically, if a candidate country with a high probability of transitioning to UMIC status is under consideration for selection, the Board will examine additional data and information related to the following:

- Whether the country faces significant challenges accessing other sources of development financing (such as international capital, domestic resources, and other donor assistance) and, if so, whether MCC grant financing would be an appropriate tool;
- Whether the nature of poverty in the country (for example, high inequality or poverty headcount ratios relative to peer countries) presents a clear and strategic opportunity for MCC to assist the country in reducing such poverty through projects that spur economic growth;
- Whether the country demonstrates particularly strong policy performance, including policies and actions that demonstrate a clear priority on poverty reduction; and
- Whether MCC can reasonably expect that the country would contribute a significant amount of funding to the compact.

These additional criteria would then be applied in any additional years of selection as the country continues to develop its compact. Should a country eventually transition to UMIC status during compact development, it would no longer be a candidate for selection for that fiscal year. Continuing compact development beyond that point would then be at the Board's discretion.

Appendix A: Statutory Basis for This Report

This report to Congress is provided in accordance with section 608(b) of the Millennium Challenge Act of 2003, as amended (the Act), 22 U.S.C. 7707(b).

Section 605 of the Act authorizes the provision of assistance to countries that enter into a Millennium Challenge Compact with the United States to support policies and programs that advance the progress of such countries in achieving lasting economic growth and poverty reduction. The Act requires MCC to take a number of steps in selecting countries for compact assistance for FY 2024 based on the countries' demonstrated commitment to just and democratic governance, economic freedom, and investing in their people, MCC's opportunity to reduce poverty and generate economic growth in the country, and the availability of funds. These steps include the submission of reports to the congressional committees specified in the Act and publication of information in the **Federal Register** that identify:

(1) The countries that are ''candidate countries'' for assistance for FY 2024 based on per capita income levels and eligibility to receive assistance under U.S. law (section 608(a) of the Act; 22 U.S.C. 7707(a));

(2) The criteria and methodology that MCC's Board of Directors (Board) will use to measure and evaluate policy performance of the candidate countries consistent with the requirements of section 607 of the Act (22 U.S.C. 7706) in order to determine ''eligible countries'' from among the ''candidate countries'' (section 608(b) of the Act; 22 U.S.C. 7707(b)); and

(3) The list of countries determined by the Board to be ''eligible countries'' for FY 2024, with justification for eligibility determination and selection for compact negotiation, including those eligible countries with which MCC will seek to enter into compacts (section 608(d) of the Act; 22 U.S.C. 7707(d)).

This report satisfies item 2 above.

Appendix B: Lists of All Candidate Countries and Statutorily-Prohibited Countries for Evaluation Purposes

Income Groups for Scorecards

Since MCC was created, it has relied on the *World Bank's gross national income (GNI) per capita income data* (Atlas method) and the historical ceiling for eligibility as set by the World Bank's International Development Association (IDA) to divide countries into two income categories for purposes of creating scorecards. These categories are used to account for the income bias that occurs when countries with more per capita resources perform better than countries with fewer. Using the historical IDA eligibility ceiling for the scorecard evaluation groups ensures that the poorest countries compete with their income level peers and are not compared against countries with more resources to mobilize.

MCC will continue to use the historical IDA classifications for eligibility to categorize countries in two groups for purposes of FY 2024 scorecard comparisons:

- Countries with GNI per capita equal to or less than IDA's historical ceiling for eligibility (*i.e.,* $2,145 for FY 2024); and
- Countries with GNI per capita above IDA's historical ceiling for eligibility but below the World Bank's upper middle income country threshold (*i.e.,* $2,146 and $4,465 for FY 2024).

The list of countries for FY 2024 scorecard assessments is set forth below:

Countries With GNI per Capita of $2,145 or Less

1. Afghanistan
2. Angola
3. Benin
4. Burkina Faso
5. Burundi
6. Cambodia
7. Cameroon
8. Central African Republic
9. Chad
10. Comoros
11. Congo, Democratic Republic of the
12. Congo, Republic of
13. Eritrea
14. Ethiopia
15. Gambia, The
16. Guinea
17. Guinea-Bissau
18. Haiti
19. Korea, North
20. Kyrgyzstan
21. Lesotho
22. Liberia
23. Madagascar
24. Malawi
25. Mali
26. Mozambique
27. Myanmar
28. Nepal
29. Nicaragua
30. Niger [4]
31. Nigeria
32. Pakistan
33. Rwanda
34. Senegal
35. Sierra Leone
36. Somalia
37. South Sudan
38. Sudan
39. Syria
40. Tajikistan
41. Tanzania
42. Timor-Leste
43. Togo
44. Uganda
45. Yemen
46. Zambia
47. Zimbabwe

Countries With GNI per Capita Between $2,146 and $4,465

1. Algeria
2. Bangladesh
3. Bhutan
4. Bolivia
5. Cabo Verde
6. Cote d'Ivoire
7. Djibouti
8. Egypt
9. Eswatini
10. Ghana
11. Honduras
12. India
13. Iran
14. Jordan
15. Kenya
16. Kiribati
17. Laos
18. Lebanon
19. Mauritania
20. Micronesia, Federated States of
21. Mongolia
22. Morocco
23. Papua New Guinea
24. Philippines
25. Samoa
26. Sao Tome and Principe
27. Solomon Islands
28. Sri Lanka
29. Tunisia
30. Ukraine
31. Uzbekistan
32. Vanuatu
33. Vietnam

Statutorily-Prohibited Countries

1. Burkina Faso
2. Burma
3. Cambodia
4. Eritrea
5. Guinea
6. Haiti
7. Iran
8. Korea, North
9. Mali
10. Nicaragua
11. South Sudan
12. Sri Lanka
13. Sudan
14. Syria
15. Zimbabwe

[4] Note that, should events that began in July 2023 in Niger be assessed to trigger restrictions on foreign assistance pursuant to the military coup restriction in section 7008 of the FY 2023 SFOAA, Niger will not be a candidate country.

Appendix C: Indicator Definitions

The following indicators will be used to measure candidate countries' demonstrated commitment to the criteria found in section 607(b) of the Act. The indicators are intended to assess the degree to which the political and economic conditions in a country serve to promote broad-based sustainable economic growth and reduction of poverty and thus provide a sound environment for the use of MCC funds. The indicators are not goals in themselves; rather, they are proxy measures of policies that are linked to broad-based sustainable economic growth. The indicators were selected based on (i) their relationship to economic growth and poverty reduction; (ii) the number of countries they cover; (iii) transparency and availability; and (iv) relative soundness and objectivity. Where possible, the indicators are developed by independent sources. Listed below is a brief summary of the indicators (a detailed rationale for the adoption of these indicators can be found in the public Guide to the Indicators on MCC's website at *www.mcc.gov/who-we-select/indicators*).

Ruling Justly

1. Political Rights: Independent experts rate countries on the prevalence of free and fair electoral processes; political pluralism and participation of all stakeholders; government accountability and transparency; freedom from domination by the military, foreign powers, totalitarian parties, religious hierarchies and economic oligarchies; and the political rights of minority groups, among other things. Pass: Score must be above the minimum score of 17 out of 40. Source: *Freedom House*

2. Civil Liberties: Independent experts rate countries on freedom of expression and belief; association and organizational rights; rule of law and human rights; and personal autonomy and economic rights, among other things. Pass: Score must be above the minimum score of 25 out of 60. Source: *Freedom House*

3. Freedom of Information: Measures the legal and practical steps taken by a government to enable or allow information to move freely through society; this includes measures of press freedom, national freedom of information laws, and the extent to which a county is shutting down social media or the internet. Pass: Score must be above the median score for the income group. Source: *Reporters Without Borders/Access Now/ Centre for Law and Democracy.*

4. Government Effectiveness: An index of surveys and expert assessments that rate

countries on the quality of public service provision; civil servants' competency and independence from political pressures; and the government's ability to plan and implement sound policies, among other things. Pass: Score must be above the median score for the income group. Source: *Worldwide Governance Indicators (World Bank/Brookings)*

5. Rule of Law: An index of surveys and expert assessments that rate countries on the extent to which the public has confidence in and abides by the rules of society; the incidence and impact of violent and nonviolent crime; the effectiveness, independence, and predictability of the judiciary; the protection of property rights; and the enforceability of contracts, among other things. Pass: Score must be above the median score for the income group. Source: *Worldwide Governance Indicators (World Bank/Brookings)*

6. Control of Corruption: An index of surveys and expert assessments that rate countries on: ''grand corruption'' in the political arena; the frequency of petty corruption; the effects of corruption on the business environment; and the tendency of elites to engage in ''state capture,'' among other things. Pass: Score must be above the median score for the income group. Source: *Worldwide Governance Indicators (World Bank/Brookings)*

Encouraging Economic Freedom

1. Fiscal Policy: General government net lending/borrowing as a percent of gross domestic product (GDP), averaged over a three-year period. Net lending/borrowing is calculated as revenue minus total expenditure. The data for this measure comes from the IMF's World Economic Outlook. Pass: Score must be above the median score for the income group. Source: *The International Monetary Fund's World Economic Outlook Database*

2. Inflation: The most recent average annual change in consumer prices. Pass: Score must be 15 percent or less. Source: *The International Monetary Fund's World Economic Outlook Database*

3. Regulatory Quality: An index of surveys and expert assessments that rate countries on the burden of regulations on business; price controls; the government's role in the economy; and foreign investment regulation, among other areas. Pass: Score must be above the median score for the income group. Source: *Worldwide Governance Indicators (World Bank/Brookings)*

4. Trade Policy: A measure of a country's openness to international trade based on weighted average tariff rates and non-tariff barriers to trade. Pass: Score must be above the median score for the income group. Source: *The Heritage Foundation*

5. Gender in the Economy: An index that measures the extent to which laws provide men and women equal capacity to generate income or participate in the economy, including factors such as the capacity to access institutions, get a job, register a business, sign a contract, open a bank account, choose where to live, to travel freely, property rights protections, protections against domestic violence, and child marriage, among others. Pass: Score must be above the median score for the income group. Source: *Women, Business, and the Law (World Bank) and the WORLD Policy Analysis Center (UCLA)*

6. Land Rights and Access: An index that rates countries on the extent to which the institutional, legal, and market framework provides secure land tenure and equitable access to land in rural areas and the extent to which men and women have the right to private property in practice and in law. Pass: Score must be above the median score for the income group. Source: *The International Fund for Agricultural Development and Varieties of Democracy Index*

7. Access to Credit: An index that ranks countries based on access and use of formal and informal financial services as measured by the number of bank branches and ATMs per 100,000 adults and the share of adults that have an account at a formal or informal financial institution. Pass: Score must be above the median score for the income group. Source: *Financial Development Index (International Monetary Fund) and Findex (World Bank)*

8. Equal Employment Opportunity: Measures a country government's commitment to ending slavery and forced labor, preventing employment discrimination, and protecting the rights of workers and people with disabilities. Pass: Score must be above the median score for the income group. Sources: *Varieties of Democracy Institute and WORLD Policy Analysis Center (UCLA).*

Investing in People

1. Health Expenditures: Total current expenditures on health by government (excluding funding sourced from external donors) at all levels divided by GDP. Pass: Score must be above the median score for the income group. Source: *The World Health Organization*

2. Education Expenditures: Total expenditures on education by government at all levels divided by GDP. Pass: Score must be above the median score for the income group. Source: *The United Nations Educational, Scientific and Cultural Organization and National Governments*

3. Natural Resource Protection: Assesses a country government's commitment to preserving biodiversity and natural habitats, responsibly managing ecosystems and fisheries, and engaging in sustainable agriculture. Pass: Score must be above the median score for the income group. Source: *Yale Center for Environmental Law and Policy*

4. Immunization Rates: The average of DPT3 and measles immunization coverage rates for the most recent year available. Pass: Score must be above either the median score for the income group or 90 percent, whichever is lower. Source: *The World Health Organization and the United Nations Children's Fund*

5. Girls Education:

a. Girls' Primary Completion Rate: The number of female students enrolled in the last grade of primary education minus repeaters divided by the population in the relevant age cohort (gross intake ratio in the last grade of primary). Countries with a GNI/capita of $2,145 or less are assessed on this indicator. Pass: Score must be above the median score for the income group. Source: *United Nations Educational, Scientific and Cultural Organization*

b. Girls' Lower Secondary Completion Rate: The number of female pupils that have completed the last grade of lower secondary education divided by the population within three to five years of the intended age of completion, expressed as a percentage of the total population of females in the same age group. Countries with a GNI/capita between $2,146 and $4,465 are assessed on this indicator instead of Girls' Primary Completion Rates. Pass: Score must be above the median score for the income group. Source: *United Nations Educational, Scientific and Cultural Organization*

6. Child Health: An index made up of three indicators: (i) access to improved water, (ii) access to improved sanitation, and (iii) child (ages 1–4) mortality. Pass: Score must be above the median score for the income group. Source: *The Center for International Earth Science Information Network and the Yale Center for Environmental Law and Policy*

Relationship to Statutory Criteria

Within each policy category, the Act sets out a number of specific selection criteria. A set of objective and quantifiable policy indicators is used to inform eligibility decisions for assistance and to measure the relative performance by candidate countries against these criteria. The Board's approach to determining eligibility ensures that performance against each of these criteria is assessed by at least one of the objective indicators. Most are addressed by multiple indicators. The specific indicators appear in parentheses next to the corresponding criterion set out in the Act.

Section 607(b)(1): Just and Democratic Governance, Including a Demonstrated Commitment to—

(A) promote political pluralism, equality and the rule of law (*Political Rights, Civil Liberties, Rule of Law, and Gender in the Economy*)*;*

(B) respect human and civil rights, including the rights of people with disabilities (*Political Rights, Civil Liberties, Equal Employment Opportunity, and Freedom of Information*);

(C) protect private property rights (*Civil Liberties, Regulatory Quality, Rule of Law, and Land Rights and Access*);

(D) encourage transparency and accountability of government (*Political Rights, Civil Liberties, Freedom of Information, Control of Corruption, Rule of Law, and Government Effectiveness, Equal Employment Opportunity*);

(E) combat corruption (*Political Rights, Civil Liberties, Rule of Law, Freedom of Information, and Control of Corruption*); and

(F) the quality of the civil society enabling environment (*Civil Liberties, Freedom of Information, Equal Employment Opportunity, and Rule of Law*)

Section 607(b)(2): Economic Freedom, Including a Demonstrated Commitment to Economic Policies That—

(A) encourage citizens and firms to participate in global trade and international capital markets (*Fiscal Policy, Inflation, Trade Policy, and Regulatory Quality*);

(B) promote private sector growth (*Inflation, Fiscal Policy, Land Rights and Access, Access to Credit, Gender in the Economy, and Regulatory Quality*);

(C) strengthen market forces in the economy (*Fiscal Policy, Inflation, Trade Policy, Land Rights and Access, Access to Credit, and Regulatory Quality*); and

(D) respect worker rights, including the right to form labor unions (*Equal Employment Opportunity, Civil Liberties, and Gender in the Economy*)

Section 607(b)(3): Investments in the People of Such Country, Particularly Women and Children, Including Programs That—

(A) promote broad-based primary education (*Girls' Primary Completion Rate, Girls' Secondary Education Enrollment Rate, Total Public Expenditure on Primary Education, and Equal Employment Opportunity*);

(B) strengthen and build capacity to provide quality public health and reduce child mortality (*Immunization Rates, Public Expenditure on Health, and Child Health*); and

(C) promote the protection of biodiversity and the transparent and sustainable management and use of natural resources (*Natural Resource Protection*).

Appendix D: Subsequent and Concurrent Compact Considerations

MCC reporting and data in the following chart are used to assess threshold program performance, compact performance of MCC compact countries nearing the end of compact implementation (*i.e.,* within 18 months of compact end date), or for current MCC compact countries under consideration for a concurrent compact, where appropriate. Some reporting used for assessment may contain sensitive information and adversely affect implementation or MCC-partner country relations. This information is for MCC's internal use and is not made public. However, key implementation information is summarized in compact status and results reports that are published quarterly on MCC's website under MCC country programs (*www.mcc.gov/where-we-work*) or monitoring and evaluation (*www.mcc.gov/our-impact/m-and-e*) web pages.

For completed compacts, additional information is used to assess compact performance and is found in a country's Star Report. The Star Report and its associated quarterly business process capture key information to provide a framework for results and improve the ability to disseminate learning and evidence throughout the lifecycle of an MCC investment from selection to final evaluation. For each compact and threshold program, evidence is collected on performance indicators, evaluation results, partnerships, sustainability efforts, and learning, among other elements.

In addition to the Star Reports, MCC also surveys staff on topics related to the quality of the partnership during design and implementation of programs, progress toward program results, a partner country's commitment to undertaking policy and institutional reforms, and compliance with MCC standards. Additional information on the survey can be found in the Guide to the Program Surveys: *https://www.mcc.gov/resources/doc/guide-to-program-surveys-fy23.*

Topic	MCC reporting/data source	Published documents
COUNTRY PARTNERSHIP		
Political Will • Status of major conditions precedent • Program oversight/implementation ○ project restructures ○ partner response to accountable entity capacity issues • Political independence of the accountable entity Management Capacity • Project management capacity • Project performance • Level of MCC intervention/oversight • Relative level of resources required	• *Quarterly implementation reporting* • *Quarterly results reporting* • *MCC Star Reports*	• *Quarterly results published as "Table of Key Performance Indicators" (available by country): https://www.mcc.gov/our-impact/m-and-e.* • *Star Reports (available by country): https://www.mcc.gov/resources?fwp_resource_type=star-report.*
PROGRAM RESULTS		
Financial Results • Commitments—including contributions to compact and threshold funding • Disbursements Project Results • Output, outcome, objective targets • Accountable entity commitment to 'focus on results' • Accountable entity cooperation on impact evaluation • Percent complete for process/outputs • Relevant outcome data • Details behind target delays Target Achievements	• *Indicator tracking tables* • *Quarterly financial reporting* • *Quarterly implementation reporting* • *Quarterly results reporting* • *Impact evaluations* • *MCC Star Reports*	• *Monitoring and Evaluation Plans (available by country): https://www.mcc.gov/our-impact/m-and-e.* • *Quarterly results published as "Table of Key Performance Indicators" (available by country): https://www.mcc.gov/our-impact/m-and-e.* • *Star Reports (available by country): https://www.mcc.gov/resources?fwp_resource_type=star-report.*
ADHERENCE TO STANDARDS		
• Procurement • Environmental and social • Fraud and corruption • Program closure • Monitoring and evaluation • All other legal provisions	• *Audits (GAO and OIG)* • *Quarterly implementation reporting* • *MCC Star Reports*	• *Published OIG and GAO audits.* • *Star Reports (available by country): https://www.mcc.gov/resources?fwp_resource_type=star-report.*

Topic	MCC reporting/data source	Published documents
COUNTRY SPECIFIC		
Sustainability • Implementation entity • MCC investments Role of private sector or other donors • Other relevant investors/investments • Other donors/programming • Status of related reforms • Trajectory of private sector involvement going forward	• *Quarterly implementation reporting* • *Quarterly results reporting* • *MCC Star Reports*	• *Quarterly results published as "Table of Key Performance Indicators" (available by country): https://www.mcc.gov/our-impact/m-and-e.* • *Star Reports (available by country): https://www.mcc.gov/resources?fwp_resource_type=star-report.*

[FR Doc. 2023–20163 Filed 9–18–23; 8:45 am]

BILLING CODE 9211–03–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Thursday, September 21, 2023.

PLACE: Board Room, 7th Floor, Room 7B, 1775 Duke Street (All visitors must use Diagonal Road Entrance), Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Board Briefing, Share Insurance Fund Quarterly Report.
2. NCUA Rules and Regulations, Financial Innovation—Loan Participation, Eligible Obligations, and Notes of Liquidating Credit Unions.

CONTACT PERSON FOR MORE INFORMATION: Melane Conyers-Ausbrooks, Secretary of the Board, Telephone: 703–518–6304.

Melane Conyers-Ausbrooks,

Secretary of the Board.

[FR Doc. 2023–20300 Filed 9–15–23; 11:15 am]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

2023 Tribal Consultation

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts will conduct a Tribal Consultation at the 2023 International Conference of Indigenous Tribal Archives, Libraries, and Museums in Oklahoma City, Oklahoma on Wednesday, October 25, 2023, 2:30–3:30 p.m. CDT.

DATES: The 2023 Tribal Consultation will take place on October 25, 2023, 2:30–3:30 p.m. CDT. Tribal leaders wishing to send a proxy to the consultation session should send notification to the email address listed in the address section below by October 18, 2023. If neither a tribal leader nor a proxy is able to attend this consultation session, please provide written comments to the email address listed in the address section below by November 15, 2023.

ADDRESSES: Please RSVP for this meeting by emailing *NativeArts@arts.gov.* Proxy notifications and written comments may also be sent to *NativeArts@arts.gov* by the dates listed above.

SUPPLEMENTARY INFORMATION:

The agenda is as follows:

1. NEA Resources

a. The NEA, established by Congress in 1965, is an independent Federal agency that is the largest funder of the arts and arts education in communities nationwide and a catalyst of public and private support for the arts. By advancing equitable opportunities for arts participation and practice, the NEA fosters and sustains an environment in which the arts benefit everyone in the United States. This is accomplished primarily by providing resources to support the creative lives of all communities in the United States. Grants are awarded for specific projects to 501(c)(3) nonprofit organizations, federally recognized Tribes, or units of State or local government. Individual makers, artists, and culture bearers are recognized and supported through programs such as the National Heritage Fellowship, Jazz Masters, and Creative Writing Fellowships. Forty percent of the NEA's program budget is granted to State Arts Agencies and Regional Arts Organizations, which make subgrants to support additional arts activities across the nation.

i. What is your awareness of our agency's work?

ii. Have NEA resources impacted your community? If so, how?

iii. To what extent do you see the arts and cultural activities of your tribal community reflected in the resources we offer?

iv. The review criteria for our primary grant program, Grants for Arts Projects, includes artistic excellence, which is defined as ''The quality of the artists and other key individuals, creative process, works of art, organizations, arts education providers, artistic partners, and/or services involved in the project and their relevance to the audience or communities the project aims to serve.'' How does this definition of artistic excellence resonate with the artistic and cultural activities of your tribal community?

2. Tribal Engagement

a. In recent years, the NEA has made grants to Tribal governments and Tribal Colleges & Universities (TCUs). We also have recognized Indigenous artists with National Heritage Fellowships. These direct grants to Tribes, Tribal citizens, and TCUs are in addition to the grants we make to Native-serving nonprofits.

i. How can the NEA expand on this engagement with tribes and increase awareness of these opportunities?

ii. If the NEA has the resources to send staff representation to in-person events, where would our participation be most effective?

b. The NEA annually updates the Federal Resources for Native Arts & Cultural Activities, which is a consolidation of opportunities offered by federal agencies for organizations looking for funding and other resources to support Native arts and cultural activities.

i. Have you ever accessed this publication?

ii. Is this publication a useful resource to make available to tribal communities?

iii. How can we increase awareness of this resource guide?

3. Partnerships With Tribal-Serving Organizations

a. Tribal Arts Councils: At the last NEA Tribal Consultation session, the NEA discussed the possibility of supporting the work of Tribal Arts Councils, bodies organized to support arts and cultural activities at the regional level by providing programs and support services. These Tribal Arts Councils could be similar in form to State, regional or local Arts agencies,

and would support the identified need for greater regional Tribal resources.

i. How would you see a tribal arts council benefiting your community?

ii. What regional needs would apply to tribal arts councils?

iii. Would a government point of contact specific to arts grants be beneficial?

iv. What support would Tribal Arts Councils require from NEA?

v. Do you currently work with your State and/or Local Arts Agency?

Dated: August 24, 2023.

RaShaunda Thomas,

Deputy Director, Office of Administrative Services & Contracts, National Endowment for the Arts.

[FR Doc. 2023–19550 Filed 9–18–23; 8:45 am]

BILLING CODE 7537–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–265 and CP2023–268; MC2023–267 and CP2023–270; MC2023–268 and CP2023–271]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 21, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2023–265 and CP2023–268; *Filing Title:* USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 27 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 13, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* September 21, 2023.

2. *Docket No(s).:* MC2023–267 and CP2023–270; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 8 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 13, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* September 21, 2023.

3. *Docket No(s).:* MC2023–268 and CP2023–271; *Filing Title:* USPS Request to Add USPS Ground Advantage Contract 3 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 13, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* September 21, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2023–20263 Filed 9–18–23; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98375; File No. SR–BX–2023–022]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 7, Section 118(e)

September 13, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on September 1, 2023, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's transaction fees at Equity 7, Section 118(e), as described further below.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/rules,* at the principal office

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange operates on the ''taker-maker'' model, whereby it generally pays credits to members that take liquidity and charges fees to members that provide liquidity. Currently, the Exchange has a schedule, at Equity 7, Section 118(e), which consists of several different credits and fees for Retail Orders [3] and Retail Price Improvement Orders [4] under Rule 4780 (Retail Price Improvement Program).

The purpose of the proposed rule change is to amend the Exchange's schedule of fees at Equity 7, Section 118(e). Specifically, the Exchange proposes to amend the qualifying criteria for an existing fee for RPI Orders that provide liquidity.

Currently, the Exchange charges a $0.0018 per share executed fee for RPI Orders entered by a member that (i) quotes RPI Orders in at least 1,200 symbols on average per day and (ii) provides liquidity through RPI Orders equal to or exceeding an average daily volume of 2,500,000 shares. The Exchange proposes to amend the qualifying criteria for the $0.0018 fee by eliminating the requirement to quote RPI Orders in at least 1,200 symbols on average per day. Thus, a member could qualify for the $0.0018 per share executed fee for RPI Orders if the member provides liquidity through RPI Orders equal to or exceeding an average daily volume of 2,500,000 shares.

The Exchange hopes that the less strict qualifying criteria (*i.e.,* removing the requirement to quote RPI Orders in at least 1,200 symbols on average per day) will encourage members to increase liquidity providing activity in RPI Orders on the Exchange. If the proposal is effective in achieving this purpose, then the quality of the Exchange's market will improve, particularly with respect to RPI and Retail Orders to the benefit of all participants, especially those who submit RPI and Retail Orders.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[5] in general, and furthers the objectives of sections 6(b)(4) and 6(b)(5) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed change to its schedule of fees is reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [7]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [8]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange believes it is reasonable and equitable to amend the qualifying criteria for the $0.0018 per share executed fee for RPI Orders by eliminating the requirement to quote RPI Orders in at least 1,200 symbols on average per day. As discussed above, the Exchange's goal is to increase liquidity adding activity in RPI Orders on its platform. It is reasonable and equitable to address this need by easing the qualification requirements as an incentive for members to increase their liquidity activity in RPI Orders on the Exchange. If the proposal is effective in achieving this purpose, then the quality of the Exchange's market will improve, particularly with respect to RPI and Retail Orders to the benefit of all participants, especially those who submit RPI and Retail Orders.

[3] Retail Orders shall mean an order type with a Non-Display Order Attribute submitted to the Exchange by a Retail Member Organization (as defined in Rule 4780). A Retail Order must be an agency Order, or riskless principal Order that satisfies the criteria of FINRA Rule 5320.03. The Retail Order must reflect trading interest of a natural person with no change made to the terms of the underlying order of the natural person with respect to price (except in the case of a market order that is changed to a marketable limit order) or side of market and that does not originate from a trading algorithm or any other computerized methodology. *See* Rule 4702(b)(6).

[4] Retail Price Improving (''RPI'') Orders shall mean an Order Type with a Non-Display Order Attribute that is held on the Exchange Book in order to provide liquidity at a price at least $0.001 better than the NBBO through a special execution process described in Rule 4780. A Retail Price Improving Order may be entered in price increments of $0.001. RPI Orders collectively may be referred to as ''RPI Interest.'' *See* Rule 4702(b)(5).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4) and (5).

[7] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[8] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

The Exchange believes that the proposal is not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries—from co-branded credit cards to grocery stores to cellular telephone data plans—that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

The Exchange intends for its proposal to improve market quality for all members that submit RPI and Retail Orders on the Exchange and by extension attract more liquidity to the market, improving market wide quality and price discovery. Although net adders of liquidity for RPI Orders will benefit most from the proposal, this result is fair insofar as increased liquidity adding activity in RPI Orders will help to improve market quality and the attractiveness of the Exchange to all existing and prospective retail participants.

Any participant that is dissatisfied with the proposal is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage. The proposal eases the qualification requirements for the $0.0018 per share executed fee for RPI Orders. Members may modify their businesses so that they can meet the required threshold and pay lower charges. As noted above, all members of the Exchange will benefit from any increase in market activity that the proposal effectuates. Moreover, members are free to trade on other venues to the extent they believe that the fees assessed, and credits provided, are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes.

Intermarket Competition

The Exchange believes that its proposed modification to its schedule of fees will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from the other live exchanges and from off-exchange venues, which include alternative trading systems that trade national market system stock. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The proposed change is reflective of this competition because, as a threshold issue, the Exchange is a relatively small market so its ability to burden intermarket competition is limited. In this regard, even the largest U.S. equities exchange by volume has less than 20% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprises more than 40% of industry volume.

In sum, the Exchange intends for the proposed change to its fees to increase member incentives to engage in the addition of liquidity on the Exchange. If the change proposed herein is unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed change will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–BX–2023–022 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–BX–2023–022. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–BX–2023–022 and should be submitted on or before October 10, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–20167 Filed 9–18–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98378; File No. SR–BX–2023–023]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 4, Rules 4702 and 4703

September 13, 2023.

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 September 5, 2023, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Equity 4, Rules 4702 and 4703.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes amendments to its Rules to address inconsistencies between the Rule Text and observed System behavior as well as behavior unaccounted for in the existing Rule text, as follows. This proposal is similar to a rule change filed by the Exchange's sister exchange, the Nasdaq Stock Market, LLC on August 16, 2023.[3]

First Rule Change

The first proposed rule change addresses an edge case of inconsistency between the Rule text and System behavior, this time regarding Market Maker Peg Orders.[4] Rule 4702(b)(7)(A) states that, if after entry of a Market Maker Peg Order that has a displayed price based on the NBBO, and the NBBO subsequently shifts such that the displayed price of the Market Maker Peg Order to buy (sell) is equal to or greater (less) than the National Best Bid (or National Best Offer), the Market Maker Peg Order will not be subsequently repriced until a new reference price is established that is more aggressive than the displayed price of the Market Maker Peg Order. System testing revealed that the System does not reprice Market Maker Peg Orders in this scenario, but only if such Orders are in round lot sizes, whereas it does reprice such Orders when they are in odd lot sizes. After evaluation, the Exchange determined to maintain this System behavior and amend the Rule to conform to it. The Exchange proposes to do so because the existing language proscribing repricing only makes sense within the context of round lot Market Maker Peg Orders, which this scenario would set a new NBBO and when they do so, cannot reprice with respect to the reference price they just set. By contrast, odd lot Market Maker Peg Orders are ineligible to set the NBBO, and do not have this same problem. Accordingly, the Exchange proposes to amend Rule 4702(b)(7)(A) to clarify that the prohibition against repricing only applies to Market Maker Peg Orders in round lot sizes.

Second Rule Change

The second proposal would amend Equity 4, Rule 4703(h), to correct its description of behavior of the Non-Displayed portion of Orders with the Reserve Attribute.[5] Rule 4703(h) provides as follows, in pertinent part:

In all cases, if the remaining size of the Non-Displayed Order is less than the fixed or random amount stipulated by the Participant, the full remaining size of the Non-Displayed

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–98225 (August 16, 2023), 88 FR 60255 (August 31, 2023) (SR–NASDAQ–2023–030). The Exchange's proposal differs from that of Nasdaq in that it excludes changes to Order Types and Attributes that are inapplicable to the Exchange due to its absence of opening and closing crosses.

[4] Pursuant to Rule 4702(b)(7)(A), a ''Market Maker Peg Order'' is an Order Type designed to allow a Market Maker to maintain a continuous two-sided quotation at a displayed price that is compliant with the quotation requirements for Market Makers set forth in Equity 2, Section 5(a)(2). The displayed price of the Market Maker Peg Order is set with reference to a ''Reference Price'' in order to keep the displayed price of the Market Maker Peg Order within a bounded price range. The Reference Price for a Market Maker Peg Order to buy (sell) is the then-current National Best Bid (National Best Offer), or if no such National Best Bid or National Best Offer, the most recent reported last-sale eligible trade from the responsible single plan processor for that day, or if none, the previous closing price of the security as adjusted to reflect any corporate actions (*e.g.,* dividends or stock splits) in the security.

[5] ''Reserve Size'' is, in part, an Order Attribute that ''permits a Participant to stipulate that an Order Type that is displayed may have its displayed size replenished from additional non-displayed size.'' Rule 4703(h). The Rule also states that Reserve ''is not available for Orders that are not displayed; provided, however, that if a Participant enters Reserve Size for a Non-Displayed Order with a Time-in-Force of IOC, the full size of the Order, including Reserve Size, will be processed as a Non-Displayed Order.'' *Id.* In addition to the change proposed above, the Exchange proposes to eliminate from the immediately preceding language ''with a Time-in-Force of IOC'' because the Exchange does not assess a reason to include this qualifier. The statement that a Non-Displayed Order with Reserve will be entirely non-displayed is true even as to Non-Displayed Orders with other TIFs.

Order will be displayed and the Non-Displayed Order will be removed.

As stated, this Rule requires that the entire Non-Displayed portion of a Reserve Order will become Displayed the moment the size of the Non-Displayed portion drops below an amount that a participant designates or has directed the System to randomly designate (the ''Max Floor''). In conducting a test of System behavior, however, the Exchange observed that the System does not, in fact, operate in this manner. Instead, the System maintains the Non-Displayed portion of a Reserve Order as such when the size of that Non-Displayed Portion drops below the Max Floor. Rather than correct the current System behavior to match the Rule, the Exchange determined that users of Reserve Orders prefer the current System behavior because it is true to the underlying intent of Reserve functionality, which is to help limit the price impacts of trading large quantities of shares by displaying only small portions of such shares at a given time, while hiding the rest in reserve. Thus, the Exchange proposes to address the inconsistency between the Rule text and the behavior of the System by deleting the aforementioned language from Rule 4703(h). Going forward, the System will not convert to a Displayed Order the Non-Displayed remainder of a Reserve Order that falls below the Max Floor, and the System will not remove it.

2. Statutory Basis

The Exchange believes that its proposals are consistent with section 6(b) of the Act, in general, and further the objectives of section 6(b)(5) of the Act, in particular, in that they are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

It is consistent with the Act to amend the Exchange's Rules to address inconsistencies between the Rule text and observed System behavior, including by adapting the Rule text to codify observed System behavior, where the observed behavior is more consistent with the underlying purpose of an Order Attribute than is the Rule text (maintaining the Non-Displayed status of a reserve portion of a Reserve Order that drops below the Max Floor) and where System behavior reflects a nuance not contemplated by the existing Rules (clarifying that the prohibition against repricing Market Maker Peg Orders that have prices equal to or better than the NBBO only applies to round lot Market Maker Peg Orders, and not to odd lots).

Finally, it is consistent with the Act to amend Rule 4703(h) to delete qualifying language which erroneously suggests that Non-Displayed Orders with Reserve are only non-displayed when such Orders have a TIF of IOC. Investors and the public have an interest in the Exchange maintaining a Rulebook that is accurate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposals merely address inconsistencies between Rule text and System behavior. The Exchange neither intends nor perceives that these rule changes will have any impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)(iii) thereunder.[9]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B)[10] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–BX–2023–023 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–BX–2023–023. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 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, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 15 U.S.C. 78s(b)(2)(B).

that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–BX–2023–023 and should be submitted on or before October 10, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–20170 Filed 9–18–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98376; File No. CboeBZX–2023–065]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

September 13, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] notice is hereby given that, on September 1, 2023, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule, effective September 1, 2023.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 17% of the market share and currently the Exchange represents only approximately 5% of the market share.[3] Thus, in such a low-concentrated and highly competitive market, no single options exchange, including the Exchange, possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange's Fee Schedule sets forth standard rebates and rates applied per contract. For example, the Exchange provides a rebate of $0.25 per contract for Customer orders that add liquidity in Penny Securities, yielding fee code PY. The Fee Codes and Associated Fees section of the Fees Schedule also provides for certain fee codes associated with certain order types and market participants that provide for various other fees or rebates.

Currently, Customer orders in Penny Securities, excluding SPY, that remove liquidity are assessed a standard transaction fee of $0.48 per contract and yield fee code ''PC''. Customer SPY orders that remove liquidity are assessed a standard transaction fee of $0.45 per contract and yield fee code ''PR''.

Currently, IWM Customer orders that remove liquidity yield fee code PC and are assessed $0.48 per contract. The Exchange proposes to reduce the fee assessed for IWM orders that remove liquidity to $0.45 per contract. The Exchange therefore proposes to amend current fee code PR to include Customer IWM orders that remove liquidity. The standard transaction fee assessed for orders that yield fee code PR remains the same under the proposed rule change (*i.e.,* $0.45 per contract).

The Exchange also proposes to amend the definition of fee code PC to clarify that such fee code (and corresponding transaction fee) applies to all customer orders in Penny securities that remove liquidity, except Customer orders in SPY and IWM.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[5] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[6] requirement that the rules of an exchange not be designed to permit unfair discrimination between

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Cboe Global Markets U.S. Options Market Monthly Volume Summary (August 28, 2023), available at *https://markets.cboe.com/us/options/market_statistics/*.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] *Id.*

customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with section 6(b)(4) of the Act,[7] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all market participants. The Exchange is only one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market.

Additionally, the Exchange believes that the proposed amendment to reduce the transaction fee for Customer IWM orders that remove liquidity (and therefore apply fee code PR to include such orders) is consistent with section 6(b)(4) of the Act in that the proposed fee is reasonable, equitable, and not unfairly discriminatory. The Exchange believes the proposed change is reasonable as Members will pay lower fees for liquidity removing IWM Customer orders. The Exchange believes its proposed change is also reasonable as the proposed rate continues to be competitive and in line with IWM-specific pricing at other exchanges.[8] The Exchange believes the proposed amendment will also encourage market participants to increase retail IWM order flow to the Exchange, which benefits all market participants by providing additional trading opportunities. This, in turn, attracts increased large-order flow from liquidity providers which facilitates tighter spreads and potentially triggers a corresponding increase in order flow originating from other market participants. The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory as the proposed change will apply uniformly to all Customer IWM orders that remove liquidity.

The Exchange also believes it is reasonable, equitable and not unfairly discriminatory to adopt IWM-specific pricing as the Exchange already maintains product-specific pricing for other products, such as SPY. Additionally, as noted above, other exchanges similarly provide for IWM-specific pricing.[9] The Exchange also believes that it is equitable and not unfairly discriminatory to assess a lower fee for Customer IWM orders as compared to other market participants because customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Specifically, customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market-Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Moreover, the options industry has a long history of providing preferential pricing to customers, and the Exchange's current Fee Schedule currently does so in many places, as do the fees structures of multiple other exchanges.[10]

Finally, the Exchange believes the change to the description of fee code PC is reasonable as such fee code does not currently apply to SPY Customer orders that remove liquidity, and as proposed will no longer apply to IWM Customer orders that remove liquidity. The Exchange believes explicitly referencing that SPY and IWM are excluded from fee code PC in the fee code description will reduce potential confusion and maintain clarity in the Fees Schedule.

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. In particular, the Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change to reduce the transaction fee for Customer IWM orders that remove liquidity will apply to all Members. As discussed above, the Exchange believes the proposed change to reduce the transaction fee would attract additional IWM Customer orders that remove liquidity, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all Members. As a result, the Exchange believes that the proposed change furthers the Securities and Exchange Commission's (the ''Commission's'') goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.''

The Exchange also believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues they may participate on and direct their order flow, including 15 other options exchanges. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 17% of the market share. Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchanges if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''. Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or

[7] 15 U.S.C. 78f(b)(4).

[8] *See e.g.,* MIAX Pearl Fee Schedule, Section 1 Transaction Rebates/Fees, which provides for fees ranging between $0.45 and $0.48 per contract for priority customer IWM orders that remove liquidity.

[9] *Id.*

[10] *See* BZX Options Fee Schedule, Fee Codes and Associated Fees; *see also* Cboe C2 Options Exchange Fees Schedule, Transaction Fees.

appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [11] and paragraph (f) of Rule 19b–4 [12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2023–065 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeBZX–2023–065. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBZX–2023–065 and should be submitted on or before October 10, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–20168 Filed 9–18–23; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98380; File No. SR–BOX–2023–20]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of Proposed Rule Change To Adopt Rules To Govern FLEX Equity Options and a New Order Type to Trade FLEX Equity Options on the BOX Trading Floor

September 13, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 1, 2023, BOX Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (1) adopt Rules 5055 and 7605 which will govern the trading of flexible exchange options (''FLEX Equity Options'') on BOX; and (2) make related changes to Rules 100 (Definitions), 7620 (Accommodation Transactions), and 12140 (Imposition of Fines for Minor Rule Violations). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *https://rules.boxexchange.com/rulefilings.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt rules to govern FLEX Equity Options and a new order type to trade FLEX Equity Options on the BOX Trading Floor.[3] The Exchange also proposes to amend Rules 100 (Definitions), 7620 (Accommodation Transactions), and 12140 (Imposition of Fines for Minor Rule Violations) to reflect the introduction of FLEX Equity Option trading on the Exchange. FLEX Equity Options are options with flexible terms such that Participants [4] can customize

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Trading Floor'' or ''Options Floor'' means the physical trading floor of the Exchange located in Chicago. The Trading Floor shall consist of one ''Crowd Area'' or ''Pit'' where all option classes will be located. The Crowd Area or Pit shall be marked with specific visible boundaries on the Trading Floor, as determined by the Exchange. A Floor Broker must open outcry an order in the Crowd Area. *See* BOX Rule 100(a)(68).

[4] The term ''Participant'' means a firm, or organization that is registered with the Exchange pursuant to the Rule 2000 Series for purposes of participating in trading on a facility of the Exchange

expiration date, exercise price, and exercise style. FLEX Equity Options are designed to meet the needs of investors for greater flexibility in selecting the terms of options within the parameters of the Exchange's proposed rules. FLEX Equity Options are not preestablished for trading and are not listed individually for trading on the Exchange. Rather, investors select FLEX Equity Option terms and are limited by the parameters detailed below in their selection of those terms. As a result, FLEX Equity Options allow investors to satisfy more specific, individualized investment objectives than may be available to them in the standardized options market. Specifically, FLEX Equity Options will be subject to proposed Rule 5055 and will be traded as FLEX Open Outcry Orders (''FOO Orders'') on the BOX Trading Floor under proposed Rule 7605. FLEX Equity Options are a type put or call, and allow investors to choose an exercise price of any dollar amount in minimum increments of $0.01,[5] an exercise style of American or European,[6] and an expiration date of any month, business day and year no more than 15 years from the date on which a FLEX Equity Option is executed.[7] As discussed further below, FLEX Equity Options will not be permitted with the same terms as an existing Non-FLEX Equity Option listed on the Exchange.[8] Because of their composition, the Exchange believes that FLEX Equity Options may allow investors to more closely meet their individual investment and hedging objectives by customizing option contracts for the purpose of satisfying particular investment objectives that could not be met by the standardized markets.

Background

The Securities and Exchange Commission (''Commission'') approved the trading of FLEX options in 1993.[9] At the time, the Chicago Board Options Exchange, Inc., now Cboe Exchange, Inc. (''CBOE'') proposed FLEX options based on the Standard and Poor's Corporation 500 and 100 Stock Indexes (referred to as the ''CBOE Order'' herein).[10] These FLEX options were offered as an alternative to an over-the-counter (''OTC'') market in customized equity options.[11] Several years after the initial approval, the Commission approved the trading of additional FLEX options on specified equity securities.[12] In its order, the Commission provided: ''The benefits of the Exchanges' options markets include, but are not limited to, a centralized market center, an auction market with posted transparent market quotations and transaction reporting, parameters and procedures for clearance and settlement, and the guarantee of the OCC [Options Clearing Corporation] for all contracts traded on the Exchange.'' [13]

The Exchange notes that FLEX options are currently traded on CBOE, NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), and Nasdaq PHLX LLC (''PHLX'').[14] The Exchange notes further that CBOE offers electronic and open outcry FLEX option trading while NYSE American, NYSE Arca, and PHLX offer only open outcry trading of FLEX options.

In August 2017, the Commission approved the Exchange's proposal to adopt rules for an open outcry trading floor.[15] The Exchange based the rules for the BOX Trading Floor on the rules of the options exchanges that had established trading floors at that time. When the BOX Trading Floor was adopted in 2017, it was the first options trading floor to be established since the 1970s.[16] As such, the BOX Trading Floor rules have certain differences to the trading floor rules at the other options exchanges, to account for the unique nature of BOX's Trading Floor and to modernize the existing trading floor rules and surveillance practices. The BOX Trading Floor has been operating since 2017 and is now well-established. The Exchange believes that its unique features for open-outcry trading provide value to Floor Participants. The Exchange now proposes to allow for the trading of FLEX Equity Options as FOO Orders on the BOX Trading Floor.

Proposal

The Exchange proposes to adopt Rule 5055 titled FLEX Equity Options which describes and governs FLEX Equity Options. Rule 5055(a) details the applicability of other Exchange rules with respect to the proposed FLEX Equity Options.[17] Specifically, the trading of FLEX Equity Options is subject to all other Rules applicable to the trading of options on the Exchange, unless otherwise provided in Rules 5055 and 7605.[18] The rules proposed by the Exchange are uniquely applicable to FLEX Equity Options in order to accommodate their special characteristics. For example, the BOX Book [19] and the Complex Order Book [20] shall not be available for transactions in FLEX Equity Options because, consistent with other exchanges' FLEX rules, there will be no pre-established series and no electronic trading of FLEX Equity Options.[21] While electronic trading in FLEX options is available on CBOE,[22] the Exchange at this time intends to introduce FLEX Equity Options on the Trading Floor only, consistent with other markets that trade these customized options solely on their trading floors.[23] The Exchange notes that rules that contemplate the operation of or interaction with the BOX Book and the Complex Order Book will not apply to FLEX Equity Options, given that FLEX Equity Options may only be

and includes an ''Options Participant'' and ''BSTX Participant.'' *See* BOX Rule 100(a)(42).

[5] *See* proposed Rule 5055(e)(1)(iii).

[6] *See* proposed Rule 5055(e)(1)(iv).

[7] *See* proposed Rule 5055(e)(1)(v).

[8] At least one of the following terms must differ between FLEX Equity Options and Non-FLEX Equity Options on the same underlying security: Exercise price, Exercise style, and Expiration date.

[9] *See* Securities Exchange Act Release No. 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993) (SR–CBOE–92–17) (Order Approving and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1, 2, 3, and 4 to Proposed Rule Changes by the Chicago Board Options Exchange, Inc., Relating to Flexible Exchange Options (''FLEX Options'')).

[10] *Id.*

[11] *Id.*

[12] *See* Securities Exchange Act Release No. 36841 (February 14, 1996), 61 FR 6666 (February 21, 1996) (SR–CBOE–95–43) (SR–PSE–95–24) (Order Approving Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval of Amendments by the Chicago Board Options Exchange, Inc. and the Pacific Stock Exchange, Inc., Relating to the Listing of Flexible Exchange Options on Specified Equity Securities).

[13] *Id.* The Exchange notes that the Commission found pursuant to Rule 9b-1 under the Act, that FLEX Options, including FLEX Equity Options, are standardized options for purposes of the options disclosure framework established under Rule 9b-1 of the Act. *Id.*

[14] *See* CBOE Rules 4.20–4.22 and 5.70–5.75 *and* NYSE American Rules 900G–910G *and* NYSE Arca Rules 5.30–O–5.41–O *and* PHLX Rule Options 8, Section 34.

[15] *See* Securities Exchange Act Release No. 81292 (August 2, 2017), 82 FR 37144 (August 8, 2017) (Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Adopt Rules for an Open-Outcry Trading Floor) (finding that the proposed rule change was consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange).

[16] *See https://www.optionsplaybook.com/options-introduction/stock-option-history/.*

[17] *See* proposed Rule 5055(a). For example, Rules 7010 (Fees and Charges), 7020 (Days and Hours of Business), 7030 (Units of Trading), and 7080 (Trading Halts) apply to FLEX Equity Options and Non-FLEX Equity Options alike.

[18] *See* proposed Rule 5055(a). Proposed Rule 5055(a) is based on NYSE Arca Rules 5.30–O(a) and (c).

[19] The term ''BOX Book'' means the electronic book of orders on each single option series maintained by the BOX Trading Host. *See* BOX Rule 100(a)(10).

[20] The term ''Complex Order Book'' means the electronic book of Complex Orders maintained by the BOX Trading Host. *See* BOX Rule 7240(a)(8).

[21] *See* proposed Rule 5055(a)(1). Proposed Rule 5055(a)(1) is based on CBOE Rule 5.72(a).

[22] *See, e.g.,* CBOE Rules 5.73 and 5.74.

[23] *See, e.g.,* NYSE Arca Rule 5.30–O(c).

traded as FOO Orders and FOO Orders may not be placed in the BOX Book or the Complex Order Book.[24] Additionally, the Exchange is proposing to codify that Options Exchange Officials have the same duties and ability to enforce rules applicable to the trading of FLEX Equity Options as they do for all other activity on the Trading Floor.[25]

FLEX Equity Options will only be permitted in puts and calls that do not have the same exercise style (American or European), same expiration date and same exercise price as Non-FLEX Equity Options that are already available for trading on the same underlying security.[26] In addition, once, and if, identical option series are listed for trading as Non-FLEX Equity Options, (1) all existing open positions established under the FLEX trading procedures shall be fully fungible with transactions in the respective Non-FLEX Equity Option series, and (2) any further trading in the series would be as Non-FLEX Equity Options subject to the non-FLEX trading procedures and rules.[27] Therefore, FOO Orders, whose terms must be different from options that are already available for trading, would not be fungible with interest resting on the BOX Book or Complex Order Book. Accordingly, the Exchange believes FOO Orders would not be able to trade through interest resting on the BOX Book or Complex Order Book nor would interest resting on the BOX Book or Complex Order Book lose priority to FOO Orders.

The Exchange proposes Rule 5055(b) which defines the following terms: FLEX Equity Option, Non-FLEX Equity Option, FLEX Market Maker, and FLEX Open Outcry Order. Specifically, the term ''FLEX Equity Option'' means an option on a specified underlying security that is subject to Rule 5055.[28] ''Non-FLEX Equity Option'' means an option contract that is not a FLEX Equity Option.[29] ''FLEX Open Outcry Order'' (''FOO Order'') means a FLEX Equity Option order as defined in proposed Rule 7605.[30] ''FLEX Market Maker'' means a Market Maker that is qualified by the Exchange to trade FLEX Equity Options and meets the requirements of proposed Rule 5055(k).[31] The proposed functionality for FOO Orders is designed to be similar to the Exchange's existing Qualified Open Outcry (''QOO'') Orders because both order types will be transacted on the Trading Floor and BOX believes they should follow similar procedures, excluding provisions related to the BOX Book, as discussed below.[32] FLEX Equity Options shall not be traded other than as FOO Orders.[33]

The Exchange proposes Rule 5055(c) which states that certain Exchange rules do not apply to transactions in FLEX Equity Options. Specifically, Rule 7600 ''Qualified Open Outcry Orders—Floor Crossing'' and Rule 7620 ''Accommodation Transactions'' do not apply to transactions in FLEX Equity Options.[34] These rules represent order types that currently apply to Non-FLEX Equity Options on the BOX Trading Floor and are specifically excluded given that the Exchange is proposing the FOO Order type to be used exclusively for trading FLEX Equity Options. However, the Exchange proposes that certain Rule 7600 Interpretive Materials apply to FLEX Equity Options; in particular IM–7600–2 [35] and IM–7600–5.[36] IM–7600–2 and IM–7600–5 relate to tied hedge orders and to compliance with Section 11(a)(1) of the Act, respectively, and will apply to the proposed FOO Orders in the same manner as they currently apply to QOO Orders. Because these provisions would apply equally to FLEX Equity Options as they do to Non-FLEX Equity Options, they need not be duplicated for purposes of the proposed rules.

The Exchange proposes Rule 5055(d) which states that FLEX Equity Options will have no trading rotations.[37] Trading rotations are used to open or reopen a series of options on BOX at a single

[24] The Exchange notes that FLEX Equity Options may not trade via the PIP, COPIP, Facilitation and Solicitation Auctions, or as Qualified Contingent Cross (''QCC''), Complex QCC, Customer Cross, and Complex Customer Cross Orders. If the Exchange intended to allow FLEX Equity Options to trade via the PIP, COPIP, Facilitation and Solicitation Auctions, or as (''QCC''), Complex QCC, Customer Cross, and Complex Customer Cross Orders, the Exchange would be required to file a proposed rule change with the Commission to amend its rules to allow for the inclusion of FLEX Equity Options in the relevant rule text.

[25] *See* proposed Rule 5055(f)(2).

[26] *See* proposed Rule 5055(f)(1). Proposed Rule 5055(f)(1) is based on NYSE Arca Rule 5.32–O, Commentary .01.

[27] *See* proposed Rule 5055(f)(2). Proposed Rule 5055(f)(2) is based on NYSE Arca Rule 5.32–O, Commentary .01.

[28] *See* proposed Rule 5055(b)(1). The Exchange notes that proposed Rule 5055(e)(1)(i) provides that FLEX Equity Options on underlying securities may be authorized pursuant to Rule 5020.

[29] *See* proposed Rule 5055(b)(2). Proposed Rule 5055(b)(2) is based on NYSE Arca Rule 5.30–O(b)(11).

[30] *See* proposed Rule 5055(b)(3).

[31] *See* proposed Rule 5055(b)(4).

[32] *See* BOX Rule 7600. *See also* Securities Exchange Act Release No. 81292 (August 2, 2017), 82 FR 37144 (August 8, 2017) (Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Adopt Rules for an Open-Outcry Trading Floor).

[33] *See* proposed Rule 5055(b)(3).

[34] *See* proposed Rule 5055(c). Proposed Rule 5055(c) is based on NYSE Arca Rule 5.30–O(d).

[35] BOX IM–7600–2 provides that nothing prohibits a Floor Broker from buying or selling a stock, security futures, or futures position following receipt of an option order, including a Complex Order, provided that prior to announcing such order to the trading crowd: (a) the option order is in a class designated as eligible for ''tied hedge'' transactions (as described below) as determined by the Exchange and is within the designated tied hedge eligibility size parameters, which parameters shall be determined by the Exchange and may not be smaller than 500 contracts per order. Additionally, there shall be no aggregation of multiple orders to satisfy the size parameter, and for Complex Orders involved in a tied hedge transaction at least one leg must meet the minimum size requirement; (b) such Floor Broker shall create an electronic record that it is engaging in a tied hedge transaction in a form and manner prescribed by the Exchange; (c) such hedging position is: (1) comprised of a position designated as eligible for a tied hedge transaction as determined by the Exchange and may include the same underlying stock applicable to the option order, a security future overlying the same stock applicable to the option order or, in reference to an index or Exchange-Traded Fund Shares (''ETF''), a related instrument. A ''related instrument'' means, in reference to an index option, securities comprising ten percent or more of the component securities in the index or a futures contract on any economically equivalent index applicable to the option order. A ''related instrument'' means, in reference to an ETF option, a futures contract on any economically equivalent index applicable to the ETF underlying the option order; (2) brought without undue delay to the trading crowd and announced concurrently with the option order; (3) offered to the trading crowd in its entirety; and (4) offered, at the execution price received by the Floor Broker introducing the option, to any in-crowd Floor Participant who has established parity or priority for the related options; (d) the hedging position does not exceed the option order on a delta basis; (e) all tied hedge transactions (regardless of whether the option order is a simple or Complex Order) are treated the same as Complex Orders for purposes of the Exchange's open outcry allocation and reporting procedures. Tied hedge transactions are subject to the existing NBBO trade-through requirements for options and stock, as applicable, and may qualify for various exceptions; however, when the option order is a simple order, the execution of the option leg of a tied hedge transaction does not qualify for the NBBO trade-through exception for a Complex Trade (defined in Rule 7610(e)); (f) in-crowd Floor Participants that participate in the option transaction must also participate in the hedging position and may not prevent the option transaction from occurring by giving a competing bid or offer for one component of such order; (g) in the event the conditions in the non-options market prevents the execution of the non-option leg(s) at the agreed prices, the trade representing the options leg(s) may be cancelled; and (h) prior to entering tied hedge orders on behalf of Customers, the Floor Broker must deliver to the Customer a written notification informing the Customer that his order may be executed using the Exchange's tied hedge procedures. The written notification must disclose the terms and conditions contained in this Interpretative Material and be in a form approved by the Exchange. *See* BOX IM–7600–2.

[36] BOX IM–7600–5 provides that a Participant shall not utilize the Trading Floor to effect any transaction for its own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion by relying on an exemption under Section 11(a)(1)(G) of the Exchange Act. *See* BOX IM–7600–5.

[37] *See* proposed Rule 5055(d). Proposed Rule 5055(d) is based on NYSE Arca Rule 5.31–O(b).

price.[38] There is a period of time before the market in the underlying security opens during which orders placed on the BOX Book do not generate trade executions but may participate in the Opening Match.[39] FLEX Equity Options will not be placed on the BOX Book, and therefore will not have trading rotations because there will be no requirement for specific FLEX Equity Option series to be quoted or traded each day. FLEX Equity Options are created with terms unique to individual investment objectives. As such, each investor may require FLEX Equity Options with slightly different terms than those already created. These individually defined FLEX Equity Options are customized for each investor and therefore trading rotations may not be useful for other investors who may create their own FLEX Equity Options because trading rotations are designed, in part, to determine a single opening, or reopening, price based on orders and quotes from multiple Participants. With the bespoke nature of FLEX Options there is not the opportunity, nor need, to bring together multiple orders and quotes as part of a trading rotation.

Further, the Exchange proposes Rule 5055(e) which provides that FLEX Equity Options will not be preestablished for trading, and must include one of each of the terms of a FLEX Equity Option that are described in the proposed Rule.[40] Specifically, (i) the Exchange may authorize for trading a FLEX Equity Option class on any underlying security if it may authorize trading a Non-FLEX Equity Option class on that underlying security pursuant to Rule 5020,[41] and that has Non-FLEX Equity Options on such security listed and traded on at least one national securities exchange, even if the Exchange does not list that Non-FLEX Equity Option class for trading; [42] (ii) the option type may be put or call; [43] (iii) the exercise price may be any dollar amount in minimum increments of $0.01; [44] (iv) the exercise style may be American or European; [45] and (v) the expiration date may be any business day (specified to the day, month, and year) no more than 15 years from the date of the FLEX Equity Option transaction.[46] A FLEX Equity Option order may be submitted on any trading day, including the expiration date.[47]

Next, the Exchange proposes Rule 5055(f) titled Additional Conditions of FLEX Equity Options. Proposed Rule 5055(f)(1) limits FLEX Equity Option terms such that options on an underlying security otherwise eligible for FLEX trading will only be permitted in puts and calls that do not have the same exercise style (American or European), same expiration date and same exercise price as Non-FLEX Equity Options that are already available for trading on the same underlying security.[48] Notwithstanding the foregoing, FLEX Equity Options that may in the future have the same terms as Non-FLEX Equity Options will be permitted before the options are listed for trading as Non-FLEX Equity Options. Once and if the identical option series are listed for trading as Non-FLEX Equity Options: (i) all existing open positions established under the FLEX trading procedures shall be fully fungible with transactions in the respective Non-FLEX Equity Option series,[49] and (ii) any further trading in the series would be as Non-FLEX Equity Options subject to the non-FLEX trading procedures and rules,[50] in addition to any other rules that apply to Non-FLEX Equity Options.[51] In the event a Non-FLEX Equity Option series is added intra-day, the holder or writer of a FLEX Equity Option position established under the FLEX trading procedures would be permitted to close such position under the FLEX trading procedures against another closing only FLEX Equity Option position for the balance of the trading day on which the series is added.[52] In the event the Non-

[38] *See* BOX Rules 7070(e)(2) and (l).

[39] *See* BOX Rules 7070(a) and (e). The Exchange notes that trading rotations are referred to in BOX Rule 7070(e) as the Opening Match.

[40] Proposed Rule 5055(e) is based on NYSE Arca Rule 5.32–O. The Exchange notes that it is not proposing FLEX Index Options and thus has not incorporated applicable provisions as Index Options do not trade on BOX.

[41] Rule 5020 provides criteria for the listing of options on several different underlying types of securities, including securities registered with the SEC under Regulation NMS of the Act (''NMS stock''), Exchange-Traded Fund Shares, and Index-Linked Securities. *See* BOX Rule 5020.

[42] *See* proposed Rule 5055(e)(1)(i). Proposed Rule 5055(e)(1)(i) is based on NYSE Arca Rule 5.32–O(f)(1).

[43] *See* proposed Rule 5055(e)(1)(ii). Proposed Rule 5055(e)(1)(ii) is based on NYSE Arca Rule 5.32–O(b)(2).

[44] *See* proposed Rule 5055(e)(1)(iii). Proposed Rule 5055(e)(1)(iii) is based on NYSE Arca Rule 5.32–O(f)(2) (exercise prices and premiums may be stated in terms of: (i) a dollar amount; (ii) a method for fixing at the time a FLEX Request for Quote or FLEX Order is traded; or (iii) a percentage of the price of the underlying security at the time of the trade or as of the close of trading on the NYSE Arca on the trade date). The Exchange notes that the proposal only includes exercise, bid, and offer prices in terms of a dollar amount.

[45] *See* proposed Rule 5055(e)(1)(iv). Proposed Rule 5055(e)(1)(iv) is based on NYSE Arca Rule 5.32–O(b)(3).

[46] *See* proposed Rule 5055(e)(1)(v). Proposed Rule 5055(e)(1)(v) is based on NYSE Arca Rules 5.32–O(b)(4) and (6). The Exchange notes that it has omitted the exception for FLEX Index Options because BOX does not list FLEX Index Options and FLEX Index Options are not part of this proposal.

[47] *See* proposed Rule 5055(e)(1)(v)(a). It is the Exchange's understanding from conversations with the Options Clearing Corporation (''OCC'') that the OCC is able to process FLEX transactions that occur on the expiration date. The Exchange notes that NYSE Arca's rules do not contain a similar provision. However, the Exchange believes, based on Participant feedback, that FLEX Option orders on NYSE ARCA are allowed on the expiration date. The Exchange notes that the exercise of options contracts is governed by the Rule 9000 series including exercise cut-off times and contrary exercise advices.

[48] *See* proposed Rule 5055(f)(1). Proposed Rule 5055(f)(1) is based on NYSE Arca Rule 5.32–O, Commentary .01. The Exchanges notes that its system enforces the requirement that a FLEX Equity Option does not have the same exercise style (American or European), same expiration date and same exercise price as a Non-FLEX Equity Option that is already available for trading on the same underlying security. Specifically, the system will reject an order in a FLEX Equity Option if the order is received with the same exercise style (American or European), same expiration date and same exercise price as a Non-FLEX Equity Option that is already available for trading on the same underlying security on the Exchange.

[49] An open position resulting from a transaction on the Exchange becomes fungible post-trade and is separate from the execution occurring on the Exchange. For example, assume a Participant buys one (1) American style AAPL call option expiring on October 9, 2024, with a strike price of 150, which is a FLEX series because there is no standard option listed with those same terms. Now assume, while holding this position, a standard option with the same terms is listed (American style AAPL call option expiring on October 9, 2024, with a strike price of 150). After this standard option is listed, the Participant purchases one (1) contract in this non-FLEX option series. After this second transaction, the Participant will have an open position of two (2) contracts in the standard AAPL call expiring on October 9, 2024, with a 150 strike price.

[50] This includes all priority and trade-through requirements on the Exchange (*see, e.g.,* Rule 7130).

[51] *See* proposed Rule 5055(f)(2). Proposed Rule 5055(f)(2) is based on NYSE Arca Rule 5.32–O, Commentary .01. The Exchange notes that FLEX Equity Options previously traded as part of a Complex FOO Order or Multi-Leg FOO Order where the respective Non-FLEX Equity Option series is later listed may not be traded as part of a Complex FOO Order or Multi-leg FOO Order except as provided in proposed Rules 5055(f)(3) and 7605(d)(3) once such Non-FLEX Equity Option series has been listed on the Exchange. *See* proposed Rules 7605(d)(1) and 7605(d)(3). For example, assume a Participant executes a Complex FOO Order to buy strategy A+B where A and B are both FLEX Equity Option series. Now assume that prior to the opening on the next trading day, a Non-FLEX Equity Option series with the same terms (underlying security, type, exercise price, exercise style, and expiration date) as A has been listed on the Exchange. If the Participant decided to close out their open position in strategy A + B, it would need to be done as two separate orders for the component legs of the original order: (i) selling B, a FLEX Equity Option, by submitting a FOO Order, and (ii) selling the corresponding Non-FLEX Equity Option series that has the same terms as A because A has become fungible with the Non-FLEX Equity Option series with the identical terms. Trading in A would be subject to the Non-FLEX trading procedures and rules. *See* proposed Rule 5055(f)(2).

[52] *See* proposed Rule 5055(f)(3). Proposed Rule 5055(f)(3) is based on NYSE Arca Rule 5.32–O, Commentary .01. The Exchange notes that Complex

Continued

FLEX Equity Option series is added on a trading day after the position is established, the holder or writer of a FLEX Equity Option position established under the FLEX trading procedures would be permitted to close such position as a non-FLEX transaction consistent with the requirements of Rule 5055(f)(2).

The Exchange proposes Rule 5055(g) which states that the minimum quoting and trading increment for FLEX Equity Option contracts traded on BOX will be one cent ($0.01) for all series.[53]

The Exchange proposes Rule 5055(h) which states that FLEX Equity Options will be subject to the exercise by exception provisions of Rule 805 of the OCC, titled Expiration Exercise Procedure.[54] Rule 805 provides provisions for the automatic exercise of certain options upon expiration.

The Exchange proposes Rule 5055(i) which details position limits for FLEX Equity Options. Specifically, 5055(i)(1) states that FLEX Equity Options will not be subject to position limits, except as long as the options positions remain open, positions in FLEX Equity Options that expire on a third Friday-of-the-month shall be aggregated with positions in Non-FLEX Equity Options on the same underlying security and shall be subject to the position and exercise limits set forth in this proposed rule, and in the current BOX rules.[55] Positions in FLEX Equity Options shall not be taken into account when calculating position limits for Non-FLEX Equity Options, other than for positions in FLEX Equity Options that expire on a third Friday-of-the-month, as discussed below.[56]

The Exchange proposes to specify that, if the Exchange determines that a higher margin requirement is advisable in light of the risks associated with a FLEX Equity Option position, the Exchange may, pursuant to its authority under Rule 10130(b), consider imposing higher margin requirements upon the account maintaining the position. Additionally, it should be noted that the clearing firm carrying the account will be subject to capital charges under Rule 15c3–1 under the Act[57] to the extent of any margin deficiency resulting from a higher margin requirement imposed by the Exchange.[58]

The Exchange notes that, unlike NYSE Arca Rule 5.35–O(b), the Exchange is not proposing to include a requirement that each Participant (other than a Market Maker) that maintains a position on the same side of the market in excess of the standard position limit for Non-FLEX Equity Options of the same class on behalf of its own account or for the account of a customer shall report information on the FLEX Equity Option position, positions in any related instrument, the purpose or strategy for the position and the collateral used by the account. Proposed Rule 5055(i)(1) would also differ from NYSE Arca Rule 5.35–O(b) in that the Exchange is proposing to better tailor the Rule's description of the Exchange's ability to impose a higher margin requirement with the Exchange's existing authority to impose higher margin as described in Rule 10130(b). The Exchange believes this would better maintain consistency with its existing rules and would more accurately describe the process by which the Exchange would consider imposing higher margin requirements in practice.

The Exchange also believes that the separate reporting requirement for FLEX Equity Option positions, along with a requirement for the Exchange to monitor margin requirements for FLEX Equity Option positions separately from the manner in which the Exchange considers margin generally, add administrative burdens on Participants and the Exchange that do not meaningfully contribute to the management of margin in the options markets. The Exchange notes that the text of NYSE Arca Rule 5.35–O(b), along with comparable rule text at other exchanges that offer FLEX equity options, was originally adopted over 25 years ago when FLEX equity options were first permitted to trade without position limits.[59] The options markets have changed significantly since that time, including with respect to technology and surveillance capabilities. Moreover, market participants are now much more familiar with trading FLEX equity options and managing their associated risks. The OCC and FINRA both manage their own robust margin requirements that apply to Exchange Participants whether or not they trade in FLEX Equity Options.[60] The Exchange further understands that, since FLEX equity options have traded on exchanges without position limits, no options exchange has used its authority to increase margin requirements due to large FLEX equity option positions. And, to the extent it ever became necessary to do so, the Exchange believes it already has the authority under Rule 10130(b) to increase margin requirements with respect to any FLEX Equity Option position. Accordingly, the Exchange does not believe it is necessary or appropriate to continue to mandate a duplicative reporting requirement and separate margin calculation that imposes additional administrative burdens on Participants and the Exchange with limited attendant benefits.

The Exchange proposes Rule 5055(j) which governs exercise limits for FLEX Equity Options. Specifically, proposed Rule 5055(j) states that exercise limits for FLEX Equity Options shall be equivalent to the position limits established in this proposal; accordingly, there shall be no exercise limits for FLEX Equity Options.[61] FLEX Equity Options will not be taken into account when calculating exercise limits for Non-FLEX Equity Options, except that as long as the option positions remain open, positions in FLEX Equity Options which expire on a

FOO Orders and Multi-Leg FOO Orders, discussed below, may be traded with one or more closing only component legs. The Exchange notes that proposed Rule 5055(f)(3) differs from NYSE Arca Rule 5.32–O, Commentary .01 in that it includes a provision detailing the interaction between proposed Rules 5055(f)(2) and (3).

[53] *See* proposed Rule 5055(g). Proposed Rule 5055(g) is based on CBOE Rule 5.4(c)(4). The Exchange notes that minimum increments in percentage terms have been omitted because they are not part of this proposal.

[54] *See* proposed Rule 5055(h). Proposed Rule 5055(h) is based on NYSE Arca Rule 5.32–O(f)(4).

[55] *See* BOX Rules 3120 (Position Limits) and 3140 (Exercise Limits). The Exchange notes that Complex FOO Orders and Multi-Leg FOO Orders when executed result in position changes for the individual component legs of the transaction based on the composition of the Complex or Multi-Leg FOO Order.

[56] *See* proposed Rule 5055(i). Proposed Rule 5055(i) is based on NYSE Arca Rules 5.35–O(a)(iii) and (b). The Exchange notes that Index Options and Binary Return Derivatives (''ByRDs'') are not traded on BOX and therefore FLEX Index Options and FLEX ByRDs will not be traded on BOX and are not included in proposed Rule 5055(i). *See also* CBOE Rule 8.35 *and* NYSE American Rule 906G *and* PHLX Rule Options 8, Section 34(e).

[57] *See* 17 CFR 240.15c3–1.

[58] *See* proposed Rule 5055(i)(1). Proposed Rule 5055(i)(1) is based on NYSE Arca Rule 5.35–O(b).

[59] *See* Securities Exchange Act Release Nos. 39032 (September 9, 1997), 62 FR 48683 (September 16, 1997) (SR–Amex–96–19; SR–CBOE–96–79; SR–PCX–97–09) (Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change by the American Stock Exchange, Inc. and the Chicago Board Options Exchange, Inc., and Order Granting Approval to Proposed Rule Change by the Pacific Exchange, Inc., Relating to the Elimination of Position and Exercise Limits for FLEX Equity Options) (approval of a pilot program for the elimination of position and exercise limits on FLEX Equity Options) *and* 42223 (December 10, 1999), 64 FR 71158 (December 20, 1999) (SR–Amex–99–40; SR–PCX–99–41; SR–CBOE–99–59) (Order Granting Accelerated Approval to Proposed Rule Change Relating to the Permanent Approval of the Elimination of Position and Exercise Limits for FLEX Equity Options).

[60] *See, e.g.,* FINRA Rule 4210(f)(2); OCC Rule 601.

[61] *See* proposed Rule 5055(j). Proposed Rule 5055(j) is based on NYSE Arca Rule 5.36–O. *See also* proposed Rule 5055(i).

third Friday-of-the-month shall be aggregated with positions in Non-FLEX Equity Options on the same underlying security and will be subject to Non-FLEX Equity Option exercise limits as applicable.[62]

The Exchange proposes Rule 5055(k) which details the Letter of Guarantee required for Market Makers to trade FLEX Equity Options. Specifically, proposed Rule 5055(k) states that no Market Maker shall effect any transaction in FLEX Equity Options unless a Letter of Guarantee has been issued by a clearing member organization and filed with the Exchange pursuant to Rule 8070 specifically accepting financial responsibility for all FLEX Equity Option transactions made by such Market Maker and such letter has not been revoked under Rule 8070(c).[63] A Letter of Guarantee will be required for a Market Maker to be qualified to trade FLEX Equity Options.

Similarly, the Exchange proposes Rule 5055(l), which provides that no Floor Broker[64] shall effect any transaction in FLEX Equity Options unless a Letter of Authorization has been issued by a clearing member organization and filed with the Exchange specifically accepting responsibility for the clearance of FLEX Equity Option transactions of the Floor Broker, and that such letter will remain in effect until a written revocation is received by the Exchange.[65]

FLEX Open Outcry (''FOO'') Orders

The Exchange proposes to introduce a new order type to facilitate FLEX Equity Option transactions on the BOX Trading Floor. Specifically, the Exchange proposes to adopt a FOO Order type and to model it after a current order type on the Trading Floor—QOO Orders.[66] Trading FLEX options on an exchange floor in a similar manner as non-FLEX options is consistent with how FLEX orders are traded on another exchange.[67] FOO Orders must consist of options with terms as defined in proposed Rule 5055. Further, FOO Orders are limited solely to FLEX Equity Options.[68] FOO Orders are limited solely to the BOX Trading Floor and may be entered only by Floor Brokers.[69] Floor Brokers must also be registered under Rule 7550. Prior to the announcement of such FOO Orders in the trading crowd, Floor Brokers must record all FOO Orders pursuant to Rule 7580(e)(1).[70] FOO Orders may be traded by FLEX Market Makers, which must be registered under Rule 8000 and must be Floor Market Makers in good standing under Rule 8500.[71] FLEX Market Makers will be subject to Rule 8510, including provisions for the course and conduct of dealings, class assignments, and option priority and parity, unless otherwise specified in proposed Rule 7605. The Exchange shall qualify at least three FLEX Market Makers in accordance with a FLEX-specific qualification process prescribed by the Exchange to perform as Market Makers in FLEX Equity Options on the Trading Floor.[72] Additionally, a Floor Broker shall ascertain that at least one FLEX Market Maker is present in the Crowd Area prior to announcing an order for execution.[73] The Exchange notes that the Commission provided in its order approving the BOX Trading Floor that this requirement, among others, is designed to increase the opportunities for another Floor Participant to compete to interact with the orders on the Trading Floor.[74] For FLEX Equity Options, this means that at least one of the FLEX Market Makers, out of the at least three required to be qualified by the Exchange, is present in the Crowd Area when the FOO Order is announced.[75]

On the BOX Trading Floor today, a Floor Broker may bring an unmatched order to the Trading Floor in order to seek liquidity. The Floor Broker may announce the unmatched order (*i.e.,* the initiating side of a QOO Order) to the trading crowd in an attempt to source the contra-side. After finding sufficient quantity to match the initiating side pursuant to Rules 7580(e)(2) and 7600(b), the Floor Broker is then able to submit a two-sided QOO Order to the BOG[76] as required.[77] Floor Brokers may also enter single-sided orders into the BOX Book using BOX's electronic interface. Specifically, a Floor Broker may receive a matched or unmatched order via a telephone call on the Trading Floor[78] or may have the matched or unmatched order sent electronically to the Floor Broker's order entry mechanism on the Trading Floor prior to submitting the QOO Order to the BOG. Similar to how QOO Orders are introduced on the Trading Floor

[62] *See* proposed Rule 5055(i).

[63] *See* proposed Rule 5055(k). Proposed Rule 5055(k) is based on NYSE Arca Rule 5.41–O(a). The Exchange notes that, while NYSE Arca allows an existing Letter of Guarantee to be amended specifically to include FLEX transactions upon approval by the OCC, the Exchange's proposal does not include such a provision because the Exchange will require a separate Letter of Guarantee. The Exchange notes that a Market Maker's Letter of Guarantee will remain effective until a revocation is received by the Exchange.

[64] A Floor Broker is an individual who is registered with the Exchange for the purpose, while on the Trading Floor, of accepting and handling options orders. A Floor Broker must be registered as an Options Participant prior to registering as a Floor Broker. *See* BOX Rule 7540.

[65] *See* proposed Rule 5055(l). Proposed Rule 5055(l) is based on NYSE Arca Rule 5.41–O(b). The Exchange notes that, while NYSE Arca allows an existing Letter of Authorization to be amended specifically to include FLEX transactions upon approval by the OCC, the Exchange's proposal does not include such a provision because the Exchange will require a separate Letter of Authorization. The Exchange notes that a Floor Broker's Letter of Authorization will remain effective until a written revocation is received by the Exchange.

[66] *See* proposed Rule 7605. *See also* Securities Exchange Act Release No. 81292 (August 2, 2017), 82 FR 37144 (August 8, 2017) (Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Adopt Rules for an Open-Outcry Trading Floor) (finding that the proposed rule change was consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange).

[67] CBOE allows a FLEX Order to be represented and executed in the same manner as a non-FLEX Order. *See* CBOE Rule 5.72(d). The Exchange notes that CBOE Rule 5.72(d) also contains provisions that limit the priority rules applicable to FLEX Orders. *Id.* at 5.72(d)(2) and (3).

[68] *See* proposed Rule 7605(a).

[69] *See* proposed Rule 7605(b). Proposed Rule 7605(b) is based on BOX Rules 7600(a)(2) and (3) and NYSE Arca Rule 5.41–O(b). Additionally, the Exchange is proposing to add a statement clarifying that Floor Brokers must record all FOO Orders pursuant to Rule 7580(e)(1) prior to the announcement of such FOO Orders, which is the requirement for all orders on the Trading Floor.

[70] BOX Rule 7580(e)(1) outlines the requirements for a Floor Broker to record and systematize any orders prior to announcement of such order in the trading crowd.

[71] *See* proposed Rule 7605(c). Proposed rule 7605(c) is based on NYSE Arca Rules 5.37–O(a) and 5.41–O(a). The Exchange notes that, while NYSE Arca requires at least three FLEX Qualified Market Makers per class, the Exchange's proposal does not qualify FLEX Market Makers per class.

[72] *Id.* FLEX Market Maker qualification will include an examination requiring knowledge of FLEX Equity Options, including FLEX Equity Option terms, FLEX Market Maker qualification requirements, FLEX Market Maker quoting obligations, and FOO Order trading procedures.

[73] *See* proposed Rule 7605(e)(3). Proposed Rule 7605(e)(3) is similar to BOX Rule 7580(a), which applies to QOO Orders on the Trading Floor and requires a Floor Broker to ascertain that at least one Floor Market Maker is present in the Crowd Area prior to announcing an order for execution.

[74] *See* Securities Exchange Act Release No. 81292 (August 2, 2017), 82 FR 37144 (August 8, 2017) (Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Adopt Rules for an Open-Outcry Trading Floor).

[75] The Exchange notes that the requirement to have at least three qualified FLEX Market Makers is a baseline that must be met in order for any FLEX Equity Option to be traded on the Trading Floor. The requirement that at least one FLEX Market Maker be present when an FOO Order is announced is an additional order-by-order requirement that promotes order competition and is the same requirement for QOO Orders currently.

[76] The BOX Order Gateway (''BOG'') is a component of the Trading Host which enables Floor Brokers and/or their employees to enter transactions on the Trading Floor. *See* BOX Rule 100(b)(2).

[77] *See* IM–7600–4.

[78] When a Floor Broker receives an order, matched or unmatched, via telephone, the Floor Broker must enter the order electronically into the Floor Broker's order entry mechanism.

today, FOO Orders may be brought to the floor as matched or unmatched orders with a Floor Broker receiving the matched or unmatched order via the same methods that Floor Brokers receive them currently on the Trading Floor.[79] The Exchange again notes that trading FLEX options on an exchange floor in a similar manner as non-FLEX options is consistent with how FLEX orders are traded on another exchange.[80]

Next, pursuant to proposed Rule 7605(d), FOO Orders may be Complex Orders (''Complex FOO Order'') or Multi-Leg Orders (''Multi-Leg FOO Order'') as defined in Rules 7240(a)(7) and (10) with no more than the applicable number of legs, as determined by the Exchange and communicated to Participants,[81] including tied hedge orders as defined in IM–7600–2.[82] However, the priority provisions of Rules 7240(b)(2) and (3) do not apply to Complex FOO Orders or Multi-Leg FOO Orders because there will be no Complex Order Book for such orders, nor will there be a BOX Book for the individual FLEX Equity Option components of the Complex FOO Orders or Multi-Leg FOO Orders.[83] Each option leg of a Complex FOO Order or Multi-Leg FOO Order must be for a FLEX Equity Option series with the same underlying security and must have the same exercise style (American or European).[84] If a Non-FLEX Equity Option series is added intra-day for a component leg(s) of a Complex FOO Order or Multi-Leg FOO Order, the holder or writer of a position in the component leg(s) resulting from such Complex FOO Order or Multi-Leg FOO Order would be permitted to close its position(s) pursuant to proposed Rule 5055(f)(3). If a Non-FLEX Equity Option series is added for a component leg(s) of a Complex FOO Order or Multi-Leg FOO Order on a trading day after the position is established, the holder or writer of a position in the component leg(s) resulting from such Complex FOO Order or Multi-Leg FOO Order would be required to execute separate FLEX and non-FLEX transactions consistent with the requirements of proposed Rule 5055(f)(2) for each of the component leg(s) of the Complex FOO Order or Multi-Leg FOO Order to close its position(s).[85]

Announcement, Representation, and Execution of a FOO Order

The Exchange proposes Rule 7605(e) which details announcement and representation of FOO Orders on the BOX Trading Floor that is consistent with the current Trading Floor requirements.[86] Specifically, the Exchange proposes that all FOO Orders must be represented to the trading crowd as provided in Rule 7580(e)(2)[87] prior to submitting the agency FOO Order as part of a two-sided order to the Trading Host. The Exchange notes that Floor Brokers may bring unmatched orders (*i.e.,* the initiating side of a FOO Order) to the Trading Floor in order to seek a contra-side. Once a contra-side is sourced, the Floor Broker shall submit the two-sided FOO Order to the BOG.[88] When a Floor Broker submits a FOO Order for execution, the order will be executed in accordance with the proposed rules. A FOO Order on the Exchange is not deemed executed until it is processed by the Trading Host. All transactions occurring from the Trading Floor must be processed by the Trading Host. Floor Brokers are responsible for handling all orders in accordance with Exchange priority rules.

There will be an initiating side and a contra-side of a FOO Order. The initiating side is the order which must be filled in its entirety. The contra-side must guarantee the full size of the initiating side of the FOO Order and can be composed of multiple firms. When the Floor Broker is soliciting interest from the trading crowd when the initiating side was announced or to the extent the trading crowd offers a better price, the contra-side will be the solicited interest from the trading crowd.[89] If the Floor Broker had sufficient interest to match against the initiating side when the initiating side was announced, such Floor Broker interest will be the contra-side to the initiating side. If Floor Participants[90] responded with interest to the initiating

[79] *See, e.g.,* Securities Exchange Act Release No. 80720 (May 18, 2017), 82 FR 23657, 23666 (May 23, 2017) (SR–BOX–2016–48) (Notice of Filing of Amendment No. 2 to a Proposed Rule Change to Adopt Rules for an Open-Outcry Trading Floor) (''[A] Floor Broker may receive a matched or unmatched order via a telephone call on the Trading Floor or may have the matched or unmatched order sent electronically to the Floor Broker's order entry mechanism on the Trading Floor . . . .'').

[80] CBOE allows a FLEX Order to be represented and executed in a similar manner as a non-FLEX Order. *See* CBOE Rule 5.72(d). The Exchange notes that CBOE Rule 5.72(d) also contains provisions that limit the priority rules applicable to FLEX Orders. *Id.* at 5.72(d)(2) and (3).

[81] The Exchange notes that this process is the same as current Rule 7600(a)(4) for QOO Orders on the BOX Trading Floor. *See* BOX Information Circular 2022–18 (June 7, 2022), *https://boxoptions.com/assets/IC-2022-18-Upcoming-Enhancements-to-Complex-Orders.pdf* (providing that the maximum number of legs for Complex Orders is currently 16). A separate notice will be issued for Complex FOO Orders and Multi-Leg FOO Orders.

[82] The Exchange notes that tied hedge orders may not be smaller than 500 contracts per order. *See* IM–7600–2(a).

[83] The Exchange notes that, as with a simple FOO Order, the priority and allocation rules applicable to Complex FOO Orders and Multi-Leg FOO Orders are in proposed Rules 7605(i) (allocation of the initiating side of a FOO Order against the contra-side of the FOO Order and interest from the Trading Crowd) and (k) (Floor Broker guarantee when crossing orders) and current Rule 7610 (priority among Floor Participants in the Trading Crowd).

[84] *See* proposed Rule 7605(d). Proposed Rule 7605(d) is based on CBOE Rules 1.1 (definition of ''Complex Order'') and 5.70(b) and BOX Rule 7600(a)(4). The Exchange does not reference FLEX Index Options or related attributes because Index Options are not traded on BOX and FLEX Index Options are not proposed herein.

[85] *See* Proposed Rule 7605(d)(3). The Exchange is proposing Rule 7605(d)(3) to clarify the treatment of Complex FOO Orders and Multi-Leg FOO Orders when a Non-FLEX Equity Option is subsequently listed for a component leg.

[86] Proposed Rule 7605(e) is based on BOX Rules 7600(a), (a)(1), (b) and (c). The Exchange notes that the QOO Order provisions related to market conditions, the NBBO, the BOX Book, book sweep, the Complex Order Book, auctions, and away routing have been omitted because there will be no NBBO, no BOX Book, no Complex Order Book, no electronic auctions, and no book sweep for FOO Orders. *See* BOX Rules 7600(c)-(e) and (h). A book sweep is the number of contracts, if any, of the initiating side of a QOO Order that the Floor Broker is willing to relinquish to orders and quotes on the BOX Book that have priority pursuant to Rules 7600(d)(1) and (2). *See* BOX Rule 7600(h). Book sweeps will not apply to FOO Orders. As provided in proposed Rules 5055(f)(1) and (2), FOO Orders must have different terms from orders on the BOX Book and, therefore, could not execute against interest on the BOX Book. For the same reason, the Complex Order priority provisions in Rules 7240(b)(2) and (3), which address the priority of Complex Orders and interest on the BOX Book, do not apply to Complex FOO Orders or Multi-Leg FOO Orders. *See* proposed Rule 7605(d). The priority and allocation of FOO Orders will be determined by proposed Rules 7605(i) and (k) and current Rule 7610. *See supra* note 83. The Exchange also notes that proposed Rule 7605(e) requires that Floor Brokers announcing a FOO Order give Floor Participants a reasonable amount of time to respond, as provided in Rule 100(b)(5). Proposed Rule 7605(e) further provides that the Exchange shall establish, and announce via Regulatory Notice, a minimum period of time that qualifies as a reasonable amount of time that a Floor Broker must allow Floor Participants to respond, which must be between three seconds and five minutes. This differs from current Rule 7600(c), which simply states that Floor Brokers must allow adequate time for Floor Participants to participate in the transaction as provided in Rule 100(b)(5).

[87] BOX Rule 7580(e)(2) provides that ''A Floor Broker must announce an agency order that he is representing to the trading crowd before submitting the order to the BOG for execution. This announcement must take place whether the Floor Broker is representing a single-sided order and soliciting contra-side interest, or the Floor Broker has sufficient interest to match against the agency order already. If a Floor Broker is holding two agency orders, he will choose which order is the initiating side.''

[88] *See* proposed IM–7605–1. Proposed IM–7605–1 is based on IM–7600–4.

[89] The Exchange notes that priority of bids and offers from Floor Participants in the trading crowd is determined by Rule 7610.

[90] The term ''Floor Participant'' means Floor Brokers as defined in Rule 7540 and Floor Market Makers as defined in Rule 8510(b). *See* BOX Rule 100(a)(26).

side where the Floor Broker provided sufficient interest to match against the initiating side, the Floor Broker will allocate the initiating side of the FOO Order pursuant to proposed Rule 7605(i).[91] The Exchange notes that this negotiation and agreement that occurs in the trading crowd does not result in a final trade, but rather a ''meeting of the minds'' that is then submitted through the BOG for execution. Consistent with current Trading Floor operations, all FOO Orders must be announced to the trading crowd, as provided in Rule 7580(e)(2), prior to the FOO Order being submitted to the BOG.[92] An Options Exchange Official will certify that the Floor Broker adequately announced the FOO Order to the trading crowd.

The FOO Order is not deemed executed until it is processed by the Trading Host. Once the Floor Broker submits the FOO Order to the BOG there will be no opportunity for the submitting Floor Broker,[93] or anyone else, to alter the terms of the FOO Order. After announcing the FOO Order to the trading crowd, the Floor Broker must submit the FOO Order to the BOG for processing by the Trading Host without undue delay, provided that the executing Floor Broker must give Floor Participants a reasonable amount of time to respond, as provided in Rule 100(b)(5). Additionally, the Exchange shall establish, and announce via Regulatory Notice, a minimum period of time (which amount of time must be between three seconds and five minutes) that qualifies as a reasonable amount of time for responses under proposed Rule 7605(e)(2). Such threshold will constitute the minimum possible time that a Floor Broker must give to the trading crowd to respond to a FOO Order; however, based on the characteristics and circumstances of each specific FOO Order, a reasonable amount of time, as provided in Rule 100(b)(5), may require a response interval longer than the minimum threshold. An Options Exchange Official may not waive the minimum threshold established by the Exchange.

The Exchange notes that the proposed floor interaction practice is consistent with the process in BOX Rule 7600 for QOO Orders on the BOX Trading Floor where the main differences are that FOO Orders will not be eligible for the BOX Book or the Complex Order Book, there is no NBBO, and that Floor Brokers must allow Floor Participants a minimum period of time to respond to FOO Orders. Consistent with QOO Orders, a FOO Order is not deemed executed until it is processed by the Trading Host.[94] The Exchange notes that a reasonable amount of time for Floor Participants to respond to a FOO Order, the same as a QOO Order, will be interpreted on a case-by-case basis by an Options Exchange Official based on current market conditions and trading activity on the Trading Floor, provided, for FOO Orders, the minimum threshold discussed above must be satisfied.[95]

The Exchange proposes Rule 7605(f) which states that the minimum size for FLEX Equity Options transactions and quotations shall be one (1) contract.[96] The Exchange also proposes Rule 7605(g) which states that there are no maximum differences between the bid and the offer for FLEX Equity Option quotes.[97]

Pursuant to proposed Rule 7605(h), FLEX Market Makers have an obligation to quote a FLEX Equity Option in response to any request for quote by a Floor Broker or Options Exchange Official and must provide a two-sided market.[98]

Allocation of FOO Orders

Next, the Exchange proposes Rule 7605(i) which details the allocation process for FOO Orders. Specifically, the FOO Order will be matched by the Trading Host against the contra-side of the FOO Order, regardless of whether the contra-side order submitted by the Floor Broker is ultimately entitled to receive an allocation pursuant to proposed Rules 7605(i)(1)–(2). If no Floor Participant, other than the executing Floor Broker, is entitled to an allocation, then no further steps are necessary. If however, Floor Participants are entitled to an allocation, the remaining balance of the initiating side of the FOO Order will be allocated as described below.[99]

First, if the FOO Order satisfies the provisions of proposed Rule 7605(k), discussed below, the executing Floor Broker is entitled to 40% of the remaining quantity of the initiating side of the FOO Order.[100] Next, FLEX Market Makers that respond with interest when the Floor Broker announces the FOO

[91] *See* proposed Rule 7605(e)(1). Proposed Rule 7605(e)(1) is based on BOX Rule 7600(a)(1). The Exchange notes that provisions related to market conditions, the NBBO, the BOX Book, book sweep, and the Complex Order Book have been omitted because there will be no NBBO, no BOX Book, no Complex Order Book, and no book sweep for FOO Orders. *See supra* note 86. The priority and allocation of FOO Orders will be determined by proposed Rules 7605(i) and (k) and current Rule 7610. *See supra* note 83.

[92] *See* proposed Rule 7605(e)(2). Proposed Rule 7605(e)(2) is based on BOX Rules 7600(b) and (c). The Exchange notes that provisions related to market conditions, the NBBO, the BOX Book, book sweep, and the Complex Order Book have been omitted because there will be no NBBO, no BOX Book, no Complex Order Book, and no book sweep for FOO Orders. *See supra* note 86. The priority and allocation of FOO Orders will be determined by proposed Rules 7605(i) and (k) and current Rule 7610. *See supra* note 83.

[93] The Exchange notes that trades may be allocated as provided in proposed Rule 7605(j). The Exchange notes further that the Exchange may nullify a transaction or adjust the execution price of a transaction in accordance with Rule 7170 (Nullification and Adjustment of Options Transactions including Obvious Errors). *See also* BOX Rule 7640(b) (relating to trading disputes and adjustment or nullification of transactions on the Trading Floor).

[94] *See* proposed Rule 7605(e).

[95] *See* BOX Rule 100(b)(5). The Exchange notes that an Options Exchange Official takes into account various factors including complexity of the trade, general prevailing market conditions, and activity on the Trading Floor at the time the order is announced.

[96] *See* proposed Rule 7605(f). Proposed Rule 7605(f) is based on NYSE Arca Rule 5.32–O(b)(7).

[97] *See* proposed Rule 7605(g). Proposed Rule 7605(g) is based on NYSE Arca Rule 5.37–O(d). The Exchange notes that it has omitted the first part of NYSE Arca Rule 5.37–O(d), which provides FLEX Appointed Market Makers need not provide continuous FLEX Quotes and the Exchange has included the second part of NYSE Arca Rule 5.37–O(d), which provides FLEX Appointed Market Makers need not quote a minimum bid-offer spread in FLEX Equity Options. The Exchange has omitted the first part of NYSE Arca Rule 5.37–O(d) because, pursuant to proposed Rule 7605(h), the Exchange is instead proposing that FLEX Market Makers be obligated to quote FLEX Equity Options in response to any request for quote by a Floor Broker or Options Exchange Official and must provide a two-sided market, which the Exchange believes will promote a robust and competitive market for FOO Orders on the Trading Floor and facilitate a fair and orderly market for the trading of FLEX Equity Options on the Exchange. The Exchange further notes that on NYSE Arca, FLEX Appointed Market Makers are appointed in classes of FLEX index options. FLEX Qualified Market Makers are appointed in FLEX equity options on NYSE Arca. Further, FLEX Appointed Market Makers have an obligation to enter a quote in response to a request for quote in a FLEX index option while FLEX Qualified Market Makers do not have a similar obligation for FLEX equity options. The Exchange believes that this distinction is the reason why NYSE Arca Rule 5.37–O(d) only specifically exempts FLEX Appointed Market Makers from quoting with a minimum bid-offer spread since they are the only FLEX market makers with the requirement to respond to a request for quote. Similarly, the Exchange is proposing that there be no maximum differences between the bid and offer for FLEX Equity Option quotes that, pursuant to Proposed Rule 7605(h), a FLEX Market Maker is required to provide in response to a request for quote by a Floor Broker or Options Exchange Official.

[98] *See* proposed Rule 7605(h). Proposed Rule 7605(h) is based on BOX Rule 8510(c)(2). The Exchange notes that proposed Rule 7605(h) does not include the provisions of current Rule 8510(c)(2) related to quote spread parameter requirements and quotation sizes, which requirements are provided separately in proposed Rules 7605(f) and (g).

[99] *See* proposed Rule 7605(i). Proposed Rule 7605(i) is based on BOX Rule 7600(d)(3). The Exchange notes that provisions of BOX Rules 7600(d)(1)–(2) were omitted from proposed Rule 7605(i) because those provisions are related to the BOX Book, which is inapplicable to FOO Orders.

[100] *See* proposed Rule 7605(i)(1). The Exchange notes that proposed Rule 7605(i)(1) is based on BOX Rule 7600(d)(3)(i).

Order to the trading crowd, as outlined in Rule 7580(e)(2) and proposed Rule 7605(e), are allocated.[101] When multiple Floor Participants respond with interest, priority in the Trading Crowd is established pursuant to Rule 7610.[102] Last, if interest remains after Floor Participants that responded with interest receive their allocation, the remaining quantity of the initiating side of the FOO Order will be allocated to the executing Floor Broker.[103] The Exchange again notes that similar allocation and priority provisions are already established and apply to responses for QOO Orders on the BOX Trading Floor.[104]

The Exchange proposes that after execution of the FOO Order, the executing Floor Broker is responsible for providing the correct allocations of the initiating side of the FOO Order to an Options Exchange Official or his or her designee, if necessary, who will properly record the order in the Exchange's system.[105] The executing Floor Broker must provide the correct allocations to an Options Exchange Official or his or her designee, in writing, without unreasonable delay.[106] The Exchange notes that the same procedure for recording trade allocations applies to QOO Orders on the BOX Trading Floor today.

Similar to the allocation process in place for QOO Orders, the Exchange proposes to allow for a participation guarantee for certain FOO Orders executed by Floor Brokers on the Trading Floor. Specifically, when a Floor Broker holds an option order of the eligible order size or greater, the Floor Broker is entitled to cross 40% of the remaining contracts of the original order, after all bids or offers at better prices are filled, with other orders that the Floor Broker is holding.[107] The Exchange may determine, on an option by option basis, the eligible size for an order on the Trading Floor to be subject to this guarantee; however, the eligible order size may not be less than 50 contracts. In determining whether an order satisfies the eligible order size requirement, any Complex FOO Order or Multi-Leg FOO Order must contain one leg alone which is for the eligible order size or greater.[108] Nothing in the proposed rule is intended to prohibit a Floor Broker from trading more than their percentage entitlement if the other Participants of the trading crowd do not choose to trade the remaining portion of the order.[109] The Exchange notes that the proposed guarantee process is similar to the guarantee process currently in place for QOO Orders on the BOX Trading Floor.[110]

The below examples are designed to illustrate the allocation of the initiating side of a FOO Order.

Example 1—Assume a Floor Broker wishes to execute a FOO Order for 500 contracts. When he announces the order, FLEX Market Maker 1 and FLEX Market Maker 2 both respond to the FOO Order for 250 contracts each at the same price as the Floor Broker's contra-side. FLEX Market Maker 1 responded first so he will have time priority over FLEX Market Maker 2. Since the FOO Order is for at least 50 contracts, the Floor Broker is entitled to match at least 40% of the initiating side with the Floor Broker's contra-side.

Result: The initiating side of the FOO Order will match against the Floor Broker's contra-side order for the full 500 contracts. After the execution of the FOO Order, because other Floor Participants are entitled to an allocation, the executing Floor Broker is then responsible for providing an Options Exchange Official or his or her designee the following allocation of the initiating side of the FOO Order:

1. 200 contracts (40%, or 500 * .40) for the contra-side order submitted by the Floor Broker
2. 250 contracts for FLEX Market Maker 1 with time priority
3. Remaining 50 contracts to FLEX Market Maker 2

Example 2—Assume a Floor Broker wishes to execute a FOO Order for 40 contracts. When he announces the order, FLEX Market Maker 1 and FLEX Market Maker 2 both respond to the FOO Order for 20 contracts each at the same price as the Floor Broker's contra-side. FLEX Market Maker 1 responded first so he will have time priority over FLEX Market Maker 2. Since the FOO Order is for less than 50 contracts, the Floor Broker is not entitled to a 40% guarantee.

Result: The initiating side FOO Order will match against the Floor Broker's contra-side for the full 40 contracts. After execution of the FOO Order, because other Floor Participants are entitled to an allocation, the executing Floor Broker is then responsible for providing an Options Exchange Official or his or her designee with the following allocation of the initiating side of the FOO Order:

1. 20 contracts for FLEX Market Maker 1 with time priority
2. 20 contracts for FLEX Market Maker 2
3. The initiating side is filled and the executing Floor Broker will receive no allocation.

Example 3—Assume a Floor Broker wishes to execute a FOO Order for 40 contracts in ABC at 1.05 (initiating side is to sell). When he announces the order, FLEX Market Maker 1 and FLEX Market Maker 2 both respond to the FOO Order for 20 contracts each. FLEX Market Maker 1 responded first at an improved price to buy 20 at 1.06 so he will have price priority over FLEX Market Maker 2.[111] Since the FOO Order is for less than 50 contracts, the Floor Broker is not entitled to a 40% guarantee.

Result: The Floor Broker will submit two FOO Orders for 20 contracts each: a FOO Order at 1.06 for 20 contracts and a FOO Order at 1.05 for 20 contracts. The initiating side of each FOO Order will match against the Floor Broker's contra-side orders for the full 20 contracts. After execution of the FOO Orders, the executing Floor Broker is then responsible for providing an Options Exchange Official or his or her

[101] *See* proposed Rule 7605(i)(2). The Exchange notes that proposed Rule 7605(i)(2) is based on BOX Rule 7600(d)(3)(ii).

[102] *Id.* Priority under Rule 7610 is determined first by price and then by sequence. Specifically, on the Trading Floor, the highest (lowest) bid (offer) shall have priority; when two or more bids (offers) represent the highest (lowest) price, priority shall be afforded to such bids (offers) in the sequence in which they were made. If, however, the bids (offers) of two or more Floor Participants are made simultaneously, or if it is impossible to determine clearly the order of time in which they are made, such bids (offers) will be deemed to be on parity and priority will be afforded to them, insofar as practicable, on an equal basis. The Floor Broker announcing the order is responsible for determining the sequence in which bids or offers are vocalized on the Trading Floor from Floor Participants in response to the Floor Broker's bid, offer, or call for a market. Rule 7610 also provides priority provisions where a Floor Broker requests a market in order to fill a large order and the Floor Participants provide a collective response. *See* BOX Rule 7610.

[103] *See* proposed Rule 7605(i)(3). The Exchange notes that proposed Rule 7605(i)(3) is based on BOX Rule 7600(d)(3)(iii).

[104] The Exchange notes that FOO Order allocation and priority differs from QOO Order provisions related to the priority of orders on the BOX Book. *See* BOX Rules 7600(c)–(e) and (h), and 7600(f)(1) and (3). *See also supra* note 86.

[105] *See* proposed Rule 7605(j). Proposed Rule 7605(j) is based on BOX Rule 7600(d)(4).

[106] *Id.*

[107] *See* proposed Rules 7605(i), 7605(k)(1) and (3). Proposed Rules 7605(k)(1) and (3) are based on BOX Rules 7600(f)(1) and (3).

[108] *See* proposed Rule 7605(k)(2). Proposed Rule 7605(k)(2) is based on BOX Rule 7600(f)(2).

[109] *See* proposed Rule 7605(k)(4). Proposed Rule 7605(k)(4) is based on BOX Rule 7600(f)(4).

[110] The Exchange notes that the proposed FOO Order priority differs from QOO Order priority because BOX Rules 7600(d)(1)–(2) contain provisions that describe priority related to the BOX Book, which is inapplicable to FOO Orders.

[111] Pursuant to Rule 7610, FLEX Marker Maker 1 would have priority over FLEX Market Maker 2 even if FLEX Market Maker 2 responded first because FLEX Market Maker 1 responded at a better price.

designee with the following allocation of the initiating side of the FOO Orders:

1. FOO Order at 1.06—20 contracts for FLEX Market Maker 1.
2. FOO Order at 1.05—20 contracts for FLEX Market Maker 2.
3. The executing Floor Broker will receive no allocation of either FOO Order.

Additional Provisions

The Exchange also proposes that all orders entrusted to a Floor Broker will be considered Not Held Orders, unless otherwise specified by a Floor Broker's client. A Not Held Order is an order marked ''not held'', ''take time'', or which bears any qualifying notation giving discretion as to the price or time at which such order is to be executed.[112]

The Exchange further proposes IM–7605–1 which allows Floor Brokers to bring unmatched orders (*i.e.,* the initiating side of a FOO Order) to the Trading Floor in order to seek contra-side interest. Once a contra-side is sourced pursuant to current Rule 7580(e)(2) and proposed Rule 7605(e), the Floor Broker shall submit the two-sided FOO Order to the BOG.[113] The Exchange notes that this provision is identical to IM–7600–4, with the exception of internal rule references, which applies to QOO Orders on the BOX Trading Floor.

The Exchange proposes IM–7605–2 to guide conduct on the floor.[114] In particular, the Floor Broker must disclose all securities that are components of the Public Customer order which is subject to crossing before requesting bids and offers for the execution of all components of the order. Once the trading crowd has provided a quote, it will remain in effect until a reasonable amount of time has passed, there is a significant change in the price of the underlying security, or the market given in response to the request has been improved. In the case of a dispute, the term ''significant change'' will be interpreted on a case-by-case basis by an Options Exchange Official based upon the extent of recent trading in the option and in the underlying security, and any other relevant factors.[115] The Participants of the trading crowd who established the market will have priority over all other orders that were not announced in the trading crowd at the time that the market was established and will maintain priority over such orders except for orders that improve upon the market. When a Floor Broker announces an order to the trading crowd pursuant to Rule 7580(e)(2), it shall be the responsibility of the Floor Participant who established the market to alert the Floor Broker of the fact that the Floor Participant has priority. Complex FOO Orders, Multi-Leg FOO Orders or tied hedge orders on opposite sides of the market may be crossed, provided that the Floor Broker holding such orders proceeds in the manner described in proposed Rule 7605 and IM–7600–2 as appropriate. Floor Participants may not prevent a Complex Order from being completed by giving a competing bid or offer for one component of such order.[116] In determining whether an order satisfies the eligible tied hedge order size requirement, any Complex FOO Order or Multi-Leg FOO Order must contain one leg which, standing alone, is for the eligible order size or greater.[117] A Floor Broker crossing a Public Customer FOO Order with an order that is not a Public Customer Order, when providing for a reasonable opportunity [118] for the trading crowd to participate in the transaction, shall disclose the Public Customer Order that is subject to crossing.

The Exchange proposes to amend Rule 100(b)(3) to provide: ''All Exchange options transactions shall be executed automatically by the Trading Host as provided in applicable Exchange Rules.'' [119] The Exchange notes that Rule 100(b)(3) already applies to Non-FLEX Equity Options. The proposed amendment is to replace specific rule references with a more general reference to avoid any unintended ambiguity and permit the Rule to apply in connection with FLEX Equity Options.

The Exchange proposes to amend Rule 7620, titled Accommodation Transactions, and IM–7620–1 to exclude FLEX Equity Options as defined in proposed Rule 5055.[120] The Exchange notes that Rule 7620(b) currently states that it applies to all options except for option classes participating in the Penny Interval Program under Rule 7260, and IM–7620–1(b) currently states that it applies to all options including those in the Penny Interval Program. The proposed amendments will ensure consistency with proposed Rule 5055(c), which provides that Rule 7620 (Accommodation Transactions) shall not apply to transactions in FLEX Equity Options.

The Exchange has not yet determined the fees for FOO transactions executed on the Trading Floor. Prior to commencing trading of the proposed FOO Orders on the Trading Floor, the Exchange intends to submit a proposed rule change to the Commission setting forth the proposed fees.

The Exchange has also analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the additional message traffic associated with the listing of new series that may result from the introduction of FLEX Equity Options.[121] Additionally, the Exchange will have surveillance coverage in place to monitor issues unique to FLEX trading.

The proposed FLEX Equity Option rules are based predominately on the rules of NYSE Arca. However, the Exchange omitted certain NYSE Arca rules from the proposed rules discussed herein due to differences in the scope and operation of FLEX Option [122] trading at NYSE Arca, compared to the scope and operation of the proposed FLEX Equity Option trading herein. The Exchange is not including NYSE Arca rule provisions that relate to FLEX Index Options as Index Options are not traded on BOX and FLEX Index Options are not proposed herein.[123] In particular, NYSE Arca Rule 5.39–O requires net liquidating equity of $100,000 in an account in which

[112] *See* proposed Rule 7605(l). Proposed Rule 7605(l) is based on BOX Rule 7600(g). *See also* NYSE Arca Rules 5.34–O and 6.62–O(f). The Exchange notes that NYSE Arca Rule 5.34–O provides a Floor Broker with additional discretion with respect to the number of FLEX contracts to be purchased or sold. The Exchange is not proposing the same discretion for FOO Orders so that the requirements for Floor Brokers handling FOO Orders are the same as handling QOO Orders currently on the Trading Floor.

[113] *See* proposed IM–7605–1. Proposed IM–7605–1 is based on IM–7600–4.

[114] *See* proposed IM–7605–2. Proposed IM–7605–2 is based on IM–7600–1.

[115] The Exchange believes that, by providing the Options Exchange Official with the ability to consider any other relevant factors, Options Exchange Officials will retain the necessary discretion to perform their duties if a new or unforeseen circumstance arises.

[116] The Exchange notes that while a Complex Order could be prevented from being completed by competing bids or offers on multiple components of such orders, competing bids or offers in any one of the multiple components may not prevent a Complex Order from being completed and each one is prohibited.

[117] *See* proposed IM–7605–2(d). The eligible tied hedge order size requirement is determined by the Exchange and may not be smaller than 500 contracts per order. *See* BOX IM–7600–2.

[118] The Exchange is proposing that a minimum response period, which must be between three seconds and five minutes, shall be established by the Exchange and announced via Regulatory Notice. *See* proposed Rule 7605(e)(2).

[119] *See* proposed Rule 100(b)(3).

[120] *See* proposed Rule 7620.

[121] The Exchange will report FLEX Equity Option trades and, if necessary, trade cancels to OPRA.

[122] The term ''Flexible Exchange Option'' or ''FLEX Option'' means a customized options contract. *See* NYSE Arca Rule 5.30–O(b)(4) *and* CBOE Rule 1.1 (definition of, ''FLEX Option'').

[123] *See* NYSE Arca Rules 5.39–O and 5.40–O.

transactions in FLEX Index Options will be conducted. As the Exchange does not trade Index Options, FLEX Index Options are not proposed herein, and the Exchange already imposes minimum net capital requirements,[124] it does not propose additional requirements.

Next, NYSE Arca Rule 5.40–O requires at least $1 million of net liquidating equity in the account of a FLEX Appointed Market Maker. However, FLEX Appointed Market Makers are appointed for FLEX Index Options on NYSE Arca but are not required for FLEX Equity Options.[125] Instead, NYSE Arca only requires FLEX Qualified Market Makers for FLEX Equity Options.[126] And, this subset of Market Makers is not required to have at least $1 million of net liquidating equity. Therefore, the Exchange's proposal does not propose to include additional net liquidating equity requirements for FLEX Market Makers. The Exchange notes that Market Makers, including Floor Market Makers and FLEX Market Makers are still subject to several financial requirements, including net liquidating equity in its Market Maker account of not less than $200,000.[127] Additionally, the Exchange believes that the large infrastructure needed to trade as a Market Maker, including their adequacy of capital and operational capacity is such that current Market Makers are likely to have net liquidating equity well beyond $1 million. In fact, another exchange which trades FLEX Options has removed a net liquidating equity requirement while still requiring market makers to maintain net capital sufficient to comply with the requirements of Rule 15c3–1, under the Act.[128] The Exchange has a similar provision, Rule 10200, that requires each Participant subject to Rule 15c3–1 under the Act to comply with the capital requirements prescribed therein among other requirements.[129]

An additional difference in the appointment of FLEX Market Makers is that NYSE Arca appoints FLEX Qualified Market Makers to each FLEX Equity Option of a given class, while the Exchange will qualify FLEX Market Makers for all FLEX Equity Options. The Exchange believes that the structure of its Trading Floor, with one crowd or trading area, will operate more efficiently without qualifying FLEX Market Makers by class.[130] Accordingly, a Floor Broker or Options Exchange Official may request a FLEX Equity Option quote in any class from a FLEX Market Maker. The Exchange notes that FLEX Market Makers will be subject to Rule 8510, including provisions for the course and conduct of dealings, class assignments, and option priority and parity, unless otherwise specified in proposed Rule 7605.[131]

Further, the Exchange notes differences between the proposed quoting obligations and those applicable on NYSE Arca. Specifically, a NYSE Arca FLEX Qualified Market Maker may, but shall not be obligated to, enter a FLEX Quote in response to a Request for Quotes on a FLEX Equity Option of the class in which he or she is qualified.[132] However, a FLEX Official on NYSE Arca may call upon FLEX Qualified Market Makers appointed in a class of FLEX Equity Options to make FLEX Quotes in response to a specific Request for Quotes in that class of FLEX Equity Options whenever in the opinion of the FLEX Official the interests of a fair, orderly and competitive market are best served by such action and shall make such a call upon FLEX Qualified Market Makers whenever no FLEX Quotes are made in response to a specific Request for Quotes.[133] The Exchange's proposal differs from NYSE Arca's rule in that FLEX Market Makers have an obligation to quote a FLEX Equity Option in response to any request for quote by a Floor Broker or Options Exchange Official and must provide a two-sided market.[134] The Exchange believes that the proposed quoting requirements allow reasonable opportunities for Floor Brokers to get quotes on FOO Orders and notes that the quoting requirements for QOO Orders on the BOX Trading Floor are similar to those proposed for FOO Orders.[135]

Among other NYSE Arca provisions not incorporated by the Exchange, are certain of NYSE Arca's ''Special Terms for FLEX Equity Options.'' [136] Specifically, these special terms include that exercise prices and premiums may be stated in terms of: (i) a dollar amount; (ii) a method for fixing at the time a FLEX Request for Quote or FLEX order is traded; or (iii) a percentage of the price of the underlying security at the time of the trade or as of the close of trading on the NYSE Arca on the trade date. The Exchange will only offer exercise prices and premiums in a dollar amount because the additional methods for fixing prices are a matter of individual preference, and the Exchange believes that the requirements of Participants will be met by pricing exercise prices and premiums in a dollar amount.[137]

Another NYSE Arca provision not adopted by the Exchange in this proposal allows discretionary orders where Floor Brokers have discretion regarding the quantity of FLEX contracts traded.[138] The Exchange prohibits discretion regarding quantity, and other terms, including the choice of the class of options to be bought or sold, and whether any such transaction shall be one of purchase or sale except to any discretionary transactions executed by a Floor Market Maker for an account in which he has an interest.[139] The Exchange believes that proposed Rule 7605(l) combined with current Rule 7590, allowing Floor Brokers to have discretion over some terms of a FOO

[124] *See* BOX Rules 8010, 8080, and 10200.

[125] *See* NYSE Arca Rule 5.37–O(a).

[126] *See id.* The Exchange notes that NYSE Arca allows but does not require appointment of two or more FLEX Appointed Market Makers to FLEX Equity Options in lieu of appointing FLEX Qualified Market Makers.

[127] *See* BOX Rule 8080(a)(1). Rule 8080 also requires Market Makers to maintain net capital sufficient to comply with the requirements of Rule 15c3–1 under the Act and each Market Maker that is a Clearing Participant shall also maintain net capital sufficient to comply with the requirements of the OCC. *See* BOX Rules 8080(a)(2) and (b). *See also* BOX Rule 8010 (''To qualify for registration as a Market Maker, an Options Participant must meet the requirements established in SEC Rule 15c3–1(a)(6)(i) . . .'').

[128] *See* CBOE Rule 11.6 *and* Securities Exchange Act Release No. 87024 (September 19, 2019), 84 FR 50545 (September 25, 2019) (SR–CBOE–2019–059) (Notice of Filing and Immediate Effectiveness of a proposed rule change to amend certain rules relating to market makers upon migration to the trading system used by CBOE affiliated exchanges).

[129] *See* BOX Rule 10200 (Participants must comply with the additional requirements of the Rule 10200 Series and Market Makers must comply with the minimum financial requirements contained in Rule 8010).

[130] Pursuant to BOX Rule 8150(e), whenever a BOX Floor Market Maker enters the trading crowd he must undertake the obligations specified in Rule 8510(d) (In Classes of Option Contracts to Which Assigned—Affirmative Obligations). Since there is only one trading crowd on the BOX Floor, in practice this results in all BOX Floor Market Makers being required to quote all classes on the Trading Floor. The same will apply to FLEX Market Makers.

[131] *See* proposed Rules 7605(f)-(h) (providing FOO Order quoting obligations). The Exchange notes that current Floor Market Maker quoting obligations and restrictions are detailed in Rule 8510.

[132] *See* NYSE Arca Rule 5.37–O(b).

[133] *See* NYSE Arca Rule 5.37–O(c).

[134] *See* proposed Rule 7605(h).

[135] *See* BOX Rule 8510(c)(2). The Exchange notes that proposed Rule 7605(h) and current Rule 8510(c)(2) are similar except that proposed Rule 7605(h) does not include the provisions of current Rule 8510(c)(2) related to quote spread parameter requirements and quotation sizes, which requirements are provided separately in proposed Rules 7605(f) and (g).

[136] *See* NYSE Arca Rule 5.32–O(f)(2).

[137] The Exchange's belief that the requirements of Participants will be met by stating exercise prices and premiums in a dollar amount is based on conversations with Participants regarding their preferences for stating the terms of exercise prices and premiums.

[138] *See* NYSE Arca Rule 5.34–O.

[139] *See* BOX Rule 7590 and proposed Rule 7605(l).

Order such as price and time while not allowing discretion over terms such as quantity, strikes a balance between allowing Floor Brokers to provide full services to clients and preventing erroneous trades based on differing expectations or miscommunications between Floor Brokers and their clients. The Exchange notes that Rule 7600(g) governing QOO Orders is identical to proposed Rule 7605(l) and believes that consistency of handling between QOO Orders and FOO Orders may reduce confusion and increase efficiency on the Trading Floor.

Another NYSE Arca rule not proposed by the Exchange provides that NYSE Arca may designate FLEX Officials.[140] The Exchange is not proposing a similar rule because Rule 100(b)(6) already provides that any Exchange employee or officer designated as an Options Exchange Official will from time to time as provided in these rules have the ability to recommend and enforce rules and regulations relating to trading access, order, decorum, health, safety and welfare on the Exchange. Specifically, Options Exchange Officials have duties enumerated in Rules 100(b)(5), 7610, 7640, and 8510, as well as in proposed Rule 7605 regarding announcement, quoting, and recording of FOO Orders, priority in the trading crowd, disputes on the trading floor, and obligations and restrictions applicable to Floor Market Makers and FLEX Market Makers. The Exchange believes that Options Exchange Officials will have the authority necessary to enforce the proposed FLEX Equity Option and FOO Order rules such that designation of a unique FLEX Official would be redundant and unnecessary, as the Exchange's existing Options Exchange Officials will have the ability to perform the same functions as a separately designated FLEX Official. Specifically, the duties of FLEX Officials on NYSE Arca are mainly related to their Request for Quotes (''RFQ'') procedure unique to FLEX Options trading on NYSE Arca.[141] The Exchange has elected not to adopt a similar procedure, as discussed below, instead basing the FOO Order process on the QOO Order process already monitored by Options Exchange Officials. Additionally, the Exchange's system is designed to review the terms of a FLEX Equity Option for compliance with the applicable Rules as opposed to being a requirement of an Options Exchange Official to review.[142] Options Exchange Officials will continue to be responsible for monitoring all open outcry activity on the Trading Floor. Therefore, the Exchange will not require a separate official to govern any unique process for FLEX Equity Options. Additionally, the Exchange represents that Options Exchange Officials will receive appropriate training on the terms of FLEX Equity Options and all rules applicable to FLEX Equity Options and FOO Orders, including their responsibility to certify that a Floor Broker has adequately announced a FOO Order to the trading crowd,[143] consistent with the manner in which they are currently trained with respect to QOO Orders.[144] The Exchange further notes that NYSE Arca's rules do not require the exchange to designate FLEX Officials.[145]

Another NYSE Arca rule provision not proposed by the Exchange is NYSE Arca Rule 5.35–O(b), which would require that each Participant (other than a Market Maker) that maintains a position on the same side of the market in excess of the standard position limit for Non-FLEX Equity Options of the same class on behalf of its own account or for the account of a customer report information on the FLEX Equity Option position, positions in any related instrument, the purpose or strategy for the position and the collateral used by the account. As described above, the options markets have changed significantly since this provision was originally adopted and the Exchange does not believe it is necessary or appropriate to continue to mandate a duplicative reporting requirement that imposes additional administrative burdens on Participants and the Exchange with limited attendant benefits. The Exchange is also proposing to better tailor the language in proposed Rule 5055(i) to its existing authority to impose higher margin requirements on Participants.

As mentioned above, rather than adopt the NYSE Arca RFQ procedure for FLEX Equity Options,[146] the Exchange instead proposes to utilize the current process used on the BOX Trading Floor for QOO Orders with the addition of a minimum time period that a Floor Broker must allow Floor Participants when responding to FOO Orders.[147] The Exchange believes that using the order announcement and responsive quote process for both QOO Orders and FOO Orders on the BOX Trading Floor will result in less confusion and greater efficiency for all BOX Trading Floor Participants.

The Exchange notes that the manner in which the Exchange has proposed rules with respect to announcement of orders and responsive quotes is similar to how CBOE treats its FLEX Options; specifically, CBOE allows a FLEX Order[148] to be represented and executed in a similar manner as a non-FLEX Option.[149] The Exchange believes CBOE's approach is consistent with the Act and proposes to also require Floor Brokers to allow for a reasonable amount of time to participate in FLEX Equity Option transactions. Further, unlike CBOE, the Exchange proposes to establish and announce, via Regulatory Notice, a minimum period of time that a Floor Broker must allow Floor Participants to respond (which amount of time must be between three seconds and five minutes). The Exchange believes that it is unnecessary to specify a specific maximum time period for responses to FLEX orders as Options Exchange Officials on BOX's Trading Floor will be responsible both to enforce the minimum period of time and to ensure that Floor Participants have a reasonable amount of time to respond to FOO Orders.[150] The Exchange notes that the proposed order announcement procedure for FOO Orders is similar to

[140] *See* NYSE Arca Rule 5.38–O.

[141] NYSE Arca Rule 5.38–O provides that ''[a] FLEX Official is responsible for: (1) reviewing the conformity of FLEX Requests for Quotes and FLEX Quotes to the terms and specifications contained in Rule 5.32–O [Terms of FLEX Options]; (2) posting FLEX Requests for Quotes for dissemination; (3) determining the BBO; (4) ensuring that FLEX contracts are executed in conformance with the priority principles set forth in Rule 5.33–O; and (5) calling upon FLEX Qualified Market Makers to make FLEX Quotes in specific classes of FLEX Equity Options as provided in paragraph (c) of Rule 5.37–O.'' *See* NYSE Arca Rule 5.38–O.

[142] *See supra* note 48. The Exchange notes that NYSE Arca Rule 5.38–O(b)(1) provides that it is the responsibility of their FLEX Officials to review the terms of a FLEX order.

[143] *See* proposed Rule 7605(e)(2).

[144] BOX Rules currently provide that the President of the Exchange and his or her designated staff shall be responsible for monitoring, among other things, the activities of Floor Participants and their associated persons and shall establish standards and procedures for the training and qualification of Floor Participants and their associated persons active on the Trading Floor. *See* BOX Rule 100(b)(1).

[145] *See* NYSE Arca Rule 5.38–O(a) (''The Exchange *may* at any time designate an Exchange employee to act as a FLEX Official in one or more classes of FLEX Options [emphasis added]. . . .'').

[146] *See* NYSE Arca Rule 5.33–O.

[147] *See* proposed Rule 7605 and current Rule 7600. The minimum time period, which must be between three seconds and five minutes, will be established by the Exchange and communicated via Regulatory Notice. *See* proposed Rule 7605(e)(2). *See also* Securities Exchange Act Release No. 81292 (August 2, 2017), 82 FR 37144 (August 8, 2017) (Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Adopt Rules for an Open-Outcry Trading Floor).

[148] ''FLEX Orders'' are orders submitted in FLEX Options. *See* CBOE Rule 5.70.

[149] *See* CBOE Rule 5.72(d). The Exchange notes that CBOE Rule 5.72(d) also contains provisions that limit the priority rules applicable to FLEX Orders. *See* CBOE Rules 5.72(d)(2) and (3).

[150] *See supra* note 147 and accompanying text.

the rules and procedures currently in place for QOO Orders on the BOX Trading Floor.

Minor Rule Violation Plan

The Exchange's disciplinary rules, including Exchange Rules applicable to ''minor rule violations,'' are set forth in the Rule 12000 Series of the Exchange's current Rules. The MRVP provides that in lieu of commencing a disciplinary proceeding, the Exchange may, subject to the certain requirements set forth in the Rule, impose a fine, not to exceed $5,000, on any Options Participant, or person associated with or employed by an Options Participant, with respect to any Rule violation listed in Rules 12140(d) or (e) as discussed below. Any fine imposed pursuant to this Rule that (i) does not exceed $2,500 and (ii) is not contested, shall be reported on a periodic basis, except as may otherwise be required by Rule 19d-1 under the Act or by any other regulatory authority. Further, the Rule provides that any person against whom a fine is imposed under the Rule shall be served with a written statement setting forth: (i) the Rule(s) allegedly violated; (ii) the act or omission constituting each such violation; (iii) the fine imposed for each violation; and (iv) the date by which such determination becomes final and such fine must be paid or contested, which date shall be not less than twenty-five (25) calendar days after the date of service of such written statement. Rules 12140 (d) and (e) set forth the list of specific Exchange Rules under which an Options Participant or person associated with or employed by an Options Participant may be subject to a fine for violations of such Rules and the applicable fines that may be imposed by the Exchange. As with all the violations incorporated into its MRVP, the Exchange will proceed under this Rule only for violations that are minor in nature. Any other violation will be addressed pursuant to Rules 12030 (Letters of Consent) or 12040 (Charges).

The Exchange proposes to amend its MRVP to add certain rules relating to FLEX Equity Options to the list of rules eligible for minor rule violation plan treatment by amending Rule 12140. Specifically, the Exchange proposes to amend Rule 12140(e)(3), which covers the failure to properly execute a QOO Order, to include Failure to Properly Execute a FOO Order (proposed Rule 7605).[151] Additionally, the Exchange proposes to amend Rule 12140(e)(9), which covers compliance with quotation requirements for Floor Market Makers and is designed to sanction violations thereof, to include violations of proposed Rule 7605(h), which proposes quoting requirements similar to those contained in Rule 8510(c)(2) regarding Floor Market Maker obligations.[152]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[153] in general, and furthers the objectives of Section 6(b)(5) of the Act[154] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Specifically, the Exchange believes the adoption of the proposed rules allowing FLEX Equity Options to trade on the BOX Trading Floor as FOO Orders is consistent with the goals of the Act to remove the impediments to and perfect the mechanism of a free and open market because it will benefit Participants by providing an additional venue for Participants to provide and seek liquidity for customized, large, or complex FLEX option orders. As the Commission noted in its order granting FLEX Equity Option trading on CBOE and what was then the Pacific Stock Exchange (now NYSE Arca), trading FLEX Equity Options on an exchange is an alternative to trading customized options in OTC markets and carries with it the advantages of exchange markets such as transparency, parameters and procedures for clearance and settlement, and a centralized counterparty clearing agency.[155] Therefore, the Exchange believes the proposed rule change will promote these same benefits for the market as a whole by providing an additional venue for market participants to seek liquidity for customized, large-sized, or complex FLEX option orders. The Exchange believes that providing an additional venue for these FLEX orders will benefit investors, the national market system, Participants, and BOX by increasing competition for order flow and executions, and thereby spur product enhancements and potentially result in lower prices for exchange services related to FLEX Equity Options.

The Exchange further believes that the proposal is designed to prevent fraudulent and manipulative acts and practices as the Exchange will review all current surveillance in light of any changes required, including surveillance and technology to detect disruptive or manipulative trading activity for FOO Orders on the Trading Floor, and will modify or add any surveillance as appropriate.

General

The Exchange believes that proposed Rule 5055(a) stating that the trading of FLEX Equity Options is subject to all other Rules applicable to the trading of options on the Exchange, unless otherwise provided in Rules 5055 and 7605, is consistent with the Act because it will ensure that, except where otherwise provided in Rules 5055 and 7605, the Exchange's existing rules will continue to apply to FLEX Equity Options, which will provide increased consistency for Participants trading FLEX Equity Options and Non-FLEX Equity Options on BOX. The Exchange reiterates that rules which contemplate the operation of or interaction with the BOX Book and the Complex Order Book will not apply to FLEX Equity Options, given that FLEX Equity Options may only be traded as FOO Orders and FOO Orders may not be placed in the BOX Book or the Complex Order Book.[156] Specifically, proposed Rule 5055(a) will specify that the BOX Book and the Complex Order Book shall not be applicable for transactions in FLEX Equity Options and thereby provide clarity for market participants that FLEX

[151] *See* proposed Rule 12140(e)(3). The Exchange notes that adding proposed Rule 7605 for FOO Orders to current Rule 12140(e)(3) is consistent with the existing provision to enforce current Rule 7600 for QOO Orders because Floor Participants have the same general requirements for executing FOO and QOO Orders on the Trading Floor. The Exchange notes further that fines defined under Rule 12140(e)(3) may apply to any failure to properly execute a FOO Order in accordance with applicable provisions of proposed Rule 7605 governing such execution requirements. Proposed Rule 7605(h), however, which relates to a FLEX Market Maker's quoting obligation, is specifically proposed for inclusion in proposed Rule 12140(e)(9).

[152] *See* proposed Rule 12140(e)(9). The Exchange notes that proposed Rule 7605(h) and current Rule 8510(c)(2) are similar except that proposed Rule 7605(h) does not include the provisions of current Rule 8510(c)(2) related to quote spread parameter requirements and quotation sizes, which requirements are provided separately in proposed Rules 7605(f) and (g). However, the Exchange believes it is appropriate to include proposed Rule 7605(h) with Rule 8510(c)(2) in the MRVP given the similar nature of the underlying requirement to provide quotations.

[153] 15 U.S.C. 78f(b).

[154] 15 U.S.C. 78f(b)(5).

[155] *See* Securities Exchange Act Release No. 36841 (February 14, 1996), 61 FR 6666 (February 21, 1996) (SR–CBOE–95–43) (SR–PSE–95–24) (Order Approving the Trading of Flexibly Structured Equity Options by CBOE and PSE).

[156] *See supra* notes 83 and 86 and accompanying text.

Equity Options may only be traded on the Trading Floor. As described above, while electronic trading in FLEX options is available on one market today, the Exchange at this time intends to introduce FLEX Equity Options on the Trading Floor only, consistent with other markets that trade these customized options solely on their trading floors. The Exchange also believes that providing further detail about rules that shall not apply in proposed Rule 5055(c) is consistent with the Act because it will provide clarity for market participants about existing rules that will not be applicable to FLEX Equity Options on BOX. In particular, specifying that Rules 7600 and 7620 will not apply to FLEX Equity Options will avoid potential confusion about which order types apply to FLEX Equity Options on BOX, as the Exchange is instead proposing Rule 7605 to apply to transactions in FLEX Equity Options. Specifically, Rule 7600 contains priority provisions related to the BOX Book and the Complex Order Book neither of which are applicable to transactions in FLEX Equity Options. The Exchange notes that another exchange excludes similar rules from application to transactions in FLEX Equity Options.[157] However, proposed Rule 5055(c) also specifies that IM–7600–2 and IM–7600–5 shall apply to FLEX Equity Options. The Exchange believes that expressly applying these provisions is consistent with the Act because, although the remainder of Rule 7600 will not apply to FOO Orders, IM–7600–2, and IM–7600–5 relate, respectively, to tied hedge orders and to compliance with Section 11(a)(1) of the Act and should apply to the proposed FOO Orders in the same manner as they currently apply to QOO Orders. Specifically, tied hedge orders are a combination of an option and hedging position that must follow the procedures set forth in IM–7600–2 which is designed to protect investors and the public interest with provisions that limit the types of combinations considered to be tied hedge orders as well as prescribing Floor Broker duties for the handling of such orders. The Exchange believes that expressly applying IM–7600–2 to FOO Orders is consistent with the Act, as this will provide greater consistency between the trading of FLEX Equity Options and Non-FLEX Equity Options on the BOX Trading Floor and reduce the potential for market participant confusion. Next, IM–7600–5 prevents Participants from utilizing the Trading Floor to effect any transactions for their own account, the account of an associated person, or an account with respect to which the Participant or an associated person thereof exercises investment discretion by relying on an exemption under Section 11(a)(1)(G) of the Act (''G Exemption''). IM–7600–5 thereby provides notice to Floor Participants that when utilizing the trading floor to effect transactions in covered accounts, they cannot rely on the G Exemption and must rely on other available exemptions to the prohibition in Section 11(a)(1) of the Act.[158] In this manner, IM–7600–5 provides increased clarity to Floor Participants about their ability to comply with Section 11(a)(1) of the Act and it is therefore consistent with the Act and would protect investors and the public interest to continue to apply this rule to FOO Orders.

The Exchange believes that the definitions proposed in Rule 5055(b) will provide increased clarity to market participants which will protect investors and the public interest by specifying definitions for FLEX Equity Options and Non-FLEX Equity Options, and by specifying that FLEX Equity Option transactions will be governed as proposed in Rule 7605 and shall not be traded other than as FOO Orders. The Exchange believes further that the term ''FLEX Market Maker'' will clarify the difference between Floor Market Makers and FLEX Market Makers, where the latter are qualified for trading FLEX Equity Options and have an obligation to provide quotes in response to FOO Orders. The Exchange notes that, should it decide to propose additional order types or electronic trading for FLEX Equity Options, it will revise the defined term ''FLEX Open Outcry Order'' accordingly.

The Exchange believes that proposed Rule 5055(d) which specifies that there shall be no trading rotations in FLEX Equity Options is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system because it provides notice to Participants regarding the mechanisms applicable to FLEX trading, which will not include trading rotations due to the customized nature of FLEX Equity Options and the fact that there will be no requirement for specific FLEX Equity Option series to be quoted or traded each day.[159] The Exchange notes that QOO Orders on the Trading Floor can only participate in a trading rotation if entered into the BOX Book and as discussed herein FLEX Equity Options will not be eligible to be placed on the BOX Book.[160] The Exchange also notes that another exchange does not hold trading rotations for FLEX Equity Options.[161]

FLEX Equity Option Terms

The Exchange believes that some of the terms of FLEX Equity Options pursuant to proposed Rule 5055(e) serve to perfect the mechanism of a free and open market and a national market system because they will permit investors to customize some of the terms of their FLEX Equity Options to implement more precise trading strategies and hedges which may not be possible using Non-FLEX Equity Options.[162] These investors may have improved capability to execute strategies to meet their specific investment objectives by using customized FLEX Equity Options. However, only certain terms are subject to flexible structuring by the parties to FLEX Equity Option transactions, and most of such terms have a specified number of alternative configurations. The Exchange believes that these restrictions are reasonable and designed to further the objectives of the Act and to promote just and equitable principles of trade because limiting FLEX Equity Option terms enables the efficient, centralized clearance and settlement and active secondary trading of opened FLEX Equity Options. Further, these terms are consistent with those currently offered at another exchange.[163]

Proposed rule 5055(e)(1)(v)(a) allowing a FLEX Equity Option order to be submitted on any trading day, including the expiration date, serves to perfect the mechanism of a free and open market and a national market system because it will allow investors to execute FLEX Equity Options at a time of their choosing. These investors may have improved capability to execute strategies to meet their specific investment objectives. Further, this rule is designed to provide clarity about when FLEX Equity Options may be

[157] *See* NYSE Arca Rules 5.30–O(c) and (d).

[158] *See infra* note 229 and accompanying text (describing the Section 11(a)(1) prohibition and defining ''covered accounts'').

[159] *See* Securities Exchange Act Release No. 31920 (February 24, 1993), 58 FR 12280, 12284 (March 3, 1993) (SR–CBOE–92–17) (Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Listing and Trading of Flexible Exchange Options Based on the Nasdaq 100 Index).

[160] *See* BOX Rule 7070(d).

[161] *See* NYSE Arca Rule 5.31–O(b).

[162] *See* proposed Rule 5055(f)(1) (providing that FLEX Equity Options shall be permitted in puts and calls that do not have the same exercise style, same expiration date, and same exercise price as Non-FLEX Equity Options that are already available for trading on the same underlying security).

[163] *See* NYSE Arca Rule 5.32–O.

executed. The Exchange believes that Floor Participants benefit from increased flexibility and clarity.

The Exchange also believes that proposed Rule 5055(f) to prevent FLEX Equity Options and Non-FLEX Equity Options with the same terms from trading concurrently is designed to promote just and equitable principles of trade and prevent fraudulent and manipulative acts and practices.[164] In particular, a Non-FLEX Equity Option trading pursuant to Rule 7600 as a QOO Order has different priority rules than a FOO Order trading pursuant to proposed Rule 7605.[165] Allowing an option with the same terms to trade under both rules concurrently would result in inconsistent order handling and could allow the order priority of QOO Orders to be circumvented. Therefore, the Exchange proposes to prevent this situation by permitting FLEX Equity Option transactions only in options with a different term (exercise style, expiration date, or exercise price) than Non-FLEX Equity Options that otherwise meet the requirements of proposed Rule 5055(e). This is designed to prevent FLEX Equity Options from being surrogates for Non-FLEX Equity Options. Additionally, in the event that a Non-FLEX Equity Option series is added intra-day, the holder or writer of a FLEX Equity Option position established under the FLEX trading procedures would be permitted to close such position under the FLEX trading procedures against another closing only FLEX Equity Option position for the balance of the trading day on which the series is added. In the event that the Non-FLEX Equity Option series is added on a trading day after the position is established, the holder or writer of a FLEX Equity Option position established under the FLEX trading procedures would be permitted to close such position as a non-FLEX transaction consistent with the requirements of proposed Rule 5055(f)(2). This proposed rule will prevent an option with the same terms from trading as both a FLEX Equity Option and a Non-FLEX Equity Option concurrently, while providing a narrow exception for closing positions.[166] Further opening trades in such options would be as Non-FLEX Equity Options subject to the Non-FLEX Equity Option trading procedures and rules, including Rule 7600 for Trading Floor transactions.[167] The Exchange believes that enforcing consistent handling and priority for identical and fungible options prevents fraudulent and manipulative acts and practices, and promotes just and equitable principles of trade to protect investors and the public interest by ensuring consistent treatment of these options. The Exchange further believes that providing a narrow exception to permit the closing of a FLEX Equity Option position for the balance of the trading day on which the fungible Non-FLEX Equity Option is added perfects the mechanism of a free and open market and a national market system because it provides investors the ability to close their open FLEX Equity Option positions the same day as the identical Non-FLEX Equity Option is added.[168] As noted herein, these requirements are consistent with those at another exchange.[169]

Further, the Exchange believes that allowing FLEX Equity Options to trade in minimum increments of $0.01 [170] perfects the mechanism of a free and open market and a national market system because it provides investors with increased ability to meet their specific investment objectives and allows for increased opportunities for price improvement through a finer trading increment. The Exchange notes that another exchange currently trades FLEX Equity Options in minimum increments of $0.01.[171]

The Exchange further believes that subjecting FLEX Equity Options to the exercise by exception provisions of Rule 805 of the OCC [172] fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.[173] Specifically, OCC Rule 805 provides that, unless contrary instructions are given, option contracts that are in-the-money by specified amounts shall be automatically exercised. Application of Rule 805 to FLEX Equity Options provides consistency with Non-FLEX Equity Options and prevents confusion in the clearing process with respect to exercise instructions. The Exchange notes that another exchange provides that FLEX Equity Options shall be subject to the exercise by exception provisions of OCC Rule 805.[174]

Position Limits

Position and exercise limits are designed to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. While position and exercise limits should address and discourage the potential for manipulative schemes and adverse market impact, if such limits are set too low, participation in the options market may be discouraged. The Exchange believes that any decision regarding imposing position and exercise limits for FLEX Equity Options must therefore be balanced between mitigating concerns of any potential manipulation and the cost of inhibiting potential hedging activity that could be used for legitimate economic purposes.[175]

[164] *See* proposed Rule 5055(f)(1).

[165] For example, the BOX Book will be inapplicable to FOO Orders and thus certain priority provisions applicable to QOO Orders are not applicable to FOO Orders. Specifically, FOO Order priority differs from QOO Order provisions related to the priority of orders on the BOX Book. *See* BOX Rules 7600(c)–(e) and (h). The priority of FOO Orders will be determined by proposed Rules 7605(i) and (k) and BOX Rule 7610.

[166] *See* proposed Rule 5055(f)(3). *See also* proposed Rule 7605(d)(3). *See* Exchange Act Release Nos. 62321 (June 17, 2010), 75 FR 36130 (June 24, 2010) (SR–NYSEArca–2010–46) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Commentary .01 to Rule 5.32 To Permit Certain FLEX Options To Trade Under the FLEX Trading Procedures for a Limited Time on a Closing Only Basis) *and* 62870 (September 8, 2010), 75 FR 56147 (September 15, 2010) (SR–CBOE–2010–078) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit Certain FLEX Options To Trade Under the FLEX Trading Procedures for a Limited Time on a Closing Only Basis).

[167] *See* proposed Rule 5055(f)(2). *See* Exchange Act Release Nos. 59417 (February 18, 2009), 74 FR 8591 (February 25, 2009) (SR–CBOE–2008–115) (Notice of Filing of Amendments No. 1 and 2 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendments No. 1 and 2 Thereto, Relating to FLEX Options Expirations); 60548 (August 20, 2009), 74 FR 43191 (August 26, 2009) (SR–NYSEAmex–2009–44) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE AMEX LLC Amending the Permissible Expiration Dates for Flexible Exchange Options); 60549 (August 20, 2009), 74 FR 44415 (August 28, 2009) (SR–NYSE–Arca–2009–75) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Permissible Expiration Dates for Flexible Exchange Options); *and* 60549 (September 16, 2009), 74 FR 48619 (September 23, 2009) (SR–Phlx–2009–81) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to FLEX Option Expirations).

[168] The Exchange notes that investors will be able to close any such positions utilizing Non-FLEX Equity Option trading procedures beginning the next trading day.

[169] *See* NYSE Arca Rule 5.32–O, Commentary .01.

[170] *See* proposed Rule 5055(g).

[171] *See* CBOE Rule 5.4(c)(4). The Exchange notes that minimum increments in percentage terms are not part of this proposal.

[172] *See* proposed Rule 5055(h).

[173] The Exchange notes that Rule 805 of the OCC currently applies to Non-FLEX Equity Options on BOX. *See* BOX Rule 9000(b).

[174] *See* NYSE Arca Rule 5.32–O(f)(4).

[175] The Exchange notes that although no position limits are proposed for FLEX Equity Options, there are several mitigating factors, which include aggregation of FLEX Equity Option and Non-FLEX Equity Option positions that expire on a third Friday-of-the-month and subjecting those positions to position and exercise limits, and daily monitoring of market activity.

Similar to the other exchanges that trade FLEX Equity Options, the Exchange believes that eliminating position and exercise limits for FLEX Equity Options, while requiring positions in FLEX Equity Options that expire on a third Friday-of-the-month to be aggregated with positions in Non-FLEX Equity Options on the same underlying security,[176] removes impediments to and perfects the mechanism of a free and open market and a national market system because it allows BOX to create a product and market that is an improved but comparable alternative to the OTC market in customized options. OTC transactions occur through bilateral agreements, the terms of which are not publicly disclosed to the marketplace. As such, OTC transactions do not contribute to the price discovery process that exists on a public exchange.

The Exchange believes that the proposed elimination of position and exercise limits for FLEX Equity Options may encourage market participants to transfer their liquidity demands from OTC markets to exchanges and enable liquidity providers to provide additional liquidity to BOX through transactions in FLEX Equity Options. The Exchange notes that the Commission previously approved the elimination of position and exercise limits for FLEX Equity Options, finding that such elimination would allow exchanges ''to better compete with the growing OTC market in customized equity options, thereby encouraging fair competition among brokers and dealers and exchange markets.'' [177] The Commission has also stated that the elimination of position and exercise limits for FLEX Equity Options ''could potentially expand the depth and liquidity of the FLEX equity market without significantly increasing concerns regarding intermarket manipulations or disruptions of the options or the underlying securities.'' [178]

Additionally, the Exchange believes that requiring positions in FLEX Equity Options that expire on a third Friday-of-the-month to be aggregated with positions in Non-FLEX Equity Options on the same underlying security subjects FLEX Equity Options and Non-FLEX Equity Options to the same position and exercise limits on third Friday-of-the-month expirations. These limitations are intended to serve as a safeguard against potential adverse effects of large FLEX Equity Option positions expiring on the same day as Non-FLEX Equity Option positions. The Exchange notes that another exchange has the same requirement.[179]

The Exchange believes that any potential risk of manipulative activity is mitigated by existing surveillance technologies, procedures, and reporting requirements at the Exchange, which allows the Exchange to properly identify disruptive and/or manipulative trading activity. In addition to its own surveillance programs, the Exchange also works with other SROs and exchanges on intermarket surveillance related issues. Through its participation in the Intermarket Surveillance Group (''ISG'') [180] the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. The Exchange also notes that Financial Industry Regulatory Authority, Inc. (''FINRA''), conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement.[181] The Exchange also represents that it is reviewing its procedures to detect potential manipulation in light of any changes required for FLEX Equity Options to confirm appropriate surveillance coverage. These procedures utilize daily monitoring of market activity via automated surveillance techniques to identify unusual activity in both options and their underlying securities and are designed to protect investors and the public interest by ensuring that the Exchange has an adequate surveillance program in place.

The Exchange believes that proposed Rule 5055(i)(1) further mitigates concerns for potential market manipulation and/or disruption in the underlying markets and thus protects investors and the public interest because the Exchange may determine that a higher margin requirement is necessary in light of the risks associated with a FLEX Equity Option position in excess of the standard limit for Non-FLEX Equity Options of the same class. The Exchange may, pursuant to its authority under Rule 10130(b), impose additional margin upon the account of any Participant, including a Participant maintaining a large FLEX Equity Option position, as a safeguard against potential adverse effects of large FLEX Equity Option positions. The Exchange notes that the clearing firm carrying the account will be subject to capital charges under SEC Rule 15c3–1 to the extent of any margin deficiency resulting from the higher margin requirement. The Exchange also notes that other exchanges currently trading FLEX options have similar position and exercise limits.[182] The Exchange also believes it is consistent with the Act to not include a requirement relating to the reporting of information on FLEX Equity Option positions in excess of the standard position limit for Non-FLEX Equity Options because it will remove an unnecessary administrative burden on Participants and the Exchange, and the Exchange, along with the OCC and FINRA, will retain the ability to monitor large FLEX Equity Options positions and have the ability to increase margin requirements if necessary. The Exchange further believes it is consistent with the Act to better tailor the language in proposed Rule 5055(i) to the Exchange's existing authority to impose higher margin requirements because this will ensure consistency among Participants regarding the manner in which the Exchange may impose additional margin requirements and will increase clarity and accessibility with respect to the Exchange's Rules.

Letters of Guarantee and Authorization

Pursuant to proposed Rule 5055(k), the Exchange will require FLEX Market Makers to provide a Letter of Guarantee issued by a clearing member organization and filed with the Exchange specifically accepting financial responsibility for all FLEX Equity Option transactions made by such person as long as such letter has not been revoked under Rule 8070(c).[183] Market Makers that are qualified by the Exchange and have provided such a Letter of Guarantee will be permitted to trade FLEX Equity Options on BOX.[184]

[176] *See* proposed Rules 5055(i) and (j). *See also* NYSE Arca Rules 5.35–O(a)(iii), (b) and 5.36–O *and* CBOE Rules 8.35 and 8.42 *and* NYSE American Rules 906G and 907G *and* PHLX Rule Options 8, Section 34(e) and (f).

[177] *See* Securities Exchange Act Release No. 42223 (December 10, 1999), 64 FR 71158, 71159 (December 20, 1999) (SR–Amex–99–40) (SR–PCX–99–41) (SR–CBOE–99–59) (Order Granting Accelerated Approval to Proposed Rule Change Relating to the Permanent Approval of the Elimination of Position and Exercise Limits for FLEX Equity Options).

[178] *See id.*

[179] *See* NYSE Arca Rule 5.35–O(b)(i).

[180] ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by cooperatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG's information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

[181] The Exchange notes that it is responsible for FINRA's performance under this regulatory services agreement.

[182] *See* NYSE Arca Rules 5.35–O(a)(iii), (b), and 5.36–O *and* CBOE Rules 8.35 and 8.42 *and* NYSE American Rules 906G and 907G *and* PHLX Rule Options 8, Section 34(e) and (f).

[183] *See* proposed Rule 5055(k).

[184] *See* proposed Rule 7605(c). The Exchange notes that Market Makers are subject to the

Continued

The Exchange believes that requiring a Letter of Guarantee specific to FLEX Equity Options protects investors and the public interest because it signifies that the clearing member has specifically accepted financial responsibility for transactions in FLEX Equity Options entered into by the Market Maker which will protect the counterparties of those trades and such protections will flow to other clearing members and ultimately to the OCC as the central counterparty and guarantor of both FLEX Equity Option and Non-FLEX Equity Option transactions. The Exchange notes that another exchange requires a Letter of Guarantee for FLEX transactions.[185]

Pursuant to proposed Rule 5055(l), prior to effecting any transaction in FLEX Equity Options, Floor Brokers are required to provide a Letter of Authorization issued by a clearing member organization and filed with the Exchange specifically accepting financial responsibility for all FLEX Equity Option transactions made by such person, and such letter remains in effect until a written revocation is received by the Exchange.[186] Floor Brokers that have provided such a Letter of Authorization and are qualified by the Exchange will be permitted to trade FLEX Equity Options on BOX.[187] The Exchange believes that requiring a Letter of Authorization specific to FLEX Equity Options protects investors and the public interest because it signifies that the clearing member has accepted financial responsibility for transactions in FLEX Equity Options entered into by the Floor Broker which will protect the counterparties of those trades and such protections will flow to other clearing members and ultimately to the OCC as the central counterparty and guarantor of both FLEX Equity Option and Non-FLEX Equity Option transactions. The Exchange notes that another exchange requires a separate Letter of Authorization for Floor Brokers to trade FLEX Equity Options.[188]

FOO Orders

The Exchange believes that the proposed rule change to adopt a new order type [189] for FLEX Equity Option transactions on the BOX Trading Floor is consistent with the Act. The Exchange modeled its proposed rule governing FOO Orders after Rule 7600 applicable to QOO Orders to harmonize current procedures on BOX's Trading Floor, which the Exchange believes will reduce investor confusion and thus remove impediments to and perfect the mechanism of a free and open market and a national market system.[190] Specifically, the proposed elements of a FOO Order are designed to aid Floor Brokers in their duties and to maintain order and structure on the Trading Floor. For example, as with a QOO Order, the rules applicable to FOO Orders will ensure that all FLEX Equity Option transactions executed on the Trading Floor by Floor Brokers are systematized before they are represented to the trading crowd and provide an accurate timestamp of when the order was executed by the Floor Broker.[191] As described above, the main differences from QOO Orders are that FOO Orders will not interact with the BOX Book or the Complex Order Book and that Floor Brokers must allow Floor Participants a minimum period of time to respond to FOO Orders.

Under this proposal, Floor Brokers will continue to allow a reasonable amount of time for Floor Participants to participate in a FOO Order. Additionally, the Exchange will establish and communicate via Regulatory Notice a minimum time that Floor Brokers must provide for Floor Participants to respond to FOO Orders, which amount of time must be between three seconds and five minutes. While other exchanges have adopted RFQ processes for FLEX Equity Options,[192] the Exchange has proposed to follow a similar approach for trading FLEX Equity Options as CBOE, which does not have a different open outcry process for FLEX Option transactions as compared to non-FLEX Option transactions, but does establish a different order announcement process that requires a reasonable amount of time for traders to respond to a FLEX Order.[193] In fact, the Exchange notes that CBOE recently changed its process for FLEX Option transactions from conducting a RFQ process to utilizing the same process as for a non-FLEX Option on its trading floor.[194] In its rule filing, CBOE stated that aligning the open outcry process for FLEX Options with that of non-FLEX Options may reduce confusion regarding how FLEX Orders may trade in open outcry and encourage the submission of FLEX Orders for execution.[195]

The Exchange similarly proposes to align its open outcry process for FLEX Equity Options with that of Non-FLEX Equity Options and to establish a minimum time for responses to FOO Orders. The Exchange also believes that, in addition to the required minimum time, it is appropriate to continue to have Options Exchange Officials determine whether Floor Participants have been provided a reasonable amount of time to respond to a FOO Order, which is consistent with the current procedure on the BOX Trading Floor for QOO Orders.[196] The Options Exchange Official will make this determination on a case-by-case basis based on the current market conditions and trading activity on the Trading Floor.[197] Options Exchange Officials are employees of the Exchange, reporting to the Chief Regulatory Officer, and are trained and qualified to enforce the Exchange's rules. The Exchange believes that Options Exchange Officials will ensure that FOO Orders follow the

qualifications in Exchange rules including net capital and financial requirements. *See* BOX Rule 8000 series.

[185] *See* NYSE Arca Rule 5.41–O(a).

[186] *See* proposed Rules 5055(l) and 7605(b).

[187] The Exchange notes that Floor Brokers are subject to registration requirements in Exchange rules including a Floor Broker examination and other factors deemed appropriate by the Exchange. *See* BOX Rule 7550.

[188] *See* NYSE Arca Rule 5.41–O(b).

[189] *See* proposed Rule 7605.

[190] *See* Securities Exchange Act Release No. 81292 (August 2, 2017), 82 FR 37144 (August 8, 2017) (Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Adopt Rules for an Open-Outcry Trading Floor) (''After careful review and consideration of the comments received, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.'').

[191] *See* proposed Rule 7605(e). The Exchange notes that in order to execute a FOO Order on the Trading Floor, it must be sent from a Floor Broker's system to the BOG. This requires that the Floor Broker adequately systematized the FOO Order.

[192] *See* NYSE Arca Rule 5.33–O *and* PHLX Rule Options 8, Section 34(c) *and* NYSE American Rule 904G.

[193] *See* CBOE Rule 5.72(d)(1) (providing that FLEX Traders have a reasonable amount of time (which amount of time must be between three seconds and five minutes) from the time a FLEX Trader requests a quote in a FLEX Option series or represents a FLEX Order (including announcing a crossing transaction pursuant to Rule 5.87) to respond with bids and offers). The Exchange notes that PHLX has also taken a similar approach to CBOE. *See* Securities Exchange Act Release No. 97658 (June 7, 2023), 88 FR 38562 (June 13, 2023) (SR–Phlx–2023–22) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Various Options 8 Rules).

[194] *See* Securities Exchange Act Release No. 87235 (October 4, 2019), 84 FR 54671 (October 10, 2019) (SR–CBOE–2019–084) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Operation of its Flexible Exchange Options (''FLEX Options'') Pilot Program Regarding Permissible Exercise Settlement Values for FLEX Index Options).

[195] *Id.*

[196] *See supra* note 147 (describing that the minimum time period, which must be between three seconds and five minutes, will be established by the Exchange and communicated via Regulatory Notice).

[197] The Exchange has a Minor Rule Violation Program (''MRVP'') pursuant to Rule 12140 (Imposition of Fines for Minor Rule Violations). The MRVP provides in part that improper vocalization of a trade may result in sanction. *See* BOX Rule 12140.

Exchange's rules, including that FLEX Market Makers are provided a reasonable amount of time to respond.[198] FLEX Market Makers that do not believe a reasonable amount of time to respond was provided may appeal any related determination of an Options Exchange Official to the Exchange's Chief Regulatory Officer.[199] Additionally, Floor Brokers have a general responsibility to use due diligence to cause orders to be executed at the best price or prices available to them in accordance with the Rules of the Exchange.[200] Further, it shall be considered conduct inconsistent with just and equitable principles of trade for any Floor Broker to intentionally disrupt the open outcry process.[201] Thus, the Exchange believes that the proposed process promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system because the proposed process provides substantially similar opportunities for Floor Participants to respond to FOO Orders as an RFQ process while maintaining consistency with existing Exchange processes for transactions on the Trading Floor. As noted herein, the proposed open outcry process is safeguarded by enforcement of the Exchange's rules by Options Exchange Officials. The Exchange again notes that, except for the inclusion of a minimum time period that a Floor Broker must allow Floor Participants to respond to FOO Orders, the proposed open outcry process for FOO Orders is similar to the current process for QOO Orders. Therefore, the Exchange believes the proposal will serve to avoid confusion and increase efficiency on the BOX Trading Floor.

Proposed Rule 7605(b) states that FOO Orders will be limited solely to the Trading Floor. The Exchange believes that limiting FOO Orders to the Trading Floor is consistent with the Act because, due to their unique and customizable nature, FLEX Equity Option transactions are well suited for a trading floor environment where the terms of such options can be effectively negotiated. The Exchange notes that other exchanges limit FLEX Equity Options trading to their respective trading floors.[202] To the extent the Exchange determines to adopt an electronic mechanism for the trading of FLEX Equity Options, it will file a subsequent proposed rule change with the Commission.

Proposed Rule 7605(c) provides that FLEX Market Makers must be registered under Rule 8000 and must be Floor Market Makers in good standing under Rule 8500, which protects investors and the public interest by ensuring that Market Makers are qualified to perform their duties, including filing an application, demonstrating knowledge of FLEX Equity Options, and providing additional information as the Exchange may consider necessary. The Exchange shall qualify at least three FLEX Market Makers in accordance with a FLEX-specific qualification process prescribed by the Exchange to provide competition for FOO Orders and reasonable opportunities for Participants to get quotes on FLEX Equity Options. The requirement to qualify at least three FLEX Market Makers is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system. Similarly to Floor Market Makers, FLEX Market Makers will also be subject to Rule 8510, including provisions for the course and conduct of dealings, class assignments, and option priority and parity, unless otherwise specified in proposed Rule 7605.[203] Specifically, Rule 8510 provides that transactions of a Floor Market Maker should constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, quoting obligations, restrictions on trading in certain circumstances, and restrictions on conduct related to the allocation of trades. These rules are designed to protect investors and the public interest and are therefore consistent with the Act.

Proposed Rule 7605(d) states that FOO Orders may be Complex FOO Orders or Multi-Leg FOO Orders, including as tied hedge orders, and that these orders may be crossed.[204] However, the priority provisions of Rules 7240(b)(2) and (3) do not apply to Complex FOO Orders or Multi-Leg FOO Orders because there will be no pre-established series and no electronic trading.[205] Further, only FLEX Equity Options on the same underlying and of the same exercise style (American or European) may be part of a Complex FOO Order or Multi-Leg FOO Order. Additionally, if a Non-FLEX Equity Option series is added intra-day for a component leg(s) of a Complex FOO Order or Multi-Leg FOO Order, the holder or writer of a FLEX Equity Option position in the component leg(s) resulting from such Complex FOO Order or Multi-Leg FOO Order would be permitted to close its position(s) pursuant to Rule 5055(f)(3). If a Non-FLEX Equity Option series is added for a component leg(s) of a Complex FOO Order or Multi-Leg FOO Order on a trading day after the position is established, the holder or writer of a FLEX Equity Option position in the component leg(s) resulting from such Complex FOO Order or Multi-Leg FOO Order would be required to execute separate FLEX and non-FLEX transactions consistent with the requirements of Rule 5055(f)(2) for each of the component leg(s) of the Complex FOO Order or Multi-Leg FOO Order to close its position(s). These proposed rules are designed to maintain order and structure, to detail the operation of Complex FOO Order and Multi-Leg FOO Order trading on the Trading Floor, and are similar to BOX's current Rule 7600(a)(4). The Exchange is proposing to use similar procedures for the trading of Complex QOO Orders, multi-leg QOO Orders, Complex FOO Orders, and Multi-Leg FOO Orders on the BOX Trading Floor because it will reduce investor confusion and increase efficiency. Additionally, offering order functionality such as Complex FOO Orders, Multi-Leg FOO Orders, and tied hedge orders provides investors with the flexibility and capability to meet their investment and hedging objectives. For these reasons, the Exchange believes that allowing Complex FOO Orders, Multi-Leg FOO Orders, and tied hedge orders removes impediments to and perfects the mechanism of a free and open market and a national market system and is therefore consistent with the Act. The Exchange notes that another exchange allows complex

[198] *See supra* note 147 (describing that the minimum time period, which must be between three seconds and five minutes, will be established by the Exchange and communicated via Regulatory Notice).

[199] *See* BOX Rule 7640(e).

[200] *See* BOX Rule 7570.

[201] *See* BOX IM–7580–4.

[202] *See* NYSE American Rule 904G *and* NYSE Arca Rule 5.33–O *and* PHLX Rule Options 8, Section 34(c).

[203] Pursuant to proposed Rule 7605(h), FLEX Market Makers have an obligation to quote a FLEX Equity Option in response to any request for quote by a Floor Broker or Options Exchange Official and must provide a two-sided market.

[204] *See* proposed Rule 7605(d), proposed IM–7605–2(d) and current IM–7600–2.

[205] BOX Rules 7240(b)(2) and (3) provide priority provisions for Complex Orders that take into consideration the prices of orders on the BOX Book and the Complex Order Book. Because there will be no BOX Book or Complex Book for Complex FOO Orders, there is no priority of orders on the BOX Book or Complex Book applicable to Complex FOO Orders. This is a distinction from Rule 7600(c), which, for purposes of QOO Orders, excludes the priority rules for Complex Orders contained in Rules 7240(b)(2) and (3) only from multi-leg QOO Orders that are not Complex Orders.

orders and tied hedge orders for FLEX Equity Options.[206]

Another provision designed to maintain order and structure on the Trading Floor is the Exchange's proposal that FOO Orders entrusted to a Floor Broker will be considered a Not Held Order, unless otherwise specified by a Floor Broker's client.[207] In particular, considering orders as Not Held will aid Floor Brokers in their duties on the Trading Floor because it provides clarity to both Floor Brokers and their clients regarding how each order is to be handled. Additionally, this rule is consistent with the current handling of QOO Orders on the BOX Trading Floor which will avoid confusion, increase efficiency, and ensure consistent treatment of orders on the Trading Floor. The Exchange further believes that this proposed rule protects investors and the public interest by clarifying order handling duties and expectations between Floor Brokers and Participants.

Additionally, the requirement, in proposed IM–7605–2, that Participants disclose Public Customer Orders subject to crossing with an order that is not a Public Customer Order and all securities that are components of the Public Customer Order is designed to maintain order and structure on the Trading Floor.[208] The rule also clarifies that Complex FOO Orders, Multi-Leg FOO Orders, or tied hedge orders on opposite sides of the market may be crossed subject to limitations.[209] The Exchange believes that providing clarity will remove impediments to and perfect the mechanism of a free and open market and a national market system and that full disclosure will prevent fraudulent and manipulative acts and practices by providing complete information to Participants which may prompt them to improve upon the Floor Broker's proposed crossing price. Additionally, rules governing how long a response is in effect and the effect of an established market on priority create order and structure on the Trading Floor.[210] The Exchange believes that such order and structure protects investors and the public and notes that the same rules apply to QOO Orders.[211]

Proposed Rule 7605(e) is designed to aid Floor Brokers in their duties and to maintain structure and order on the Trading Floor. For example, by providing that a FOO Order is not executed until it is processed by the Trading Host,[212] the Exchange is providing an accurate timestamp of when the order was actually executed by the Floor Broker and not just when it was submitted to the Exchange.[213] Additionally, the process whereby Floor Brokers are required to systematize orders in their systems is designed to provide a complete and accurate audit trail and minimize the occurrence of disputes and regulatory violations.[214] After systematization, a Floor Broker's system will then be required to send an order to the BOG. Further, Floor Brokers are responsible for providing the correct allocations of the initiating side of the FOO Order to an Options Exchange Official or his or her designee, if necessary, after order execution.[215] Floor Brokers will also be required to ascertain that at least one FLEX Market Maker is present in the Crowd Area prior to announcing a FOO Order for execution, which is designed to increase competition for FLEX Equity Option interest on the Trading Floor.[216] The Exchange notes that these rules are substantially similar to those currently in place for QOO Orders on the BOX Trading Floor.[217] The Exchange believes that having substantially similar rules for all orders on the BOX Trading Floor will avoid any potential confusion and increase efficiency on the BOX Trading Floor, which will further the objectives and goals of the Act by helping to prevent fraudulent and manipulative acts and practices, promoting just and equitable principles of trade, and removing impediments to and perfecting the mechanisms of a free and open market and a national market system.

FLEX Market Maker Requirements

The Exchange believes that the proposed rules applicable to FLEX Market Makers are reasonable and will foster cooperation and coordination with persons engaged in facilitating transactions in securities, promote just and equitable principles of trade, and remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, proposed Rules 7605(f), (g) and (h) state: (1) that the minimum size for FLEX Equity Option transactions and quotations shall be 1 contract; (2) that there are no maximum bid to ask spread differentials for FLEX Equity Option quotes; and (3) that FLEX Market Makers have an obligation to quote a FLEX Equity Option in response to any request for quote by a Floor Broker or Options Exchange Official and must provide a two-sided market.[218] The Exchange believes that these rules reflect the unique nature of FLEX Equity Option trading which occurs relatively infrequently and with option premiums that can vary widely because any exercise price (in minimum increments of $0.01) and any expiration date on a business day within 15 years of trade date may be traded.[219] The Exchange believes that these requirements strike a balance between the complexity of quoting customized options and the need to ensure that Floor Brokers are able to get a quote for any FLEX Equity Option selected by their clients. Further, these requirements remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that there is a procedure in place to receive a two-sided quote for each FOO Order brought to the BOX Trading Floor. The Exchange notes that these requirements are similar to those currently in place at BOX and another options exchange.[220]

Priority of Orders and Allocation of Trades

The Exchange believes that the proposed rule to provide a Floor Broker with a guarantee or entitlement to cross

[206] *See* CBOE Rules 5.70(b) and 1.1 (definition of, ''Complex Order'') (providing that the term ''complex order'' means an order involving the concurrent execution of two or more different series in the same underlying security or index (the ''legs'' or ''components'' of the complex order), for the same account, occurring at or near the same time and for the purpose of executing a particular investment strategy with no more than the applicable number of legs (which number CBOE determines on a class-by-class basis)). The Exchange notes that the term ''complex order'' on CBOE includes both Complex Orders and Multi-Leg Orders, as those terms are defined on BOX. *See also* CBOE Rule 5.87 Interpretations and Policies .07 *and* Securities Exchange Act Release No. 93122 (September 24, 2021), 86 FR 54269 (September 30, 2021) (Order Granting Approval of SR–CBOE–2021–041).

[207] *See* proposed Rule 7605(l). *See also* NYSE Arca Rules 5.34–O and 6.62–O(f).

[208] *See* proposed IM–7605–2(a) and (e).

[209] *See* proposed IM–7605(d).

[210] *See* proposed IM–7600–2(b) and (c).

[211] *See* BOX IM–7600–1. The Exchanges notes that the portion of IM–7600–1 that references BOX Book Priority is not included in proposed IM–7605–2 because, as discussed, the BOX Book is not available for transactions in FLEX Equity Options.

[212] *See* proposed Rule 7605(e)(2).

[213] FOO Orders will be submitted by Floor Brokers to the BOG, which is a component of the Trading Host. A Floor Broker will have a connection to the BOG giving the Floor Broker the ability to submit FOO Orders to the Trading Host.

[214] In order to execute a FOO Order on the Trading Floor, it must be sent from a Floor Broker's system to the BOG. This requires that the Floor Broker adequately systematized the FOO Order prior to announcing the FOO Order to the trading crowd. *See* proposed Rule 7605(b).

[215] *See* proposed Rule 7605(j).

[216] *See* proposed Rule 7605(e)(3).

[217] *See* BOX Rule 7600(d)(4). *See also* BOX Rule 7580(a).

[218] *See* proposed Rules 7605(f)–(h).

[219] *See* proposed Rule 5055(e).

[220] *See* NYSE Arca Rules 5.32–O(b)(7) and 5.37–O(d) *and* BOX Rule 8510(c)(2).

40% of the remaining contracts of the original order, after all bids or offers at better prices are filled, with other orders that he is holding,[221] is reasonable and is consistent with the Act. Specifically, proposed Rules 7605(i) and (k) will reward Floor Brokers who bring orders of an eligible size determined by the Exchange but not less than 50 contracts to the Exchange by guaranteeing them the ability to cross 40% of the remaining contracts of those orders after any better priced interest has been filled. The Exchange believes that establishing an eligible size for such guarantee for at least 50 contracts will encourage larger negotiated transactions while providing Floor Participants with a reasonable opportunity to participate. The Exchange notes that other options exchanges provide a guarantee for FLEX Equity Options on their trading floors.[222] Additionally, the Exchange currently provides a similar guarantee with respect to QOO Orders executed on the BOX Trading Floor.[223] Allowing a similar guarantee for QOO Orders and FOO Orders is intended to maintain consistency and increase efficiency for the different order types offered on the BOX Trading Floor. The Exchange believes that allowing a guarantee will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system by encouraging Floor Brokers to bring orders to the Trading Floor while maintaining the ability of other Floor Participants to participate in floor transactions and compete for such orders.

The Exchange believes that, after the allocation of any bids and offers at better prices and any eligible Floor Broker guarantee, allocating FLEX Equity Option trades between Floor Participants pursuant to the priority provisions of Rule 7610 is reasonable and promotes just and equitable principles of trade. The Exchange notes that, pursuant to Rule 7610, bids and offers are considered in order of the highest bid/lowest offer and priority shall be afforded to such bids and offers in the sequence in which they are made. In situations where the sequence cannot be determined, Floor Participants are treated on an equal basis and receive an equal number of contracts to the extent mathematically possible.[224] The Exchange believes that Rule 7610 is designed to be a fair and impartial method of trade allocation, to promote competition between Floor Participants, and to encourage quick responses of bids and offers at the best available prices. Additionally, consistent and objective trade allocation on the BOX Trading Floor may encourage FLEX Market Makers to provide liquidity which may improve the quality of responses to FOO Orders. The Exchange notes that Rule 7610 is currently applicable to QOO Orders on the BOX Trading Floor[225] and that other exchanges use a similar procedure.[226] Further, if interest remains after Floor Participants that responded with interest receive their allocation, the remaining quantity of the initiating side of the FOO Order will be allocated to the executing Floor Broker. This allocation is designed to further incentivize Floor Brokers after first allowing Floor Participants an opportunity to participate in the trade.

The Exchange believes that the proposed rule change to add certain proposed rules as eligible for a minor rule fine disposition under its MRVP will assist the Exchange in preventing fraudulent and manipulative acts and practices and promoting just and equitable principles of trade, and will serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange believes violations of proposed Rules 7605 and 7605(h) to be minor in nature and therefore proposes to add them to the list of rules in Rule 12140(e) eligible for a minor rule fine disposition. Further, the Exchange will be able to carry out its regulatory responsibility more quickly and efficiently by incorporating these violations into the MRVP. The Exchange notes that these violations are consistent with violations at other options exchanges.[227] The Exchange also notes that the proposed additional violations are similar to minor rule violations already designated in the Exchange's MRVP for activities related to the Trading Floor.

The Exchange believes that amending Rule 7620 and IM–7620–1 to exclude FLEX Equity Options is consistent with proposed Rule 5055(c) which provides that Rule 7620 shall not apply to transactions in FLEX Equity Options. The amendment is designed to provide clarity by adding FLEX Equity Options to the exclusion list in Rule 7620 and IM–7620–1 to clarify that neither

[221] *See* proposed Rules 7605(i) and (k).

[222] *See* NYSE American Rule 904G(e)(iii) (providing that ''[i]n the case of FLEX Equity Options only and notwithstanding [Rules 904G(e)(i) and (ii)], whenever the Submitting Member has indicated an intention to cross or act as principal on the trade and has matched or improved the BBO during the BBO Improvement Interval, the Submitting Member will be permitted to execute the contra side of the trade that is the subject of the Request for Quotes, to the extent of at least 40% of the trade'') *and* PHLX Rule Options 8, Section 34(c)(5) (''In the case of FLEX equity options only and notwithstanding [Section 34(c)(4)], whenever the Requesting Member has indicated an intention to cross or act as principal on the trade and has matched or improved the BBO during the BBO Improvement Interval, the Requesting Member will be permitted to execute the contra side of the trade that is the subject of the RFQs, to the extent of at least 40% of the trade, provided the order is a Public Customer order or an order respecting the Requesting Member's firm proprietary account.''). *See also* NYSE American Rule 904G(f) (''A Submitting Member may effect crossing transactions only on public customer orders or orders respecting the Submitting Member's firm proprietary account.''). The Exchange notes differences between the guarantees on NYSE American and PHLX and the guarantee on BOX. First, neither PHLX nor NYSE American set an eligible order size and BOX proposes an eligible order size, determined by the Exchange, of 50 or more contracts. Further, both NYSE American and PHLX require the contra side of a crossing order subject to the 40% guaranteed allocation to be either a Public Customer order or an order respecting the submitting firm's proprietary account whereas BOX does not impose such limitations. The Exchange believes that not limiting contra side participant types is consistent with the Act because it is consistent with current BOX rules for QOO Orders and removes impediments to and perfects the mechanism of a free and open market and a national market system by allowing more participant types on the contra side of crossing orders which may increase the number of eligible contra-side participants and may result in more transactions on the BOX Trading Floor.

[223] *See* BOX Rule 7600(f).

[224] *See* BOX Rule 7610.

[225] The Exchange notes that split-price priority applicable to QOO Orders is not applicable to FOO Orders. Split-price priority allows a Participant effecting a trade that betters the market to have priority on the balance of that trade at the next pricing increment, even if there are orders in the book at the same price. BOX Book will not be applicable to FOO Orders and thus there is no need for split-price priority. Accordingly, the Exchange does not propose to adopt provisions analogous to Rule 7600(i), IM–7600–6, or IM–7600–7 in proposed Rule 7605.

[226] CBOE Rule 5.72(d)(2) provides that FLEX Orders are allocated only to responses from the trading crowd pursuant to Rule 5.85(a)(1) and (2)(C). Rule 5.85(a)(1) provides that bids and offers with the highest bid and lowest offer have priority and (2)(C) establishes priority between in-crowd market participants at the same price. The Exchange believes that these rules are similar to BOX Rule 7610 and are appropriate for FLEX Equity Option trading. *But see* NYSE Arca Rules 5.30–O(d) (providing that priority and order allocation procedures for open outcry do not apply to FLEX Equity Options) and 5.33–O (providing a RFQ procedure for FLEX transactions including priority provisions that provide priority in certain instances to FLEX Qualified Market Makers and limited priority to the submitting firm if it has matched or improved the market on NYSE Arca). As discussed herein, the Exchange does not believe that a RFQ procedure is necessary for FLEX Equity Option trading on BOX. Similarly, CBOE does not have a specific open outcry procedure for FLEX transactions. *See* CBOE Rule 5.72(d) (providing that a submitting FLEX Trader may represent and execute a FLEX Order on the Exchange's trading floor in the same manner as a Trading Permit Holder may represent and execute an order for a non-FLEX Option).

[227] *See, e.g.,* NYSE Arca Rule 10.12 *and* CBOE Rule 13.15.

Cabinet orders nor Sub-Penny Cabinet orders will be available for FLEX Equity Options. The Exchange believes further that this amendment will protect investors and the public interest by removing potential ambiguity between Rule 7620 and proposed Rules 5055 and 7605 and is therefore consistent with the Act.

Lastly, the amendment of Rule 100(b)(3) to remove specific rule references is designed to clarify that all Exchange options transactions shall be executed automatically by the Trading Host as provided in applicable Exchange Rules. The Exchange believes that this amendment will protect investors and the public interest by removing potential ambiguity created by a list of specific rule references that may not be complete and is therefore consistent with the Act.

The Exchange reiterates that FLEX Equity Options are currently traded on four other options exchanges currently conducting options trading.[228] Therefore, the proposed rules perfect the mechanism of a free and open market and protect investors and the public interest by establishing FLEX Equity Options and FOO Orders on the BOX Trading Floor, which would provide market participants an additional execution venue to provide and seek liquidity for their customized orders, thereby increasing the opportunities to execute such orders to the benefit of all market participants.

Section 11(a) Analysis

The proposed rule change is consistent with Section 11(a) of the Act and the rules thereunder. Section 11(a)(1) of the Act[229] prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises investment discretion (collectively, ''covered accounts''), unless an exception applies. Sections 11(a)(1)(A)–(I) of the Act[230] and the rules thereunder provide certain exemptions from this general prohibition, including the exemption set forth in Rule 11a2–2(T) under the Act.[231] The proposed rule change would not limit in any way the obligation of a Participant, while acting as a Floor Broker or otherwise, to comply with Section 11(a) of the Act or the rules thereunder.[232]

As described above, the Exchange proposes to apply existing IM–7600–5 to FLEX Equity Options,[233] which states that a Participant shall not utilize the Trading Floor to effect any transaction for a covered account by relying on the G Exemption.[234] Because no covered account transactions utilizing the Trading Floor may rely on the G Exemption, Participants utilizing the Trading Floor to effect transactions for covered accounts may only rely upon other exemptions to the Section 11(a)(1) prohibition.[235]

In addition to statutory exemptions, Rule 11a2–2(T) under the Act,[236] known as the ''effect versus execute'' rule, provides Participants with an exemption from the Section 11(a)(1) prohibition. Rule 11a2–2(T) permits a Participant, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated Participant, acting as a Floor Broker, to execute transactions on the Exchange. To comply with Rule 11a2–2(T)'s conditions, the initiating Participant: (i) must transmit the order from off the Trading Floor; (ii) may not participate in the execution of the transaction once the order has been transmitted to the Participant performing the execution; [237] (iii) may not be affiliated with the executing Participant; and (iv) with respect to an account over which the Participant or an associated person has investment discretion, neither the Participant nor an associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule. For the reasons set forth below, the Exchange believes that Participants utilizing FOO Orders on the Trading Floor may comply with the conditions of Rule 11a2–2(T) under the Act.[238]

Rule 11a2–2(T)'s first requirement is that orders for covered accounts be transmitted from off the Trading Floor. The Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.[239] Floor Brokers will receive matched or unmatched orders either via telephone, or electronically to the Floor Broker's order entry mechanism. A Participant could submit an order for a covered account from off the Trading Floor to an unaffiliated Floor Broker for representation on the Trading Floor and use the ''effect versus execute'' exemption (assuming the other conditions of the rule are satisfied). A Participant that submits a FOO Order for a covered account utilizing the Trading Floor, and who wishes to rely on the ''effect versus execute'' exemption, must submit the order from off the Trading Floor.

Second, Rule 11a2–2(T) requires that neither the initiating Participant nor an associated person of the initiating Participant participate in the execution of the transaction at any time after the order for the transaction has been transmitted. At no time following the submission of a FOO Order utilizing the Trading Floor will the submitting

[228] FLEX options are currently traded on CBOE, NYSE American, NYSE Arca, and PHLX.

[229] 15 U.S.C. 78k(a)(1).

[230] 15 U.S.C. 78k(a)(1)(A)–(I).

[231] 17 CFR 240.11a2–2(T).

[232] A Floor Broker may utilize the Trading Floor to effect a transaction for a covered account only pursuant to Rule 7540 and for purposes of liquidating error positions.

[233] *See* proposed Rule 5055(c) (stating that IM–7600–5 shall apply to FLEX Equity Options).

[234] 15 U.S.C. 78k(a)(1)(G). Section 11(a)(1)(G) of the Act provides an exemption from the general prohibition in Section 11(a)(1) of the Act for any transaction for a member's own account, provided that: (i) such member is primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities to customers, and acting as broker, or any one or more of such activities, and whose gross income normally is derived principally from such business and related activities; and (ii) such transaction is effected in compliance with rules of the Commission which, as a minimum, assure that the transaction is not inconsistent with the maintenance of fair and orderly markets and yields priority, parity, and precedence in execution to orders for the account of persons who are not members or associated with members of the exchange. *See also* 17 CFR 240.11a1–1(T) (setting forth requirements for relying on the G Exemption).

[235] Section 11(a) of the Act and the rules thereunder provide other exemptions to the Section 11(a)(1) prohibition, including, for example, the ''effect versus execute'' exemption (as discussed below), the exemption for transactions by a dealer acting in the capacity of a market maker, and the exemption for transactions to offset a transaction made in error.

[236] 17 CFR 240.11a2–2(T).

[237] This prohibition also applies to associated persons of the initiating Participant. The Participant may, however, participate in clearing and settling the transaction.

[238] The Commission has previously found that the all-electronic transactions effected through the Trading Host are consistent with the requirements of Section 11(a) of the Act and Rule 11a2–2(T) thereunder. *See, e.g.,* Securities Exchange Act Release Nos. 72848 (August 14, 2014), 79 FR 49361 (August 20, 2014) (SR–BOX–2014–16) (order approving the Exchange's proposal to adopt new trade allocation algorithms for matching trades at the conclusion of the PIP and the COPIP); and 66871 (April 27, 2012), 77 FR 26323 (May 3, 2012) (order granting the Exchange's application for registration as a national securities exchange). The Commission has also found that transactions effected by Participants through the Trading Floor are consistent with the requirements of Section 11(a) of the Act and Rule 11a2–2(T) thereunder. *See* Securities Exchange Act Release No. 81292 (August 2, 2017), 82 FR 37144 (August 8, 2017) (SR–BOX–2016–48) (order approving the Exchange's proposal to adopt rules for an open-outcry Trading Floor).

[239] *See, e.g.,* Securities Exchange Act Release Nos. 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979); and 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (''1978 Release'').

Participant or any associated person of such Participant acquire control or influence over the result or timing of the order's execution.[240] In addition, once a Floor Broker submits a FOO order to the BOG for execution, neither the Floor Broker nor anyone else may alter the terms of the order.[241] Moreover, when a Floor Broker submits a FOO Order for execution, the order will be executed in accordance with Exchange rules and based on market conditions of when the order is received by the Trading Host.[242] Accordingly, a Participant and its associated persons would not participate in the execution of a FOO Order submitted for execution utilizing the Trading Floor.

Third, Rule 11a2–2(T) requires that the order be executed by a Participant that is not associated with the Participant initiating the order. To rely on the exemption in Rule 11a2–2(T), a Participant could submit a FOO Order for a covered account from off the Trading Floor to an unaffiliated Floor Broker. A Participant relying on Rule 11a2–2(T) could not submit a FOO Order for a covered account to its ''house'' Floor Broker on the Trading Floor for execution. If a Participant sends its FOO Order from off the floor to an affiliated Participant that is on the floor, who then directs the order into the Trading Host for execution, the off-floor Participant may not rely on the exemption in Rule 11a2–2(T).

Fourth, in the case of a transaction effected for an account with respect to which the initiating Participant or an associated person thereof exercises investment discretion, neither the initiating Participant nor any associated person may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2–2(T) thereunder.[243] Participants and their associated persons trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule's exemption.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that other exchanges currently offer FLEX option trading on their respective trading floors. The Exchange believes that the proposed rules will allow BOX to compete with these other exchanges and provide an additional execution venue for these transactions for market participants. Thus, the proposed rules will promote intermarket competition by increasing the number of exchanges where FLEX Equity Options can be traded. The proposal also promotes intermarket competition by providing another alternative, exchange markets, to bilateral OTC trading of options with flexible terms. Exchange markets, in contrast with bilateral OTC trading, are centralized, transparent, and have the guarantee of the OCC for options traded.

Additionally, the Exchange believes that this proposal does not impose an undue burden on intramarket competition because Participants are not required to trade FLEX Equity Options and those that choose to trade FLEX Equity Options may do so on the same terms and pursuant to the same rules. To the extent that the proposed rules differ for FLEX Market Makers and Floor Brokers, these differences are based on the unique roles and obligations of Floor Brokers (*e.g.,* systemization, announcement, and allocation of orders) and FLEX Market Makers (*e.g.,* quoting in response to orders). Additionally, any burden on intramarket competition imposed by providing Floor Brokers with a guaranteed trade allocation on certain trades is mitigated by the facts that FLEX Market Maker quotes at better prices are allocated first and FLEX Market Makers may still participate after the Floor Broker's guarantee at the same price. Further, the Exchange notes that Floor Brokers source liquidity for the contra side of a two-sided order that may otherwise be unavailable on the Trading Floor due to the size and complexity of the order. The proposed guarantee provides greater opportunity for the contra-side to participate in the trade which facilitates Floor Brokers in their generation of contra-side interest and increases the likelihood of securing sufficient contra-side interest. FLEX Market Makers do not construct two-sided orders and thus are not provided a guarantee. However, FLEX Market Makers may benefit from the Floor Broker guarantee as the guarantee is designed to incentivize Floor Brokers to bring their FLEX orders to the BOX Trading Floor where FLEX Market Makers have the ability to interact with these orders. The Exchange also does not believe the proposed rule change imposes any undue burden on intramarket competition between Participants that trade FLEX Equity Options and those that trade Non-FLEX Equity Options. As described above, the Exchange has proposed to use substantially similar procedures for the trading of QOO Orders and FOO Orders, with any modifications designed to reflect the unique nature of customizable FLEX Equity Options. The Exchange notes further that proposed Rule 5055(f) would prevent any FLEX Equity Options and Non-FLEX Equity Options with the same terms from trading concurrently on the Exchange, with a narrow exception for closing only orders.[244]

Lastly, the proposed MRVP changes are not intended to address competitive issues but rather are concerned solely with updating the Exchange's MRVP in connection with the proposed rules eligible for a minor rule fine disposition. Further, the proposal relates to the Exchange's role and responsibilities as a self-regulatory organization and the manner in which it disciplines its Participants and associated persons for violations of its rules. The Exchange believes the proposed MRVP changes, overall, will strengthen the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct.

Based on the foregoing, the Exchange believes that the proposed rule changes discussed herein do not impose any burden on competition not necessary or

[240] A Participant may cancel or modify the FOO Order, or modify the instructions for executing the FOO Order. The Commission has stated that the nonparticipation requirement is satisfied under such circumstances so long as the modifications or cancellations are also transmitted from off the floor. *See* 1978 Release, *supra* note 239, at 11547 (stating that the ''non-participation requirement does not prevent initiating members from canceling of modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor'').

[241] *See* proposed Rule 7600(c).

[242] *See* proposed Rule 7600(a).

[243] In addition, Rule 11a2–2(T)(d) requires that, if a Participant or associated person is authorized by written contract to retain compensation in connection with effecting transactions for covered accounts over which the Participant or associated person thereof exercises investment discretion, the Participant or associated person must furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the Participant or any associated person thereof in connection with effecting transactions for the account during the period covered by the statement. *See* 17 CFR 240.11a2–2(T)(d). *See also* 1978 Release, *supra* note 239, at 11548 (stating that ''[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests'').

[244] *See supra* note 48.

appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–BOX–2023–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–BOX–2023–20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–BOX–2023–20 and should be submitted on or before October 10, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[245]

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98377; File No. SR–Phlx–2023–43]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 4, Rules 3301A and 3301B

September 13, 2023.

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 September 5, 2023, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Equity 4, Rules 3301A and 3301B.[3]

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes amendments to its Rules to address inconsistencies between the Rule Text and observed System behavior as well as behavior unaccounted for in the existing Rule text, as follows. This proposal is similar to a rule change filed by the Exchange's sister exchange, the Nasdaq Stock Market, LLC, on August 16, 2023.[4]

First Rule Change

The first proposed rule change addresses an edge case of inconsistency between the Rule text and System behavior, this time regarding Market Maker Peg Orders.[5] Rule 3301A states that, if after entry of a Market Maker Peg

[245] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] References herein to Phlx Rules in the 3000 Series shall mean Rules in Phlx Equity 4.

[4] *See* Securities Exchange Act Release No. 34–98225 (August 16, 2023), 88 FR 60255 (August 31, 2023) (SR–NASDAQ–2023–030). The Exchange's proposal differs from that of Nasdaq in that it excludes changes to Order Types and Attributes that are inapplicable to the Exchange due to its absence of opening and closing crosses.

[5] Pursuant to Rule 3301B(b)(5)(A), a ''Market Maker Peg Order'' is an Order Type designed to allow a Market Maker to maintain a continuous two-sided quotation at a displayed price that is compliant with the quotation requirements for Market Makers set forth in Equity 2, Section 5(a)(2). The displayed price of the Market Maker Peg Order is set with reference to a ''Reference Price'' in order to keep the displayed price of the Market Maker Peg Order within a bounded price range. The Reference Price for a Market Maker Peg Order to buy (sell) is the then-current National Best Bid (National Best Offer), or if no such National Best Bid or National Best Offer, the most recent reported last-sale eligible trade from the responsible single plan processor for that day, or if none, the previous closing price of the security as adjusted to reflect any corporate actions (*e.g.,* dividends or stock splits) in the security.

Order that has a displayed price based on the NBBO, and the NBBO subsequently shifts such that the displayed price of the Market Maker Peg Order to buy (sell) is equal to or greater (less) than the National Best Bid (or National Best Offer), the Market Maker Peg Order will not be subsequently repriced until a new reference price is established that is more aggressive than the displayed price of the Market Maker Peg Order. System testing revealed that the System does not reprice Market Maker Peg Orders in this scenario, but only if such Orders are in round lot sizes, whereas it does reprice such Orders when they are in odd lot sizes. After evaluation, the Exchange determined to maintain this System behavior and amend the Rule to conform to it. The Exchange proposes to do so because the existing language proscribing repricing only makes sense within the context of round lot Market Maker Peg Orders, which this scenario would set a new NBBO and when they do so, cannot reprice with respect to the reference price they just set. By contrast, odd lot Market Maker Peg Orders are ineligible to set the NBBO, and do not have this same problem. Accordingly, the Exchange proposes to amend Rule 3301A to clarify that the prohibition against repricing only applies to Market Maker Peg Orders in round lot sizes.

Second Rule Change

The second proposal would amend Equity 4, Rule 3301B(h), to correct its description of behavior of the Non-Displayed portion of Orders with the Reserve Attribute.[6] Rule 3301B(h) provides as follows, in pertinent part:

> In all cases, if the remaining size of the Non-Displayed Order is less than the fixed or random amount stipulated by the Participant, the full remaining size of the Non-Displayed Order will be displayed and the Non-Displayed Order will be removed.

As stated, this Rule requires that the entire Non-Displayed portion of a Reserve Order will become Displayed the moment the size of the Non-Displayed portion drops below an amount that a participant designates or has directed the System to randomly designate (the ''Max Floor''). In conducting a test of System behavior, however, the Exchange observed that the System does not, in fact, operate in this manner. Instead, the System maintains the Non-Displayed portion of a Reserve Order as such when the size of that Non-Displayed Portion drops below the Max Floor. Rather than correct the current System behavior to match the Rule, the Exchange determined that users of Reserve Orders prefer the current System behavior because it is true to the underlying intent of Reserve functionality, which is to help limit the price impacts of trading large quantities of shares by displaying only small portions of such shares at a given time, while hiding the rest in reserve. Thus, the Exchange proposes to address the inconsistency between the Rule text and the behavior of the System by deleting the aforementioned language from Rule 3301B(h). Going forward, the System will not convert to a Displayed Order the Non-Displayed remainder of a Reserve Order that falls below the Max Floor, and the System will not remove it.

2. Statutory Basis

The Exchange believes that its proposals are consistent with section 6(b) of the Act,[7] in general, and further the objectives of section 6(b)(5) of the Act,[8] in particular, in that they are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

It is consistent with the Act to amend the Exchange's Rules to address inconsistencies between the Rule text and observed System behavior, including by adapting the Rule text to codify observed System behavior, where the observed behavior is more consistent with the underlying purpose of an Order Attribute than is the Rule text (maintaining the Non-Displayed status of a reserve portion of a Reserve Order that drops below the Max Floor) and where System behavior reflects a nuance not contemplated by the existing Rules (clarifying that the prohibition against repricing Market Maker Peg Orders that have prices equal to or better than the NBBO only applies to round lot Market Maker Peg Orders, and not to odd lots).

Finally, it is consistent with the Act to amend Rule 3301B(h) to delete qualifying language which erroneously suggests that Non-Displayed Orders with Reserve are only non-displayed when such Orders have a TIF of IOC. Investors and the public have an interest in the Exchange maintaining a Rulebook that is accurate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposals merely address inconsistencies between Rule text and System behavior. The Exchange neither intends nor perceives that these rule changes will have any impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)(iii) thereunder.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the

[6] ''Reserve Size'' is, in part, an Order Attribute that ''permits a Participant to stipulate that an Order Type that is displayed may have its displayed size replenished from additional non-displayed size.'' Rule 3301B(h). The Rule also states that Reserve ''is not available for Orders that are not displayed; provided, however, that if a Participant enters Reserve Size for a Non-Displayed Order with a Time-in-Force of IOC, the full size of the Order, including Reserve Size, will be processed as a Non-Displayed Order.'' *Id.* In addition to the change proposed above, the Exchange proposes to eliminate from the immediately preceding language ''with a Time-in-Force of IOC'' because the Exchange does not assess a reason to include this qualifier. The statement that a Non-Displayed Order with Reserve will be entirely non-displayed is true even as to Non-Displayed Orders with other TIFs.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 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, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B) [13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–Phlx–2023–43 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–Phlx–2023–43. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–Phlx–2023–43 and should be submitted on or before October 10, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–20169 Filed 9–18–23; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Annual Meeting of the Regional Small Business Regulatory Fairness Boards

AGENCY: Office of the National Ombudsman, U.S. Small Business Administration (SBA).

ACTION: Notice of open meeting of the Regional Small Business Regulatory Fairness Boards.

SUMMARY: The SBA, Office of the National Ombudsman, is issuing this notice to announce the location, date, time and agenda for the annual board meeting of the ten Regional Small Business Regulatory Fairness Boards. The meeting is open to the public.

DATES: The meeting will be held on Thursday, September 28, 2023, from 9:30 a.m. to 4 p.m. EDT, and Friday, September 29, 2023, from 9:30 a.m. to 4 p.m. EDT.

ADDRESSES: The meeting will be held virtually through Microsoft Teams.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public; however advance notice of attendance is requested. Anyone wishing to attend must contact John Kelly, Case Management Specialist, by September 21, 2023. If you need accommodations because of a disability, translation services, or require additional information, please contact John Kelly, by phone (888) 734–3247, by fax (202) 481–5719 or email *ombudsman@sba.gov.*

For more information on the Office of the National Ombudsman, please visit our website at *www.sba.gov/ombudsman.*

SUPPLEMENTARY INFORMATION: Pursuant to the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121), sec. 222, SBA announces the meeting of the Regional Small Business Regulatory Fairness Boards (Regional Regulatory Fairness Boards). The Regional Regulatory Fairness Boards are tasked to advise the National Ombudsman on matters of concern to small businesses relating to enforcement activities of agencies and to report on substantiated instances of excessive enforcement actions against small business concerns, including any findings or recommendations of the Board as to agency enforcement practice or policy.

The purpose of the meeting is to discuss the following topics related to the Regional Regulatory Fairness Boards:

—Introduction of the Regional Regulatory Fairness Boards and the staff of the Office of the National Ombudsman
—Facilitated discussion of ongoing regulatory issues for small business
—Annual Report to Congress Update
—Office of Advocacy regulatory review
—SBA update and future outreach planning

Dated: September 13, 2023.

Andrienne Johnson,

SBA Committee Management Officer.

[FR Doc. 2023–20166 Filed 9–18–23; 8:45 am]

BILLING CODE 8026–09–P

TENNESSEE VALLEY AUTHORITY

Spring Valley II Solar Project

AGENCY: Tennessee Valley Authority.

ACTION: Notice of intent.

SUMMARY: The Tennessee Valley Authority (TVA) intends to prepare an environmental impact statement (EIS) for the purchase of electricity generated by the proposed Spring Valley II Solar Project in Colbert County, Alabama. The EIS will assess the potential environmental effects of constructing, operating, and maintaining the proposed 178-megawatt (MW) alternating current (AC) solar facility that would occupy approximately 943 acres of the 1,629-acre project study area. Public comments are invited concerning the scope of the EIS, alternatives being considered, and environmental issues that should be addressed as a part of this EIS. TVA is also requesting data, information, and analysis relevant to the proposed action from the public; affected federal, state, tribal, and local governments, agencies, and offices; the scientific community; industry; or any other interested party.

DATES: The public scoping period begins with the publication of this Notice of Intent in the **Federal Register**. To ensure consideration, comments must be postmarked, emailed, or submitted online no later than October 19, 2023.

ADDRESSES: Written comments should be sent to J. Taylor Johnson, NEPA Compliance Specialist, Tennessee Valley Authority, 1101 Market Street, BR 2C–C, Chattanooga, Tennessee 37402. Comments may be submitted online at: *https://www.tva.gov/nepa,* or by email to *nepa@tva.gov.* Please note that TVA encourages comments be submitted electronically.

FOR FURTHER INFORMATION CONTACT: J. Taylor Johnson by email at *jtcates@tva.gov,* by phone at (423) 751–2732, or by mail at the address above.

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the Council on Environmental Quality's Regulations (40 CFR parts 1500 to 1508) and TVA's procedures for implementing the National Environmental Policy Act (NEPA) (18 CFR 1318). TVA is an agency and instrumentality of the United States, established by an act of Congress in 1933, to foster the social and economic welfare of the people of the Tennessee Valley region and to promote the proper use and conservation of the region's natural resources. One component of this mission is the generation, transmission, and sale of reliable and affordable electric energy.

Background

In June 2019, TVA completed the final 2019 Integrated Resource Plan (IRP) and associated EIS. The IRP is a comprehensive study of how TVA will meet the demand for electricity in its service territory over the next 20 years. The 2019 IRP recommends solar expansion and anticipates growth in all scenarios analyzed, with most scenarios anticipating 5,000–8,000 MW and one anticipating up to 14,000 MW by 2038. In 2022, customer demand for cleaner energy prompted TVA to release a Carbon-Free Request for Proposal (RFP) for renewable energy resources.

As a result of the RFP, TVA is considering entering into a Power Purchase Agreement (PPA) with Spring Valley Solar, LLC to purchase 178 MW AC of power generated by the proposed Spring Valley II Solar Project. The proposed solar facility would occupy approximately 943 acres of the 1,629-acre project study area, which is located entirely in Colbert County, Alabama. The land surplus is to accommodate relocating the arrays if any areas need to be avoided as a result of the environmental review. The project site is located south of the city limits of Tuscumbia, Alabama, near the City of Muscle Shoals and Florence, Alabama, along US Highway 43. The project site is a mixture of agricultural fields and forested areas. A map showing the project site is available at *https://www.tva.gov/nepa.*

Preliminary Proposed Action and Alternatives

In addition to a No Action Alternative, TVA will evaluate the action alternative of purchasing power from the proposed Spring Valley II Solar Project under the terms of a PPA. In evaluating alternatives, TVA considered other solar proposals, prior to selecting the Spring Valley II site for further evaluation. Part of the screening process included a review of transmission options, including key connection points to TVA's transmission system. The Spring Valley II site stood out as a viable option for connectivity. Environmental and cultural considerations are also included in TVA's screening. For the proposed site, the solar developer plans to consider the establishment of a footprint that could avoid impacts to cultural or biological resources. The EIS will also evaluate ways to mitigate impacts that cannot be avoided. The description and analysis of these alternatives in the EIS will inform decision makers, other agencies, and the public about the potential for environmental impacts associated with the proposed solar facility.

Project Purpose and Need

The Spring Valley II Solar Project that was submitted as a result of TVA's 2022 Carbon-Free RFP would help TVA meet immediate needs for additional renewable generating capacity in response to customer demands and fulfill the renewable energy goals established in the 2019 IRP. To meet these goals, public scoping is integral to the process for implementing NEPA and ensures that (1) issues are identified early and properly studied, (2) issues of little significance do not consume substantial time and effort, and (3) the analysis of identified issues is thorough and balanced.

Anticipated Environmental Impacts

This EIS will contain descriptions of the existing environmental and socioeconomic resources within the area that could be affected by the proposed solar facility, including the documented historical, cultural, and environmental resources. Evaluation of potential environmental impacts to these resources will include, but not be limited to, air quality and greenhouse gas emissions, surface water, groundwater, wetlands, floodplains, vegetation, wildlife, threatened and endangered species, land use, natural areas and parks and recreation, geology, soils, prime farmland, visual resources, noise, cultural resources, socioeconomics and environmental justice, solid and hazardous waste, public and occupational health and safety, utilities, and transportation.

Based on a preliminary evaluation of these resources, potential impacts to vegetation and wildlife due to the conversion of forest of various ages to early maintained grass-dominated fields may occur. Impacts to water resources would likely be minor with the use of best management practices and avoidance of siting project components in or near streams, wetlands, and riparian areas to the extent feasible. Land use would be impacted by the conversion of farmland to industrial use and the elimination of current farming operations, which would also result in visual impacts. A listed National Register of Historic Places property is located outside of the project footprint but in proximity and potential viewshed. Due to the location, there is a high probability of additional cultural resources to be present. Additional cultural resources surveys will be conducted to identify resources within the project area and viewshed and to assess effects.

Beneficial impacts are expected by facilitating the development of renewable energy and thereby increasing local job opportunities, as well as improving regional air quality and reducing carbon emissions. The EIS will analyze measures that would avoid, minimize, or mitigate identified environmental effects. The final range of issues to be addressed in the environmental review will be determined, in part, from scoping comments received.

Request for Identification of Potential Alternatives, Information, and Analyses Relevant to the Proposed Action

TVA requests assistance with identifying any new potential alternatives to the proposed action to be considered. TVA also requests assistance with identifying any known potential impacts of the proposed action that should be analyzed. Information interested parties possess which would assist in the analysis of resources is also appreciated. The preliminary identification of reasonable alternatives, information, and analyses relevant to the proposed action in this notice is not meant to be exhaustive or final.

Public Participation and Process

The public is invited to submit comments on the scope of this EIS no later than the date identified in the

DATES section of this notice. Federal, state, and local agencies and Native American Tribes are also invited to provide comments. Information about this project is available on the TVA web page at *https://www.tva.gov/nepa,* including a link to an online public comment page. Any comments received, including names and addresses, will become part of the administrative record and will be available for public inspection.

EIS Preparation and Schedule

After consideration of comments received during the scoping period, TVA will develop and distribute a scoping document that will summarize public and agency comments that were received and identify the schedule for completing the EIS process. Following analysis of the issues, TVA will prepare the draft EIS for public review and comment, expected to be released mid-2024. TVA anticipates the final EIS in mid-2025. In finalizing the EIS and in making its final decision, TVA will consider the comments that it receives on the draft.

Rebecca Tolene,

Vice President, Environment and Sustainability.

[FR Doc. 2023–20264 Filed 9–18–23; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[FAA Docket number: FAA–2023–1966]

NextGen Advisory Committee; Notice of Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the NextGen Advisory Committee (NAC).

DATES: The date and time of the meeting is October 4, 2023, from 12 p.m.–4:30 p.m. eastern time. If you wish to attend the meeting virtually, you must submit a request by September 26, 2023. If you need to request accommodations for a disability, you must submit the request by September 26, 2023. If you wish to make a public statement during the meeting, you must submit a written copy of your remarks by September 26, 2023. For NAC member review prior to the meeting, you must submit your written statement no later than September 26, 2023.

ADDRESSES: The meeting location is at the Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, with a virtual option. The FAA will post virtual meeting information to the NAC internet website at least one week in advance of the meeting. Information on the NAC, including copies of previous meeting minutes, is available on the NAC internet website at: *https://www.faa.gov/about/office_org/headquarters_offices/ang/nac/.*

Members of the public who wish to observe the meeting virtually or in person must send the required information listed in the **SUPPLEMENTARY INFORMATION** section to *9-AWA-ANG-NACRegistration@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Kimberly Noonan, NAC Coordinator, U.S. Department of Transportation, at *Kimberly.Noonan@faa.gov* or 202–267–3760. Submit requests or questions not regarding attendance registration to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of Transportation established the NAC under agency authority in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, Public Law 92–463, 5 U.S.C. app. 2, to provide independent advice and recommendations to the FAA and to respond to specific taskings received directly from the FAA. The NAC recommends consensus-driven advice relating to Air Traffic Management System modernization for FAA consideration.

II. Agenda

At the meeting, the agenda will cover the following topics:

- NAC Chair's Report
- FAA Report
- NAC Subcommittee Chair's Report
  - Risk and Mitigations update for the following focus areas: Data Communications, Performance Based Navigation, Surface and Data Sharing, and Northeast Corridor
  - Status Update on NAC Tasking 23–1: National Airspace System (NAS) Airspace Efficiencies
- NAC Chair Closing Comments

The FAA will post the detailed agenda on the NAC internet website at least one week in advance of the meeting.

III. Public Participation

The meeting is open to the public. Members of the public who wish to attend are asked to register via email by submitting their full legal name, country of citizenship, contact information (telephone number and email address), and name of their industry association or applicable affiliation, and if they would like to attend the meeting in-person or virtually. Please email this information to the email address listed in the **ADDRESSES** section. For foreign national in-person attendees, please also provide surname, given name, country of birth, country of citizenship, date of birth, title or position, and passport or diplomatic ID# and its expiration date. The FAA will confirm registration and provide the virtual meeting information, including the teleconference call-in number and passcode, to those registrants who requested to attend virtually. Callers are responsible for paying associated long-distance charges (if any).

Note: Only NAC Members, NAC working group members, FAA staff who are providing briefings, and members of the public who registered and the FAA selected to make a public statement will have the ability to speak. All other attendees will be able to listen only.

The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

The agenda allows a maximum of six minutes for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, each commenter may have limited speaking time. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, along with the proposed speaker's name, address, organizational affiliation, and a written copy of the oral statement. If the number of registrants requesting to make oral statements is greater than the meeting allows, the FAA will select speakers in the order the FAA receives the requests. Speakers are required to submit a copy of their prepared remarks for inclusion in the meeting records and for circulation to NAC members to the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. The meeting record will include all prepared remarks submitted on time.

Members of the public may submit written statements for inclusion in the meeting records and circulation to the NAC members. Members of the public must submit written statements to the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. NAC members may not have time to review

comments received after the due date listed in the **DATES** section prior to the meeting. Any member of the public may present a written statement to the committee at any time.

Signed in Washington, DC.

Kimberly Noonan,

Manager, Office of Stakeholder Collaboration, Management Services Office, ANG–A, Office of the Assistant Administrator for NextGen, Federal Aviation Administration.

[FR Doc. 2023–20209 Filed 9–18–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2020–0025]

Surface Transportation Project Delivery Program; Florida DOT Audit #4 Report

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The Surface Transportation Project Delivery Program, commonly known as the National Environmental Policy Act (NEPA) Assignment Program, allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance for Federal highway projects. When a State assumes these Federal responsibilities, the State becomes solely responsible and liable for the responsibilities it has assumed, in lieu of FHWA. This program mandates annual audits during each of the first 4 years to ensure the State's compliance with program requirements. This is the fourth and final audit of the Florida Department of Transportation's (FDOT) performance of its responsibilities under the NEPA Assignment Program. This notice finalizes the findings of the fourth and final audit report for FDOT.

FOR FURTHER INFORMATION CONTACT: Ms. Marisel Lopez Cruz, Office of Project Development and Environmental Review, (407) 867–6402, *marisel.lopez-cruz@dot.gov,* Federal Highway Administration, U.S. Department of Transportation, 400 W Washington Street, Room 4200, Orlando, FL 32801, or Mrs. Michelle Andotra, Office of the Chief Counsel, (404) 562–3679, *michelle.andotra@dot.gov* , Federal Highway Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the specific docket page at: *www.regulations.gov.*

Background

The Surface Transportation Project Delivery Program, codified at title 23, United States Code (U.S.C.), section 327, commonly known as the NEPA Assignment Program, allows a State to assume FHWA's responsibilities for environmental review, consultation, and compliance for Federal highway projects. When a State assumes these Federal responsibilities, the State becomes solely liable for carrying out the responsibilities it has assumed, in lieu of FHWA. Effective December 14, 2016, FDOT assumed FHWA's responsibilities for environmental review and the responsibilities for reviews under other Federal environmental requirements.

Section 327(g) of Title 23, U.S.C., requires the Secretary to conduct annual audits to ensure compliance with the memorandum of understanding during each of the first 4 years of State participation and, after the fourth year, monitor compliance. The results of each audit must be made available for public comment. This notice finalizes the findings of the fourth audit report on FDOT participation in the program. A draft version of this report was published in the **Federal Register** on December 14, 2022, at 87 FR 76535, and was available for public review and comments. The FHWA received two responses to the **Federal Register** Notice during the public comment period for this draft report. One comment from the American Road and Transportation Builders Association voiced support for this program and another was made by a citizen. The citizen's comment was unrelated to this report.

Authority: Section 1313 of Public Law 112–141; section 6005 of Public Law 109–59; 23 U.S.C. 327; 23 CFR 773.

Shailen P. Bhatt,

Administrator, Federal Highway Administration.

FINAL

Surface Transportation Project Delivery Program, FHWA Audit #4 of the Florida Department of Transportation, May 2019 to April 2020

Executive Summary

This is a report of the fourth and final audit of the Florida Department of Transportation's (FDOT) assumption of National Environmental Policy Act (NEPA) responsibilities under the Surface Transportation Project Delivery Program. Under the authority of section 327 of Title 23, United States Code (U.S.C.), FDOT and the Federal Highway Administration (FHWA) executed a memorandum of understanding (MOU) on December 14, 2016, whereby FHWA assigned, and FDOT assumed, FHWA's NEPA responsibilities and liabilities for Federal-aid highway projects and other related environmental reviews for transportation projects in Florida.

The FHWA formed a team in January 2020 to conduct an audit of FDOT's performance according to the terms of the MOU. The team held internal meetings and reviewed FDOT's 2019 Project Development & Environment (PD&E) Manual and NEPA project files, FDOT's response to FHWA's pre-audit information request (PAIR), and FDOT's NEPA Assignment Self Assessment Summary Report. The team presented initial project file observations to FDOT Office of Environmental Management (OEM) on June 26, 2020, and July 28, 2020. The team conducted virtual interviews with FDOT, resource agencies, and prepared preliminary audit results from September 21–24, 2020. The team presented these preliminary observations to FDOT OEM leadership on September 25, 2020.

While FDOT continues to develop, revise, and implement procedures and processes required to carry out the NEPA Assignment Program, it is FHWA's expectation that documentation to support a project's decision will be included in the Statewide Environmental Project Tracker (SWEPT) system prior to project closeout. By addressing the observation in this report, FDOT will continue to assure a successful program.

Overall, the team found that FDOT remains committed to delivering a successful NEPA Program. This report describes numerous successful practices, no observations, and one non-compliance observation. The FDOT has carried out the responsibilities it has assumed in keeping with the intent of the MOU and FDOT's application. Through this report, FHWA is notifying FDOT of the one non-compliance observation that requires FDOT to take corrective action. The report concludes with the status of FHWA's non-compliance observations from the first, second, and third audit reviews, including any FDOT self-imposed corrective actions.

Background

The purpose of the audits performed under the authority of 23 U.S.C. 327 is to assess a State's compliance with the provisions of the MOU as well as all

applicable Federal statutes, regulations, policies, and guidance. The FHWA's review and oversight obligation entails the need to collect information to evaluate the success of the NEPA Assignment Program; to evaluate a State's progress toward achieving its performance measures as specified in the MOU; and to collect information for the administration of the NEPA Assignment Program. This report summarizes the results of the fourth audit in Florida and includes a summary discussion that describes progress since the last audit. This audit is the last of the required audits.

Scope and Methodology

The overall scope of this audit review is defined both in statute (23 U.S.C. 327) and the MOU (Part 11). An audit generally is defined as an official and careful examination and verification of accounts and records, especially of financial accounts, by an independent unbiased body. With regard to accounts or financial records, audits may follow a prescribed process or methodology and be conducted by ''auditors'' who have special training in those processes or methods. The FHWA considers this review to meet the definition of an audit because it is an unbiased, independent, official, and careful examination and verification of records and information about FDOT's assumption of environmental responsibilities.

The team consisted of NEPA subject matter experts (SME) from FHWA offices in Texas, Georgia, and Headquarters, as well as staff from FHWA's Florida Division. The diverse composition of the team, as well as the process of developing the review report and publishing it in the **Federal Register**, are intended to make this audit an unbiased official action taken by FHWA.

The team conducted a careful examination of FDOT policies, guidance, and manuals pertaining to NEPA responsibilities, as well as a representative sample of FDOT's project files. Other documents, such as the August 2020 PAIR responses and FDOT's August 2020 Self Assessment Summary Report, also informed this review. In addition, the team interviewed FDOT and resource and regulatory agency staff via video conference. This review is organized around the six NEPA Assignment Program elements: program management; documentation and records management; quality assurance/quality control (QA/QC); legal sufficiency; performance measurement; and training program. In addition, the team considered three cross-cutting focus areas: (1) Environmental Permits; (2) Process Improvements; and, (3) Project Authorizations.

The team defined the timeframe for highway project environmental approvals subject to this fourth audit to be between May 2019 and April 2020, when 635 projects were approved. The team drew judgmental samples totaling 110 projects from data in FDOT's online file system, SWEPT. In the context of this report, descriptions of environmental documents are consistent with FDOT's Project Development and Environment Manual. The FHWA judgmentally selected all reevaluations of Environmental Impact Statements with Records of Decision (ROD) (three projects) and Environmental Assessments with Findings of No Significant Impacts (FONSI) (eight projects). The team selected a random sample of 61 Type 1 Categorical Exclusions (CE), 16 Type 2 CEs, and 22 Type 2 CE Reevaluations, for a total of 110 projects in the sample. The team reviewed all fiscal project authorization files in the audit period (422 project files) downloaded from FHWA's Fiscal Management Information System to determine if the NEPA certification was completed for these projects prior to the authorization. In addition, for all projects with a NEPA approval date within the audit year (316 projects), SWEPT was used to evaluate the supporting environmental information. The remaining 106 projects used the FDOT Project Approvals Reports to provide a cursory review of the environmental information.

The team submitted a PAIR to FDOT that contained 25 questions covering all 6 NEPA Assignment Program elements. The FDOT responses to the PAIR were used to develop questions for the virtual interviews with FDOT staff.

The team conducted a total of 32 interviews. Interview participants included staff from all seven FDOT District offices and the FDOT Central Office. The team interviewed FDOT legal and environmental staff. The team also interviewed representatives from the following resource agencies: National Oceanic and Atmospheric Administration—National Marine Fisheries Service; the U.S. Coast Guard; the U.S. Fish and Wildlife Service; U.S. Army Corps of Engineers; and the State Historic Preservation Officer from the Florida Department of State, Division of Historic Resources.

The team compared FDOT policies and procedures (including the published 2019 PD&E Manual) for the audit focus areas to the information obtained during interviews and project file reviews to determine if FDOT's performance of its MOU responsibilities are in accordance with FDOT policies and procedures and Federal requirements. Individual observations were documented during interviews and reviews and combined under the six NEPA Assignment Program elements. The audit results are described below by program element.

Overall Audit Opinion

The team recognizes that FDOT's efforts have included implementing the requirements of the MOU by: processing and approving projects; refining policies, procedures, and guidance documents; refining the SWEPT Tracking System for official project files; training staff; implementing a QA/QC Plan; and conducting a self assessment for monitoring compliance with the assumed responsibilities. The team found evidence of FDOT's continuing efforts to train staff in clarifying the roles and responsibilities of FDOT staff, and in educating staff in an effort to assure compliance with all of the assigned responsibilities.

During the fourth audit, the team identified numerous successful practices, no observations, and one non-compliance observation that FDOT will need to address through corrective actions.

The FDOT has carried out the responsibilities it has assumed consistent with the intent of the MOU and FDOT's application. The team finds that FDOT is in substantial compliance with the terms of the MOU. By addressing the non-compliance observation in this report, FDOT will continue to assure a successful program.

Successful Practices and Observations

Successful practices are practices that the team believes are positive, and encourages FDOT to continue or expand those programs in the future. The team identified numerous successful practices in this report. Observations are items the team would like to draw FDOT's attention to, which may improve processes, procedures, and/or outcomes. The team identified no observations in this report.

A non-compliance observation is an instance where the team finds the State is not in compliance or is deficient with regard to a Federal regulation, statute, guidance, policy, State procedure, or the MOU. Non-compliance may also include instances where the State has failed to secure or maintain adequate personnel and/or financial resources to carry out the responsibilities they have assumed. The FHWA expects the State to develop and implement corrective actions to address all non-compliance

observations. The team identified one non-compliance observation during this fourth audit.

The team acknowledges that sharing initial results during the closeout and sharing the draft audit report with FDOT provided them the opportunity to clarify any observation, as needed, and/or begin implementing corrective actions to improve the program.

The Audit Report addresses all six MOU program elements as separate discussions.

Program Management

Successful Practices

The FDOT has continued and expanded its working relationships with the resource agencies. The FDOT has been meeting early and often with some resource agencies to discuss ongoing and future projects. This enhanced communication minimizes delays in project delivery and permitting processes. The Efficient Transportation Decision Making process was in place prior to NEPA Assignment and this tool continues to foster good relationships between FDOT and the resource agencies. Districts are beginning to conduct periodic Environmental Technical Advisory Team (ETAT) Webinars instead of annual ETAT meetings to discuss upcoming projects. In addition, federally funded positions dedicated to FDOT projects reduce delays in project delivery.

The SWEPT is a fundamental component of FDOT's NEPA Assignment success. The SWEPT continues to be a critical and flexible tool in implementing the NEPA Assignment Program responsibilities. The review team learned through the interviews that as FDOT users have become more familiar with the SWEPT System, they have praised its usefulness in streamlining the NEPA documentation process. The SWEPT provides standards for documentation in templates, provides a consistent interface, and facilitates the creation of the administrative record. Users also have an opportunity to provide input to improve SWEPT's ability to track project progression. The SWEPT has continued to evolve and is now used to support the permitting process for some projects.

The FDOT's internal communication is robust and effective. As FDOT's NEPA Assignment Program matures, communication and relationships continue to improve between FDOT's OEM staff, district staff, and consultants. Communications at the program level between OEM and district staff have become a regular part of their day-to-day operations. The OEM engagement through the Project Delivery Coordinators has helped save time on projects and improved consistency. Monthly meetings within the districts among environmental staff and permit coordinators have improved project development and delivery. One district holds quarterly meetings between permitting, environmental management, and construction offices to discuss outstanding items and issues.

The FDOT Districts accelerate NEPA project delivery through enhanced scoping. The review team learned through interviews that two districts have staff complete surveys and assessments before the NEPA process begins to accelerate project delivery. Once the NEPA process begins, the district consultants are then able to complete the NEPA phase in a shorter timeframe, without having to wait on seasonal surveys, such as those required for some species, and other information that is needed for the NEPA decisions. This early information gathering is an example of Planning and Environment Linkages to allow for accelerated NEPA project delivery and reduced costs for consultant services in the environmental phase.

Quality Assurance/Quality Control

Successful Practice

The SWEPT provides a QA/QC advantage. The review team learned through interviews that SWEPT provides additional environmental document quality control for the project file. The use of templates in SWEPT and the SWEPT System validation control point prevents project advancement and approval until required documents are uploaded and serves as additional QA/QC tools.

Legal Sufficiency

Successful Practices

The FDOT has an attorney dedicated to Section 4(f) reviews. Section 4(f) is a complex law which is challenging to master and implement. This practice allows FDOT counsel to provide consistent advice, develop subject matter expertise, and allows for streamlined reviews ensuring the analysis meets the legal sufficiency requirements in accordance with 23 CFR part 774.

Counsel has been fully integrated into the NEPA decisionmaking process. The FDOT Districts routinely contact counsel with questions throughout the NEPA development process. Consulting early and often with counsel has not only expedited the NEPA decisionmaking process but also translated into counsel being invited to participate in other phases of project development and policy matters.

Training Program

The FDOT has continued to focus resources ensuring staff, other agencies, and consultants are adequately trained. In the audit period FDOT again trained more than 2,300 staff, consultants, resource agencies and local agencies in over 100 courses on topics such as Section 4(f), Permits, Wetlands, and the PD&E Manual. Through information presented in the FDOT Self Assessment and the interviews, the review team learned of the variety in, and growth of, FDOT's environmental training program.

Successful Practice

The FDOT has a strong onboarding process when new employees join the OEM. The OEM initiated a 6-month pilot program to conduct weekly sessions led by technical experts. These onboarding mentoring sessions with SMEs are being recorded and made available for other FDOT staff to watch on demand.

Performance Measures

Based on information reported in FDOT's 2020 Self Assessment Summary Report, FDOT met, exceeded, or was close to achieving all targets for the review period.

Documentation and Records Management

The team reviewed environmental documentation for 61 Type 1 CEs, 16 Type 2 CEs, and 33 Reevaluations which included RODs, FONSIs, and Type 2 CEs to determine if the environmental review met Federal requirements. The team also reviewed 422 fiscal project authorization files to determine if NEPA was completed for these projects prior to the authorization.

Non-Compliance Observation #1: Some FDOT project files contain insufficient documentation to support the project authorization, environmental analysis, or environmental decision.

The team found some CEs that did not have a Statewide Transportation Improvement Program (STIP) page or had an outdated STIP page (10 projects) in their documentation for fiscal constraint. The team also found that some fiscal project authorizations did not have documentation verifying that NEPA was completed (11 projects). The FDOT has already updated the SWEPT System by uploading any missing documentation. In addition, FDOT committed to making process

improvements to address any remaining concerns.

While the SWEPT System has validation control points in place, there are still opportunities for additional enhancements regarding quality assurance to ensure these documents are included in all project files. It is FHWA's expectation that documentation to support a project's decision will be included in the SWEPT system prior to project closeout.

Update From Previous Audit Findings

The FHWA reported a non-compliance observation related to some FDOT project files that lacked documentation to support the environmental analysis or decision as part of Audit #1, Audit #2, and Audit #3. Also, as part of Audit #3, FHWA identified the lack of documentation to support the project authorization. The FDOT and FHWA have productively worked together to resolve documentation issues from these previous audits. The FDOT implemented several process improvements to address noted procedural deficiencies.

2017 Audit #1, Non-Compliance Observation #1 and 2018 Audit #2, Non-Compliance Observation #1: Some FDOT project files contain insufficient documentation to support the environmental analysis or decision.

To address the 2017 and 2018 findings, FDOT implemented enhancements to SWEPT including revisions to the Type 1 CE checklist, the Type 2 CE form, and the reevaluation form. They added STIP and the Transportation Improvement Plan planning consistency uploading instructions, added validation for data within the Type 1 CE checklist for right-of-way, wetlands, floodplains, and waterways, added an attachment point for the project commitment record in the Type 1 CE checklist, allowed multiple attachments for Section 7 Endangered Species Act concurrence letters, integrated Section 4(f) approvals for applicable classes of action, and developed a spreadsheet tool for the project managers to verify which documents need to be uploaded to the project file. The FDOT also updated the PD&E manual, conducted training for their staff on the SWEPT and PD&E manual enhancements and on the areas of noted deficiencies. The FDOT also developed computer based training in some of these areas for future use.

2019 Audit #3, Non-Compliance Observation #1: Some FDOT project files contain insufficient documentation to support the project authorization, environmental analysis or decision.

To address the 2019 findings, FDOT implemented enhancements to SWEPT by adding validation for data within the Type 1 CE checklist for bridge permits. The FDOT also updated the PD&E manual, conducted training for their staff on the SWEPT, and made PD&E manual enhancements in the noted deficiency areas. The FDOT also developed computer based training for class of actions, CEs, and environmental assessments.

The improvements made in response to the 2017, 2018, and 2019 observations were assessed during this final audit and are considered sufficient to address the issues underlying the non-compliance observations in those audits.

Finalizing This Report

The FHWA received two responses to the **Federal Register** Notice during the public comment period for this draft report. One comment from the American Road and Transportation Builders Association voiced support of this program and another was made by a citizen. The citizen's comment was unrelated to this report. This report is a finalized version of the draft report without substantive changes.

[FR Doc. 2023–20220 Filed 9–18–23; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0107; FMCSA–2014–0385; FMCSA–2014–0386; FMCSA–2021–0014; FMCSA–2018–0135; FMCSA–2018–0138]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of renewal of exemptions; correction.

SUMMARY: In a notice of renewal of exemptions published in the **Federal Register** on September 6, 2023, FMCSA announced its decision to renew exemptions for eight individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce. The notice inadvertently published an individual's legal name incorrectly. This notice corrects that error.

DATES: This correction is effective September 6, 2023. Comments on the notice must still be received on or before October 5, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing materials in the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Correction

On September 6, 2023, FMCSA published a notice of renewal of exemptions (88 FR 60732) with an effective date of September 12, 2023, which FMCSA announced its decision to renew exemptions for eight individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate CMV drivers. The notice inadvertently published Alex Courtney O'Donnell Bertling's legal name incorrectly. Through this notice, FMCSA corrects the September 6, 2023, notice of renewal of exemptions by correctly indicating Alex Courtney O'Donnell Bertling's legal name.[1]

In FR Doc. 2023–18993 appearing on page 60732 in the **Federal Register** of September 6, 2023, the following correction is made:

1. On page 60733, in the third column, ''Courtney Bertling (OR)'' is corrected to read ''Alex Courtney O'Donnell Bertling (OR)''.

Issued under authority delegated in 49 CFR 1.87.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–20152 Filed 9–18–23; 8:45 am]

BILLING CODE 4910–EX–P

[1] The published version of the original notice is included in the docket for this correction.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0212; FMCSA–2017–0253; FMCSA–2020–0049; FMCSA–2021–0025]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for five individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on August 13, 2023. The exemptions expire on August 13, 2025.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2014–0212, FMCSA–2017–0253, FMCSA–2020–0049, or FMCSA–2021–0025) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. 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 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

I. Background

On August 3, 2023, FMCSA published a notice announcing its decision to renew exemptions for five individuals from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) to operate a CMV in interstate commerce and requested comments from the public (88 FR 51393). The public comment period ended on September 5, 2023, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

II. Discussion of Comments

FMCSA received no comments in this proceeding.

III. Conclusion

Based on its evaluation of the five renewal exemption applications, FMCSA announces its decision to exempt the following drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8).

As of August 13, 2023, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following five individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (88 FR 51393):

Diego DaSilva (MA)
Jaime Dougherty (MN)
Jeffrey Douglass (ME)
Christopher Nonnenkamp (MO)
Angel Velez-Cruz (NJ)

The drivers were included in docket number FMCSA–2014–0212, FMCSA–2017–0253, FMCSA–2020–0049, or FMCSA–2021–0025. Their exemptions were applicable as of August 13, 2023 and will expire on August 13, 2025.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–20149 Filed 9–18–23; 8:45 am]

BILLING CODE 4910–EX–P

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2023–0035]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 21 individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these

individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on September 10, 2023. The exemptions expire on September 10, 2025.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, (FMCSA–2023–0035) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

On August 3, 2023, FMCSA published a notice announcing receipt of applications from 21 individuals requesting an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) and requested comments from the public (88 FR 51395). The public comment period ended on September 5, 2023, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes allow the Agency to renew exemptions at the end of the 5-year period. However, FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on the 2007 recommendations of the Agency's Medical Expert Panel. The Agency conducted an individualized assessment of each applicant's medical information, including the root cause of the respective seizure(s) and medical information about the applicant's seizure history, the length of time that has elapsed since the individual's last seizure, the stability of each individual's treatment regimen and the duration of time on or off of anti-seizure medication. In addition, the Agency reviewed the treating clinician's medical opinion related to the ability of the driver to safely operate a CMV with a history of seizure and each applicant's driving record found in the Commercial Driver's License Information System for commercial driver's license (CDL) holders, and interstate and intrastate inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency. A summary of each applicant's seizure history was discussed in the August 3, 2023, **Federal Register** notice (88 FR 51396) and will not be repeated in this notice.

These 21 applicants have been seizure-free over a range of 50 years while taking anti-seizure medication and maintained a stable medication treatment regimen for the last 2 years. In each case, the applicant's treating physician verified his or her seizure history and supports the ability to drive commercially.

The Agency acknowledges the potential consequences of a driver experiencing a seizure while operating a CMV. However, the Agency believes the drivers granted this exemption have demonstrated that they are unlikely to have a seizure and their medical condition does not pose a risk to public safety.

Consequently, FMCSA finds further that in each case exempting these applicants from the epilepsy and seizure disorder prohibition in § 391.41(b)(8) would likely achieve a level of safety equal to that existing without the exemption, consistent with the applicable standard in 49 U.S.C. 31315(b)(1).

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and include the following: (1) each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5T; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 21 exemption applications, FMCSA exempts the following drivers from the epilepsy and seizure disorder prohibition in § 391.41(b)(8), subject to the requirements cited above:

Ashley Aucion (LA)
Colby Banks (NC)
Christopher Beaver (PA)
Emil Bigler (UT)
Timothy Brinkman (NE)
Alexander Carestia (NC)
Kelly Craft (MN)
Nathan Gager (MN)
Kenneth Gradoville (NE)
Winterhawk Hunter (NV)
Donald Huntley (OH)
Samuel Isenberg (PA)
Thomas Kepler (MO)
Brian Manning (NJ)
Devin McKain (IN)
Jacob McNally (CT)
Chris McNamara (NH)
oseph Pitts (SC)
Joshua Ross (DE)
Shawn Springer (MN)
Ryan Webb (MI)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136, 49 U.S.C. chapter 313, or the FMCSRs.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–20153 Filed 9–18–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2018–0041]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by letter dated July 1, 2023, the Port Authority Trans-Hudson Corporation (PATH) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 214 (Railroad Workplace Safety). The relevant Docket Number is FRA–2018–0041.

Specifically, PATH requests continued relief from the definition of ''fouling a track'' found in 49 CFR 214.7, *Definitions,* at certain locations within PATH's tunnel system if certain conditions are met. PATH seeks the waiver to allow tunnel bench walls to be considered a ''place of safety'' under § 214.329, *Train approach warning,* for the safety and efficiency of roadway maintenance procedures at those locations. When train approach warning or foul time is used as a method of protection, roadway workers may move to a previously arranged place of safety designated as a ''Clearance Area.'' PATH states that its ''physical structure and track configurations within the tunnel system provide many locations where it is physically impossible to clear outside four feet of the near rail.'' PATH adds that ''the historical use and safety record of bench walls as a place of clearance for close to half of a century without incident show that, under certain conditions, they can be used as a place of safety within the four-foot fouling envelope.'' In support of its request, PATH notes that ''there have been no known issues raised upon issuance of the waiver and no reported failures of compliance found during inspections.''

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by November 20, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. 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 *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2023–20202 Filed 9–18–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257, Notice No. 94]

Railroad Safety Advisory Committee; Notice of Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: FRA announces the sixty-fifth meeting of the Railroad Safety Advisory Committee (RSAC), a Federal advisory committee that provides advice and recommendations to FRA on railroad safety matters through a consensus process. This meeting of the RSAC will focus on efforts made regarding potential safety improvements related to the February 3, 2023, Norfolk Southern freight train derailment in East Palestine, Ohio.

DATES: The RSAC meeting is scheduled for Thursday, October 26, 2023. The meeting will commence at 9:30 a.m. and will adjourn by 4:30 p.m. (all times Eastern Daylight Time). Requests to submit written materials to be reviewed during the meeting must be received by October 16, 2023. Requests for accommodations because of a disability must be received by October 16, 2023.

ADDRESSES: The RSAC meeting will be held at the National Association of Home Builders, located at 1201 15th Street NW, Washington, DC 20005. A final agenda will be posted on the RSAC

internet website at *https://rsac.fra.dot.gov/* at least one week in advance of the meeting. Please see the RSAC website for additional information on the committee at *https://rsac.fra.dot.gov/.*

FOR FURTHER INFORMATION CONTACT: Kenton Kilgore, RSAC Designated Federal Officer/RSAC Coordinator, FRA Office of Railroad Safety, (202) 365–3724 or *kenton.kilgore@dot.gov.* Any committee-related request should be sent to Mr. Kilgore.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of the RSAC.

The RSAC is composed of 56 voting representatives from 30 member organizations, representing various rail industry perspectives. The diversity of the Committee ensures the requisite range of views and expertise necessary to discharge its responsibilities.

Public Participation: The meeting is open to the public. Attendance is on a first-come, first served, basis, and is accessible to individuals with disabilities. DOT and FRA are committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, please contact Mr. Kenton Kilgore as listed in the **FOR FURTHER INFORMATION CONTACT** section, and submit your request by October 16, 2023.

Any member of the public may submit a written statement to the committee at any time; however, submissions for committee review during the meeting must be received by October 16, 2023.

Agenda Summary: This meeting of the RSAC will include updates from the working groups for: train braking modernization; wayside detectors; and enhancement of hazardous trains designations. These working groups were formed in response to the February 3, 2023, Norfolk Southern Railway Co. freight train derailment in East Palestine, Ohio. Working groups for Confidential Close Call Reporting (C3RS) and roadway worker protection will also report to the committee on their activity. FRA will also announce the renewal of the RSAC charter for the period of October 2023–October 2025, and discuss changes made to the charter. A detailed agenda for the meeting will be posted on the RSAC internet website at least one week in advance of the meeting. Copies of the minutes of past meetings, along with general information about the committee, are also available on the RSAC internet website at *https://rsac.fra.dot.gov/.*

Issued in Washington, DC.

Amitabha Bose,

Administrator.

[FR Doc. 2023–20234 Filed 9–18–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2023–0059]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Under part 235 of title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that by letters received on July 21, 2023, and September 1, 2023, Union Railroad, LLC (URR) petitioned the Federal Railroad Administration (FRA) seeking approval to discontinue or modify a signal system. FRA assigned the petition Docket Number FRA–2023–0059.

Specifically, URR requests to discontinue the control point One Block, located in Braddock, Pennsylvania. The following are requested to be removed: signals 76, 80, 82, 86, 88, and 90; power switches 81 and 83; hand-throw switch T–20; lock movements 75 and 97; the circuit controller on switch 95; and track circuits 64T, 72T, 76T, 82T, 86T, 91T, and 97AT. URR states that the involved tracks are primarily used for switching leads and yard tracks in freight service at a maximum speed of 20 miles per hour. In support of its request, URR states that ''safety of operations will be positively impacted by eliminating any confusion as to who should be contacted for permission on a given track.''

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by November 20, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. 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 *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2023–20205 Filed 9–18–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2018–0067]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on August 3, 2023, the Peninsula Corridor Joint Powers Board (Caltrain) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR parts 229 (Railroad Locomotive Safety Standards), 231 (Railroad Safety Appliance Standards), and 238 (Passenger Equipment Safety Standards). The relevant Docket Number is FRA–2018–0067.

Specifically, Caltrain requests continued relief for its Stadler-built KISS Electric Multiple Unit (EMU) railcars specific to the passenger area emergency brake valve (as required by § 229.47(b), *Emergency brake valve,* and § 238.305(c)(5), *Interior calendar day*

mechanical inspection of passenger cars); the clearance above the top rail (as required by § 229.71, *Clearance above top of rail*); and the safety appliances (as required by § 229.71(b)–(d) and (f)-(g), § 238.229, *Safety appliances—general,* and § 238.230(d), *Safety appliances—new equipment*). Caltrain also notes that it has increased its EMU fleet from 16 six-car trainsets to 19 seven-car trainsets. Additionally, the intermediate level doors in the EMUs have been replaced with door plugs, as the doors ''will not be utilized for initial operation at Caltrain.'' Caltrain states that although the EMUs ''may not meet the specific requirements'' of the regulations, it requests relief for ''alternate or equivalent compliance.''

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by November 20, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. 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 *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2023–20203 Filed 9–18–23; 8:45 am]

BILLING CODE

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2023–0065]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on August 8, 2023, Providence and Worcester Railroad; the International Association of Sheet Metal, Air, Rail and Transportation Workers; and the Brotherhood of Railroad Signalmen (collectively, ''Petitioners'') petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 240 (Qualification and Certification of Locomotive Engineers) and part 242 (Qualification and Certification of Conductors). FRA assigned the petition Docket Number FRA–2023–0065.

Specifically, Petitioners request relief required to participate in FRA's Confidential Close Call Reporting System (C^{3}RS) Program. Petitioners seek to shield reporting employees from mandatory punitive sanctions that would otherwise arise as provided in §§ 240.117(e)(1)–(4); 240.305(a)(1)–(4) and (a)(6); 240.307; 242.403(b), (c), (e)(1)–(4), (e)(6)–(11), (f)(1)–(2); and 242.407. The C^{3}RS Program encourages certified operating crew members to report close calls and protects the employees and the railroad from discipline or sanctions arising from the incidents reported per the C^{3}RS Implementing Memorandum of Understanding.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by November 20, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. 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 *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2023–20206 Filed 9–18–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2023–0055]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Under part 235 of title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that by letters received on July 20, 2023, and September 1, 2023, Union Railroad, LLC (URR) petitioned the Federal Railroad Administration (FRA) seeking approval to discontinue or modify a signal system. FRA assigned the petition Docket Number FRA–2023–0055.

Specifically, URR requests to discontinue the signal system on Track #2 Southbound Main between signal 200 at control point (CP) Mon Junction and signal 262 at CP Bull Run, a distance of 7,633 feet. The track section is located in Duquesne, Pennsylvania, on the Mon Southern Division. It is signaled for bidirectional operation and

only moves freight in switching and terminal operations at a maximum speed of 20 miles per hour. To maintain operations during a project to begin in June 2024, URR requests to downgrade the track section to non-signaled storage track. In its petition, URR notes that ''safety of operations will not be affected'' by the changes.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by November 20, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. 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 *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2023–20204 Filed 9–18–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Safety Advisory 23–1 Bus-to-Person Collisions

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of Safety Advisory.

SUMMARY: The Federal Transit Administration (FTA) is issuing Safety Advisory 23–1 to encourage agencies that provide bus service to consider mitigation strategies to reduce bus-to-person collisions. This safety advisory provides guidance on identifying specific hazards that may cause or contribute to bus-to-person collisions, completing a safety risk assessment, and developing mitigations to address the assessed safety risks for transit agencies. FTA's Safety Advisory 23–1 ''Bus-to-Person Collisions'' is available on the agency's public website (*https://www.transit.dot.gov/regulations-and-guidance/safety/fta-safety-advisories*).

FOR FURTHER INFORMATION CONTACT: Joseph DeLorenzo, Associate Administrator for Transit Safety and Oversight, FTA, telephone (202) 366–1783 or *Joseph.DeLorenzo@dot.gov.*

(Authority: 49 U.S.C. 5329; 49 CFR 1.91 and 670.29)

Nuria I. Fernandez,

Administrator.

[FR Doc. 2023–20259 Filed 9–18–23; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2023–0061]

Pipeline Safety: Meeting of the Gas Pipeline Advisory Committee

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice of advisory committee meeting.

SUMMARY: This notice announces a public meeting of the Gas Pipeline Advisory Committee (GPAC) to discuss the notices of proposed rulemaking (NPRMs) titled ''Gas Pipeline Leak Detection and Repair'' and ''Class Location Change Requirements.''

DATES: PHMSA will hold a public meeting from November 27, 2023, to December 1, 2023. The GPAC will meet each day from 8:30 a.m. to 5 p.m. ET to discuss the NPRMs. However, the meeting may end early if the GPAC completes its review of the NPRMs. Members of the public who wish to attend are asked to register no later than November 20, 2023. PHMSA requests that individuals who require accommodations because of a disability notify Tewabe Asebe by email at *tewabe.asebe@dot.gov* at least five days prior to the meeting. Public comments on the proceedings of the GPAC meeting must be submitted by January 5, 2024.

ADDRESSES: The meeting will be held in person at the Westin Crystal City, 1800 Richmond Highway, Arlington, VA 22202. The agenda and any additional information, including information on how to participate in the meeting, will be published on the meeting website at *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=167.* Presentations will be available on the meeting website and at *https://www.regulations.gov/* in docket number PHMSA–2023–0061 no later than 30 days following the meeting. You may submit comments, identified by Docket No. PHMSA–2023–0061, by any of the following methods:

- *Web: https://www.regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building: Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building: Room W12–140, Washington, DC 20590–0001, between 9:00 a.m. and 5:00 p.m. EST, Monday through Friday, except federal holidays.
- *Instructions:* Identify Docket No. PHMSA–2023–0061 at the beginning of your comments. If you submit your comments by mail, submit two copies. Internet users may submit comments at *https://www.regulations.gov.* If you would like confirmation that PHMSA received your comments, please include a self-addressed stamped postcard labeled ''Comments on PHMSA–2023–0061.'' The docket clerk will date stamp the postcard prior to returning it to you via U.S. mail.
- *Note:* All comments received will be posted without edits to *https://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading for more information. Anyone can use the site to search all comments by the name of the

submitting individual or, if the comment was submitted on behalf of an association, business, labor union, etc., the name of the signing individual. Therefore, please review the complete DOT Privacy Act Statement in the **Federal Register** at 65 FR 19477 or the Privacy Notice at *https://www.regulations.gov* before submitting comments.

• *Privacy Act Statement:* DOT may solicit comments from the public regarding certain general notices. 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.*

• *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 (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments in response 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 CFR 190.343, you may ask PHMSA to provide 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 a copy of the original document with the CBI deleted along with the original, unaltered document; and (3) explain why the information you are submitting is CBI. Submissions containing CBI should be sent to Tewabe Asebe, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Submission containing CBI can also be emailed to Tewabe Asebe by encrypted email at *tewabe.asebe@dot.gov.* Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket.

• *Docket:* For access to the docket or to read background documents or comments, go to *https://www.regulations.gov.* Follow the online instructions for accessing the dockets. Alternatively, this information is available by visiting DOT at 1200 New Jersey Avenue SE, West Building: Room W12–140, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET, Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Tewabe Asebe, Office of Pipeline Safety, by phone at 202–366–5523 or by email at *tewabe.asebe@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Meeting Agenda

The GPAC will meet from November 27, 2023, to December 1, 2023, to discuss the ''Gas Pipeline Leak Detection and Repair'' NPRM that PHMSA published in the **Federal Register** on May 18, 2023, (88 FR 31890),[1] and the ''Class Location Change Requirements'' NPRM that PHMSA published in the **Federal Register** on October 14, 2020, (85 FR 65142).[2] The GPAC will review the NPRMs and their associated regulatory analyses, including, but not limited to, the cost-benefit and risk assessment analyses; regulatory impact analyses; environmental assessments; and other materials pertaining to the NPRMs provided in the respective public dockets. While the meeting is scheduled for five days, the GPAC may complete its review of the proposed rules in less time. PHMSA will post additional details on the meeting website in advance of the meeting as they become available.

In the ''Gas Pipeline Leak Detection and Repair'' NPRM, PHMSA proposes to make regulatory amendments that implement congressional mandates in the ''Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2020'' to reduce methane emissions from new and existing gas transmission pipelines, distribution pipelines, regulated (Types A, B, C, and offshore) gas gathering pipelines, underground natural gas storage facilities, and liquefied natural gas facilities. Among the proposed amendments for Part 192-regulated gas pipelines are strengthened leakage survey and patrolling requirements; performance standards for advanced leak detection programs; leak grading and repair criteria with mandatory repair timelines; requirements for mitigation of emissions from blowdowns; pressure relief device design, configuration, and maintenance requirements; and clarified requirements for investigating failures. Finally, this NPRM proposes to expand reporting requirements for operators of all gas pipeline facilities within DOT's jurisdiction, including underground natural gas storage facilities and liquefied natural gas facilities. PHMSA requested public comments with a submission deadline of August 16, 2023.[3] PHMSA received approximately 35,000 comments on the NPRM.

In the ''Class Location Change Requirements'' NPRM, PHMSA proposes to revise the Federal Pipeline Safety Regulations to amend the requirements for gas transmission pipeline segments that experience a change in class location. Under the existing regulations, pipeline segments located in areas where the population density has significantly increased must perform one of the following actions: reduce the pressure of the pipeline segment; pressure test the pipeline segment to higher standards; or replace the pipeline segment. This proposed rule would add an alternative set of requirements operators could use—based on implementation of integrity management principles and pipe eligibility criteria—to manage certain pipeline segments where the class location has changed from a Class 1 location to a Class 3 location. Through required periodic assessments, repair criteria, and other extra preventive and mitigative measures, PHMSA expects this alternative approach will provide long-term safety benefits consistent with the current natural gas pipeline safety rules while also providing cost savings for pipeline operators. PHMSA requested public comments with a submission deadline of December 14, 2020.[4] PHMSA received 14 comments on the NPRM.

Following the GPAC meeting, PHMSA will evaluate the GPAC's recommendations and publish final rules that address the comments received and relevant information from the GPAC meeting report.

II. Background

The GPAC is a statutorily mandated advisory committee that provides PHMSA and the Secretary of Transportation with recommendations on proposed standards for the transportation of gas by pipeline. The committee was established in accordance with 49 U.S.C. 60115 and the Federal Advisory Committee Act of 1972 (Pub. L. 92–463) to review PHMSA's regulatory initiatives and determine their technical feasibility, reasonableness, cost-effectiveness, and practicability. The committee consists of 15 members, with membership evenly divided among federal and state governments, regulated industry, and the general public.

[1] The public docket for the Leak Detection and Repair NPMR can be found at *https://regulations.gov* in Docket No. PHMSA–2021–0039.

[2] The public docket for the Class Location Change Requirements Notice can be found at *https://regulations.gov* in Docket No. PHMSA–2017–00151.

[3] 88 FR 42284.

[4] 85 FR 65142

III. Public Participation

The meeting will be open to the public. Members of the public who wish to attend must register on the meeting website and include their names and affiliations. PHMSA will provide members of the public reasonable opportunity to make a statement during this meeting. Additionally, PHMSA will record the meeting and post a record to the public docket. PHMSA is committed to providing all participants with equal access to this meeting. Public comments on the proceedings of the GPAC meeting must be submitted by January 5, 2024. If you need an accommodation due to a disability, please contact Tewabe Asebe by phone at 202–366–5523 or by email at *tewabe.asebe@dot.gov.*

PHMSA is not always able to publish a notice in the **Federal Register** quickly enough to provide timely notice regarding last-minute issues that impact a previously announced advisory committee meeting. Therefore, individuals should check the meeting website or contact Tewabe Asebe regarding any possible changes.

Issued in Washington, DC, on September 13, 2023, under authority delegated in 49 CFR 1.97.

Massoud Tahamtani,

Deputy Associate Administrator.

[FR Doc. 2023–20159 Filed 9–18–23; 8:45 am]

BILLING CODE 4910–60–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 four entities that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) whose property and interests in property have been blocked pending investigation. All property and interests in property subject to U.S. jurisdiction of these entities are blocked pending investigation, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Bradley Smith, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On September 14, 2023, pursuant to section 203 of the International Emergency Economic Powers Act, 50 U.S.C. 1702, Executive Order 14024 of April 15, 2021, ''Blocking Property With Respect to Specified Harmful Activities of the Government of the Russian Federation,'' 86 FR 20249, 3 CFR, 2021 Comp., p. 542 (Apr. 15, 2021), and section 587.201 of the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (the ''Regulations''), OFAC blocked pending investigation the property and interests in property of the following four entities whose names will be placed on the SDN List with the tag [BPI–RUSSIA–EO14024] in accordance with Note 2 to § 587.201 of the Regulations.

BILLING CODE 4810–AL–P

Entities:

1. BOIS ROUGE SARLU (a.k.a. WOOD INTERNATIONAL GROUP SARLU), 4eme Ardt, Bangui, Central African Republic; Organization Established Date Mar 2019; Organization Type: Logging; Target Type Private Company; Registration Number CA/BG/2019B520 (Central African Republic) [BPI-RUSSIA-EO14024].

2. FIRST INDUSTRIAL COMPANY SAU, Cite Des 36 Villas, Face Au Lycee B. Boganda, Avenue de l'Independence, Bangui, Central African Republic; Organization Type: Wholesale of food, beverages and tobacco; Target Type Private Company [BPI-RUSSIA-EO14024].

3. LIMITED LIABILITY COMPANY BROKER EXPERT (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ БРОКЕР ЭКСПЕРТ) (a.k.a. "BROKER EKSPERT LLC"; a.k.a. "LLC BROKER EXPERT" (Cyrillic: "ООО БРОКЕР ЭКСПЕРТ")), Pom. 3N, Liter M, 6, Ul. Tsvetochnaya, St. Petersburg 196084, Russia; Organization Established Date 06 Feb 2015; Organization Type: Non-specialized wholesale trade; Target Type Private Company; Tax ID No. 7810336185 (Russia); Registration Number 1157847037105 (Russia) [BPI-RUSSIA-EO14024].

4. LOGISTIQUE ECONOMIQUE ETRANGERE SARLU, Enceinte Mai, Route De Ndres, Quartier Boy-Rabe, Arrondissement 4, Bangui, Central African Republic; Organization Established Date Oct 2020; Organization Type: Non-specialized wholesale trade; Target Type Private Company; Business Registration Number CA/BG2020B1559 (Central African Republic) [BPI-RUSSIA-EO14024].

Dated: September 14, 2023.

Bradley T. Smith,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–20235 Filed 9–18–23; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request Concerning Information Reporting for Form 15424

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. The IRS is soliciting comments concerning new Form 15424, *Taxpayer Experience Office Speaker Request.*

DATES: Written comments should be received on or before November 20, 2023 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–New, Form 15424—Taxpayer Experience Office Speaker Request'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Sara Covington, at (202) 317–5744, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *sara.l.covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Taxpayer Experience Office Speaker Request.

OMB Number: 1545–New.

Form Project Number: Form 15424.

Abstract: If an organization would like a representative from Internal Revenue Service (IRS) Taxpayer Experience Office to speak at their event, they can complete the speaker request form. This form provides organizations with a more structured way of making the request. Also, the form streamlines the process by ensuring the IRS receives the necessary information in order to provide a speaker.

Current Actions: This is a request for new OMB control number.

Type of Review: New form.

Affected Public: Business, or other for-profit, and not-for-profit institutions.

Estimated Number of Responses: 100.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 17 hrs.

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: September 14, 2023.

Sara L. Covington,

IRS Tax Analyst.

[FR Doc. 2023–20186 Filed 9–18–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Prosthetics and Special-Disabilities Programs, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. ch. 10, that the Advisory Committee on Prosthetics and Special-Disabilities Programs will meet on October 17–18, 2023. The meeting sessions will begin at 8:30 a.m. EST and end at 4:30 p.m. EST on both days.

The meeting will be a hybrid meeting, held in-person at the Lafayette Building, 811 Vermont Avenue NW, Room 3611, Washington, DC and virtually via WebEx conferencing. All sessions will be open to the public. The public is invited to attend the meeting virtually on both days via WebEx conferencing at the following URLs:*https://veteransaffairs.webex.com/veteransaffairs/j.php?MTID=mdfec97ed00815c7ad1e2eb35d1f55dbc* or join by phone 14043971596 USA Toll Number; meeting number (access code): 2762 349 6847. Meeting password GeMey5yf@33.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on VA's prosthetics programs designed to provide state-of-the-art prosthetics and the associated rehabilitation research, development, and evaluation of such technology. The Committee also provides advice to the Secretary on special-disabilities programs, which are defined as any program administered by the Secretary to serve Veterans with spinal cord injuries, blindness or visual impairments, loss of extremities or loss of function, deafness or hearing impairment, and other serious incapacities in terms of daily life functions.

The Committee will convene in open (hybrid) sessions with introductory remarks from the Committee Chair; the Executive Director for Rehabilitation and Prosthetics; and Department Senior Leaders. The Committee will hear presentations from the following Veterans Health Administration (VHA) National Program Offices: Recreation Therapy and Creative Arts Therapy Service; Blind Rehabilitation Service; Prosthetic and Sensory Aids Service; Audiology and Speech Pathology Service; and the National Veterans Sports Programs and Special Events. The committee will also hear presentations from the PACT Act Team; Workforce Management and Consulting; Geriatrics and Extended Care Service; Patient Centered Care & Cultural Transformation (Whole Health), as well as from the Neurology subcommittees.

The meeting will include time reserved for public comments before the meeting closes on October 18, 2023. Members of the public may submit written statements for review by the Committee in advance of the meeting. Public comments may be received no later than October 11, 2023, for inclusion in the official meeting record. Please send these comments to Dr. Lauren Racoosin, Designated Federal Officer, Rehabilitation and Prosthetic Services, Veterans Health Administration, at *Lauren.Racoosin@va.gov.*

Dated: September 14, 2023.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2023–20222 Filed 9–18–23; 8:45 am]

BILLING CODE 8320–01–P

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 3, 54, 216, et al.

Long-Term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions; Resolution Plans Required for Insured Depository Institutions With $100 Billion or More in Total Assets; Informational Filings Required for Insured Depository Institutions With At Least $50 Billion but Less Than $100 Billion in Total Assets; Guidance for Resolution Plan Submissions of Domestic and Foreign Triennial Full Filers; Proposed Rules and Notices

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 3 and 54

[Docket ID OCC–2023–0011]

RIN 1557–AF21

FEDERAL RESERVE SYSTEM

12 CFR Parts 216, 217, 238, and 252

[Regulations P, Q, LL, and YY; Docket No. [R–1815]]

RIN 7100–AG66

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 324 and 374

RIN 3064–AF86

Long-Term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions

AGENCY: Office of the Comptroller of the Currency, Department of the Treasury; Board of Governors of the Federal Reserve System; and Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking with request for public comment.

SUMMARY: The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation are issuing a proposed rule for comment that would require certain large depository institution holding companies, U.S. intermediate holding companies of foreign banking organizations, and certain insured depository institutions, to issue and maintain outstanding a minimum amount of long-term debt. The proposed rule would improve the resolvability of these banking organizations in case of failure, may reduce costs to the Deposit Insurance Fund, and mitigate financial stability and contagion risks by reducing the risk of loss to uninsured depositors.

DATES: Comments must be received on or before November 30, 2023.

ADDRESSES: Comments should be directed to:

OCC: You may submit comments to the OCC by any of the methods set forth below. Commenters are encouraged to submit comments through the Federal eRulemaking Portal. Please use the title ''Long-term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions'' 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–2023–0011'' 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 1–866–498–2945 (toll free) Monday–Friday, 9 a.m.–5 p.m. ET, or email *regulationshelpdesk@gsa.gov*.

- *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–2023–0011'' 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–2023–0011'' in the Search Box and click ''Search.'' Click on the ''Dockets'' tab and then the document's title. After clicking the document's title, click the ''Browse All 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 Comments Results'' options on the left side of the screen. Supporting materials can be viewed by clicking on the ''Browse Documents'' tab. Click 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 checking the ''Supporting & Related Material'' checkbox. For assistance with the *Regulations.gov* site, please call 1–866–498–2945 (toll free) Monday–Friday, 9 a.m.–5 p.m. ET, or email *regulationshelpdesk@gsa.gov*.

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 to the Board, identified by Docket No. R–1815 and RIN 7100–AG66, 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*.

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

- *Email: regs.comments@federalreserve.gov*. Include docket number and RIN 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. In general, all public comments will be made available on the Board's website at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, and will not be modified to remove confidential, contact or any identifiable information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St. NW Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. during federal business weekdays.

FDIC: You may submit comments to the FDIC, identified by RIN 3064–AF86, by any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/*. Follow instructions for submitting comments on the FDIC website.

- *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments/Legal OES (RIN 3064–AF86), Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

- *Hand Delivered/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 a.m. and 5 p.m.

• *Email: comments@FDIC.gov*. Include RIN 3064–AF86 on the subject line of the message.

• *Public Inspection:* Comments received, including any personal information provided, may be posted without change to *https://www.fdic.gov/resources/regulations/federal-register-publications/*. Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this notice will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT:

OCC: Andrew Tschirhart, Risk Expert, Capital and Regulatory Policy, (202) 649–6370; or Carl Kaminski, Assistant Director, or Joanne Phillips, Counsel, Chief Counsel's Office, (202) 649–5490, 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: Molly Mahar, Senior Associate Director, (202) 973–7360, Juan Climent, Assistant Director, (202) 872–7526, Francis Kuo, Lead Financial Institution Policy Analyst (202) 530–6224, Lesley Chao, Lead Financial Institution Policy Analyst, (202) 974–7063, Tudor Rus, Lead Financial Institution Policy Analyst, (202) 475–6359, Lars Arnesen, Senior Financial Institution Policy Analyst, (202) 452–2030, Division of Supervision and Regulation; or Charles Gray, Deputy General Counsel, (202) 872–7589, Reena Sahni, Associate General Counsel, (202) 452–3236, Jay Schwarz, Assistant General Counsel, (202) 452–2970, Josh Strazanac, Counsel, (202) 452–2457, Brian Kesten, Senior Attorney, (202) 475–6650, Jacob Fraley, Legal Assistant/Attorney, (202) 452–3127, Legal Division; For users text telephone systems (TTY) or any TTY-based Telecommunications Relay Services, please call 711 from any telephone, anywhere in the United States; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

FDIC: Andrew J. Felton, Deputy Director, (202) 898–3691; Ryan P. Tetrick, Deputy Director, (202) 898–7028; Elizabeth Falloon, Senior Advisor, (202) 898–6626; Jenny G. Traille, Acting Senior Deputy Director, (202) 898–3608; Julia E. Paris, Senior Cross-Border Specialist, (202) 898–3821; Division of Complex Institution Supervision and Resolution; R. Penfield Starke, Acting Deputy General Counsel, *rstarke@fdic.gov;* David Wall, Assistant General Counsel, (202) 898–6575; F. Angus Tarpley III, Counsel, (202) 898–8521; Dena S. Kessler, Counsel, (202) 898–3833, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction and Overview of the Proposal
  A. Background and Introduction
  B. Overview of the Proposal
II. Advance Notice of Proposed Rulemaking
III. LTD Requirement for Covered Entities
  A. Scope of Application
  B. Covered Savings and Loan Holding Companies
  C. Calibration of Covered Entity LTD Requirement
IV. LTD Requirement for Covered IDIs
  A. Scope of Application
  B. Calibration of Covered IDI LTD Requirement
V. Features of Eligible LTD
  A. Eligible External LTD
  B. Eligible Internal LTD
  C. Special Considerations for Covered IHCs
  D. Legacy External LTD Counted Towards Requirements
VI. Clean Holding Company Requirements
  A. No External Issuance of Short-Term Debt Instruments
  B. Qualified Financial Contracts With Third Parties
  C. Guarantees That are Subject to Cross-Defaults
  D. Upstream Guarantees and Offset Rights
  E. Cap on Certain Liabilities
VII. Deduction of Investments in Eligible External LTD From Regulatory Capital
VIII. Transition Periods
IX. Changes to the Board's TLAC rule
  A. Haircut for LTD Used to Meet TLAC Requirement
  B. Minimum Denominations for LTD Used to Satisfy TLAC Requirements
  C. Treatment of Certain Transactions for Clean Holding Company Requirements
  D. Disclosure Templates for TLAC HCs
  E. Reservation of Authority
  F. Technical Changes To Accommodate New Requirements
X. Economic Impact Assessment
  A. Introduction and Scope of Application
  B. Benefits
  C. Costs
XI. Regulatory Analysis
  A. Paperwork Reduction Act
  B. Regulatory Flexibility Act
  C. Riegle Community Development and Regulatory Improvement Act of 1994
  D. Solicitation of Comments on the use of Plain Language
  E. OCC Unfunded Mandates Reform Act of 1995 determination
  F. Providing Accountability Through Transparency Act of 2023

I. Introduction and Overview of the Proposal

A. Background and Introduction

Following the 2008 financial crisis, the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), and Federal Deposit Insurance Corporation (FDIC and, together with the OCC and the Board, the ''agencies'') adopted rules and guidance, both jointly and individually, to improve the resolvability, resilience, and safety and soundness of all banking organizations. The agencies have continued to evaluate whether existing regulations are appropriate to address evolving risks. In recent years, certain banking organizations that are not global systemically important banking organizations (GSIBs) have grown in size and complexity, and new vulnerabilities have emerged, such as increased reliance on uninsured deposits. In light of these trends, the Board and the FDIC issued an advance notice of proposed rulemaking (ANPR) in October 2022 seeking public input on whether a long-term debt requirement was appropriate to address the financial stability risk associated with the material distress or failure of certain non-GSIB large banking organizations.[1] More recently, the insured depository institutions (IDIs) of certain non-GSIB banking organizations with consolidated assets of $100 billion or more experienced significant withdrawals of uninsured deposits in response to underlying weaknesses in their financial position, precipitating their failures. These events have further highlighted the risk that the failure of one of these banking organizations can spread to other financial institutions and potentially give rise to systemic risk. Moreover, these recent IDI failures have resulted in significant costs to the FDIC's Deposit Insurance Fund (DIF).

To address these risks, the Board is proposing to require Category II, III, and IV bank holding companies (BHCs) and

[1] *See* Resolution-Related Resource Requirements for Large Banking Organizations, 87 FR 64170 (Oct. 24, 2022), *https://www.federalregister.gov/documents/2022/10/24/2022-23003/resolution-related-resource-requirements-for-large-banking-organizations.*

savings and loan holding companies (SLHCs and, together with BHCs, ''covered HCs''), and Category II, III, and IV U.S. intermediate holding companies (IHCs) of foreign banking organizations (FBOs) that are not GSIBs (''covered IHCs'' and, together with covered HCs, ''covered entities'') to issue and maintain minimum amounts of long-term debt (LTD) that satisfies certain requirements. The agencies also are proposing to require IDIs that are not consolidated subsidiaries of U.S. GSIBs and that (i) have at least $100 billion in consolidated assets or (ii) are affiliated with IDIs that have at least $100 billion in consolidated assets (covered IDIs) to issue and maintain minimum amounts of LTD.[2] Under the proposal, covered IDIs that are consolidated subsidiaries of covered entities would be required to issue the LTD internally to a company that consolidates the covered IDI, which would in turn be required to purchase that LTD. Covered IDIs that are not consolidated subsidiaries of covered entities would be permitted (and where there is no controlling parent, required) to issue their LTD externally to nonaffiliates. Under the proposal, only debt instruments that are most readily able to absorb losses in a resolution proceeding would qualify as eligible LTD. Therefore, the agencies believe the proposal would improve the resolvability of covered entities and covered IDIs.

By augmenting loss-absorbing capacity, LTD can provide banking organizations and banking regulators greater flexibility in responding to the failure of covered entities and covered IDIs. In the resolution of a failed IDI, the availability of an outstanding amount of LTD may increase the likelihood of an orderly and cost-effective resolution for the IDI and may help minimize costs to the DIF. Even where the amount of outstanding LTD is insufficient to absorb enough losses so that all depositor claims at the IDI can be fully satisfied, it would reduce potential costs to the DIF and may expand the range of options available to the FDIC as receiver. In addition, the proposed LTD requirement could improve the resilience of covered entities and covered IDIs by enhancing the stability of their funding profiles. Investors in LTD could also exercise market discipline over issuers of LTD.

1. Risks Presented by Covered Entities and Covered IDIs, and Challenges in Resolution

Covered entities today primarily operate a bank-centric business model, with deposits providing the main source of their funding.[3] Following the 2008 financial crisis, the reliance of covered entities on uninsured deposits grew dramatically.[4] This increased reliance on uninsured deposit funding has given rise to vulnerabilities at these banking organizations.

As recent events have highlighted, high levels of uninsured deposit funding can pose an especially significant risk of bank runs when customers grow concerned over the solvency of their bank. The failure of covered entities or covered IDIs can also spread to a broader range of banking organizations, impacting the provision of financial services and access to credit for individuals, families, and businesses. FDIC research shows that account holders with uninsured deposits are more sensitive to negative news regarding the stability of their banks and are more likely to withdraw funds to protect themselves than those holding only insured deposits.[5] The sensitivity of uninsured depositors to information flows has been amplified by social media, potentially further shortening the timeline between a banking organization experiencing a negative news event and being faced with a potential deposit run. This can, in turn, bring about the rapid failure of a covered entity, forcing its IDI subsidiary into an FDIC receivership with little runway for recovery steps to be implemented or for contingency planning for resolution. The speed at which stress occurs has the potential to cause contagion to other institutions perceived to be similarly situated.

Among covered entities that are subject to resolution planning requirements under Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), most indicate that their preferred resolution strategy involves the resolution of their IDI subsidiaries under the Federal Deposit Insurance Act of 1950, as amended (FDI Act), with the covered entities being resolved under Chapter 11 of the U.S. Bankruptcy Code. In the resolution of an IDI under the FDI Act, the FDIC as receiver has a variety of strategic options, including, among others, selling the IDI's assets and transferring its deposit liabilities to one or more healthy acquirers, transferring the IDI's assets and deposit liabilities to a bridge depository institution, or executing an insured deposit payout and liquidation of the assets of the failed bank. Many covered entities focus in their resolution plans on a bridge strategy where the FDIC transfers the assets and deposit liabilities of a failed IDI to a newly organized bridge depository institution that the FDIC continues to operate. This resolution option can allow the FDIC to effectively stabilize the operations of the failed IDI and preserve the failed IDI's franchise value, making the business of the failed IDI or its separate business lines more attractive to a greater number of potential acquirers.

The FDIC is required by section 13(c) of the FDI Act to resolve an IDI in a manner that poses the least cost to the DIF.[6] Depending on the losses incurred at an IDI and on the liability structure of the IDI, the FDIC could be required to impose losses on the IDI's uninsured depositors in order to satisfy the least-cost requirement, unless the systemic risk exception is invoked.[7] As recent

[2] IDIs that are consolidated subsidiaries of U.S. GSIBs would not be subject to the proposed LTD requirement because their parent holding companies are subject to the LTD requirement under the Board's total loss-absorbing capacity (TLAC) rule. *See* 12 CFR 252 subparts G and P. In addition, U.S. GSIBs are subject to the most stringent capital, liquidity, and other prudential standards in the United States. These firms also have adopted resolution plans reflecting guidance issued by the Board and the FDIC which establishes a capital and liquidity framework for resolution. The guidance (including the provisions related to Resolution Capital Adequacy and Positioning, or RCAP) is designed to ensure adequate maintenance of loss-absorbing resources either at the parent or at material subsidiaries such that all material subsidiaries, including IDIs, could be recapitalized in the event of resolution under the single point of entry resolution strategies adopted by the U.S. GSIBs. *See* Guidance for § 165(d) Resolution Plan Submissions by Domestic Covered Companies applicable to the Eight Largest, Complex U.S. Banking Organizations, 84 FR 1438 (Feb. 4, 2019), *https://www.federalregister.gov/documents/2019/02/04/2019-00800/final-guidance-for-the-2019*.

[3] According to FR Y–9C and Call Report data as of December 31, 2022, for domestic Category II, III and IV BHCs and SLHCs with more than $100 billion in total assets, excluding U.S. GSIBs and grandfathered unitary SLHCs, deposits account for approximately 82 percent of total liabilities. Review of the Federal Reserve's Supervision and Regulation of Silicon Valley Bank, Table 1 (Apr. 2023) (SVB Report), *https://www.federalreserve.gov/publications/files/svb-review-20230428.pdf*. Comparatively, across the U.S. GSIBs, deposits account for approximately 54 percent of total liabilities.

[4] Data from Call Reports show that the proportion of uninsured deposits to total deposits at covered entities increased from about 31 percent to 43 percent from 2009 to 2022.

[5] *See* FDIC, Deposit Inflows and Outflows in Failing Banks: The Role of Deposit Insurance (last updated July 15, 2022), *https://www.fdic.gov/analysis/cfr/working-papers/2018/cfr-wp2018-02-update.pdf*.

[6] *See* 12 U.S.C. 1823(c)(4).

[7] Invocation of the systemic risk exception allows the FDIC to take actions that could be inconsistent with the least-cost requirement in the FDI Act. The systemic risk exception determination can only be made by the Secretary of the Treasury, in consultation with the President, and with the recommendation of two-thirds of the boards of the Board and the FDIC, upon a determination that compliance with the least-cost requirement would have serious adverse effects on economic

experiences have demonstrated, if uninsured depositors believe they might lose a portion of their deposit funds or they might encounter interrupted access to such funds, contagion can spread to other institutions and cause deposit runs beyond those at the failing IDI.

The recent failures of three IDIs that would have been covered within the scope of this proposal, Silicon Valley Bank (SVB), Signature Bank (SBNY), and First Republic Bank (First Republic), highlighted the risks posed by the failure of a covered IDI, including systemic contagion, as well as the challenges that the FDIC can face in executing an orderly resolution for covered IDIs. The comparative absence of alternate forms of stable funding in these cases, other than equity and deposits, increased these banks' vulnerability to deposit runs, and these runs precipitated their failures. Despite prompt action taken by regulators to facilitate the resolution of these failed IDIs, there was contagion in the banking sector, particularly for certain covered entities and certain regional banking organizations,[8] some of which experienced higher than normal deposit outflows during this time.[9] The proposed rule, if fully implemented at the time of the failure of these firms, would have provided billions of dollars of additional loss-absorbing capacity. The agencies believe that the presence of a substantial layer of liabilities that absorbs losses ahead of uninsured depositors could have reduced the likelihood of those depositors running, might have facilitated resolution options that were not otherwise available and could have made systemic risk determinations unnecessary.

2. Key Benefits and Rationale of the Proposal

The proposed LTD requirements would improve the resolvability of covered entities and covered IDIs because LTD can be used to absorb loss and create equity in resolution. In particular, because LTD is subordinate to deposits and can be used by the FDIC to absorb losses by leaving it behind in the receivership estate of a failed IDI, it can help mitigate the risk that any depositors would take losses in the resolution of the IDI. Because LTD absorbs losses before deposits, an LTD requirement at the covered IDI would give the FDIC greater flexibility, including the potential to transfer all deposit liabilities (including uninsured deposit liabilities) of a failed IDI to an acquirer or to a bridge depository institution in a manner consistent with the FDI Act's least-cost requirement.

Expanding the FDIC's range of options for resolving a failed IDI to potentially include the use of a bridge depository institution that can assume all deposits on a least-cost basis can significantly improve the prospect of an orderly resolution. When an IDI fails quickly, a bridge depository institution might afford the FDIC additional time to find an acquirer for the IDI's assets and deposits. Transfer of deposits and assets to a bridge depository institution may also give the FDIC additional time to execute a variety of resolution strategies, such as selling the IDI in pieces over time or effectuating a spin-off of all or parts of the IDI's operations or business lines. LTD can therefore reduce costs to the DIF and expand the available resolution options if a bank fails. The availability of LTD would also improve the FDIC's options for resolving a failed IDI by maintaining franchise value, improving the marketability of the failed IDI, and reducing the need to use DIF resources to stabilize the institution or support a purchaser. Further, the availability of LTD could enable strategies involving bridge depository institutions to meet the least-cost test. The availability of LTD resources would also potentially support resolution strategies that involve a recapitalized bridge depository institution exiting from resolution on an independent basis as a newly-chartered IDI that would have new ownership. This may be particularly important in circumstances where there are market or other limitations that preclude finding a suitable acquirer, and where other options, such as liquidation, are not feasible or involve unacceptable levels of systemic risk. Further, there may be a limited market for the covered IDIs subject to this proposal due to their size and, in some cases, relatively more specialized business models. As a result, at the time of resolution, strategies that involve the sale of large IDIs may be limited due to market or other barriers, or may involve high costs in order to make a sale attractive and feasible for an acquirer, especially taking into account post-acquisition capital requirements. The availability of LTD to absorb losses or to recapitalize a failed IDI through the resolution process could also mitigate the impact of a covered IDI's failure on financial stability by reducing the risk to uninsured depositors, thereby reducing the risk of runs and contagion. LTD can therefore reduce costs to the DIF and expand the available resolution options if a bank fails.

Although the primary benefits of LTD relate to the resolution of covered entities and their covered IDI subsidiaries, LTD can also improve the resiliency of these banking organizations prior to failure. Considering its long maturity, LTD would be a stable source of funding and, in contrast to other forms of funding like uninsured deposits, may serve as a source of market discipline through pricing.

B. Overview of the Proposal

The agencies are inviting comment on this notice of proposed rulemaking to improve the resolvability of covered entities and covered IDIs. The proposal includes five key components.

First, the proposal would require Category II, III, and IV covered entities to issue and maintain outstanding minimum levels of eligible LTD. This aspect of the proposal is being issued solely by the Board.[10]

Second, the proposal would require covered IDIs to issue and maintain outstanding a minimum amount of eligible LTD.[11] This aspect of the proposal is being issued by all of the agencies. A covered IDI that is a consolidated subsidiary of a covered entity or a foreign GSIB IHC would be required to issue eligible LTD internally to an entity that directly or indirectly consolidates the covered IDI.[12] A covered IDI that is not a controlled subsidiary of a further parent entity would be required to issue eligible LTD to investors that are not affiliates. A covered IDI that is a consolidated subsidiary of a further parent entity that

conditions or financial stability. 12 U.S.C. 1823(c)(4)(G).

[8] Regional banking organizations generally are considered those with total consolidated assets between $10 billion and $100 billion. *See, e.g.,* SVB Report.

[9] *See* GAO, Preliminary Review of Agency Actions Related to March 2023 Bank Failures at 32 (Apr. 28, 2023), *https://www.gao.gov/assets/gao-23-106736.pdf.*

[10] The proposal would also require covered entities to purchase the debt of their subsidiaries that are internally issuing IDIs under the proposal.

[11] The IDI requirement would apply to an IDI of a U.S. IHC regardless of whether the U.S. IHC is subject to the Board's TLAC rule, provided the IDI meets the other requirements for applicability. *See* Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U.S. Bank Holding Companies and Intermediate Holding Companies of Systemically Important Foreign Banking Organizations, 82 FR 8266 (Jan. 24, 2017), *https://www.federalregister.gov/documents/2017/01/24/2017-00431/total-loss-absorbing-capacity-long-term-debt-and-clean-holding-company-requirements-for-systemically.*

[12] A subsidiary is considered a consolidated subsidiary based on U.S. generally accepted accounting principles (GAAP); consolidation generally applies when its holding company controls a majority (greater than 50 percent) of the outstanding voting interests.

is not a covered entity or that is a controlled but not consolidated subsidiary of a covered entity or a foreign GSIB IHC would be permitted to issue eligible LTD to a company that controls the covered IDI or to investors that are not affiliates.

Third, the operations of covered entities would be subject to ''clean holding company'' requirements to further improve the resolvability of covered entities and their operating subsidiaries. This aspect of the proposal is being issued solely by the Board. In particular, the proposal would prohibit covered entities from issuing short-term debt instruments to third parties, entering into qualified financial contracts (QFCs) with third parties, having liabilities that are subject to ''upstream guarantees'' [13] or that are subject to contractual offset against amounts owed to subsidiaries of the covered entity. The proposal would also cap the amount of a covered entity's liabilities that are not LTD and that rank at either the same priority as or junior to its eligible external LTD at 5 percent of the sum of the covered entity's common equity tier 1 capital, additional tier 1 capital, and eligible LTD amount.

Fourth, to limit the potential for financial sector contagion due to interconnectivity in the event of the failure of a covered entity or covered IDI, the proposed rule would expand the existing capital deduction framework for LTD issued by U.S. GSIBs and the IHCs of foreign GSIBs to include external LTD issued by covered entities and external LTD issued by covered IDIs. This aspect of the proposal is being issued by all of the agencies.

Finally, the proposal would make certain technical changes to the existing TLAC rule that applies to the U.S. GSIBs and U.S. IHCs of foreign GSIBs. This aspect of the proposal is being issued solely by the Board. These changes would harmonize provisions within the TLAC rule and address items that have been identified through the Board's administration of the rule.

The revisions introduced by the proposal would interact with the agencies' capital rule and proposed amendments to those rules.[14]

Question 1: The agencies invite comment on the implications of the interaction of the proposal with other existing rules and with other notices of proposed rulemaking. How do proposed changes to the agencies' capital rule affect the advantages and disadvantages of this proposed rule?

II. Advance Notice of Proposed Rulemaking

In October 2022, the Board and the FDIC published an ANPR to solicit public input regarding whether an extra layer of loss-absorbing capacity could improve optionality in resolving certain large banking organizations and their subsidiary IDIs, and the costs and benefits of such a requirement.[15] The Board and the FDIC received nearly 80 comments on the ANPR from banking organizations, trade associations, public interest advocacy groups, members of Congress, and private individuals. Two members of the Senate Banking Committee as well as an advocacy group representing independent banks supported the proposal. Most commenters opposed or raised concerns regarding the proposal. However, most of the comments were received prior to the recent bank stress events involving SVB, SBNY, and First Republic and therefore did not take those events into consideration.

Many commenters asserted that an LTD requirement for covered entities and covered IDIs is unnecessary and that most covered entities and covered IDIs are prepared for orderly resolution pursuant to their existing resolution plans submitted to the FDIC and the Board. Specifically, commenters argued that covered entities are better capitalized and have stronger liquidity positions under post-crisis regulations, and that covered entities are non-complex and present minimal systemic risk. The commenters also maintained that recent balance sheet growth at covered entities is not concerning because such growth has involved increases in mostly low-risk, liquid assets. Further, commenters asserted that the resolution plans that have been submitted to the agencies by the covered entities and covered IDIs subject to such requirements are effective and already provide for optionality in resolution. The commenters argued that the imposition of a uniform LTD requirement would be inappropriate for the multiple point of entry (MPOE) resolution strategies followed by certain covered entities and could require covered entities to unnecessarily change their established resolution plans. Commenters also argued that anticipated stronger capital requirements that would be imposed pursuant to the anticipated Basel III finalization reforms would further diminish the need for an LTD requirement.

Multiple commenters, while supporting the spirit of the policy options raised in the ANPR, suggested the agencies should raise equity capital requirements rather than impose an LTD requirement to improve the resiliency of covered entities. Alternatively, some commenters argued that covered entities should be able to count any equity capital in excess of regulatory minimums toward any LTD requirement.

Several commenters argued that the benefits of an LTD requirement for covered entities would not outweigh its immediate costs. These commenters asserted that an excessive LTD requirement could decrease the availability of credit to businesses and consumers. Further, a few commenters suggested that an LTD requirement could imply uninsured depositor protection for IDIs subject to such a requirement, thereby increasing moral hazard. Several commenters stressed that any LTD requirement should be supported by a rigorous cost-benefit analysis.

Finally, several commenters questioned whether the Board possesses the statutory authority to impose an LTD requirement on BHCs under section 165(b) of the Dodd-Frank Act, as amended.[16] These commenters argued that the Board's authority under section 165 to issue enhanced prudential standards is limited to addressing financial stability risks. Commenters stated that covered entities do not pose a threat to financial stability and it is uncertain whether section 165(b) supports imposing an LTD requirement on covered entities.

The agencies considered these comments in developing the proposed rule. In light of recent experiences with SVB, SBNY, and First Republic, the agencies are extending the scope of the proposed rule to large banking organization with total consolidated assets of $100 billion or more to reduce the likelihood of contagion from these banking organizations and to reduce the cost to the DIF should they fail. The agencies further note that both equity capital and LTD can be used to absorb losses and reduce the potential impact

[13] Upstream guarantees are when a parent company's obligations are guaranteed by one of its subsidiaries.

[14] On July 27, 2023, the agencies issued a notice of proposed rulemaking inviting comment on a proposal to amend the capital rule. *See* Joint press release: Agencies request comment on proposed rules to strengthen capital requirements for large banks (July 27, 2023), *https://www.federalreserve.gov/newsevents/pressreleases/bcreg20230727a.htm.*

[15] Resolution-Related Resource Requirements for Large Banking Organizations, 87 FR 64170 (Oct. 24, 2022), *https://www.federalregister.gov/documents/2022/10/24/2022-23003/resolution-related-resource-requirements-for-large-banking-organizations.*

[16] Public Law 111–203; 124 Stat. 1376 (2010), codified at 12 U.S.C. 5365(b).

from the failure of a large banking organization; unlike equity capital, however, LTD can always be used as a fresh source of capital subsequent to failure and can afford the FDIC more options in resolving a failed bank.

III. LTD Requirement for Covered Entities

A. Scope of Application

The proposed rule would apply to Category II, III, and IV U.S. BHCs and SLHCs, and Category II, III, and IV U.S. IHCs of FBOs that are not currently subject to the existing TLAC rule as defined under the Board's Regulations LL and YY (covered entities).[17] Under Regulations LL and YY, a Category II covered entity is one that has (i) at least $700 billion or more in average total consolidated assets, or (ii) at least $100 billion in average total consolidated assets and $75 billion or more in average cross-jurisdictional activity.[18] A Category III covered entity is one that has (i) at least $250 billion in average total consolidated assets, or (ii) (A) $100 billion in average total consolidated assets and (B) $75 billion or more in average total nonbank assets, average weighted short-term wholesale funding, or average off-balance sheet exposure.[19] A Category IV covered entity is one that has at least $100 billion in average total consolidated assets.[20]

Given the size of covered entities, the agencies continue to believe that the failure of one or more covered entities or covered IDIs could potentially have a negative impact on U.S. financial markets and the broader U.S. economy. While several commenters to the ANPR downplayed this concern, this risk was demonstrated by the recent failures of SBNY, SVB, and First Republic,[21] which contributed to depositor outflows at other banking organizations. In addition, some covered entities have operations that have been identified as critical operations by the Board and FDIC, the disorderly wind down of which could pose additional risks to U.S. financial stability. These financial stability implications may increase the likelihood regulators quickly resolve a covered entity by selling its assets to a larger acquirer, an approach that may itself add to long-term financial stability concerns from increased concentration in the banking sector.

Question 2: Does the proposed scope of application appropriately address the risks discussed above? What additional factors, if any, should the Board consider in determining which entities should be subject to the proposed rule, other than those that are used to determine whether a covered entity is placed within Categories II–IV? For example, what additional or alternate factors should the Board consider in setting requirements for IHCs (e.g., should the proposed rule only apply to IHCs with IDIs that would be subject to the proposed rule's IDI requirements)? Are there elements of the rule that should be applied differently to Category IV organizations as compared to Category II and III organizations, and what would be the advantages and disadvantages of such differences in requirements?

Question 3: What additional characteristics of banking organizations should the Board consider in setting the scope of the proposed rule and why? Should consideration be given to additional characteristics such as reliance on uninsured deposits; proportion of assets, income, and employees outside of the IDI; or to other aspects of a covered entity's balance sheet? How should these characteristics affect the proposed scope? Please explain.

B. Covered Savings and Loan Holding Companies

As noted above, the proposed rule would apply to Category II, III, and IV SLHCs, as defined in 12 CFR 238.10. Section 10(g) of the Home Owners' Loan Act (HOLA) [22] authorizes the Board to issue such regulations and orders regarding SLHCs, including regulations relating to capital requirements, as the Board deems necessary or appropriate to administer and carry out the purposes of section 10 of HOLA. As the primary Federal regulator and supervisor of SLHCs, one of the Board's objectives is to ensure that SLHCs operate in a safe-and-sound manner and in compliance with applicable law. Like BHCs, SLHCs must serve as a source of strength to their subsidiary savings associations and may not conduct operations in an unsafe and unsound manner.

Section 165 of the Dodd-Frank Act directs the Board to establish specific enhanced prudential standards for large BHCs and companies designated by the Financial Stability Oversight Council to prevent or mitigate risks to the financial stability of the United States.[23] Section 165 does not prohibit the application of standards to SLHCs and BHCs pursuant to other statutory authorities.[24]

SLHCs that are covered HCs engage in many of the same activities and face similar risks as BHCs that are covered HCs. SLHCs that are covered HCs are substantially engaged in banking and financial activities, including deposit taking and lending.[25] Some SLHCs that are covered HCs engage in credit card and margin lending and certain complex nonbanking activities that pose higher levels of risk. SLHCs that are covered HCs may also rely on high levels of short-term wholesale funding, which may require sophisticated capital, liquidity, and risk management processes. Similar to BHCs that are covered HCs, SLHCs that are covered HCs conduct business across a large geographic footprint, which in times of stress could present certain operational risks and complexities. Subjecting SLHCs that are covered HCs to the proposed rule would improve their resolvability and promote their safe and sound operations.

Question 4: What are the advantages and disadvantages to applying the proposed rule to SLHCs that are covered HCs in addition to BHCs that are covered HCs? How are the risks that an SLHC poses in resolution different from the risks that a BHC poses in resolution? How might those differences warrant a different LTD requirement for SLHCs relative to BHCs?

C. Calibration of Covered Entity LTD Requirement

Under the proposal, a covered entity would be required to maintain outstanding eligible LTD in an amount that is the greater of 6.0 percent of the covered entity's total risk-weighted

[17] 12 CFR 252.2 (BHCs and U.S. IHCs under Regulation YY); 12 CFR 238.2(cc)–(ee) (SLHCs under Regulation LL).

[18] 12 CFR 252.5(c) (BHCs and IHCs); 12 CFR 238.10(b) (SLHCs).

[19] 12 CFR 252.5(d) (BHCs and IHCs); 12 CFR 238.10(c) (SLHCs).

[20] 12 CFR 252.5(e) (BHCs and IHCs); 12 CFR 238.10(d) (SLHCs).

[21] SBNY had total consolidated assets of around $110 billion, SVB had total consolidated assets of just over $200 billion, and First Republic had total consolidated assets of just over $230 billion at the time of failure. The agencies note that neither SBNY nor First Republic had a holding company, so in those cases it was solely an IDI that failed. However, their failures illustrate the potential risk of contagion in the event of the material distress or failure of a large IDI.

[22] 12 U.S.C. 1467a(g).

[23] 12 U.S.C. 5365(a)(1).

[24] Section 401(b) of the Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law 115–174, 132 Stat. 1356 (2018).

[25] The proposed rule would not apply to an SLHC with 25 percent or more of its total consolidated assets in insurance underwriting subsidiaries (other than assets associated with insurance underwriting for credit), an SLHC with a top-tier holding company that is an insurance underwriting company, or a grandfathered unitary SLHC that derives a majority of its assets or revenues from activities that are not financial in nature under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1843(k)). *See* 12 CFR 238.2(ff).

assets,[26] 3.5 percent of its average total consolidated assets,[27] and 2.5 percent of its total leverage exposure if the covered entity is subject to the supplementary leverage ratio rule.[28] A covered entity would be prohibited from redeeming or repurchasing eligible LTD prior to its stated maturity date without obtaining prior approval from the Board where the redemption or repurchase would cause the covered entity's eligible LTD to fall below its LTD requirement.

The proposed eligible LTD requirement was calibrated primarily on the basis of a ''capital refill'' framework. Under that framework, the objective of the LTD requirement is to ensure that each covered entity has a minimum amount of eligible LTD such that, if the covered entity's going-concern capital is fully depleted and the covered entity fails and enters resolution, the eligible LTD would be sufficient to fully recapitalize the covered entity by replenishing its going-concern capital to at least the amount required to meet minimum leverage capital requirements and common equity tier 1 risk-based capital requirements plus the capital conservation buffer applicable to covered entities.

In terms of risk-weighted assets, a covered entity's common equity tier 1 capital level is subject to a minimum requirement of 4.5 percent of risk-weighted assets plus a capital conservation buffer equal to at least 2.5 percent.[29] Accordingly, a covered entity would be subject to an external LTD requirement equal to 7 percent of risk-weighted assets minus a 1 percentage point allowance for balance sheet depletion. This results in a proposed LTD requirement equal to 6 percent of risk-weighted assets. The 1 percentage point allowance for balance sheet depletion is appropriate under the capital refill theory because the losses that the covered entity incurs leading to its failure would deplete its risk-weighted assets as well as its capital. Accordingly, the pre-failure losses would result in a smaller balance sheet for the covered entity at the point of failure, meaning that a smaller dollar amount of capital would be required to restore the covered entity's pre-stress common equity tier 1 capital level. Although the specific amount of eligible external LTD necessary to restore a covered entity to its minimum required common equity tier 1 capital level plus minimum buffer in light of the diminished size of its post-failure balance sheet will vary, applying a uniform 1 percentage point allowance for balance sheet depletion avoids undue regulatory complexity.

The application of the capital refill framework to the leverage-based capital component of the LTD requirement is analogous. A covered entity's tier 1 leverage ratio minimum is 4 percent of average total consolidated assets and its supplementary leverage ratio minimum is 3 percent of total leverage exposure, if the covered entity is subject to the supplementary leverage ratio.[30] Under the proposal, a covered entity would be subject to an LTD requirement equal to 3.5 percent of average total consolidated assets and 2.5 percent of total leverage exposure, if applicable. These requirements, with a balance sheet depletion allowance of 0.5 percentage points, are appropriate to ensure that a covered entity has a sufficient amount of eligible LTD to refill its leverage ratio minimums in the event it depletes all or substantially all of its tier 1 capital prior to failing.

The proposed eligible LTD requirement would support an MPOE[31] resolution through the process by which a covered IDI that is a consolidated subsidiary of a covered entity issues eligible LTD internally. The internally-issued LTD would be available to absorb losses that may otherwise be borne by uninsured depositors and certain other creditors of the subsidiary IDI in the event of its failure, thereby supporting market confidence in the safety of deposits even in the event of resolution, thus limiting the potential for bank runs. The proposed calibration would increase optionality for the FDIC as the LTD amount would be sufficient to capitalize a bridge depository institution and increase its marketability, leading to greater resale value. To the extent that a covered entity has several operating subsidiaries, their recapitalization would support their orderly wind down. In a single point of entry (SPOE)[32] resolution, the required LTD amount, in conjunction with a covered entity's existing equity capital, should be able to absorb losses and support recapitalization of the failed covered entity's material subsidiaries.

The calibration of the eligible LTD requirement is based on the capital refill framework, which depends on the precise structure and calibration of bank capital requirements. The Board will continue to evaluate the LTD requirement in light of any changes to capital requirements over time. In addition, the proposed rule would reserve the authority for the Board to require a covered entity to maintain more, or allow a covered entity to maintain less, eligible LTD than the minimum amount required by the proposed rule under certain circumstances. This reservation of authority would ensure that the Board could require a covered entity to maintain additional LTD if the covered entity poses elevated risks that the proposed rule seeks to address.

The proposed rule would also prohibit a covered entity from redeeming or repurchasing any outstanding eligible LTD without the prior approval of the Board if after the redemption or repurchase the covered entity would not meet its minimum LTD requirement. The proposed rule would allow a covered entity to redeem or repurchase its eligible LTD without prior approval where such redemption or repurchase would not result in the covered entity failing to comply with the minimum eligible LTD requirement. This would give the covered entity flexibility to manage its outstanding debt levels without interfering with the underlying purpose of the proposed rule. In addition, the proposed rule also includes a provision that would allow the Board, after providing a covered entity with notice and an opportunity to respond, to order the covered entity to exclude from its outstanding eligible LTD amount any otherwise eligible debt securities with features that would significantly impair the ability of such

[26] Total risk weighted assets would be defined as the greater of a bank's standardized total risk-weighted assets and advanced approaches total risk-weighted assets, if applicable.

[27] For purposes of the LTD minimum requirement, average total consolidated assets is defined as the denominator of the Board's tier 1 leverage ratio requirement. *See* 12 CFR 217.10(b)(4).

[28] *See* 12 CFR 217.10(c)(2).

[29] *See* 12 CFR 217.11. A covered entity may be subject to a buffer greater than 2.5 percent under the capital rule due to the stress capital buffer or countercyclical capital buffer.

[30] Covered entities are not subject to a buffer requirement corresponding to their leverage ratio or SLR requirement.

[31] Under an MPOE strategy, multiple entities within a consolidated organization would enter separate resolution proceedings. For example, many covered entities plan that the parent holding company would file a petition under chapter 11 of the U.S. Bankruptcy Code, and that the FDIC would resolve the IDI subsidiary under the FDI Act.

[32] In an SPOE resolution, only the covered HC itself would enter resolution. In the case of a covered IHC, an SPOE resolution strategy for the U.S. operations of the covered IHC, where the parent FBO pursues a global MPOE strategy, involves only the covered IHC entering into resolution while its subsidiaries would continue to operate. The eligible external LTD issued by the covered IHC would be used to absorb losses incurred by the IHC and its operating subsidiaries, enabling the recapitalization of the operating subsidiaries that had incurred losses and allowing those subsidiaries—including any IDIs—to continue operating on a going-concern basis. SPOE is also an option for the resolution of a covered entity under the Orderly Liquidation Authority provisions of Title II of the Dodd-Frank Act.

debt securities to absorb loss in resolution.[33]

In addition, the Board could take an enforcement action against a covered entity for falling below its minimum LTD requirement. This would be consistent with the Board's authority to pursue enforcement actions for violations of law, rules, or regulations.

Question 5: What alternative calibration, if any, should the Board consider for the eligible LTD requirement to be applied to covered entities? Is the capital refill framework the appropriate methodology for covered entities? Should the requirements be higher or lower? What other factors should the Board consider in determining the appropriate calibration? How should differences in a covered entity's resolution strategy influence the calibration of the required LTD amount, if at all? Please discuss the advantages and disadvantages of alternative calibrations the Board should consider.

Question 6: Should the Board consider increasing or decreasing the calibration of the eligible external LTD requirement applicable to covered entities based on any other factors, such as the level of uninsured deposits at their IDI subsidiaries? If so, how should the Board differentiate between different types of uninsured deposits (e.g., what features of one type of uninsured deposits make such deposits more stable than other types of uninsured deposits), if at all, and at what level of uninsured deposits should the Board increase or decrease calibration for the LTD requirement? What other differentiated consideration or treatment should be afforded uninsured deposits with these characteristics?

Question 7: The proposal would require covered IDIs to issue LTD, as discussed more fully below. There may be circumstances in which IDIs within a single consolidated group might be required to issue, in the aggregate, a greater amount of internal LTD to a covered entity than the covered entity's external LTD requirement. What would be the advantages or disadvantages of requiring the covered entity to issue an amount of LTD that is as large as the aggregate amount that its covered IDI subsidiaries are required to issue? What alternative approaches should the Board consider to address this circumstance? How might the absence of such a requirement impede the proposed LTD requirement in achieving its intended purposes, if at all?

Question 8: The Board is considering whether and how to specify a period for covered entities to raise additional LTD after the entity has been involved in a situation where the FDIC has been appointed receiver. What are the advantages or disadvantages of permitting a period to raise additional LTD following such an event? How long should such a period reasonably be? Should the agencies specify a similar period for U.S. GSIBs and the U.S. IHCs of foreign GSIBs that are already subject to LTD and TLAC requirements?

IV. LTD Requirement for Covered IDIs

The proposed rule also would additionally create a new requirement for covered IDIs to issue eligible LTD. Requiring covered IDIs to maintain minimum amounts of eligible LTD, which would be available to absorb losses in the event of the failure of the IDI, would improve the FDIC's resolution options for the covered IDI. The objective of the IDI-level LTD requirement is to ensure that, if a covered IDI's equity capital is significantly or completely depleted and the covered IDI fails, the eligible IDI LTD would be available to absorb losses, which would help to protect depositors and certain other creditors and afford the FDIC additional optionality in resolving the IDI, including by supporting the transfer of all deposits to one or more acquirers. Where the failed bank is transferred to a bridge depository institution, the eligible LTD would help stabilize the operations of the bridge, thereby providing additional options for the FDIC to ultimately exit the bridge.

Several commenters to the ANPR suggested that increasing bank regulatory capital levels would be a more effective way to improve resiliency of covered entities and covered IDIs because additional capital would reduce their probability of default in the first place. While higher regulatory capital levels would reduce the probability of default of a covered IDI and may increase the chance that a covered entity or covered IDI would have remaining equity in the event of its failure, regulatory capital is likely to be significantly or completely depleted in the lead up to an FDI Act resolution. While eligible LTD would not help a troubled IDI remain adequately capitalized on a going-concern basis, it would significantly reduce the likelihood of contagion and loss to the DIF in resolving the failed bank. For example, if in the lead up to resolution an IDI were to fall below its minimum tier 1 capital requirements, any eligible LTD outstanding at the IDI level would have significant gone-concern benefits in that it would help to recapitalize the IDI. Because eligible LTD of a covered IDI would be available to absorb losses and protect depositors in the event of the failure of the IDI, it would increase optionality for the FDIC in resolving the IDI while meeting the least-cost requirement of the FDI Act. By supporting the FDIC's transfer of assets and deposits to a bridge depository institution in accordance with the least-cost requirement, eligible LTD may help preserve the franchise value of a failed bank and enable the FDIC to pursue restructuring options such as the sale of subsidiaries, branch networks, or business lines, as well as other potential options for divestiture and exit.

A covered IDI that is a consolidated subsidiary of a covered entity would be required to issue its eligible LTD to a company in the United States that consolidates the IDI for accounting purposes. In practice, the proceeds raised by the issuance of eligible LTD by a covered entity would generally be ''downstreamed'' to its covered IDI subsidiary in return for eligible internal LTD that would satisfy such covered IDI's own eligible LTD requirement. A covered IDI that is not a controlled subsidiary of a parent entity would be required to issue its eligible LTD to a party that is not an affiliate of the covered IDI. A covered IDI that is a consolidated subsidiary of a further parent entity that is not a covered entity would be permitted to issue its eligible LTD to a parent that controls the covered IDI or to investors that are not affiliates.

A. Scope of Application

The proposed rule would require four categories of IDIs to issue eligible LTD. First, the proposed rule would apply to any IDI that has at least $100 billion in total consolidated assets and is not controlled by a parent entity (mandatory externally issuing IDI). Second, the proposed rule would apply to any IDI that has at least $100 billion in total consolidated assets and (i) is a consolidated subsidiary of a company that is not a covered entity, a U.S. GSIB or a foreign GSIB subject to the TLAC

[33] Section 263.83 of the Board's rules of procedure describes the notice and response procedures that apply if the Board determines that a company's capital levels are not adequate. *See* 12 CFR 263.83. The Board would follow the same procedures under the proposed rule to determine that a covered entity must exclude from its eligible LTD amount securities with features that would significantly impair the ability of such debt securities to absorb loss in resolution. For example, the Board would provide notice to a covered entity of its intention to require the covered entity to exclude certain securities from its eligible LTD amount and up to 14 days to respond before the Board would issue a final notice requiring that the covered entity to exclude the securities from its eligible LTD amount, unless the Board determines that a shorter period is necessary.

rule or (ii) is controlled but not consolidated by another company (permitted externally issuing IDI). Third, the proposed rule would apply to an IDI that has at least $100 billion in total consolidated assets and that is a consolidated subsidiary of a covered entity or a foreign GSIB IHC (internally issuing IDI).[34] Lastly, the proposed rule would apply to any IDI that is affiliated with an IDI in one of the first three categories (together with mandatory and permitted externally issuing IDIs and internally issuing IDIs, covered IDIs).

The agencies propose to apply the IDI LTD requirement based on an IDI's size. While size is not the only indicator of complexity, it is a readily observable indicator, and, in general, IDIs with assets above $100 billion tend to be more complex in terms of their businesses and operations, are more difficult to resolve, and have a smaller pool of prospective acquirers. As IDIs cross the $100 billion threshold in total consolidated assets, their resolution can become increasingly costly to the DIF.

Covered IDIs under the proposed rule would include IDIs affiliated with IDIs that have at least $100 billion in total consolidated assets because the FDIC may seek to resolve an IDI with at least $100 billion in assets and its affiliated IDIs using either the same bridge depository institution or multiple bridge depository institutions. When an IDI in a group fails, it is likely that all IDIs in the group fail due to interconnectedness and the statutory cross-guaranty imposed on affiliated IDIs in the event of the failure of an IDI in the group.[35] In addition, affiliated IDIs may engage in complementary business activities, so placing them into a single bridge depository institution or coordinating marketing and resolution in multiple bridge depository institutions may improve marketability and attract a larger universe of potential acquirers. Therefore, the proposed rule would include affiliated IDIs in the definition of a covered IDI to help ensure that in the event the affiliated IDIs enter resolution together, a sufficient level of gone concern loss-absorbing resources will be present to enable the FDIC to use one or more bridge depository institutions to effectively resolve all of the affected covered IDIs.

The proposed rule would apply to mandatory and permitted externally issuing IDIs for the reasons discussed above concerning the risks associated with IDIs that have at least $100 billion in total assets. The risks associated with the failure of a mandatory externally issuing IDI are not diminished because of the lack of a parent company and the risks associated with the failure of a permitted externally issuing IDI are not diminished because its parent is not subject to an LTD requirement. Mandatory and permitted externally issuing IDIs may not have the benefit of receiving the support of a holding company or being part of a regulated consolidated organization with diversified businesses. Applying the proposed rule to mandatory and permitted externally issuing IDIs in addition to those with a covered entity parent ensures competitive equality across all covered IDIs.

Question 9: What risks or resolution challenges are presented by IDIs with less than $100 billion in total consolidated assets? In what way do those risks or resolution challenges differ from those presented by IDIs with at least $100 billion in total consolidated assets?

Question 10: How should the agencies address any evasion concerns (e.g., holding companies managing their IDIs to stay below the $100 billion threshold to avoid the IDI LTD requirement)? What would be the advantages and disadvantages of setting the applicability threshold to be based on whether the total assets of the IDIs within a consolidated organization are, in the aggregate, at least $100 billion or more?

Question 11: What would be the advantages and disadvantages of allowing certain IDIs currently defined as internally issuing IDIs (e.g., covered IDIs that are consolidated subsidiaries of Category IV holding companies) to issue debt externally, even if they are a consolidated subsidiary of a covered entity? If the agencies were to allow some IDIs that are consolidated subsidiaries of a covered entity to issue debt externally, how should the agencies determine which IDIs may issue externally, and which would still be required to issue internally? Should such a requirement replace the requirement that the parent covered entity also issue debt externally?

Question 12: Are there special characteristics of mandatory externally issuing IDIs that affect whether a mandatory externally issuing IDI should be subject to a higher or lower LTD requirement than proposed? For example, should mandatory externally issuing IDIs be required to maintain an amount of LTD such that, if the IDI's equity capital is fully depleted and the LTD is used to capitalize a bridge depository institution, the bridge would be well-capitalized under the agencies' prompt corrective action rules?

Question 13: What would be the advantages and disadvantages to requiring permitted externally issuing IDIs to meet their minimum LTD requirement by issuing only eligible internal debt securities or eligible external debt securities rather than any combination of both? What would be the advantages and disadvantages to requiring such a permitted externally issuing IDI to meet its minimum LTD requirement by issuing eligible external LTD only, rather than allowing issuance to a parent holding company or other affiliates?

Question 14: Should the proposed rule require the holding company of a permitted externally issuing IDI that issues eligible LTD to its holding company to comply with the clean holding company requirements discussed in section VI?

Question 15: Should the agencies take into consideration the resolution plan of a covered entity submitted pursuant to Title I of the Dodd-Frank Act in determining which IDIs to scope into the proposed rule? For example, should the proposed IDI-level LTD requirement only apply to IDI subsidiaries of covered entities that have adopted an MPOE resolution strategy (i.e., (i) IDIs that are expected by the parent resolution plan filer to enter into receivership if its parent fails and (ii) where the Board and FDIC find that expectation to be reasonable)? What would be the advantages and disadvantages and potential incentive effects of applying an IDI-level LTD requirement to IDIs that are subsidiaries of covered entities that have adopted an SPOE resolution strategy? Certain covered IDIs are not subsidiaries of entities subject to a resolution planning requirement. Are there alternative approaches that might provide beneficial additional flexibility for these covered IDIs?

Question 16: What other methods could the agencies use to achieve the same benefits provided by the proposed rule concerning certainty of the ultimate availability of LTD resources at an IDI that ultimately enters resolution? Are there alternative approaches that might provide beneficial additional flexibility for covered entities in an SPOE resolution? What factors, such as the size and significance of non-bank activities, should the agencies consider in determining whether any such alternative approaches or additional requirements are appropriate?

Question 17: What would be the advantages and disadvantages of requiring IDI subsidiaries of U.S. GSIBs

[34] IDIs with $100 billion or more in total assets that are subsidiaries of Category II, III, and IV U.S. IHCs would be subject to the IDI-level requirement regardless of whether they ultimately are controlled by a global systemically important FBO.

[35] *See* 12 U.S.C. 1815(e).

to issue specified minimum amounts internal LTD? Should the agencies propose applying the same IDI-level requirements to these entities?

Question 18: For U.S. intermediate holding companies that are subject to the Board's TLAC rule, to what extent does the existing LTD requirement applicable at the IHC level already address the considerations underlying the proposed imposition of a further LTD requirement on any covered IDI subsidiary of such an IHC? For example, what would be the advantages or disadvantages of changing the proposal so that it would not require covered IDIs that are consolidated subsidiaries of IHCs owned by foreign GSIBs to issue internal LTD to the IHC?

Question 19: What are the advantages and disadvantages of requiring IDIs affiliated with IDIs that have at least $100 billion in consolidated assets to issue LTD pursuant to the proposed rule? What standard should be used for determining whether an IDI is an affiliate of a covered IDI? For example, should the IDI be treated as an affiliate of a covered IDI only if it is consolidated by the same company as the covered IDI? Should two IDIs be treated as affiliates only if they are under the common control of a company (as opposed to a natural person)? What are the advantages and disadvantages of making subject to the proposed rule all affiliated IDIs as compared to only those that are consolidated by the same company as the covered IDI?

Question 20: Under the proposal, an IDI with less than $100 billion in total consolidated assets would be subject to the proposed rule if it is affiliated with an IDI that has at least $100 billion in total assets, including when the two IDIs are not consolidated by the same holding company or the two IDIs are commonly controlled by a natural person. Should the proposed rule include a minimum size requirement for such an affiliated IDI to be subject to the proposed rule? For example, should only affiliated IDIs with at least an amount of assets set between $1 billion and $50 billion be subject to the proposed rule? What would be an appropriate threshold, or are there other parameters the proposed rule should employ to establish when an affiliated IDI would be subject to the proposed rule? As an alternative to an asset size threshold or other parameter, should the agencies consider reserving the authority to exempt certain IDIs from the LTD requirement?

B. Calibration of Covered IDI LTD Requirement

Under the proposal, a covered IDI would be required to maintain outstanding eligible LTD in an amount that is the greater of 6.0 percent of the covered IDI's total risk-weighted assets, 3.5 percent of its average total consolidated assets,[36] and 2.5 percent of its total leverage exposure if the covered IDI is subject to the supplementary leverage ratio.[37]

The proposed IDI LTD requirement is calibrated by reference to the covered IDI's balance sheet and to ensure that sufficient LTD would be available at the covered IDI. The IDI LTD requirement is also calibrated to help ensure that the resolution of a covered IDI does not impose unduly high costs on the economy.

The proposed IDI LTD requirement has been calibrated so that, assuming a failed covered IDI's equity capital is significantly or completely depleted, the eligible LTD outstanding would be sufficient to capitalize a newly-formed bridge depository institution with an amount necessary to comply with the minimum leverage capital requirements and common equity tier 1 risk-based capital requirements plus buffers applicable to ordinary non-bridge IDIs after accounting for some balance sheet depletion.

The proposed calibration would appropriately support the FDIC in resolving covered IDIs under the FDI Act because the eligible LTD at the IDI could improve market confidence, improve the marketability of the failed IDI, and stabilize the bridge depository institution, thereby providing more optionality in resolution. Importantly, it could also provide for an exit from resolution by enabling a recapitalized bridge depository institution to exit from resolution as a newly chartered IDI following a period of stabilization and restructuring.

The amount of LTD required to be positioned at the covered IDI is based upon the balance sheet of the covered IDI and will reflect the size and importance of the covered IDI relative to the group. Thus, it improves the optionality of resolution at an IDI level while also potentially supporting an SPOE resolution of the covered entity in the event that option is available and would be effective.[38] Externally issuing IDIs would be subject to the same calibration as other covered IDIs, as they can have similar risk profiles, asset compositions, and liability structures as other covered IDIs and hence should have similar resolution-related resource needs.

The proposed rule would authorize an agency to require a covered IDI that it supervises to maintain an amount of eligible LTD that is greater than the minimum requirement in the proposed rule under certain circumstances. This would ensure that a covered IDI that presents elevated risk that the proposed rule seeks to address would be required to maintain a corresponding amount of eligible LTD.

The proposed rule would include a provision that would allow the appropriate Federal banking agency, after providing a covered IDI with notice and an opportunity to respond, to order the covered IDI to exclude from its outstanding eligible LTD any otherwise eligible debt securities with features that would significantly impair the ability of such debt securities to absorb losses in resolution.[39]

In addition, the appropriate Federal banking agency could take an enforcement action against a covered IDI for falling below a minimum IDI LTD requirement. This would be consistent with the agencies' authority to pursue enforcement actions for violations of law, rules, or regulations.

Question 21: What alternative calibrations should the agencies consider for the IDI LTD requirement? What other factors should the agencies consider in determining the appropriate calibration? The proposed rule would require covered IDIs to maintain an amount of LTD so that, if the LTD were written off, it would recapitalize a covered IDI to the well capitalized standards for IDIs under the common equity tier 1 risk-based capital requirements (after accounting for expected balance sheet depletion). What would be the advantages and disadvantages of requiring a covered IDI to maintain an amount of LTD that would be sufficient to recapitalize the covered IDI to ''well-capitalized'' standards relative to (1) tier-1 risk-based capital requirements, (2) total risk-based capital requirements, and (3) average total consolidated assets under the

[36] For purposes of the LTD minimum requirement, average total consolidated assets is defined as the denominator of the agencies' tier 1 leverage ratio requirement. *See* 12 CFR 3.10(b)(4) (OCC), 12 CFR 217.10(b)(4) (Board), 12 CFR 324.10(b)(4) (FDIC).

[37] *See* 12 CFR 3.10(c)(2) (OCC), 12 CFR 217.10(c)(2) (Board), 12 CFR 324.10(c)(2) (FDIC).

[38] For example, in an SPOE resolution, if the covered IDI is a consolidated subsidiary of a covered entity, the covered entity could support the covered IDI by forgiving the eligible internal LTD issued by the covered IDI.

[39] *See* 12 CFR 3.404 (OCC), 12 CFR 263.83 (Board), and 12 CFR 324.5(c) (FDIC).

agencies' prompt corrective action standards in the event of failure?

Question 22: What would be the advantages and disadvantages of proposing a different calibration for mandatory and permitted externally issuing IDIs, which do not have a parent holding company that is subject to an external LTD requirement?

Question 23: How should the calibration for the IDI LTD requirement relate, if at all, to the level of uninsured deposits outstanding at a covered IDI, either in absolute terms or relative to the IDI's liabilities? If such an approach were taken, at what level(s) of uninsured deposits should the agencies modify the calibration for the IDI LTD requirement?

Question 24: The agencies are considering whether and how to specify a period for covered IDIs to raise additional LTD after the entity has been involved in a situation in which the FDIC has been appointed receiver. What are the advantages or disadvantages of permitting a period for the covered IDI to raise additional LTD following such an event? How long should such a period reasonably be?

V. Features of Eligible LTD

The proposal would require LTD to satisfy certain eligibility criteria to qualify as eligible LTD. Although the requirements for all eligible LTD generally would be the same under the proposed rule, eligible external LTD would have certain features not applicable to eligible LTD issued within a consolidated organization (eligible internal LTD). As discussed above, covered HCs and mandatory externally issuing IDIs may only issue eligible external LTD to satisfy the proposed LTD requirement. Internally issuing IDIs and nonresolution covered IHCs must issue eligible internal LTD, while permitted externally issuing IDIs and resolution covered IHCs may issue either (see section V, subsection C for discussion of nonresolution and resolution covered IHCs). The general purpose of these requirements is to ensure that LTD used to satisfy the proposed rule is in fact able to be used effectively and appropriately to absorb losses in support of the orderly resolution of the issuer. The proposed requirements for eligible LTD are generally the same as those required for firms subject to the TLAC rule.[40]

Question 25: What are the advantages and disadvantages of limiting the types of instruments that qualify as eligible LTD? Would any of the proposed required features for eligible LTD be unnecessary or counterproductive as applied to any of the covered entities or covered IDIs? If so, explain why.

A. Eligible External LTD

Under the proposed rule, eligible external LTD issued by covered HCs, mandatory and permitted externally issuing IDIs, and resolution covered IHCs (together, external issuers) must be paid in and issued directly by the external issuer, be unsecured, have a maturity of greater than one year from the date of issuance, have ''plain vanilla'' features (that is, the debt instrument has no features that would interfere with a smooth resolution proceeding), be issued in a minimum denomination of $400,000, and be governed by U.S. law.[41] In addition, principal due to be paid on eligible external LTD in one year or more and less than two years would be subject to a 50 percent haircut for purposes of the external LTD requirement. Principal due to be paid on eligible external LTD in less than one year would not count toward the external LTD requirement. Tier 2 capital that meets the definition of eligible external LTD would continue to count toward the external LTD requirement.

Consistent with this purpose, the proposed rule would authorize the agencies, after providing an external issuer with notice and an opportunity to respond, to order the external issuer to exclude from its outstanding LTD amount any otherwise eligible debt securities with features that would significantly impair the ability of such debt securities to absorb losses in resolution.[42] This provision would enable the agencies to respond to new types of LTD instruments, ensuring the proposed rule remains responsive to developments in LTD instruments.

1. External Debt Issuance Directly by Covered Entities and Covered IDIs

Eligible external LTD would be required to be paid in and issued directly by the external issuer. Thus, debt instruments issued by a subsidiary of a covered entity or covered IDI would not qualify as eligible external LTD.

The requirement that eligible external LTD be issued directly by the covered entity or covered IDI and not a subsidiary would serve several purposes. In the case of eligible external LTD issued by a covered entity that is in turn matched by eligible internal LTD at a covered IDI subsidiary, the requirement would make sure that the covered entity has an amount of stable funding that is sourced externally and that could be used to purchase the LTD issued by the covered IDI subsidiary to meet the IDI's minimum LTD requirement.

Additionally, requiring eligible external LTD to be issued by the covered entity (or, in the case of a permitted or mandatory externally issuing IDI, the covered IDI) and not a subsidiary would simplify administration of the proposed rule by preventing a banking organization from issuing external LTD from multiple entities, which could complicate the firm's internal monitoring and examiner monitoring for compliance with the proposed rule. This requirement also would take advantage of the fact that, within a consolidated organization, the holding company generally is the entity used as a capital raising vehicle.

Finally, for external issuers that are covered entities, issuance directly from the covered entity and not a subsidiary would provide flexibility to support a range of resolution strategies. For instance, use by an external issuer (such as a covered HC) of proceeds from the issuance of eligible external LTD to purchase eligible internal LTD from a covered IDI subsidiary would support resolution of the covered IDI under the FDI Act. Where SPOE is an available option, the issuer's eligible external LTD could be used to absorb losses incurred throughout the banking organization, enabling the recapitalization of operating subsidiaries that had incurred losses and enabling those subsidiaries to continue operating on a going-concern basis. For an SPOE approach to be implemented successfully, the eligible external LTD must be issued directly by the covered entity because debt issued by a subsidiary generally cannot be used to absorb losses, even at the issuing subsidiary itself, unless that subsidiary enters a resolution proceeding.

Eligible external LTD also may only be held by certain investors. In the case of covered entities, eligible external LTD must be held by a nonaffiliate. The requirement for eligible external LTD to not be held by an affiliate ensures that LTD issuance generates new loss-absorbing capacity that is truly held

[40] *See* 12 CFR 252.61 and .161 ''Eligible debt security.''

[41] If a national bank or Federal savings association intends for LTD to qualify as tier 2 capital, the instrument must also satisfy the requirements for subordinated debt at 12 CFR 5.47 (for national banks) and 12 CFR 5.56 (for Federal savings associations). If the national bank or Federal savings association does not intend to treat the LTD as subordinated debt that qualifies as tier 2 capital, the LTD does not need to satisfy these requirements. In any event, all offers and sales of securities by a national bank or Federal savings association are subject to the disclosure requirements set forth at 12 CFR part 16.

[42] The Board would exercise this authority with respect to covered entities. For covered IDIs, a bank's primary Federal banking agency would exercise this authority.

externally from the issuer. This requirement also helps ensure that LTD holders are positioned to serve as a source of market discipline for the external issuer. LTD holders may be less likely to critically monitor the performance of the issuer if the holders are affiliated with the issuer. Eligible external LTD issued by a permitted or mandatory externally issuing IDI likewise could not be issued to an affiliate, except an affiliate that controls but does not consolidate the covered IDI (*e.g.,* where a company owns at least 25 percent of, but does not meet the accounting standard to consolidate, a covered IDI). Without this exception for upstream affiliates, eligible LTD of a permitted externally issuing IDI could be held by a company that consolidates the covered IDI (in the form of eligible internal LTD), but not a company that controls without consolidating the covered IDI. Such a prohibition would serve no purpose. Accordingly, the proposal permits a permitted or mandatory externally issuing IDI to issue eligible external LTD to such an affiliate.

2. Unsecured

Eligible external LTD would be required to be unsecured, not guaranteed by the external issuer or a subsidiary or an affiliate of the external issuer, and not subject to any other arrangement that legally or economically enhances the seniority of the instrument (such as a credit enhancement provided by an affiliate).

The primary rationale for these restrictions is to ensure that eligible external LTD can serve its intended purpose of absorbing losses incurred by the banking organization in resolution. To the extent that a creditor is secured, or provided with credit support of any type, it can avoid suffering losses by seizing the collateral that secures the debt. The debt being secured would thwart the purpose of eligible external LTD by leaving losses with the external issuer (which would lose the collateral) rather than imposing them on the eligible external LTD creditor (which could take the collateral). As a result, this requirement ensures that losses can be imposed on eligible LTD in resolution in accordance with the standard creditor hierarchy under bankruptcy or an FDI Act resolution, under which secured creditors are paid ahead of unsecured creditors.

A secondary purpose of these restrictions is to prevent eligible external LTD from contributing to the asset fire sales that can occur when a financial institution fails and its secured creditors seize and liquidate collateral. Asset fire sales can drive down the value of the assets being sold, which can undermine financial stability by transmitting financial stress from the failed firm to other entities that hold similar assets.

3.''Plain Vanilla''

Eligible external LTD instruments would be required to be ''plain vanilla'' instruments. Exotic features could create complexity and thereby diminish the prospects for an orderly resolution of the external issuer. These limitations would help to ensure that eligible external LTD represents loss-absorbing capacity with a definite value that can be quickly determined in resolution. In a resolution proceeding, claims represented by such ''plain vanilla'' debt instruments are more easily ascertainable and relatively certain compared to more complex and volatile instruments. Permitting exotic features could engender uncertainty as to the level of the issuer's loss-absorbing capacity and could increase the complexity of the resolution proceeding and potentially result in a disorderly resolution.

Under the proposed rule, external LTD instruments would be excluded from treatment as eligible external LTD if they: (i) are structured notes; (ii) have a credit-sensitive feature; (iii) include a contractual provision for conversion into or exchange for equity in the issuer; or (iv) include a provision that gives the holder a contractual right to accelerate payment (including automatic acceleration), other than a right that is exercisable (1) on one or more dates specified in the instrument, (2) in the event of the issuer entering into insolvency or resolution proceedings, or (3) the issuer's failure to make a payment on the instrument when due that continues for 30 days or more.[43]

a. Structured Notes

The proposed rule would exclude structured notes, including principal-protected structured notes, from treatment as eligible external LTD. Structured notes contain features that could make their valuation uncertain, volatile, or unduly complex. In addition, they are often liabilities held by retail investors (as opposed to institutional investors) and, as discussed in greater detail below in the context of minimum denomination requirements, holdings of LTD by more sophisticated investors can better ensure that LTD holders understand the risks of LTD and that such holders are in a position to provide market discipline with respect to LTD issuers. To promote resiliency and market discipline, it is important that external issuers maintain a minimum amount of loss-absorbing capacity with a value that is easily ascertainable at any given time. Moreover, in resolution, debt instruments that will be subjected to losses must be capable of being valued accurately and with minimal risk of dispute. The requirement that eligible external LTD not contain the features associated with structured notes advances these goals.

For purposes of the proposed rule, a ''structured note'' is defined as a debt instrument that: (i) has a principal amount, redemption amount, or stated maturity that is subject to reduction based on the performance of any asset,[44] entity, index, or embedded derivative or similar embedded feature; (ii) has an embedded derivative or similar embedded feature that is linked to one or more equity securities, commodities, assets, or entities; (iii) does not have a minimum principal amount that becomes due and payable upon acceleration or early termination; or (iv) is not classified as debt under U.S. GAAP. The definition of a structured note does not include a non-dollar-denominated instrument or an instrument whose interest payments are based on an interest rate index (for example, a floating-rate note linked to the Federal funds rate or to the secured overnight financing rate), in each case that satisfies the proposed requirements in all other respects.

Structured notes with principal protection often combine a zero-coupon bond, which pays no interest until the bond matures, with an option or other derivative product, whose payoff is linked to an underlying asset, index, or benchmark.[45] For external issuances by covered entities, the derivative feature violates the intent of the clean holding company requirements (described below), which prohibit derivatives entered into by covered entities with third parties. Moreover, investors in structured notes tend to pay less attention to issuer credit risk than investors in other LTD, because structured note investors use structured notes to gain exposure unrelated to the

[43] This limitation would be subject to an exception that would permit eligible external LTD instruments to give the holder a future put right as of a date certain, subject to the provisions discussed below regarding when the debt is due to be paid.

[44] Assets would include loans, debt securities, and other financial instruments.

[45] U.S. Securities and Exchange Commission, Structured Notes with Principal Protection: Note the Terms of Your Investment (June 1, 2011), *https://www.sec.gov/investor/alerts/structurednotes.htm.*

market discipline objective of the minimum LTD requirements.

b. Contractual Provision for Conversion Into or Exchange for Equity

The proposed rule would exclude from treatment as eligible external LTD debt that includes contractual provisions for its conversion into equity or for it to be exchanged for equity. The fundamental objective of the external LTD requirement is to ensure that external issuers will have a minimum amount of loss-absorbing capacity available to absorb losses upon the issuer's entry into resolution. Debt instruments that could convert into equity prior to resolution may not serve this goal, since the conversion would reduce the amount of debt that will be available to absorb losses in resolution. In addition, debt with features to allow conversion into equity is often complex and thus may not be characterized as ''plain vanilla.'' Convertible debt instruments may be viewed as debt instruments with an embedded equity call option. The embedded equity call option introduces a derivative-linked feature to the debt instrument that is inconsistent with the purpose of the clean holding company requirements (described below) and introduces uncertainty and complexity into the value of such securities. For these reasons, eligible external LTD may not include contractual provisions allowing for its conversion into equity or for it to be exchanged for equity prior to the issuer's resolution under the proposed rule.

c. Credit-Sensitive Features and Acceleration Clauses

Under the proposal, eligible external LTD cannot have a credit-sensitive feature or provide the holder of the instrument a contractual right to the acceleration of payment of principal or interest at any time prior to the instrument's stated maturity (an acceleration clause), other than upon the occurrence of either a receivership, liquidation, or similar proceeding,[46] or a payment default event. However, eligible external LTD instruments would be permitted to give the holder a put right as of a future date certain, subject to the remaining maturity provisions discussed below.

The restriction on acceleration clauses serves the same purpose as several of the other restrictions discussed above, *i.e.,* to ensure that the required amount of LTD will indeed be available to absorb losses in resolution. Early acceleration clauses, including cross-acceleration clauses, could undermine an orderly resolution by forcing the issuer to make payment on the full value of the debt prior to the entry of the issuer into resolution, potentially depleting the issuer's eligible external LTD immediately prior to resolution. This concern does not apply to acceleration clauses that are triggered by an insolvency or resolution event, however, because the insolvency or resolution that triggers the clause would generally occur concurrently with the issuer's entry into an insolvency or a resolution proceeding.

Senior debt instruments issued by external issuers commonly also include payment default event clauses. These clauses provide the holder with a contractual right to accelerate payment upon the occurrence of a ''payment default event''—that is, a failure by the issuer to make a required payment when due. Payment default event clauses, which are not permitted in tier 2 regulatory capital, raise more concerns than insolvency or resolution event clauses because a payment default event may occur (triggering acceleration) before the institution has entered a resolution proceeding and a stay has been imposed. Such a pre-resolution payment default event could cause a decline in the issuer's loss-absorbing capacity.

Nonetheless, the proposed rule would permit eligible external LTD to be subject to payment default event acceleration rights for two reasons. First, default or acceleration rights upon a borrower's default on its direct payment obligations are a standard feature of senior debt instruments, such that a prohibition on such rights could be unduly disruptive to the potential market for eligible external LTD. Second, the payment default of an issuer on an eligible external LTD instrument would likely be a credit event of such significance that whatever diminished capacity led to the payment default event would also be a sufficient trigger for an insolvency or a resolution event acceleration clause, in which case a prohibition on payment default event acceleration clauses would have little or no practical effect.

In addition, the proposed rule would provide that an acceleration clause relating to a failure to pay principal or interest must include a ''cure period'' of at least 30 days. During this cure period, the issuer could make payment on the eligible external LTD before such debt could be accelerated and if the issuer satisfies its obligations on the eligible external LTD within the cure period, the instrument could not be accelerated. This would ensure that an accidental or temporary failure to pay principal or interest does not trigger immediate acceleration. Moreover, this cure period for interest payments is found in many existing debt instruments and is consistent with current market practice.

4. Minimum Remaining Maturity and Amortization

Under the proposal, the amount of eligible external LTD that is due to be paid between one and two years would be subject to a 50 percent haircut for purposes of the external LTD requirement, and the amount of eligible external LTD that is due to be paid in less than one year would not count toward the external LTD requirement.

The purpose of these restrictions is to limit rollover risk of debt instruments that qualify as eligible external LTD and ensure that eligible external LTD provides stable funding and will be reliably available to absorb losses in the event that the issuer fails and enters resolution. Debt that is due to be paid in less than one year does not adequately serve these purposes because of the possibility that the debt could mature during the period between the time when the issuer begins to experience extreme stress and the time when it enters a resolution proceeding. If the debt matures during that period, then it would be likely that the creditors would be unwilling to maintain their exposure to the issuer and would therefore refuse to roll over the debt or extend new credit, and the distressed issuer would likely be unable to replace the debt with new LTD that would be available to absorb losses in resolution. This run-off dynamic could result in a case where the covered entity enters resolution with materially less loss-absorbing capacity than would be required to support or recapitalize its IDIs or other subsidiaries, potentially resulting in a disorderly resolution. To protect against this outcome, eligible external LTD would cease to count toward the external LTD requirement upon being due to be paid in less than one year, so that the full required amount of loss-absorbing capacity would be available in resolution even if the resolution period were preceded by a year-long stress period.[47]

For the same reasons, eligible external LTD that is due to be paid in less than two years but greater than or equal to one year is subject to a 50 percent haircut under the proposed rule for

[46] For the avoidance of doubt, this provision should not be construed to mean that eligible external LTD could be accelerated upon an IDI merely being insolvent.

[47] This requirement also accords with market convention, which generally defines ''long-term debt'' as debt with maturity in excess of one year.

purposes of the external LTD requirement, meaning that only 50 percent of the value of its principal amount would count toward the external LTD requirement. This amortization provision is intended to protect an issuer's loss-absorbing capacity against a run-off period in excess of one year (as might occur during a financial crisis or other protracted stress period) in two ways. First, it requires issuers that rely on eligible external LTD that is vulnerable to such a run-off period (because it is due to be paid in less than two years) to maintain additional loss-absorbing capacity in the form of eligible external LTD. Second, it leads issuers to reduce or eliminate their reliance on loss-absorbing capacity that is due to be paid in less than two years. An issuer could reduce its reliance on eligible external LTD that is due to be paid in less than two years by staggering its issuance, by issuing eligible external LTD that is due to be paid after a longer period, or by redeeming and replacing eligible external LTD once the residual maturity falls below two years.

The proposed rule also provides similar treatment for eligible external LTD that could become subject to a ''put'' right—that is, a right of the holder to require the issuer to redeem the debt on demand—prior to reaching its stated maturity. Such an instrument would be treated as if it were due to be paid on the day on which it first became subject to the put right, since on that day the creditor would be capable of demanding payment and thereby subtracting the value of the instrument from the issuer's loss-absorbing capacity.[48]

5. Governing Law

Eligible external LTD instruments would be required to consist only of liabilities that can be effectively used to absorb losses during the resolution of the external issuer without giving rise to material risk of successful legal challenge. To this end, the proposal would require eligible external LTD to be governed by the laws of the United States or any State.[49] LTD that is subject to foreign law would potentially be subject to legal challenge in a foreign jurisdiction, which could jeopardize the orderly resolution of the issuer. Foreign courts might not defer to actions of U.S. courts or U.S. resolution authorities that would impair the eligible LTD, for example, where such actions negatively impact foreign bondholders or foreign shareholders. While the presence of recognition regimes abroad does improve the likelihood that these actions would be enforced, it does not guarantee it.

6. Minimum Denomination and Investor Limitations

The proposed rule also would require eligible external LTD to be issued through instruments with minimum principal denominations and would exclude from eligible external LTD instruments that can be exchanged by the holder for smaller denominations.[50] The purpose of this requirement is to limit direct investment in eligible LTD by retail investors. Significant holdings of LTD by retail investors may create a disincentive to impose losses on LTD holders, which runs contrary to the agencies' intention that LTD holders expect to absorb losses in resolution after equity shareholders. Imposing requirements that will tend to limit investments in LTD to more sophisticated investors will help ensure that LTD holders will monitor the performance of the issuer and thus support market discipline. These more sophisticated investors are more likely to appreciate that LTD that satisfies the requirements of the proposed rule may present different risks than other types of debt instruments issued by covered entities, covered IDIs, or other firms.

The agencies propose setting the minimum denomination requirement at $400,000. A required minimum denomination of $400,000 would fall in the range of reasonable minimum denomination levels described below and would generally disincentivize direct holdings of such investments by retail investors without preventing institutional investors from purchasing eligible external LTD. In the agencies' experience, most institutional investors are able to purchase instruments in minimum denominations of $400,000. In addition, according to the 2019 Survey of Consumer Finances, the median value of the total portfolio of directly-held bonds for households that had at least one bond and had household incomes in the 90th to 100th percentiles was $400,000.[51] Setting the minimum denomination at this level would likely substantially limit the amount of households that would directly invest in eligible LTD.

The agencies considered alternative minimum denomination thresholds between $100,000 and $1 million. There are several arguments to support the reasonableness of a minimum denomination requirement at thresholds between $100,000 and $1 million. Setting the minimum denomination at $100,000 would likely result in well over half of retail investors not participating in the market for direct purchases of eligible LTD, which would meaningfully accomplish the agencies' goal of generally reducing the degree of direct retail investor holdings of eligible LTD. According to the Survey of Consumer Finances, the median value of the total portfolio of directly-held bonds for households that had at least one bond in 2019 was $121,000.[52] If eligible LTD is issued in minimum denominations of $100,000, it would be possible but unlikely that a household that directly holds an aggregate amount of individual bonds equal to this $121,000 figure would include within such holdings any eligible LTD instruments because, in that case, the minimum denomination associated with the eligible LTD instrument would cause such instrument to represent nearly the entirety of such bond holdings. A minimum denomination requirement of $1 million could therefore also be reasonable. As noted above, the 2019 Survey of Consumer Finances found that the median value of the aggregate amount of individual, directly-held bonds for households that held at least one bond and with household incomes in the 90th to 100th percentiles was $400,000.[53] Setting the minimum denomination threshold at $1 million could thus be expected to exclude most households. The agencies also would not expect a minimum $1 million denomination requirement to exclude a material number of institutional investors from purchasing LTD.

[48] The date on which principal is due to be paid would be calculated from the date the put right would first be exercisable regardless of whether the put right would be exercisable on that date only if another event occurred (*e.g.,* a credit rating downgrade).

[49] Consistent with the definition of ''State'' in the TLAC rule and the Board's Regulation YY, ''State'' would be defined to mean ''any state, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.'' *See* 12 CFR 252.2.

[50] The Board also is proposing to introduce an identical requirement for external LTD issued pursuant to the TLAC rule, as discussed in Section IX.B below.

[51] Board of Governors of the Federal Reserve System, Changes in U.S. Family Finances from 2016 to 2019: Evidence from the Survey of Consumer Finances (Sept. 2020), *https://www.federalreserve.gov/publications/files/scf20.pdf.* This number reflects households that have at least one bond. In this context, ''bonds'' include only those held directly (not part of a managed investment account or bond fund) and include corporate and mortgage-backed bonds; Federal, state, and local government bonds; and foreign bonds. *Id.*

[52] *Id.*

[53] *Id.*

Question 26: What would be the advantages and disadvantages of limiting direct retail investor exposure to eligible external LTD? To what extent would retail investors be likely to directly own eligible external LTD? Do retail investors, investing on a direct basis as opposed to through institutional funds, constitute a substantial portion of the market for debt instruments such as eligible external LTD, such that prohibiting their direct investment would meaningfully reduce the market for eligible LTD?

Question 27: To what extent would limiting direct retail holdings of eligible external LTD contribute to concentration of eligible external LTD holdings by certain market participants?

Question 28: What minimum denomination amount is most appropriate in the range of $100,000 to $1 million? Would an amount greater than $400,000 be appropriate to provide further assurance these instruments will generally be held by investors who are well positioned to exercise market discipline and bear loss in the event of the failure of the issuer? Should the agencies require the debt instrument for eligible LTD to expressly prohibit their exchange into smaller denominations? Please explain.

Question 29: What would be the advantages and disadvantages to limiting indirect exposures to eligible LTD by retail investors?

7. Subordination of Eligible LTD Issued by IDIs

The proposed rule would require eligible LTD issued by a covered IDI to be contractually subordinated so that the claim represented by the LTD in the receivership of the IDI would be junior to deposit and general unsecured claims.[54] This requirement would ensure that eligible LTD absorbs losses prior to depositors and other unsecured creditors, which increases the FDIC's optionality when acting as a receiver for a failed IDI. For example, as discussed above, the presence of eligible LTD at an IDI would increase the likelihood that the FDIC could transfer all of the deposit liabilities (insured and uninsured) of a failed bank to a bridge depository institution, thereby preserving the IDI's franchise value.

Requiring contractual subordination would also provide further clarity about the priority of the claim represented by eligible LTD in a receivership of the issuing institution, which facilitates an orderly resolution. The FDIC may need to transfer certain general unsecured claims, which could include trade creditors (if any) and non-dually-payable foreign deposits,[55] to a newly-established bridge depository institution in order to facilitate its operations. By requiring that eligible LTD issued by IDIs be contractually subordinated to general unsecured creditor claims, the eligible LTD would also serve to protect those claims, providing greater optionality to the FDIC in structuring a resolution. While the eligible LTD requirement for covered entities does not include a contractual subordination requirement, in the case that the IDI fails, eligible LTD issued by covered entities will be structurally subordinated to creditor claims against the subsidiary IDI.

Question 30: What would be the advantages and disadvantages of requiring eligible LTD issued by covered IDIs to be subordinated to general unsecured creditors? What implications, if any, would subordination of eligible LTD to general unsecured creditors have for other requirements?

Question 31: What are the advantages and disadvantages of limiting the types of instruments that qualify as eligible external LTD? Would any of the proposed features for eligible external LTD not be appropriate for any covered entities or covered IDIs? What characteristics of the specific types of institutions required to issue internal LTD under the proposed rule would caution against requiring eligible internal LTD to meet any of the proposed eligibility requirements?

B. Eligible Internal LTD

The requirements for eligible internal LTD are generally the same as those for eligible external LTD. However, eligible internal debt securities are subject to two key distinctions from eligible external debt securities under the proposed rule. First, eligible internal LTD issued by an IDI must be issued to and remain held by a company that consolidates the covered IDI, generally an upstream parent. Second, eligible internal LTD would not be subject to the minimum principal denomination requirement. As discussed further below, eligible internal LTD issued by a covered IHC would be required to include a contractual conversion trigger and would not include a prohibition against credit sensitive features.

Where a covered IDI issues eligible internal LTD, such eligible internal LTD would be required to be paid in and issued to a company that consolidates the covered IDI.[56] This helps ensure that eligible internal LTD issued by the covered IDI is supported by stable funding from its parent, which in turn is generally required to issue eligible external LTD. Accordingly, a covered entity could use the proceeds from the issuance of external LTD to purchase internal LTD issued by its IDI subsidiary.

For a covered IDI that is a consolidated subsidiary of a covered IHC, the proposed rule would require that eligible internal LTD of the covered IDI be issued to the covered IHC, or a subsidiary of the covered IHC that consolidates the IDI. In other words, to constitute eligible internal LTD, the LTD of such an IDI could not be directly issued to a foreign affiliate that controls the IDI; doing so would mean that losses could be imposed on foreign affiliates through the IDI's LTD, rather than passing up to the covered IHC, which in turn has issued outstanding loss-absorbing LTD. This requirement is consistent with the design of internal eligible LTD issued by a covered IHC to its foreign parent or a wholly owned subsidiary of that foreign parent. Internal LTD issued by a covered IHC to a foreign parent must contain a contractual conversion trigger, which is discussed below.

Certain covered IHCs that would not be expected to enter into resolution upon the failure of their parent FBOs would be required to issue eligible internal LTD to a foreign company that directly or indirectly controls the covered IHC, or to a wholly owned subsidiary of a controlling foreign company.[57] This would ensure that losses incurred by a covered IHC would be distributed to a foreign affiliate that is not a subsidiary of the covered IHC, which would allow the foreign top-tier parent to manage the resolution strategy for its global operations and manage

[54] The proposed rule would define ''deposits'' to have the same meaning as in the FDI Act. *See* 12 U.S.C. 1813(*l*). The eligible LTD would rank in priority in an FDIC receivership after deposits and general unsecured liabilities, as established at 12 U.S.C. 1821(d)(11)(A)(iv).

[55] *See* Final Rule on ''Deposit Insurance Regulations; Definition of Insured Deposit,'' 78 FR 56583 (Sept. 13, 2013), *https://www.govinfo.gov/content/pkg/FR-2013-09-13/pdf/2013-22340.pdf.*

[56] As discussed above, permitted externally issuing IDIs would be permitted to issue eligible LTD to affiliates and to nonaffiliates.

[57] Consistent with the TLAC rule, a ''wholly owned subsidiary'' of a FBO would be one where the foreign parent owns 100 percent of the subsidiary's outstanding ownership interests, except that 0.5 percent could be owned by a third party for purposes of establishing corporate separateness or addressing bankruptcy, insolvency, or similar concerns. This recognizes the practice of FBOs to own all but a small part of a subsidiary for corporate practice purposes with which the proposed rule is not intended to interfere. Moreover, allowing a very small amount of a foreign parent's subsidiary to be owned by a third party would not undermine the purposes of this proposed rule.

how the IHC would fit into this global resolution strategy. The requirement also would mitigate the risk that conversion of the eligible LTD to equity, as discussed below, would result in a change in control of the covered IHC, which could create additional regulatory and management complexity during a failure scenario.

The proposed rule would not require eligible internal LTD to be issued in minimum denominations. As discussed above, the purpose of the minimum denomination requirement is to increase the chances that LTD holders are sophisticated investors that can provide market discipline for covered entities and covered IDIs. These concerns do not apply in the case of eligible internal LTD, which by definition cannot be held by retail or outside investors.

Question 32: What would be the advantages and disadvantages of permitting all covered IDIs (or certain covered IDIs other than just mandatory or permitted externally issuing IDIs) to satisfy their LTD requirements with external LTD? If covered IDIs were able to satisfy their LTD requirements with external LTD, what would be the advantages and disadvantages of permitting any such eligible external LTD to count towards the LTD requirement of the covered IDI's consolidating parent?

Question 33: What are the advantages and disadvantages of permitting a covered IDI to issue eligible internal LTD to additional non-subsidiary affiliates, beyond consolidating parent entities?

Question 34: What are the advantages and disadvantages of limiting the types of instruments that qualify as eligible internal LTD? Which, if any, of the proposed features for eligible internal LTD instruments would not be appropriate for covered IDIs or covered IHCs and why? What characteristics of any specific types of entities required to issue internal LTD under the proposed rule would caution against requiring eligible internal LTD to meet any of the proposed eligibility requirements?

C. Special Considerations for Covered IHCs

The proposed rule would set forth certain requirements for eligible internal LTD that are specific to covered IHCs. Specifically, the proposed rule would require certain covered IHCs to issue only eligible internal LTD, where the resolution strategy of the covered IHC's foreign parent follows an SPOE model. In addition, eligible internal LTD issued by covered IHCs must include a contractual provision that is approved by the Board that provides for immediate conversion or exchange of the instrument into common equity tier 1 capital of the covered IHC upon issuance by the Board of an internal debt conversion order. Finally, eligible internal LTD issued by covered IHCs would not be subject to a prohibition on credit-sensitive features.

Only certain covered IHCs would have the option to issue debt externally to third-party investors. Specifically, covered IHCs of FBOs with a top-tier group-level resolution plan that contemplates their covered IHCs or subsidiaries of their covered IHCs entering into resolution, receivership, insolvency, or similar proceedings in the United States (resolution covered IHCs), are permitted to issue eligible LTD externally. Such resolution covered IHCs are more analogous to covered HCs, because both have established resolution plans that involve these entities entering resolution proceedings in the United States. Covered IHCs of FBOs with top-tier group-level resolution plans that do not contemplate their covered IHCs or the subsidiaries of their covered IHCs entering into resolution, receivership, insolvency, or similar proceedings (non-resolution covered IHCs) must issue LTD internally within the FBO, from the covered IHC to a foreign parent or a wholly owned subsidiary of the foreign parent.

1. Identification as a Resolution or Non-Resolution Covered IHC

This proposal would require the top-tier FBO of a covered IHC to certify to the Board whether the planned resolution strategy of the top-tier FBO involves the covered IHC or its subsidiaries entering resolution, receivership, insolvency, or similar proceedings in the United States. The certification must be provided by the top-tier FBO to the Board six months after the effective date of the final rule. In addition, the top-tier FBO with a covered IHC must provide an updated certification to the Board upon a change in resolution strategy. The proposed identification process is similar to the process used for U.S. IHCs subject to the TLAC rule.[58]

A covered IHC is a ''resolution covered IHC'' under the proposed rule if the certification provided indicates that the top-tier FBO's planned resolution strategy involves the covered IHC or its subsidiaries entering into resolution, receivership, insolvency or similar proceeding in the United States. A covered IHC is a ''non-resolution covered IHC'' under the proposed rule if the certification provided to the Board indicates that the top-tier FBO's planned resolution strategy does not involve the covered IHC or its subsidiaries entering into resolution, receivership, insolvency, or similar proceedings in the United States.

In addition, under the proposed rule, the Board may determine in its discretion that an entity that is certified to be a non-resolution covered IHC is a resolution covered IHC, or that an entity that is certified to be a resolution covered IHC is a non-resolution covered IHC. In reviewing certifications provided with respect to covered IHCs, the Board would expect to review all the information available to it regarding a firm's resolution strategy, including information provided to it by the firm. The Board would also expect to consult with the firm's home-country resolution authority in connection with this review. In addition, the Board may consider a number of factors including but not limited to: (i) whether the FBO conducts substantial U.S. activities outside of the IHC chain; (ii) whether the group's capital and liability structure is set up in a way to allow for losses to be upstreamed to the top-tier parent; (iii) whether the top-tier parent or foreign affiliates provide substantial financial or other forms of support to the U.S. operations (*e.g.,* guarantees, contingent claims and other exposures between group entities); (iv) whether the covered IHC is operationally independent (*e.g.,* costs are undertaken by the IHC itself and whether the IHC is able to fund itself on a stand-alone basis); (v) whether the covered IHC depends on the top-tier parent or foreign affiliates for the provision of critical shared services or access to infrastructure; (vi) whether the covered IHC is dependent on the risk management or risk-mitigating hedging services provided by the top-tier parent or foreign affiliates; and (vii) the location where financial activity that is conducted in the United States is booked.

A covered IHC would have one year or a longer period determined by the Board to comply with the requirements of the proposed rule applicable to non-resolution covered IHCs if it would become a non-resolution covered IHC because it either changes its resolution strategy or if the Board disagrees with the covered IHC's certification of its resolution strategy. For example, if the Board determines that a firm that had certified it is a resolution covered IHC is a non-resolution covered IHC for purposes of the rule, the IHC would have up to one year from the date on which the Board notifies the covered IHC in writing of such determination to

[58] *See* 12 CFR 252.164.

comply with the requirements of the rule. Since under the proposed rule a resolution covered IHC has the option to issue LTD externally to third parties but non-resolution covered IHCs do not, the one-year period would provide the covered IHC with time to make any necessary adjustments to the composition of its LTD so that all of its LTD would be issued internally.

As noted, under the proposed rule, the Board may extend the one-year period discussed above. In acting on any requests for extensions of this time period, the Board would consider whether the covered IHC had made a good faith effort to comply with the requirements of the rule.

2. Contractual Conversion Trigger

The proposed rule would require eligible internal LTD, whether issued by resolution covered IHCs or non-resolution covered IHCs, to contain a contractual conversion feature. The contractual trigger would allow the Board to require the covered IHC to convert or exchange all or some of the eligible internal LTD into common equity tier 1 capital on a going-concern basis (that is, without the covered IHC's entry into a resolution proceeding) under certain circumstances. These include if the Board determines that the covered IHC is ''in default or in danger of default'' and any of the three following additional circumstances applies.[59] First, the top-tier FBO or any of its subsidiaries is placed into resolution proceedings. Second, the home country supervisory authority consents to the exchange or conversion, or did not object to the exchange or conversion following 24 hours' notice. Third and finally, the Board makes a written recommendation to the Secretary of the Treasury that the FDIC should be appointed as receiver of the covered IHC under Title II of the Dodd-Frank Act.[60] The terms of the contractual conversion provision in the debt instrument would have to be approved by the Board.[61]

The principal purpose of this requirement is to ensure that losses incurred by the covered IHC are shifted to a foreign parent without the covered IHC having to enter a resolution proceeding. If the covered IHC's eligible internal LTD is sufficient to recapitalize the covered IHC in light of the losses that the covered IHC has incurred, this goal could be achieved through conversion of the eligible internal LTD into equity upon the occurrence of the trigger conditions.

Eligible external LTD issued by resolution covered IHCs is not required to contain a contractual conversion trigger. The proposed rule gives resolution covered IHCs the option to issue debt externally to third-party investors under the proposed rule on the same terms as covered HCs.

Question 35: The Board maintains an expectation that, following receipt of an internal debt conversion order, the FBO parent of a covered IHC should take steps to preserve the going concern value of the covered IHC, consistent with the resolution strategy of the top-tier FBO. Accordingly, the Board would expect that, following receipt of an internal debt conversion order, a covered IHC would not make any immediate distributions of cash or property, or make immediate payments to repurchase, redeem, or retire, or otherwise acquire any of its shares from its shareholders or affiliates. Should the Board codify this expectation in the proposed rule for covered IHCs and the U.S. IHCs of global systemically important FBOs? If so, should the regulation text specify that any such distributions or payments are subject to the Board's prior approval?

3. Allowance of Certain Credit-Sensitive Features

The proposed rule would not require eligible internal LTD issued by covered IHCs to include the prohibition against including certain credit-sensitive features that applies to other eligible LTD. This would match the requirements for eligible internal LTD issued by U.S. IHCs subject to the Board's TLAC rule.[62] Internal LTD, which by definition is issued between affiliates, is less likely to have a credit-sensitive feature. In addition, in contrast to eligible internal LTD of covered IDIs, eligible internal LTD of a covered IHC could be converted to equity by the Board. The presence of the credit-sensitive feature for the eligible LTD of a covered IHC would be less problematic once the LTD is converted to equity.

Question 36: What would be the advantages and disadvantages of making eligible internal LTD issued by all covered IHCs subject to the proposed rule or the TLAC rule subject to the same prohibition on credit-sensitive features that applies to eligible external LTD?

D. Legacy External LTD Counted Towards Requirements

The agencies anticipate that some covered entities and their subsidiary IDIs, as well as potentially certain other covered IDIs, will have external LTD outstanding at the time of finalization of the proposed rule. To enable covered entities and covered IDIs to most readily and effectively meet minimum LTD requirements as the proposed requirements are phased in, the proposed rule would allow some of this legacy external LTD to count toward the minimum requirements in the proposed rule, even where such legacy external LTD does not meet certain eligibility requirements. Specifically, the proposal would provide an exception for the following categories of outstanding external LTD instruments issued by covered HCs, resolution covered IHCs, and their subsidiary IDIs, and permitted and required externally issuing IDIs, that do not conform to all of the eligibility requirements that will apply to issuances of eligible internal or external LTD going forward once notice of the final rule resulting from this proposal is published in the **Federal Register***:* (i) instruments that contain otherwise impermissible acceleration clauses, (ii) instruments issued with principal denominations that are less than the proposed $400,000 minimum amount, and (iii) in the case of legacy instruments issued externally by a covered IDI, are not contractually subordinated to general unsecured creditors (collectively, eligible legacy external LTD). In addition, eligible legacy external LTD issued by a consolidated subsidiary IDI of a covered entity may be used to satisfy the minimum external LTD requirement applicable to its parent covered HC or resolution covered IHC, as well as any internal LTD requirement applicable to the subsidiary IDI itself. Eligible legacy external LTD cannot be used to satisfy the internal LTD requirement for nonresolution covered IHCs. To qualify as eligible legacy external LTD, an instrument must have been issued prior

[59] The phrase ''in default or in danger of default'' would be defined consistently with the standard provided by section 203(c)(4) of Title II of the Dodd-Frank Act. *See* 12 U.S.C. 5383(c)(4). Consistent with section 203's definition of the phrase, a covered IHC would be considered to be in default or in danger of default upon a determination by the Board that (A) a case has been, or likely will promptly be, commenced with respect to the covered IHC under the U.S. Bankruptcy Code; (B) the covered IHC has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the company to avoid such depletion; (C) the assets of the covered IHC are, or are likely to be, less than its obligations to creditors and others; or (D) the covered IHC is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business.

[60] *See* 12 U.S.C. 5383.

[61] The Board has delegated authority to approve these triggers to the General Counsel, in consultation with the Director of the Division of Supervision and Regulation, under certain circumstances. *See* 12 CFR 265.6(j).

[62] *See* 12 CFR 252.161.

to the date that notice of the final rule resulting from this proposal is published in the **Federal Register**.

The allowance for eligible legacy external LTD would reduce the costs of modifying the terms of existing outstanding debt or issuing new debt to meet applicable minimum LTD requirements. Over time, debt that is subject to the legacy exception will mature and be replaced by LTD that must meet all of the proposal's eligibility requirements. This approach is consistent with the intent of the legacy exceptions that were made available to entities subject to the TLAC rule in relation to LTD instruments issued prior to December 31, 2016.[63]

As noted above, the proposal would authorize the agencies, after providing a covered entity or covered IDI with notice and an opportunity to respond, to order the covered entity or covered IDI to exclude from its outstanding eligible LTD amount any otherwise eligible debt securities. These provisions would also apply to eligible legacy external LTD.

Question 37: What are the advantages and disadvantages of creating this exception for certain outstanding legacy external LTD issued by covered entities for purposes of the proposed rule?

Question 38: What are the advantages and disadvantages of establishing the date that notice of the final rule resulting from this proposal is published in the **Federal Register** *as the date before which external LTD must have been issued to qualify as legacy external LTD, as opposed to the date that the rule becomes effective?*

Question 39: The agencies welcome quantitative information about outstanding LTD issuances by covered entities or covered IDIs. What amount of LTD do covered entities or covered IDIs have outstanding? What amount would qualify as LTD if all the requirements applied upon finalization of the rule? What amount would qualify as LTD under the proposed exception?

VI. Clean Holding Company Requirements

To promote the resiliency of covered entities and minimize the knock-on effects of the failure of a covered entity to its counterparties and the financial system, the Board proposes to impose ''clean holding company'' requirements on covered entities. These requirements are similar to those imposed on U.S. GSIBs and U.S. IHCs subject to the TLAC rule.[64] Specifically, the proposal would prohibit covered entities from having the following categories of outstanding liabilities: third-party debt instruments with an original maturity of less than one year (short-term debt); QFCs with a third party (third-party QFCs); guarantees of a subsidiary's liabilities if the covered entity's insolvency or entry into a resolution proceeding (other than resolution under Title II of the Dodd-Frank Act) would create default rights for a counterparty of the subsidiary (subsidiary guarantees with cross-default rights); and liabilities that are guaranteed by a subsidiary of the covered entity (upstream guarantees) or that are subject to rights that would allow a third party to offset its debt to a subsidiary upon the covered entity's default on an obligation owed to the third party. Additionally, the proposal would limit the total value of a covered entity's (*i.e.,* parent-only, on an unconsolidated basis) non-eligible LTD liabilities owed to nonaffiliates that would rank at either the same priority as or junior relative to eligible LTD to 5 percent of the value of the covered entity's common equity tier 1 capital (excluding common equity tier 1 minority interest), additional tier 1 capital (excluding tier 1 minority interest), and eligible LTD amount. The proposed prohibitions and cap would apply only to the corporate practices and liabilities of the covered entity itself. They would not directly restrict the corporate practices and liabilities of the subsidiaries of the covered entity.

As discussed further below, these provisions provide benefits independent of the resolution strategy of a covered entity, including by improving the resiliency of covered entities, limiting certain transactions that can give rise to financial stability risks before a covered entity fails, and simplifying a covered entity so that it and its relevant subsidiaries can be resolved in a prompt and orderly manner.

These provisions may also advance several goals in connection with the resolution of the covered entity. In the case of SPOE resolution, these provisions support the goal of that resolution strategy to achieve the rapid recapitalization of the material subsidiaries of a covered entity with minimal interruption to the ordinary operations of those subsidiaries. The proposed clean holding company restrictions would advance this goal by prohibiting transactions that would distribute losses that should be borne solely by a covered entity to the covered entity's subsidiaries.

In the case of an MPOE resolution, in which a covered entity and its subsidiary IDI would enter into resolution, these provisions would limit the extent to which a subsidiary of a covered entity would experience losses or disruptions in its operations as a result of the failure of the covered entity prior to and during resolution. In particular, the prohibition on covered entity liabilities that are subject to upstream guarantees or offset rights would prevent a failed covered entity's creditors from passing their losses on to the covered entity's subsidiaries. Furthermore, covered entities that currently plan for an MPOE resolution strategy may nevertheless be resolved pursuant to an SPOE resolution strategy or adopt an SPOE resolution strategy in the future. Applying the clean holding company requirements to covered entities that currently plan for an MPOE resolution ensures that the benefits of these requirements that may be more significant for covered entities with an SPOE resolution strategy are readily available to covered entities with an MPOE resolution strategy that ultimately are resolved with an SPOE resolution strategy or eventually change their resolution strategy to an SPOE strategy.

Question 40: What would be the advantages and disadvantages of imposing clean holding company requirements on covered entities? What would be the costs or consequences on business practices of imposing these requirements?

Question 41: Under the existing TLAC rule, U.S. IHCs of foreign GSIBs already comply with clean holding company requirements. What characteristics about U.S. IHCs that would be subject to the proposed rule (i.e., not subject to the existing TLAC rule), if any, would make it appropriate or inappropriate to apply such requirements?

Question 42: To what extent are the clean holding company requirements appropriate for a firm that employs an MPOE resolution strategy? What specific challenges, if any, would result from applying the clean holding company requirements to these firms?

Question 43: What changes, if any, would result to an IDI's business model if its parent company is a covered entity that becomes subject to the clean holding company requirements, where the covered entity proposes an MPOE resolution strategy?

A. No External Issuance of Short-Term Debt Instruments

The proposed rule would prohibit covered entities from externally issuing debt instruments with an original maturity of less than one year. Under the proposed rule, a liability has an original maturity of less than one year if it would provide the creditor with the option to receive repayment within one

[63] *See* 12 CFR 252.61 ''Eligible debt security.''

[64] *See* 12 CFR 252.64 and .166.

year of the creation of the liability, or if it would create such an option or an automatic obligation to pay upon the occurrence of an event that could occur within one year of the creation of the liability (other than an event related to the covered entity's insolvency or a default related to failure to pay that could trigger an acceleration clause).

The prohibition on external issuance of short-term debt instruments would improve the resiliency of covered entities and their subsidiaries and help mitigate the financial stability risks presented by destabilizing funding runs. A covered entity with significant short-term obligations is less resilient because, in the event of real or perceived stress, short-term creditors can refuse to roll over their loans to the covered entity. In that case, the covered entity must either find replacement funding or sell assets in order to pay its short-term creditors. Both of these outcomes normally would weaken the covered entity because replacement funding is likely to be at a premium and the assets would likely be sold at a loss in order to quickly generate cash. In response to the termination or curtailment of a covered entity's short-term funding or the covered entity's asset sales, counterparties or customers of the covered entity's subsidiaries may also lose confidence in those subsidiaries and unwind transactions with or withdraw funding from them. This issue may be acute for IDIs because their main creditors—depositors—generally have the ability to demand their funds on short notice. Prohibiting external issuance of short-term debt instruments by covered entities decreases the likelihood of these outcomes, improving the resiliency of a covered entity and its subsidiaries. For example, a covered entity is better able to serve as a source of managerial and financial strength to its subsidiary IDI if the covered entity is not experiencing a run on its short-term liabilities.

Decreasing the likelihood of a funding run also benefits financial stability. The sale of assets by a covered entity to repay its short-term creditors can be a key channel for the propagation of stress through the financial system. If those assets are widely held by other firms, then the sale by a covered entity of those assets can depress the fair value of those assets, thereby significantly affecting other firms' balance sheets, which could precipitate stress at those institutions, which could require further asset sales. The proposed rule would help mitigate these financial stability risks by prohibiting covered entities from relying on short-term funding and reducing run risk.

The prohibition against short-term funding in the proposed rule applies to both secured and unsecured short-term borrowings. Although secured creditors are less likely to take losses in resolution than unsecured creditors, secured creditors may nonetheless be unwilling to maintain their exposure to a covered entity that comes under stress in order to avoid potential disruptions in access to the collateral during resolution proceedings.

Question 44: What are the advantages and disadvantages to the proposed prohibition on external issuance by covered entities of short-term debt instruments? To what extent do covered entities that would be subject to the proposed rule rely on liabilities that would be subject to this prohibition?

B. Qualified Financial Contracts With Third Parties

Under the proposal, covered HCs would be permitted to enter into QFCs only with their subsidiaries and covered IHCs would be permitted to enter into QFCs only with their affiliates, with the exception described below of entry into certain credit enhancement arrangements with respect to QFCs between a covered entity's subsidiary and third parties. The proposal defines QFCs by reference to Title II of the Dodd-Frank Act, which defines QFCs to include securities contracts, commodities contracts, forward contracts, repurchase agreements, and swap agreements, consistent with the TLAC rule.[65]

The failure of a large banking organization that is a party to a material amount of third-party QFCs could pose a substantial risk to the stability of the financial system. Specifically, it is likely that many of that institution's QFC counterparties would respond to the institution's default by immediately liquidating their collateral and seeking replacement trades with third-party dealers, which could cause fire sale effects and propagate financial stress to other firms that hold similar assets by depressing asset prices. The proposed restriction on third-party QFCs would mitigate this threat to financial stability for covered entities under both MPOE and SPOE strategies. In the case of a successful SPOE resolution, covered entities' operating subsidiaries, which may be parties to large quantities of QFCs, should remain solvent and not fail to meet any ordinary course payment or delivery obligations. Therefore, assuming that the cross-default provisions of the QFCs engaged in by the operating subsidiaries of covered entities are appropriately structured, their QFC counterparties generally would have no contractual right to terminate or liquidate collateral on the basis of the covered entity's entry into resolution proceedings. The proposed restrictions also would support successful MPOE resolution as they would encourage covered entities to migrate any external QFC activity currently being conducted at the covered entity level to the relevant operating subsidiaries, a structure that would be better aligned with the activities of the underlying subsidiaries and will enable, in the case of IDI subsidiaries, the direct application of statutory QFC stay provisions provided under the FDI Act with regard to such QFCs. This migration of covered entity QFCs to the subsidiary level should simplify resolution proceedings and enable continuity of necessary QFC activities in resolution. Further, a covered entity itself would have, subject to the exceptions discussed below, no further QFCs with external counterparties, if any, and so the covered entity's entry into resolution proceedings could result in limited or no direct defaults on QFCs and related fire sales, assuming the covered entity complies with the cross-default and upstream guarantee restrictions discussed below. The proposed restriction on third-party QFCs would therefore materially diminish the fire sale risk and contagion effects associated with the failure of a covered entity.

The proposal would only apply prospectively to new agreements entered into after the post-transition period effective date of a final rule. The proposed rule would also exempt certain contracts from the prohibition on third-party QFCs for covered HCs. These exemptions, which are also are being proposed for U.S. GSIBs and U.S. IHCs of foreign GSIBs, are discussed further below and would apply to certain underwriting agreements, fully paid structured share repurchase agreements, and employee and director compensation agreements.

Question 45: What are the advantages and disadvantages to the proposed prohibition on third-party QFCs? To what extent do covered entities that would be subject to the proposed rule currently enter into QFCs?

Question 46: What would be the cost or consequences on business practices of imposing a prohibition on third-party QFCs?

[65] 12 U.S.C. 5390(c)(8)(D).

C. Guarantees That Are Subject to Cross-Defaults

The proposal would prohibit a covered entity from guaranteeing (including by providing credit support for) any liability between a direct or indirect subsidiary of the covered entity and an external counterparty if the covered entity's insolvency or entry into resolution (other than resolution under Title II of the Dodd-Frank Act) would directly or indirectly provide the subsidiary's counterparty with a default right. The proposal defines the term ''default right'' broadly. Guarantees by covered entities of subsidiary liabilities, in the case of covered HCs, and of affiliates, in the case of covered IHCs, that are not subject to such cross-default rights would be unaffected by the proposal. The proposal would only apply prospectively to new agreements established after the effective date of a final rule.

This proposal would improve the resolvability and resilience of covered entities that have adopted MPOE and SPOE strategies. The proposed requirements would support the ability of a covered entity's subsidiaries to continue to operate normally or undergo an orderly wind-down upon the covered entity's entry into resolution. For example, an obstacle to resolution would occur if a covered entity's entry into resolution or insolvency operated as a default by the subsidiary and empowered the subsidiary's counterparties to take default-related actions, such as ceasing to perform under the contract or liquidating collateral. Were subsidiary QFC counterparties to take such actions, the subsidiary could face liquidity, reputational, or other stress that could undermine its ability to continue operating normally, including by placing short-term funding strain on the subsidiary. This could have destabilizing effects, even for a subsidiary of a covered entity with an MPOE resolution strategy as it could erode the franchise or market value of the subsidiary and pose obstacles to its orderly resolution or wind-down. The proposed prohibition would also complement other work that has been done to facilitate GSIB resolution through the stay of cross-defaults, including the agencies' final rule imposing restrictions on QFCs and the ISDA Protocol.[66]

The prohibition on entry by covered entities into guarantee arrangements covering subsidiary liabilities that contain cross-default rights would exempt guarantees subject to a rule of the Board restricting such cross-default rights or any similar rule of another U.S. Federal banking agency.[67] For example, the proposal would exempt from this prohibition subsidiary guarantees with cross-default rights that would be stayed if the underlying contracts were subject to the Board, OCC, or FDIC's rules requiring stays of QFC default rights in certain resolution scenarios.[68] However, these rules currently do not apply to covered entities. Although the Board has not adopted a rule regarding cross-default provisions of financial contracts that would apply to covered entities, the proposal leaves open the possibility that in the future certain guarantees would be permitted to the extent they are authorized under a rule of the Board or another Federal banking agency.

Question 47: Would modifications to the scope of the agencies' existing QFC stay rules be necessary to support the implementation of this provision? What are the advantages and disadvantages of doing so? Should such a rulemaking permit certain guarantee arrangements to contain cross-default provisions, consistent with 12 CFR 252 subpart I?

D. Upstream Guarantees and Offset Rights

The proposed rule would prohibit covered entities from having outstanding liabilities that are subject to a guarantee from any direct or indirect subsidiary of the holding company (upstream guarantees). Both MPOE and SPOE resolution strategies are premised on the assumption that a covered entity's operating subsidiaries face no claims from the creditors of the holding company as those subsidiaries either continue to operate normally or undergo separate resolution proceedings. This arrangement could be undermined if a liability of the covered entity is subject to an upstream guarantee because the effect of such a guarantee is to expose the guaranteeing subsidiary (and, ultimately, its creditors) to the losses that would otherwise be imposed on the holding company's creditors. A prohibition on upstream guarantees would facilitate both MPOE and SPOE resolution strategies by increasing the certainty that the covered entity's eligible external LTD holders will be exposed to loss separately from the creditors of a covered entity's subsidiaries.

Upstream guarantees do not appear to be common among covered entities. Section 23A of the Federal Reserve Act already limits the ability of an IDI to issue guarantees on behalf of its parent holding company.[69] The principal effect of the prohibition would therefore be to prevent the future issuance of such guarantees by material non-bank subsidiaries.

Similarly, the proposed rule prohibits covered entities from issuing an instrument if the holder of the instrument has a contractual right to offset the holder's liabilities, or the liabilities of an affiliate of the holder, to any of the covered entity's subsidiaries against the covered entity's liability under the instrument. The prohibition includes all such offset rights regardless of whether the right is provided in the instrument itself. Such offset rights are another device by which losses that are expected to flow to the covered entity's external LTD holders in resolution could instead be imposed on operating subsidiaries and their creditors.

E. Cap on Certain Liabilities

For covered HCs, the proposed rule would limit the amount of non-contingent liabilities to third parties (*i.e.,* persons that are not affiliates of the covered entity) that are not eligible LTD, common equity tier 1 capital, or additional tier 1 capital and that would rank at either the same priority as or junior to the covered entity's eligible LTD in the priority scheme of either the U.S. Bankruptcy Code or Title II of the Dodd-Frank Act to no more than 5 percent of the sum of a covered HC's common equity tier 1 capital (excluding common equity tier 1 minority interest), additional tier 1 capital (excluding tier 1 minority interest), and eligible LTD amount.[70] The cap would not apply to instruments that were eligible external LTD when issued and have ceased to be eligible (because their remaining maturity is less than one year) as long as the holder of the instrument does not have a currently exercisable put right; nor would it apply to payables (such as dividend- or interest-related payables) that are associated with such liabilities (related liabilities). Liabilities that would be expected to be subject to the cap include debt instruments with derivative-linked features (*i.e.,* structured notes); external vendor and

[66] *See* 12 CFR part 47 (OCC); 12 CFR 252 subpart I (Board); 12 CFR part 382 (FDIC); ISDA Universal Resolution Stay Protocol (Nov. 12, 2015), *https://www.isda.org/protocol/isda-2015-universal-resolution-stay-protocol;* ISDA 2018 U.S. Resolution Stay Protocol (Aug. 22, 2018), *https://www.isda.org/protocol/isda-2018-us-resolution-stay-protocol.*

[67] Liabilities would be considered ''subject to'' such a rule even if those liabilities were exempted from one or more of the requirements of the rule.

[68] *See, e.g.,* 12 CFR part 47 (OCC); 12 CFR 252 subpart I (Board); 12 CFR part 382 (FDIC).

[69] Transactions subject to the quantitative limits of section 23A of the Federal Reserve Act and Regulation W include guarantees issued by a bank on behalf of an affiliate. *See* 12 U.S.C. 371c(b)(7)(E); 12 CFR 223.3(h)(5).

[70] *See* 11 U.S.C. 507; 12 U.S.C. 5390(b).

operating liabilities, such as for utilities, rent, fees for services, and obligations to employees; and liabilities arising other than through a contract (*e.g.,* liabilities created by a court judgment) (collectively, unrelated liabilities).

The purpose of this requirement is to limit the amount of liabilities that are not common equity tier 1 capital, additional tier 1 capital, or eligible LTD that would rank at either the same priority as or junior relative to eligible LTD in a bankruptcy or resolution proceeding. This ensures that eligible LTD absorbs losses prior to almost all other liabilities of the covered entity and mitigates the legal risk that non-LTD creditors of a failed covered entity object to or otherwise complicate the imposition of losses in bankruptcy on the class of creditors that includes the eligible LTD of the covered entity. As a practical matter, the cap also would result in a significant portion of a covered entity's unsecured liabilities being composed of eligible LTD, which is preferable because eligible LTD has the features discussed above that more readily absorb loss and facilitate a simpler resolution relative to other types of unsecured debt.

The proposal would not subject a covered entity to this cap if the covered entity elects to subordinate all of its eligible LTD to all of the covered entity's other liabilities. Subordinating all of a covered entity's eligible LTD also would address the risk that non-LTD creditors might object to or otherwise complicate imposing losses on investors in eligible LTD. Permitting covered entities a choice between adhering to the cap on unrelated liabilities or instead contractually subordinating all eligible LTD to all of the covered entity's other liabilities provides greater flexibility in choosing how to comply with the proposed rule.

The proposed calibration of 5 percent is consistent with the 5 percent calibration for the similar cap on unrelated liabilities that applies to the parent holding companies of U.S. GSIBs and U.S. IHCs of foreign GSIBs.[71] Like the cap for U.S. GSIBs and the U.S. IHCs of foreign GSIBs, the proposed cap for a covered entity would be specified as a percentage of the sum of the covered entity's common equity tier 1 capital, additional tier 1 capital, and eligible LTD amount. The proposed 5 percent cap would apply to the parent-only balance sheets of covered entities. Specifically, Board staff estimates that, on average, the amount of liabilities that would be subject to this cap as a percentage of the sum of a firm's tier 1 capital and minimum LTD requirement under the proposal would be less than the proposed 5 percent cap.[72]

Under the proposed rule, the set of liabilities that would count towards the unrelated liabilities cap for a resolution covered IHC would be different than the liabilities that would count towards the cap for non-resolution covered IHCs (discussed below) because resolution covered IHCs are permitted to issue eligible LTD externally to third parties. The cap for resolution covered IHCs applies to unrelated liabilities owed to parent and sister affiliates, as well as to unaffiliated third parties, because these IHCs have the option to issue external LTD that will be expected to bear losses in the resolution covered IHC's individual resolution proceeding and that may rank at either the same priority as or senior to such unrelated liabilities. Thus, these firms may owe significant amounts of unrelated liabilities to their FBO parents or another affiliate that would remain outstanding when the IHC enters resolution, because such entities are not anticipated to support the IHC under the resolution plan of the parent FBO.[73] The cap on unrelated liabilities owed to parents and sister affiliates limits the amount of these liabilities that would be outstanding at the time that a resolution covered IHC enters into resolution.

The cap on unrelated liabilities for non-resolution covered IHCs does not include liabilities owed to foreign affiliates because for such entities, the eligible LTD held by foreign affiliates should, in a resolution scenario, convert to equity of the covered IHC, either through actions of the parent or the Board. Therefore, in contrast to resolution covered IHCs, concern about liabilities owed to the FBO parent or other affiliated parties is minimal.

Question 48: What would be the advantages and disadvantages of the proposed cap on unrelated liabilities? Could the objectives of the cap be achieved through other means? For example, instead of imposing a cap on unrelated liabilities, should the Board require that the LTD required under this rule be contractually subordinated so that it represents the most subordinated debt claim in receivership, insolvency, or similar proceedings? Would a different threshold for the cap be more appropriate for covered HCs or covered IHCs? For example, should the cap be calibrated to be modestly higher than the cap for U.S. GSIBs and the U.S. IHCs of foreign GSIBs because GSIBs are required to maintain outstanding a greater percentage of equity capital?

Question 49: What are the advantages and disadvantages of the proposed calibration of 5 percent of the sum of common equity tier 1 capital, additional tier 1 capital, and eligible LTD amount? Would an alternative value in the range of 4 percent to 15 percent be more appropriate? If so, why?

VII. Deduction of Investments in Eligible External LTD From Regulatory Capital

In 2021, the agencies adopted an amendment to the capital rule that required U.S. GSIBs, their subsidiary depository institutions, and Category II banking organizations to make certain deductions from regulatory capital for investments in LTD issued by U.S. GSIBs under the Board's TLAC rule to meet the minimum TLAC requirements.[74] Among other requirements, under the current capital rule a U.S. GSIB, U.S. GSIB subsidiary, or Category II banking organization is required to deduct investments in LTD issued by banking organizations that are required to issue LTD to the extent that aggregate investments by the investing U.S. GSIB, U.S. GSIB subsidiary, or Category II banking organization in the capital and LTD of other financial institutions exceed a specified threshold of the investing banking organization's regulatory capital. For purposes of the threshold deduction, U.S. GSIBs, U.S. GSIB subsidiaries, and Category II banking organizations are permitted to exclude a limited amount of LTD

[71] *See* 12 CFR 252.64(b)(1) (cap on unrelated liabilities for U.S. GSIBs); 12 CFR 252.166(b)(1) (cap on unrelated liabilities for U.S. IHCs of foreign GSIBs).

[72] Estimated to be approximately 4.6 percent. Calculated by dividing the average of the numerator and denominator for covered HCs and covered IHCs. The liabilities included in the numerator for this calculation are reported, as of December 31, 2022, as line items 13 and 17 from the FR Y–9LP. The tier 1 capital and total consolidated asset amount used to estimate the minimum LTD requirement for the denominator are from line items HC–R.26 and HC–R.46.a of the FR Y–9C, respectively.

[73] This inclusion of liabilities owed to parents of the resolution covered IHC also aligns with the cap on liabilities of covered HCs, which would include liabilities held by shareholders of the covered HC.

[74] In addition to LTD issued by U.S. GSIBs under the Board's TLAC rule, the 2021 amendments to the capital rule covered LTD issued by foreign global systemically important banking organizations and their U.S. IHCs. *See* Regulatory Capital Treatment for Investments in Certain Unsecured Debt Instruments of Global Systemically Important U.S. Bank Holding Companies, Certain Intermediate Holding companies, and Global Systemically Important Foreign Banking Organizations; Total Loss-Absorbing Capacity Requirements, 86 FR 708 (Jan. 6, 2021). This rule also provided for deduction of debt instruments that are ranked at either the same priority as or subordinated to LTD instruments and debt instruments issued by global systemically important FBOs under foreign standards similar to the Board's TLAC rule.

investments, with U.S. GSIBs and U.S. GSIB subsidiaries only permitted to exclude LTD investments held for market making purposes. The deduction framework in the current capital rule is intended to reduce interconnectedness and contagion risk by discouraging U.S. GSIBs, U.S. GSIB subsidiaries, and Category II banking organizations from investing in the capital of other financial institutions and in the LTD issued by banking organizations that are required to issue LTD.

Distress at a covered entity or IDI that issues externally, and the associated write-down or conversion into equity of its eligible LTD, could have a direct negative impact on the capital of investing banking organizations, potentially at a time when such banking organizations may themselves be experiencing financial stress. Requiring that U.S. GSIBs, U.S. GSIB subsidiaries, and Category II banking organizations apply the deduction framework to the LTD of a covered entity or IDI that issues externally would discourage these banking organizations from investing in such instruments, and would thereby help to reduce both interconnectedness within the financial system and systemic risk. Therefore, the proposal would expand the current deduction framework in the capital rule for U.S. GSIBs, U.S. GSIB subsidiaries, and Category II banking organizations to also apply to eligible external LTD issued by covered entities and mandatory or permitted externally issuing IDIs to meet the minimum LTD requirement set forth in this proposal by amending the capital rule's definition of covered debt instrument. The expanded deduction framework would apply to all legacy external LTD, including externally issued LTD of an internally issuing IDI that was issued prior to the date that the notice of the final rule resulting from this proposal is published in the **Federal Register**. The proposal would not itself otherwise amend the capital rule's deduction framework. Notably, however, the recently released Basel III reforms proposal [75] would subject Category III and IV banking organizations to the LTD deduction framework that currently only applies to U.S. GSIBs, U.S. GSIB subsidiaries, and Category II banking organizations and would apply a heightened risk weight to investments in LTD that are not deducted. Thus, if both this proposal and the Basel III reforms proposal are adopted as proposed, Category III and IV banking organizations will newly become subject to the capital rule's deduction framework for investments in LTD and the deduction framework would be expanded to apply to eligible LTD issued by covered entities and mandatory and permitted externally issuing IDIs.

Question 50: What are the advantages and disadvantages of expanding the deduction framework to apply to eligible external LTD issued to satisfy the LTD requirements set forth in the proposal? To what extent would the proposed deduction from regulatory capital of investments in eligible external LTD restrict the ability of external issuers to issue eligible external LTD?

Question 51: What would be the advantages or disadvantages of an alternative approach of requiring the deduction of eligible external LTD of only certain external issuers? For example, should eligible LTD of only larger firms within Categories I–IV be subject to the deduction framework? Should eligible external LTD issued by IDIs that are covered IDIs solely due to their affiliation with another covered IDI not be subject to the deduction framework? What considerations should affect whether an external issuer's eligible external LTD should be subject to the deduction framework?

Question 52: What would be the advantages and disadvantages of amending the proposed application of the deduction framework to exclude from deduction eligible legacy external LTD?

VIII. Transition Periods

The agencies propose to provide a transition period for covered entities and covered IDIs that would be subject to the rule when it is finalized, and a transition period for covered entities and covered IDIs that become subject to the rule after it is finalized. The purpose of these proposed transition periods is to minimize the effect of the implementation of the proposal on covered entities and covered IDIs, as well as on credit availability and credit costs in the U.S. economy.

The agencies propose to provide covered entities and covered IDIs three years to achieve compliance with the final rule. The three-year transition period would be the same for all covered IDIs, regardless of whether a covered IDI is required to issue internally to a parent or externally. Three years would provide covered entities and covered IDIs adequate time to make necessary arrangements to comply with the final rule without creating undue burden that would have unreasonable adverse impacts for covered entities and covered IDIs. The agencies may accelerate or extend this transition period in writing for the covered IDIs for which they are the appropriate Federal banking agency, and the Board may accelerate or extend this transition period in writing for covered entities.

Over that three-year period, covered entities and covered IDIs would need to meet 25 percent of their LTD requirements by one year after finalization of the rule, 50 percent after two years of finalization, and 100 percent after three years. This required phase-in schedule would apply to covered entities and covered IDIs that are subject to the rule beginning on the effective date of the finalized rule, and would likewise apply upon a firm becoming subject to the rule sometime after finalization. The proposed rule would provide additional clarifications regarding the three-year transition period to prevent evasion of the rule. The three-year transition period would not restart for a covered IDI that changes charters. For example, a national bank subject to the OCC's proposed rule would not have an additional three years to transition into compliance with the FDIC's proposed rule if the national bank changes its charter to a state-chartered savings association. Likewise, the holding company of such a bank would not have an additional three years to transition to the Board's rule for SLHCs. Covered entities that transition from being subject to the proposed LTD requirement to the requirements applicable to U.S. GSIBs or U.S. IHCs controlled by foreign GSIBs that are codified in the Board's existing TLAC rule would have three years to comply with those requirements. However, during that three-year period, such entities would be required to continue to comply with the LTD requirement and other requirements of the proposed rule. That is, a covered entity that is subject to the proposed rule and then becomes subject to the TLAC rule must continue to satisfy the minimum LTD and other requirements of the proposed rule during the three-year transition period for the TLAC rule. During this transition period, the covered entity would be required to issue new eligible LTD if necessary to maintain the minimum eligible LTD requirement set forth in the proposed rule.

[75] On July 27, 2023, the agencies issued a proposal to amend the capital requirements for banking organizations with total assets of $100 billion or more and their subsidiary depository institutions (*i.e.,* banking organizations subject to category I–IV standards), and to banking organizations with significant trading activity (Basel III reforms proposal). *See* Joint press release: Agencies request comment on proposed rules to strengthen capital requirements for large banks (July 27, 2023), *https://www.federalreserve.gov/newsevents/pressreleases/bcreg20230727a.htm.*

Question 53: Is three years an appropriate amount of time for firms that become subject to the proposed rule immediately upon finalization and those that become subject after the date on which the rule is finalized to transition into full compliance? Would a shorter period, such as two years, be an adequate transition period? If so, should a shorter transition period also include a phase-in of 50 percent of the LTD requirement by year one and 100 percent by year two? Alternatively, would a longer period, such as four years, be appropriate?

Question 54: Should the agencies consider a longer transition specifically for Category IV covered entities and their covered IDI subsidiaries, which may have less existing LTD than larger covered entities and covered IDIs? For example, should these companies have four years to transition to the proposed requirements?

Question 55: During the three-year period proposed by the agencies, what would be the advantages and disadvantages of requiring covered entities and covered IDIs to submit an implementation plan for complying with the proposed requirements at the end of the three-year period rather than or in addition to satisfying the specified phased in percentages of the LTD requirement on the timeline proposed?

Question 56: Should the agencies consider requiring a different phase in, or a phase in that requires partial compliance at a different date? For example, should the agencies consider a phase in that requires covered entities and covered IDIs to meet 30 percent of their LTD requirement by year one, 60 percent by year two, and 100 percent by year three? What factors should the agencies consider in determining the appropriateness of a phase in requirement (for example, how should the agencies account for the fact that some covered entities already have existing LTD instruments that would be eligible LTD) or in structuring the phase-in requirement?

Question 57: If the agencies revise the proposed transition period to be less than three years or retain the phase-in requirement, should the Board amend the requirements in the existing TLAC rule for U. S. GSIBs and U.S. IHCs of global systemically important FBOs to include the same transition periods or phase-in requirement?[76]

IX. Changes to the Board's TLAC Rule

In 2017, the Board finalized a TLAC and LTD requirement for the top-tier parent holding companies of domestic U.S. GSIBs (TLAC HCs) and IHCs of foreign GSIBs (TLAC IHCs and, together with TLAC HCs, ''TLAC companies'') to improve the resiliency and resolvability of TLAC companies and thereby reduce threats to financial stability.[77] The TLAC rule is intended to improve the resolvability of GSIBs without extraordinary government support or taxpayer assistance by establishing ''total loss-absorbing capacity'' standards for the GSIBs and requiring them to issue a minimum amount of LTD. The TLAC rule requires TLAC companies to maintain outstanding minimum levels of TLAC and eligible LTD;[78] establishes a buffer on top of both the risk-weighted asset and leverage components of the TLAC requirements, the breach of which would result in limitations on a TLAC company's capital distributions and discretionary bonus payments;[79] and applies ''clean holding company'' limitations to TLAC companies to further improve their resolvability and the resiliency of their operating subsidiaries.[80]

Since adopting the TLAC rule in 2017, the Board has gained experience administering the rule, including by responding to questions from TLAC companies and monitoring compliance by TLAC companies with the rule. In light of that experience, the Board is proposing to make several amendments to the TLAC rule, as discussed in greater detail below. These amendments generally are technical or intended to improve harmony between provisions within the TLAC rule and address items that have been identified through the Board's administration of the TLAC rule.

A. Haircut for LTD Used To Meet TLAC Requirement

The TLAC rule requires TLAC companies to maintain a minimum amount of TLAC and a minimum amount of eligible LTD.[81] Eligible LTD generally can be used to satisfy both these requirements. However, eligible LTD must have minimum maturities to count towards the requirements, and the minimum maturity required to count towards each requirement is different. For both the TLAC and LTD requirements, 100 percent of the amount of eligible LTD that is due to be paid in two or more years counts towards the requirements, and zero percent of the amount of eligible LTD that is due to be paid within one year counts towards the requirements. However, while 100 percent of the amount of eligible LTD that is due to be paid in one year or more but less than two years counts towards the TLAC requirement, only 50 percent of the amount counts towards the LTD requirement.[82]

When it adopted the TLAC rule, the Board stated that the purpose of the 50 percent haircut applied for purposes of the LTD requirement with respect to the amount of eligible LTD that is due to be paid between one and two years is to protect a TLAC company's LTD loss-absorbing capacity against a run-off period in excess of one year (as might occur during a financial crisis or other protracted stress period) in two ways. First, the 50 percent haircut requires TLAC companies that rely on eligible LTD that is vulnerable to such a run-off period (because it is due to be paid in less than two years) to maintain additional LTD loss-absorbing capacity. Second, it incentivizes TLAC companies to reduce or eliminate their reliance on LTD loss-absorbing capacity that is due to be paid in less than two years, since by doing so they avoid being required to issue additional eligible LTD in order to account for the haircut. A TLAC company could reduce its reliance on eligible LTD that is due to be paid in less than two years by staggering its issuance, by issuing eligible LTD that is due to be paid after a longer period, or by redeeming and replacing eligible LTD once the amount due to be paid falls below two years.

The Board is proposing to amend the TLAC rule to change the haircuts that are applied to eligible LTD for purposes of compliance with the TLAC requirement to conform to the haircuts that apply for purposes of the LTD requirement. Accordingly, the proposed rule would allow only 50 percent of the amount of eligible LTD with a maturity of one year or more but less than two years to count towards the TLAC requirement. This change would simplify the rule so that the same haircut regime applies across the TLAC

[76] Under the TLAC rule, U.S. GSIBs and U.S. IHCs of global systemically important FBOs have three years from when they meet the scope of application requirements for that rule. *See* 12 CFR 252.60(b)(2) and .160(b)(2).

[77] Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U.S. Bank Holding Companies and Intermediate Holding Companies of Systemically Important FBOs, 82 FR 8266 (Jan. 24, 2017), *https://www.federalregister.gov/documents/2017/01/24/2017-00431/total-loss-absorbing-capacity-long-term-debt-and-clean-holding-company-requirements-for-systemically#citation-102-p8300*.

[78] 12 CFR part 252, subparts G and P.

[79] 12 CFR 252.63(c) and .165(d).

[80] 12 CFR 252.64 and .166.

[81] *See* 12 CFR 252.62–.62, .162, and .165.

[82] *Compare* 12 CFR 252.62(b)(1)(ii) and .162(b)(1)(ii) *with* 12 CFR 252.63(b)(3), .165(c)(1)(iii), and .165(c)(2)(iii).

and LTD requirements. Adopting the 50 percent haircut for the TLAC requirement also would support the goals the Board noted for applying the haircut for purposes of the LTD rule. Applying the haircut to the TLAC requirement would improve TLAC companies' management of the tenor of their eligible LTD. The proposed change would incentivize firms to reduce reliance on eligible LTD with maturities of less than two years and increase the TLAC requirement for firms that rely heavily on eligible LTD with maturities of less than two years.

Staff analyzed the change in TLAC ratios that would be implied by this proposed 50 percent haircut on eligible LTD maturing between one and two years. Seventeen entities are currently subject to TLAC requirements, eight of which are U.S. GSIBs and nine of which are foreign GSIB IHCs. The staff analysis relied on data from the FR Y–9C as of March 2023. On this basis, overall aggregate TLAC at these seventeen GSIBs would decline by roughly $65 billion (some 2.7 percent) as a result of the proposed change to the eligible LTD haircut.

Based on these estimates, staff projects that all GSIBs would meet or nearly meet their TLAC requirements under the proposed change.[83] Staff did not consider whether the proposal might prompt behavioral changes at the seventeen GSIBs, primarily because the magnitudes of possible declines in TLAC and the potential associated effects appear to be modest, as discussed above. However, staff would anticipate that impacted entities would adjust their issuance to mitigate the impact of this change.

The agencies invite comment on the implications of the interaction of the proposal to modify the eligible LTD haircut with proposed changes to the agencies' capital rule under the Basel III proposal.

Question 58: How would a different remaining maturity requirement or amortization schedule better achieve the objectives of the TLAC rule?

B. Minimum Denominations for LTD Used To Satisfy TLAC Requirements

The Board proposes to amend the TLAC rule so that eligible LTD must be issued in minimum denominations for the same reasons discussed in section III.C.7 of this supplementary information section.

Question 59: Should the Board impose a higher minimum denomination for TLAC companies subject to the TLAC rule? Should the minimum denomination be higher (e.g., $1 million) for companies subject to the TLAC rule than for covered entities subject to the newly proposed LTD requirement?

C. Treatment of Certain Transactions for Clean Holding Company Requirements

The TLAC rule applies clean holding company requirements to the operations of TLAC HCs to further improve their resolvability and the resiliency of their operating subsidiaries.[84] One of these requirements is that a TLAC HC must not enter into a QFC, with the exception of entry into certain credit enhancement arrangements with respect to QFCs between a TLAC HC's subsidiary and third parties, with a counterparty that is not a subsidiary of the TLAC HC (the ''QFC prohibition'').[85] The final rule defined QFC as it is defined in 12 U.S.C. 5390(c)(8)(D).[86] This definition includes a ''securities contract,'' which is further defined to mean ''a contract for the purchase, sale, or loan of a security, . . . a group or index of securities, . . . or any option on any of the foregoing, including any option to purchase or sell any such security, . . . or option. . . .'' [87]

The Board explained that the QFC prohibition would mitigate the substantial risk that could be posed by the failure of a large banking organization that is a party to a material amount of third-party QFCs. First, the Board noted that TLAC HCs' operating subsidiaries, which are parties to large quantities of QFCs, are expected to remain solvent under an SPOE resolution and not expected to fail to meet any ordinary course payment or delivery obligations during a successful SPOE resolution. Therefore, assuming that the cross-default provisions of the QFCs engaged in by the operating subsidiaries of TLAC HCs are appropriately structured, their QFC counterparties generally would have no contractual right to terminate or liquidate collateral on the basis of the TLAC HC's entry into resolution proceedings. Second, the TLAC HCs themselves would be subject to a general prohibition on entering into QFCs with external counterparties, so their entry into resolution proceedings would not result in substantial QFC terminations and related fire sales. The restriction on third-party QFCs would therefore materially diminish the fire sale risk and contagion effects associated with the failure of a TLAC HC.

In its administration of the rule since it was finalized, the Board has gained experience with agreements that may constitute QFCs and which the Board believes may not present the risks intended to be addressed by the clean holding company requirements. Accordingly, the Board proposes to amend the clean holding company requirements so that TLAC HCs may enter into underwriting agreements, fully paid structured share repurchase agreements, and employee and director compensation agreements, each described below. The Board also proposes to amend the rule so that the Board may determine, upon request, that additional agreements are not subject to the QFC prohibition.

These changes would also be applied to the clean holding company requirements proposed for covered HCs, discussed in section VI.B of this supplementary information.

1. Underwriting Agreements

An underwriting agreement is an agreement between an issuer of securities, in this case, a U.S. GSIB, and one or more underwriters, dealers, brokers or other purchasers for the purpose of issuing or distributing securities of the issuer, whether by means of an underwriting syndicate or through an individual dealer or broker. These agreements generally will not represent a risk to the orderly resolution of a U.S. GSIB because the underwriter, not the U.S. GSIB, has the payment obligations in connection with the issuance of securities by the U.S. GSIB, which limits the potential adverse impact on the liquidity of the U.S. GSIB and, therefore, its resolvability.

2. Fully Paid Structured Share Repurchase Agreements

Defined as an arrangement between an issuer (*e.g.,* the top level parent holding company of a U.S. GSIB) and a third-party broker-dealer in connection with a stock repurchase plan of the issuer where the issuer enters into a forward contract with the broker-dealer that is fully prepaid by the issuer and where the broker-dealer agrees to purchase the issuer's stock in the market over the term of the agreement in order to deliver the shares to the issuer. These agreements may not present risks to the

[83] The agencies recognize that their Basel III reforms proposal would, if adopted, increase risk-weighted assets for this group of firms, which would mechanically increase TLAC requirements and create moderate projected shortfalls in TLAC at several GSIBs. The change in eligible LTD proposed here could modestly increase the size and number of TLAC shortfalls beyond those projected as a result of the Basel III proposal.

[84] *See* 12 CFR 252.64 and 12 CFR 252.166.

[85] *See* 12 CFR 252.64(a)(3).

[86] *See* 12 CFR 252.61 ''Qualified financial contract.''

[87] *Id.*

orderly resolution of a U.S. GSIB because the full purchase price of the stock is paid in advance and the firm has no ongoing liability, again limiting potential future liquidity impacts.

3. Employee and Director Compensation Agreements

A stock option represents the right of an employee to purchase a specific number of the issuer's (*e.g.,* U.S. GSIB) shares at a fixed price, also known as a strike price (or exercise price), within a certain period of time (or, if the stock option is to be cash-settled, to receive a cash payment reflecting the difference between the strike price and the market price at the time of exercise). These agreements also are unlikely to present risks to the orderly resolution of a U.S. GSIB because the exercise of such a QFC in times of material financial distress or pending bankruptcy is unlikely to have any material effect on the cash position of the issuer. If the stock options are not exercised, the employee becomes a creditor in the bankruptcy proceedings that will be effectively subordinated to the same level as common stock under section 510(b) of the U.S. Bankruptcy Code.

4. Other Agreements as Determined by the Board

The Board also proposes to reserve the authority to determine that additional agreements would not be subject to the QFC prohibition if the Board determines that exempting the agreement from the QFC prohibition would not pose a material risk to the orderly resolution of the U.S. GSIB or the stability of the U.S. banking or financial system. This would provide the Board flexibility to exempt other agreements from the QFC prohibition in the future. The Board expects it would delegate authority to act on these requests to staff.

Question 60: Would exempting underwriting agreements, fully paid structured share repurchase agreements, and employee and director compensation agreements from the QFC prohibition present risk to the orderly resolution of a TLAC HC?

Question 61: Should the Board include in the regulation factors it would consider in determining to exempt additional agreements from the QFC prohibition?

Question 62: Would permitting a TLAC HC to enter into these agreements undermine the purposes of the clean holding company requirements? For example, would it complicate the orderly resolution of U.S. GSIBs or pose financial stability risks?

Question 63: Should the proposed exemptions from the QFC prohibition be available for the similar QFC prohibition applicable to TLAC IHCs?[88] *Should they be extended to covered IHCs? To what extent do TLAC and covered IHCs engage in underwriting agreements, fully paid structured share repurchase agreements, and employee and director compensation agreements?*

D. Disclosure Templates for TLAC HCs

The Board has long supported meaningful public disclosure by TLAC HCs. Public disclosures of a TLAC HC's activities and the features of its risk profile work in tandem with the regulatory and supervisory frameworks applicable to TLAC HCs by helping to support robust market discipline. In this way, meaningful public disclosures help to support the safety and soundness of TLAC HCs and the financial system more broadly.

The proposal would require a TLAC HC to make certain quantitative and qualitative disclosures related to the creditor ranking of the TLAC HC's liabilities. The proposal would not subject a banking organization that is a consolidated subsidiary of a TLAC HC to the proposed public disclosure requirements. The proposal would require a TLAC HC to comply with the same standards related to internal controls and verification of disclosures, as well as senior officer attestation requirements, as applied to the disclosure requirements of banking organizations under the Board's capital rule. A TLAC HC could leverage existing systems it has in place for other public disclosures, including those set forth in the agencies' regulatory capital rule.

1. Frequency of Disclosures

The proposal would require that disclosures be made at least every six months on a timely basis following the disclosure as of date. In general, where a TLAC HC's fiscal year end coincides with the end of a calendar quarter, the Board would consider disclosures to be timely if they are made no later than the applicable SEC disclosure deadline for the corresponding Form 10–K annual report.

2. Location of Disclosures

The last three years of the proposed disclosure would be required to be made publicly available (for example, included on a public website). Except as discussed below, management would have some discretion to determine the appropriate medium and location of the disclosures. Furthermore, a TLAC HC would have flexibility in formatting its public disclosures, subject to the requirements for using the disclosure template, discussed below.

The Board encourages management to provide the disclosure on the same public website where it provides other required disclosures. This approach, which is broadly consistent with current disclosure requirements, is intended to maximize transparency by ensuring that disclosure data is readily accessible to market participants while reducing burden on TLAC HCs by permitting a certain level of discretion in terms of how and where data are disclosed.

3. Specific Disclosure Requirements

The purpose of the proposed disclosure requirement is to display in an organized fashion the priority of a TLAC HC's creditors. TLAC HCs may alter the formatting of the template to conform to publishing styles used by the TLAC HCs. However, the text set forth in the template must be used by the TLAC HC.

Table 1 to § 252.66, ''Creditor ranking for resolution entity,'' would require a TLAC HC to disclose information regarding the TLAC HC's creditor ranking individually and in aggregate at the TLAC HC's resolution entity. Specifically, the table would require a TLAC HC to identify and quantify liabilities and outstanding equity instruments that have the same or a junior ranking compared to all of the TLAC HC's eligible LTD, ranked by seniority in the event of resolution and by remaining maturity for instruments that mature.

Question 64: To what extent do the disclosure tables proposed increase the likelihood that market participants fully understand the creditor hierarchy? Should the Board additionally require all Category II, III, and IV covered entities to provide the proposed disclosures?

Question 65: Should the Board require a similar disclosure for liabilities of material subgroup entities of a TLAC HC?

Question 66: What information, if any, that could be subject to disclosure under the proposal might be confidential business information that a TLAC HC should not be required to disclose? If there is any such information, should the Board provide the ability for a TLAC HC to not disclose particular information that is confidential business information, as is provided in 12 CFR 217.62(c)?

[88] *See* 12 CFR 252.166(a)(3).

E. Reservation of Authority

In addition, the proposed rule would reserve the authority for the Board to require a TLAC company to maintain eligible LTD or TLAC instruments that are greater than or less than the minimum requirement currently required by the rule under certain circumstances. This reservation of authority would ensure that the Board could require a company entity to hold additional LTD or TLAC instruments if the company poses elevated risks that the rule seeks to address.

F. Technical Changes To Accommodate New Requirements

The Board also proposes to make technical changes to simplify the regulation text, where possible. Among other things, these technical changes would (i) move definitions that currently are shared between subparts G and P of Regulation YY to the common definition section in section 252.2 of Regulation YY; (ii) move the transition provisions for the certification provided by covered IHCs to the transition section of the TLAC rule; and (iii) eliminate instances where the regulation text referred to a number of years and a number of days, as not all years have 365 days. These changes are not intended to affect the substance of the rule.

X. Economic Impact Assessment

A. Introduction and Scope of Application

The proposed rule would increase the amount of loss absorbing capacity in the event a covered IDI fails, thereby reducing costs to the DIF and increasing the likelihood of least-cost resolutions in which all deposits are transferred to an acquiring entity. As noted below, the experience in recent bank failures suggests that these benefits could be substantial.

The agencies examined the benefits and costs of the proposed rule. The economic analysis discussed here examines the proposal with an emphasis on a steady-state perspective, meaning that it evaluates the long run effect of the fully phased-in requirement. Because current borrowing practices of covered entities and covered IDIs may not be representative of long run behavior, the agencies consider the phased-in requirement relative to two alternative assumptions about the level of LTD that covered entities and covered IDIs would choose to maintain in the absence of the proposal. One approach (the ''incremental shortfall approach'') assumes that the current reported principal amount of LTD issuance at covered entities and covered IDIs is a reasonable proxy for the levels of such debt that would be maintained in future periods in the absence of the proposed rule. An alternate approach (the ''zero baseline approach'') assumes that covered entities and covered IDIs would, in the absence of the proposed rule, choose to maintain no instruments that satisfy the proposed rule's requirements in future periods. Under both forms of analysis, the agencies conclude that the proposal is likely to moderately increase funding costs for covered entities and covered IDIs because LTD—which is generally more expensive than the short-term funding that the agencies anticipate it would replace—would be required as part of the funding structure of a covered entity or covered IDI.

Under the incremental shortfall approach, the estimated steady-state cost of the proposal would derive from the additional LTD the covered entities would need to issue to meet any long-term shortfalls, which as described below would imply only a modest increase in funding costs. Under the zero baseline approach, the steady-state cost of the proposal is the anticipated cost associated with the full estimated amount of LTD that would be currently required if the regulation were fully phased-in. Under this more conservative zero baseline approach, the estimated decrease in profitability would be greater than under the incremental shortfall approach, though, as described below, the decrease is estimated to be moderate.

The primary benefit of the proposed rule is that it supports wider options for the orderly resolution of covered entities and covered IDIs in the event of their failure. Loss-absorbing LTD may facilitate the ability of the FDIC to resolve an IDI in a manner that minimizes loss to the DIF. By expanding resolution options available to regulators, the LTD requirement may also reduce the need to rely on merger-based resolutions that can potentially increase the systemic footprint of the acquiring institution or that may raise other types of concerns, such as those related to safety and soundness or consumer issues.

The proposed LTD requirement would apply to Category II, III, and IV banking organizations, including (i) IDIs with at least $100 billion in total consolidated assets that are consolidated by a covered entity or are subsidiaries of a foreign GSIB, and their affiliated IDIs and, (ii) IDIs with at least $100 billion in total consolidated assets that are not controlled subsidiaries of a further parent entity (mandatory externally issuing IDIs), and their affiliated IDIs, and (iii) IDIs with at least $100 billion in total consolidated assets and (a) that are consolidated subsidiaries of a company that is not a covered entity, a U.S. GSIB or a foreign GSIB subject to the TLAC rule, or (b) that are controlled but not consolidated by another company (permitted externally issuing IDIs) and the affiliated IDIs of the foregoing.[89] As of June 1, 2023, top-tier companies that would become newly subject to LTD requirements under the proposal are projected to comprise 18 covered HCs, 1 covered IHC, and 1 permitted externally issuing IDI. Accordingly, the agencies analyzed estimated measures of aggregate costs for these companies (the ''analysis population''). Within these organizations, there are 24 covered IDIs.[90] In aggregate, IDIs consolidated by organizations that would be subject to external LTD requirements held a combined $5.3 trillion in total assets, with an average asset amount of $220 billion, and the asset amounts ranged between $8 million and $690 billion.[91]

This impact assessment builds on organization-level analysis that focuses on the highest level of consolidation at which banking organizations within the scope of the proposal would be subject to its requirements.

B. Benefits

The benefits of this proposal fall into two broad categories. First, LTD provides a ''gone-concern'' benefit that mitigates the spillovers, dislocations, and welfare costs that could arise from the failure of a covered entity. As noted in section I.A.2, by augmenting loss-absorbing capacity, LTD can provide firms and banking regulators greater flexibility in responding to the failure of covered entities and covered IDIs. The availability of eligible LTD may increase the likelihood of an orderly resolution for an IDI that fails and thereby help

[89] Covered entity statistics are from the FR Y–9C as of March 31, 2023. Total covered IDI assets are from the Call Report as of March 31, 2023. Both reflect estimated effects of changes in organizational structure (*e.g.,* mergers) through June 1, 2023.

[90] For purposes of the aggregate analysis in this section, the number of covered IDIs does not include IDIs that are fully consolidated subsidiaries of other covered IDIs.

[91] In addition to the IDI subsidiaries of non-GSIB LBOs that are newly made subject to LTD requirements under the provisions of the proposal, there are 6 IDI subsidiaries of IHCs owned by foreign GSIBs that would become subject to new internal LTD requirements under the proposal. These IDI subsidiaries of foreign GSIB IHCs held a combined $821 billion in total assets as of March 31, 2023. These IDIs are not separately included in the analysis population since the proposal does not change the nature or quantum of LTD that already apply at the parent IHC level for these IDIs.

minimize costs to the DIF. Even where the amount of outstanding LTD is insufficient to absorb enough losses so that all depositor claims at the IDI are fully satisfied, the presence of such gone-concern loss-absorbing capacity would reduce potential costs to the DIF and may expand the range of resolution options available to policymakers.

The recent failures of SVB, SBNY, and First Republic highlight the risks posed by the failure of a covered IDI, including systemic contagion, as well as the challenges that the FDIC can face in executing an orderly resolution for covered IDIs. This proposal, if it had been in place and fully-phased-in when these failures occurred, would have provided billions of dollars of loss absorbing capacity. The agencies believe that the presence of a substantial layer of liabilities that absorbs losses ahead of uninsured depositors could have reduced the likelihood of those depositors running, might have facilitated resolution options that were not otherwise available, and could have made systemic risk determinations unnecessary.

Second, LTD provides a ''going-concern'' benefit by supporting resilience of covered entities and covered IDIs, further promoting financial stability. The proposed LTD requirement would improve the resilience of covered entities and covered IDIs by enhancing the stability of their funding profiles. Further, investors in LTD could also exercise market discipline over issuers of LTD, supporting market signals that will be of value to both regulators and market participants. From either perspective, the increased range of options for resolution resulting from the proposal could help to alleviate the possible contagion effects of one or more covered entities approaching default. This section examines these potential benefits in further detail.

1. Benefits of LTD-Enhanced Orderly Resolutions (Gone-Concern)

If adopted, the proposed rule would help improve the likelihood that, in the event a covered IDI fails, a sufficient amount of non-deposit liabilities will be available to absorb losses that otherwise might be imposed on uninsured depositors in resolution (*e.g.,* if LTD helps to enable whole bank resolution) and to potentially facilitate other resolution options without invoking the systemic risk exception. This includes increasing the likelihood of a least-cost resolution scenario in which all deposits can be transferred to the acquiring entity, thereby maintaining depositor access to financial services and supporting financial stability. The magnitude of these benefits in any future IDI resolution would depend on the extent of losses incurred by the failing institution and the extent of its reliance on uninsured deposits. As a general matter, achievement of these benefits, including the policy goals and any attendant effects on the DIF, may also be influenced by future regulatory developments and the operation of bank supervision and regulation more broadly.

More specifically, the agencies examined three channels by which an LTD requirement may provide gone-concern economic benefit.

First, the additional loss-absorbing capacity from LTD in resolution may increase the likelihood that some or all uninsured deposits are protected from losses, even under the least-cost test. This outcome can be beneficial because interruption of access to uninsured deposits and associated services, already harmful to deposit customers, may also have spillover effects that can adversely affect a broader set of economic activity (*e.g.,* if businesses use uninsured deposits to conduct payroll service).[92] Further, because the LTD requirement for covered entities and covered IDIs can expand regulators' options to reduce or eliminate the potential losses to uninsured deposits, whether in ex-ante (market) expectation or in ex-post outcomes, the requirement may help to limit or reduce the risk of financial contagion, dislocations, and deadweight costs associated with the failure of a covered entity or covered IDI.

Second, by providing additional loss-absorbing capacity, LTD may increase the likelihood that the least cost resolution option is one that does not involve a merger that results in a sizable increase in the systemic footprint or market concentration of the combined organization, thereby producing potential economic costs. By creating a substantially larger combined successor firm, a merger-based or sale-of-business-line acquisition by another large banking or nonbank financial firm may meaningfully increase the acquiring firm's systemic footprint. While the existing regulatory and supervisory framework is designed to address the expansion of systemic footprints, there may be unexpected costs to be borne by the public. However, increasing the likelihood that a different solution is the least cost resolution option could result in policymakers avoiding transactions that could raise other concerns.

Third, the loss-absorption afforded by LTD may lower the risk that multiple concurrent failures of covered entities or covered IDIs might occur and impose high costs on the DIF, necessitating higher assessments to refill it and potentially requiring other extraordinary actions to stabilize banking conditions.

2. Strengthening Bank Resilience (Going-Concern Benefit)

The agencies analyzed two channels for going-concern benefits of the proposed rule. First, the establishment of an LTD requirement and the associated increase in loss-absorbing capacity improves the funding stability of covered entities and covered IDIs and provides firms and banking regulators greater flexibility in resolution. These features in turn further reinforce confidence in the safety of deposits at U.S. covered IDIs. For example, LTD may increase the likelihood of whole bank resolutions of covered IDIs, in which all deposits are transferred to acquiring entities. In this way, the agencies believe the proposal may also reduce the risk of sudden, large, and confidence-related deposit withdrawals (commonly known as bank runs) at covered IDIs. Liquidity transformation, a core banking activity, can make banks vulnerable to bank runs that harm uninsured depositors and may have negative externalities on the financial system and broader economy.[93] Market awareness of measures that improve resiliency or protect deposits from losses in resolution can reduce or eliminate the first-mover advantage that motivates depositors to run when their banks are distressed. It is therefore possible that the enhanced loss-absorbing capacity from LTD may, as discussed above, mitigate run risk for covered entities and covered IDIs.

For the banking system, this strengthened resilience can reduce negative externalities associated with runs. Lowering the risk of runs at covered IDIs may reduce the risk of contagion, thereby reducing risk for the broader banking system. In addition, the increased resilience can reduce fire sale risk by discouraging bank runs on covered entities and covered IDIs that compel them to liquidate assets to meet withdrawals. The economic harms from these channels could be substantial for a run on a large banking organization. LTD requirements may deliver a significant reduction in run risk for

[92] Deposit insurance already protects the access to financial services and assets of insured depositors. This protection would not change under the proposed rule.

[93] *See, e.g.,* Diamond and Dybvig (1983), and Gertler and Kiyotaki (2015).

covered IDIs, generating considerable benefits.

Second, the proposed LTD requirement may enhance market discipline with respect to covered entities and covered IDIs, incentivizing prudent behavior. The proposed LTD requirement would represent a substantial liability on covered entities' and covered IDIs' balance sheets that is subordinated to deposits, subject to credible threat of default risk, and whose value may be ascertained readily from market prices. If eligible LTD becomes a somewhat more common source of funding relative to instruments held by less sophisticated creditors, then it may strengthen market-based incentives for covered entities and covered IDIs to moderate excessive risk-taking. There is some evidence that TLAC-eligible debt securities are increasing market discipline of GSIBs.[94] LTD prices may also provide regulators and other stakeholders with valuable signals about the riskiness of covered entities and covered IDIs.

The agencies believe that harnessing the power of markets to price LTD issued by covered entities and covered IDIs creates a mechanism for firms that take excess risks to appropriately face higher funding costs. These market disciplining effects are incremental to the risk sensitivity already present in DIF premiums. There is a substantial literature over recent decades exploring the potential for enhanced market discipline for large banks based on subordinated LTD. For example, DeYoung, Flannery, Lang and Sorescu (2001) argue that subordinated debt prices reflect the information available to market participants (such as public indicators of bank condition, management concerns, and potential expected loan losses). M. Imai (2007) shows that subordinated debt investors exerted market discipline over weak banks by requiring higher rates at weaker banks. Chen and Hasan (2011) show that subordinated debt requirements and bank capital requirements can be used as complements for mitigating moral hazard problems. The literature on subordinated bank debt does not always find historically that price signals from such debt led such banks to limit their growth or take action to improve their safety and soundness. The findings of the literature may also not be completely applicable because they generally consider more generic subordinated long debt, that is, without some of the key loss absorption features of eligible LTD under this proposal.

The agencies note that the scope for these effects is uncertain for a number of reasons including but not limited to potential lack of understanding and experience among market participants with LTD-based protection for deposits. However, the agencies believe the increased resiliency and market discipline afforded by the proposed LTD requirements provide meaningful additional financial stability benefits.

3. Changes in Deposit Insurance Assessments

Under the FDIC's current regulations, any issuance of additional LTD associated with the proposed rule could reduce deposit insurance assessments for the IDIs of covered entities. Given the current framework for deposit insurance pricing, the FDIC estimates that the proposed rule could result in reductions in deposit insurance assessments for the covered IDIs of approximately $800 million per year, in aggregate. In light of the recent failures of three large banks, however, the FDIC will consider revisions to its large bank pricing methodology, including the treatment of unsecured debt and concentrations of uninsured deposits.[95]

C. Costs

1. LTD Requirements and Shortfalls

The agencies analyzed the cost impact of the proposed rule for the analysis population. This section details that analysis. First, it approximates the proposed requirements for the analysis population. Second, given these requirements, it estimates the shortfalls in eligible external LTD currently outstanding among firms in the analysis population. Third, it estimates how these requirements would shift bank funding behavior and the consequences of those shifts on bank funding costs. Finally, it discusses the potential implications of these costs.

Agency estimates of LTD requirements and shortfalls are based on organization-level time series averages for the Q4 2021–Q3 2022 period. More recent data are excluded from the sample. This is in part because shortfall estimates may be distorted by debt issuance carried out by covered entities and covered IDIs in anticipation of the rule following the Q4 2022 ANPR. Recent substitution away from deposits due to adverse banking conditions in early 2023 may also overstate the long run prominence of LTD in funding structures for these organizations. Time series averages are used to produce an estimate the agencies believe is more appropriate because it mitigates the variability in point-in-time cross section data.[96]

According to this methodology, staff estimate that the total principal value of external LTD required of firms in the analysis population, irrespective of existing LTD, would be approximately $250 billion. Among Category II and III covered entities, the total requirement would be approximately $130 billion. For Category IV covered entities and externally issuing IDIs, the aggregate requirement would be approximately $120 billion. These requirements will form the basis for the cost estimates under the zero baseline approach.[97]

For purposes of the incremental shortfall approach, the agencies estimate the level of future eligible LTD for the analysis population in the absence of the proposed rule as equal to the current level of outstanding LTD at the analysis population that is unsecured, has no exotic features, and is issued externally at any level of the organization (that is, either by a covered entity itself or a subsidiary IDI).[98] Implicit in this definition is the assumption that over the long term, it will be costless to

[94] *See* Lewrick et al. (2019).

[95] The agencies' analysis of steady-state costs (section X.C.2) as well as gone-concern and going-concern benefits (sections X.B.1 and X.B.2) does not consider whether, or to what extent, deposit insurance assessments, or a change in the level of deposit insurance assessments, could have indirect effects on estimated costs and benefits of this proposal.

[96] This is of particular importance for shortfall estimates, which can be more vulnerable to this measurement problem.

[97] The agencies recognize that their Basel III reforms proposal would, if adopted, increase risk-weighted assets across covered entities. The increased risk-weighted assets would lead mechanically to increased requirements for LTD under the LTD proposal. The increased capital that would be required under the Basel III proposal could also reduce the cost of various forms of debt for impacted firms due to the increased resilience that accompanies additional capital (which is sometimes referred to as the Modigliani-Miller offset). The size of the estimated LTD needs and costs presented in this section do not account for either of these potential effects of the Basel III proposal.

[98] The agencies estimate current eligible external LTD outstanding using a variety of data sources. Unsecured holding company-issued LTD outstanding is estimated with issue-level data from the Mergent Fixed Income Securities Database (FISD), where available. Where FISD issue-level data are not available, the agencies compute proxies for existing LTD issued by holding companies using FR Y–9LP data. The agencies proxy for eligible IDI-issued LTD using the lesser of long-term unsecured debt as recorded in the Call Reports and total external IDI-issued LTD reported in the Call Report data. The total current eligible debt estimated is therefore the sum of this proxy for external IDI-issued unsecured LTD and total holding company-issued unsecured LTD. Working within the limitations of the data, this approach generally yields more conservative estimates for eligible external LTD outstanding compared to alternative definitions.

substitute external holding company-issued debt for external IDI-issued debt, as well as to downstream resources from holding companies to IDIs through eligible internal debt securities, to fulfill the requirements of the proposed rule and general funding needs.[99] It is assumed, in other words, that there are no additional costs for IDIs to maintain eligible internal debt securities to holding companies beyond those attributable to any external holding company LTD that may be passed through to IDIs.

Based on averages for the Q4 2021–Q3 2022 period, the agencies estimate under the incremental shortfall approach that some firms would need to issue additional eligible external LTD over the long term in order to comply with the proposed rule. Staff estimate that the aggregate shortfall under the incremental approach in the analysis population is approximately $70 billion. For Category II and III covered entities, this total shortfall is approximately $20 billion. Among Category IV covered entities and externally issuing IDIs, the aggregate shortfall under the proposal is approximately $50 billion.

The agencies estimate that current average annual LTD issuance by U.S. banking organizations (with an initial term of two years or greater but not necessarily satisfying all qualifying characteristics of eligible external LTD under the proposed rule) is approximately $230 billion, including $70 billion by non-Category I firms. Depending on the term of eligible external LTD used to meet requirements under the proposed rule and how firms use early call features of these securities, the agencies anticipate that the annual issuance market for banking organization LTD will have to increase by five to seven percent.[100] If the market for LTD is defined to exclude the issuance conducted by Category I firms, then the current non-GSIB annual issuance market would have to increase by sixteen to 24 percent. Note that, in both cases, the agencies' projections of the necessary eligible external LTD market expansion are based on their estimates of shortfalls under the proposal. The true growth in eligible external LTD issuance under the proposed rule could be somewhat greater than the estimated shortfall, especially in the long run, for several reasons (including the likely use of management buffers) explored later. In the next subsection of this analysis, the agencies expand upon these results to assess the funding cost impact of the proposal.

2. Steady-State Funding Cost Impact

Building on the requirement and shortfall estimates described above, the agencies evaluated the impact of the proposal on steady-state funding costs. Because LTD is generally more expensive than the short-term funding banking organizations could otherwise use, the proposal is likely to raise funding costs in the long run. This analysis assumes that firm assets are held fixed, and the proposed rule therefore permanently shifts firm liabilities to include less short-term funding and more LTD.[101] The estimated change in funding costs is the estimated quantity of required new eligible external LTD issuance multiplied by the estimated increased funding cost per dollar of issuance (*i.e.,* the difference between the long-term and short-term funding rates). For the purposes of this analysis, interest rates for individual funding sources (*e.g.,* short-term or long-term debt) are assumed to be unaffected by funding structure changes. For example, the analysis does not allow for possible reductions in the cost of uninsured deposits resulting from the additional layer of loss absorbing LTD (which may be material).[102] The steady-state setting abstracts from continuing adjustment costs that may arise from maintaining eligible external LTD at the required level, for instance through retirement and reissuance of eligible external LTD over time. Accordingly, the analysis also does not consider short-term transition costs.

Based on market observables from the post-2008 period, the agencies estimate the eligible external LTD funding cost spread as the difference between yields on five-year debt and the national aggregate interest rate on bank non-jumbo three-month certificates of deposit (CDs).[103] [104] The five-year debt is more expensive than three-month CDs because it includes premiums for term and for credit risk (reflecting its structural subordination in the capital structure).[105] Over time, the premium for subordination will reflect the credit risk of the individual covered firms, while the premium for term will also reflect changes in the general interest rate markets. In the agencies' steady state analysis, about one third of the cost of the LTD requirement is attributable to subordination, with the remainder attributable to the term premium.

The agencies estimate that the eligible external LTD requirement would increase pre-tax annual steady-state funding costs for the analysis population by $1.5 billion in the incremental shortfall approach.[106] The agencies estimate that this cost would represent a permanent three-basis point decline in aggregate net interest margins

[99] An implication of this and the other simplifying assumptions noted is that the proposed requirement that eligible external LTD generally be issued at the holding company level would be no costlier to covered entities than an alternative rule that would also allow firms to meet the external requirement with LTD issued externally out of IDIs. This may not always be true. Some covered entities might, if permitted, prefer to partially meet the requirement with external IDI debt, for example, if they believed such a choice could incrementally lower their LTD interest cost. The agencies believe the effect of such choices on cost, if any, are likely small in the long run, and may be one of many potential influences on the cost estimates under both the incremental shortfall and zero baseline approaches.

[100] The market for external LTD was defined as all debt with a term (ignoring call features) of two years or longer in selected banking-related NAICS codes. The average term for these bonds is approximately seven years, and we assume banking organizations will generally call such debt one to three years prior to maturity. We therefore assume that the additional annual issuance needed is between one-fourth and one-sixth of the estimated LTD shortfall.

[101] This is a simplifying assumption. Staff believes that results would be broadly similar if balance sheet expansion were modeled under reasonable assumptions about how the expansion would occur (*e.g.,* investment selection) and funding opportunity costs.

[102] *See* Alanis et al. (2015), Jacewitz and Pogach (2015).

[103] For the analysis, yields on five-year debt are estimated for each firm in the analysis population as the sum of the average five-year CDS credit spread and the average yield on five-year Treasuries. CDS pricing data in this sample, provided by IHS Markit, use spreads on single-name contracts referencing holding companies. CDS data are available for only a subset of firms in the analysis population; when CDS pricing is unavailable, then averages for Category I–IV firms in the analysis population are used instead. The agencies utilize the average approach for externally issuing IDIs, for which CDS data is unavailable; this produces generally conservative estimates. The agencies obtained aggregate interest rate data for Treasuries and CD rates from the Federal Reserve Economic Data (FRED) website maintained by the Federal Reserve Bank of St. Louis.

[104] In recent years, these CD rates have been lower on average than one-month Treasury Bill yields, consistent with academic literature that studies the funding advantages of deposits. *See* Drechsler, Savov, and Schnabl (2017).

[105] Existing LTD for covered entities and covered IDIs does not always include the specific features designed to facilitate loss absorption that are required under the proposed rule. Lewrick, Serena, and Turner (2019) and Lindstom and Osborne (2020) find that, in the United States and Europe, the ''bail-in premium'' on TLAC debt that includes such features is 15–45 basis points. The agencies did not include a bail-in premium in funding cost estimates because these costs appear to be small. The agencies estimate that including a 45 basis point bail-in premium would cause NIMs at covered companies to fall by an additional 0.5 to 2 basis points.

[106] After-tax funding cost increases are approximately 25 percent lower than the corresponding pre-tax value.

(NIMs).[107] For Category II and III covered entities, this estimated pre-tax annual funding cost increase is approximately $460 million, representing a two-basis point permanent decline in NIMs. Among Category IV covered entities and externally issuing IDIs, the estimated increase in pre-tax annual funding costs based on the incremental shortfall approach is approximately $1.1 billion, representing a five-basis point permanent decline in NIMs.

Under the zero baseline approach, based on total eligible external LTD requirement quantities, the agencies estimate that the proposal would increase pre-tax annual steady-state funding costs by approximately $5.6 billion for the analysis population.[108] Staff estimate that this approach would result in a permanent eleven-basis point decline in aggregate NIMs. Among Category II and III covered entities, this estimated pre-tax annual funding cost increase is approximately $2.7 billion, representing a ten-basis point permanent decline in NIMs. For Category IV covered entities and externally issuing IDIs, this estimated pre-tax increase in annual funding costs based on the zero baseline approach is $2.9 billion, representing a twelve-basis point permanent decline in NIMs.

The agencies believe that the funding cost impact of the proposal is likely between the lower-end estimate from the incremental shortfall approach and the higher-end estimate from the zero baseline approach. The incremental shortfall approach may provide a more accurate near-term perspective on funding cost impact. However, even in the short run, this may underestimate the costs because the proxy for eligible external LTD in this analysis may not satisfy all of the proposal's requirements for eligible external LTD and, therefore, may overestimate the quantity of truly eligible external LTD outstanding among covered entities.[109] In the long run, current funding structures may differ substantially from what firms would choose in the absence of the rule. The upper range of estimates based on total required eligible external LTD quantities under the zero baseline approach is in deference to, among other considerations, the possibility that prohibiting covered entities and covered IDIs from maintaining lower levels of LTD in the future may carry additional funding costs.[110]

An increase in funding costs associated with the rule may be absorbed to varying degrees by stakeholders of covered entities and covered IDIs, including equity holders, depositors, borrowers, employees, or other stakeholders. Covered entities and covered IDIs could seek to offset the higher funding costs from an LTD requirement by lowering deposit rates or increasing interest rates on new loans. Alternatively, the higher funding costs could indirectly affect covered entities and covered IDIs' loan growth, or result in some migration of banking activity from covered entities and covered IDIs to other banks or nonbanks. The modest to moderate range of funding cost impacts presented above suggests a similarly limited scope for these types of indirect effects.

3. Transition Effects

This analysis does not attempt to quantitatively assess the proposal's phase-in effects, such as changes in asset holdings or market conditions for long-term unsecured debt instruments, because the agencies do not possess the necessary information to do so. Estimates of the phase-in effects depend upon the future financial characteristics of each covered entity and covered IDI, future economic and financial conditions, and the decisions and behaviors of covered entities and covered IDIs. However, the agencies believe that, if the proposal is phased-in gradually, the transition-related costs and risks of the proposal's adoption are likely to be small relative to long-run effects. These considerations notwithstanding, this subsection provides a brief overview of potential phase-in effects.

Due to the considerable scope of the proposal, there is a risk that efforts by covered entities and covered IDIs to issue a large volume of LTD over a limited period could strain the market capacity to absorb the full amount of such issuance if issuance volume exceeds debt market appetite for LTD instruments.[111] If banking organizations are unable to spread out their issuance activity to avoid this problem, they may be forced to issue a significant quantity of LTD at relatively higher yields.[112] These costs could be exacerbated if they coincide with periods of adverse funding market conditions such as those that followed recent bank failures. It is also worth noting that a strain on debt markets due to the proposal phase-in may also impose negative funding externalities on non-covered institutions, both inside and outside of the financial sector.

Other simplifying assumptions that are appropriate for the long run perspective of the funding cost analysis may be less suited for the study of phase-in effects. Recall that the funding cost methodology treats the proposed requirement as a liability side substitution with assets held fixed. In the short run, covered entities are in fact likely to expand their balance sheets, to at least some degree, as a result of the proposed requirements. Under some circumstances this expansion could impose upward pressure on leverage ratios (presumably temporary). It may also take some time for covered entities and covered IDIs to invest the proceeds from sizable LTD issuance productively, which could add to the phase-in costs. Other steady-state simplifying assumptions about the migration of external LTD among entities within organizations and the prepositioning of resources at IDIs are likely to understate short-term disruption due to the proposal. Organizations most exposed to phase-in costs of this kind are those with limited existing external LTD issued out of their holding companies and those with limited internal LTD between their IDIs and holding companies.

4. Conclusion

The discussion in this section highlights a range of gone-concern and going-concern benefits that could derive from the LTD required by the proposal: providing additional coverage for losses and greater optionality in resolution events, and alleviating some of the pressures that could arise as a covered entity comes under significant stress.

[107] For simplicity, the agencies assume that pricing any eligible internal debt securities would be consistent with market pricing and terms for eligible external LTD (including but not limited to the eligibility requirements under the proposal).

[108] In addition to the total increase in funding costs, the agencies also estimate the credit risk component of these funding costs. Because credit spreads reflect the market expectation of losses that would be absorbed by eligible LTD investors in per annum terms, the component speaks directly to the proposal's expansion of loss absorbing capacity. In the incremental shortfall (zero baseline) approach, the annual steady-state interest expenditure on eligible LTD due to credit risk would be $550 million ($2.1 billion).

[109] The incremental shortfall approach also does not account for the presence of management buffers which are likely to be nonzero. It should be noted that, among other purposes, management buffers can help covered entities and covered IDIs mitigate recurring LTD issuance and retirement costs. These additional costs are not estimated by the agencies.

[110] The benefits of the rule, discussed above, may also be larger to the extent firms would have chosen lower LTD levels in the future in the absence of the rule.

[111] However, as discussed in section X.C.1, the agencies' estimated eligible external LTD shortfall is a small to moderate fraction of the average total annual bank LTD issuance.

[112] Due to practical restrictions on call eligibility, a portion of LTD issued in this fashion at unattractive rates may remain on the balance sheets of covered entities and covered IDIs for a few years.

The extent of these benefits is roughly proportional to the overall loss-absorbing capability of the LTD that the rule would add. As discussed previously, the face value of additional LTD that would be available for loss absorption is estimated to be approximately between $70 billion and $250 billion. For comparison, the current level of aggregate tier 1 capital at covered entities that can absorb going-concern losses is approximately $470 billion.

In addition, the loss-absorbing capacity provided by the required LTD may provide savings to the DIF in the future relative to resolutions conducted without benefit of the additional loss absorbing capacity of the long term debt required by the proposed rule.

The direct costs of the proposal derive from the requirements that the LTD be both subordinated and longer term than current sources of funding. In total, these costs are estimated to be moderate. It is possible that alternate means exist to raise loss absorbing resources, such as subordinated debt of a shorter term, that could be less costly to covered entities and covered IDIs. Compared to the LTD requirements of the proposed rule, however, such alternatives would likely be less effective in providing a stable enough source of loss absorption to achieve the objectives of the proposal. The agencies have concluded that the direct loss absorption capacity of the LTD combined with the meaningful intangible benefits of the LTD described in this section justify the overall cost of the proposal.

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XI. Regulatory Analysis

A. Paperwork Reduction Act

Certain provisions of the proposed rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (PRA).[113] In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The information collection requirements contained in this joint notice of proposed rulemaking only pertain to information collections administered by the Board; the OCC and FDIC have reviewed the proposal and certify that no information collection administered by either agency are implicated by the proposal. The Board reviewed the proposed rule under the authority delegated to the Board by OMB.

The proposed rule contains revisions to current information collections subject to the PRA. To implement these requirements, the Board would revise and extend for three years the (1) Financial Statements for Holding Companies (FR Y–9; OMB No. 7100–0128), and (2) Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation YY (FR YY; OMB No. 7100–0350). In addition, the agencies, under the auspices of the FFIEC, would also propose related revisions to the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031, FFIEC 041, and FFIEC 051; OMB Nos. 1557–0081; 3064–0052, and 7100–0036). The proposed revisions to the FFIEC reports will be addressed in a separate **Federal Register** notice.

Comments are invited on the following:

(a) Whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collections 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 any aspect of the proposed rule's collections of information, including suggestions for reducing any associated burdens, to the addresses listed under the **ADDRESSES** heading of this Notice. 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.

Proposed Revisions, With Extension, of the Following Information Collections (Board Only)

(1) *Collection title:* Financial Statements for Holding Companies.

Collection identifier: FR Y–9C, FR Y–9LP, FR Y–9SP, FR Y–9ES, and FR Y–9CS.

OMB control number: 7100–0128.

General description of report: The FR Y–9 family of reporting forms continues to be the primary source of financial data on holding companies (HCs) on which examiners rely between on-site inspections. Financial data from these reporting forms is used to detect emerging financial problems, review performance, conduct pre-inspection analysis, monitor and evaluate capital adequacy, evaluate HC mergers and acquisitions, and analyze an HC's overall financial condition to ensure the safety and soundness of its operations. The FR Y–9C, FR Y–9LP, and FR Y–9SP serve as standardized financial statements for the consolidated HC. The Board requires HCs to provide standardized financial statements to fulfill the Board's statutory obligation to supervise these organizations. The FR Y–9ES is a financial statement for HCs that are Employee Stock Ownership Plans. The Board uses the FR Y–9CS (a free-form supplement) to collect additional information deemed to be critical and needed in an expedited manner. HCs file the FR Y–9C on a quarterly basis, the FR Y–9LP quarterly, the FR Y–9SP semiannually, the FR Y–

[113] 44 U.S.C. 3501 *et seq.*

9ES annually, and the FR Y–9CS on a schedule that is determined when this supplement is used.

Frequency: Quarterly, semiannually, and annually.

Affected Public: Businesses or other for-profit.

Respondents: BHCs, SLHCs, securities holding companies (SHCs), and IHCs (collectively, holding companies (HCs)).

Estimated number of respondents: FR Y–9C (non-advanced approaches holding companies with less than $5 billion in total assets): 107; FR Y–9C (non-advanced approaches with $5 billion or more in total assets) 236; FR Y–9C (advanced approached holding companies): 9; FR Y–9LP: 411; FR Y–9SP: 3,596; FR Y–9ES: 73; FR Y–9CS: 236.

Estimated average hours per response: FR Y–9C (non-advanced approaches holding companies with less than $5 billion in total assets): 36.16; FR Y–9C (non-advanced approaches holding companies with $5 billion or more in total assets): 45.26, FR Y–9C (advanced approached holding companies): 50.54; FR Y–9LP: 5.27; FR Y–9SP: 5.45; FR Y–9ES: 0.50; FR Y–9CS: 0.50.

Estimated annual burden hours: FR Y–9C (non advanced approaches holding companies with less than $5 billion in total assets): 15,476; FR Y–9C FR Y–9C (non advanced approaches holding companies with $5 billion or more in total assets): 42,725. FR Y–9C (advanced approaches holding companies): 1,819; FR Y–9LP: 8,664; FR Y–9SP: 39,196; FR Y–9ES: 37; FR Y–9CS: 472.

Current Actions: The proposed rule would make certain revisions to the FR Y–9C, Schedule HC–R, Part I, Regulatory Capital Components and Ratios, to amend the instructions to allow covered entities to publicly report information regarding their amounts of eligible LTD. Specifically, the instructions for item 54 would be amended to require covered entities to report outstanding eligible LTD. In addition, the proposal would create a new line item for a covered entity and a U.S. GSIB to report the subset of eligible LTD that has a maturity of between one year and two years.

The proposed rule would also create a new line item and instruction to allow U.S. GSIBs to report certain information regarding their TLAC requirements. Specifically, a new line item would be created to allow a U.S. GSIB to report its deductions of investments in own other TLAC liabilities. The proposal would also make technical amendments to the FR Y–9C instructions relating to the calculation of the TLAC buffer (item 62a). The proposal also would amend line items that exclude ''additional tier 1 minority interests'' to exclude instead ''tier 1 minority interests'' to match the corresponding provision in the existing TLAC rule. The revisions are proposed to be effective as of the effective date of the final rule resulting from this proposal.

The Board estimates that revisions to the FR Y–9C would increase the estimated annual burden by 316 hours. The respondent count for the FR Y–9C would not change because of these changes. The draft reporting forms and instructions are available on the Board's public website at *https://www.federalreserve.gov/apps/reportingforms.*

(2) *Collection title:* Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation YY.

Collection identifier: FR YY.

OMB control number: 7100–0350.

General description of report: Section 165 of the Dodd-Frank Act requires the Board to implement Regulation YY—Enhanced Prudential Standards (12 CFR part 252) for BHCs and FBOs with total consolidated assets of $250 billion or more. Section 165 of the Dodd-Frank Act also authorizes the Board to impose such standards to BHCs and FBOs with greater than $100 billion and less than $250 billion in total consolidated assets if certain conditions are met. The enhanced prudential standards include risk-based and leverage capital requirements, liquidity standards, requirements for overall risk management (including establishing a risk committee), stress test requirements, and debt-to-equity limits for companies that the Financial Stability Oversight Council (FSOC) has determined pose a grave threat to financial stability.

Frequency of Response: Annual, semiannual, quarterly, one-time, and event-generated.

Affected Public: Business or other for-profit.

Respondents: State member banks, U.S. BHCs, nonbank financial companies, FBOs, IHCs, foreign SLHCs, and foreign nonbank financial companies supervised by the Board.

Estimated number of respondents: 63.

Estimated average hours per response for new disclosures: 20.

Total estimated change in burden hours: 330.

Estimated annual burden hours: 28,082.

Current Actions: The proposal would make certain revisions to the FR YY information collection. Specifically, the proposal would require that U.S. GSIBs disclose qualitative and quantitative information regarding their creditor rankings. See section X.D of this Supplementary Information for a more detailed discussion of the required U.S. GSIB disclosures regarding creditor rankings. The revised disclosure requirement is found in section 252.66 of the proposed rule. Section 252.164 of the proposed rule would require each top-tier FBO of an IHC subject to the proposed rule or the existing TLAC rule to submit to the Board a certification indicating whether the planned resolution strategy of the top-tier FBO involves the U.S. IHC or its subsidiaries entering resolution, receivership, insolvency, or similar proceedings in the United States. The rule requires the top-tier FBO to update this certification when its resolution strategy changes.

B. Regulatory Flexibility Act

OCC

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the Small Business Administration (SBA) for purposes of the RFA to include commercial banks and savings institutions with total assets of $850 million or less and trust companies with total assets of $47 million or less) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. The OCC currently supervises approximately 661 small entities.[114]

The OCC estimates that the proposed rule would impact none of these small entities, as the scope of the rule only applies to banking organizations with total assets of at least $100 billion. Therefore, the OCC certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

[114] The OCC bases its estimate of the number of small entities on the SBA's size standards for commercial banks and savings associations, and trust companies, which are $850 million and $47 million, respectively. Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), the OCC counts the assets of affiliated banks when determining whether to classify an OCC-supervised bank as a small entity. The OCC used December 31, 2022, 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,* FN 8 of the SBA Table of Size Standards.

Board

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* 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**.

The Board is providing an IRFA with respect to the proposed rule. For the reasons described below, the Board does not believe that the proposal will have a significant economic impact on a substantial number of small entities. The Board invites public comment on all aspects of this IRFA.

1. Reasons Action Is Being Considered

The proposed rule would require covered entities and covered IDIs to maintain minimum levels of LTD funding in order to improve the resolvability of these firms in light of the risks that are posed when a covered entity or covered IDI fails. Further discussion of the rationale for the proposal is provided in section I.A of this **SUPPLEMENTARY INFORMATION**.

2. Objectives of the Proposed Rule

The agencies' objective in proposing this rule is to expand the options available to policymakers in resolving a failed covered entity and its covered IDI subsidiaries and thereby increase the likelihood that such a resolution will occur in an orderly fashion. By increasing the prospects for orderly resolutions of a failed covered entity and its covered IDI subsidiaries, the proposed rule is also intended to achieve the agencies' objective of promoting resiliency among banking organizations and safeguarding stability in the financial system.

3. Description and Estimate of the Number of Small Entities Impacted

The proposed rule would only apply to covered entities, which are Category II, III, and IV BHCs and SLHCs, as well as Category II, III, and IV U.S. IHCs of FBOs that are not global systemically important FBOs. The proposal would also apply to covered IDIs, which are IDIs that are not consolidated subsidiaries of U.S. GSIBs and that (i) have at least $100 billion in consolidated assets or (ii) are affiliated with IDIs that have $100 billion or more in consolidated assets.

Under regulations promulgated by the Small Business Administration (SBA), a small entity, for purposes of the RFA, includes a depository institution, a BHC, or an SLHC with total assets of $850 million or less (small banking organization).[115] As of March 31, 2023, there were approximately 96 small SLHCs and 2,607 small BHCs. Because only domestic SLHCs and BHCs and U.S. IHCs of FBOs with total consolidated assets of $100 billion or more would be subject to the proposed rule, all covered entities substantially exceed the $850 million asset threshold at which a banking entity would qualify as a small banking organization. However, some IDIs are subject to the proposed IDI-level requirement by virtue of being affiliated with an IDI with $100 billion or more in consolidated assets that is subject to the IDI-level requirement. These affiliated IDIs are not subject to a minimum size threshold. Accordingly, small state member banks could be subject to the proposed rule. As of March 31, 2023, there were approximately 466 small state member banks. However, the Board believes that no small state member banks would be affiliated with a covered IDI.[116] Therefore, the Board believes that no covered entity or covered IDI that is state member bank that would be subject to the proposed rule would be considered a small entity for purposes of the RFA.

4. Estimating Compliance Requirements

The proposal would introduce a requirement that covered entities and covered IDIs issue and maintain minimum amounts of LTD that satisfies the eligibility conditions described in section V of this **SUPPLEMENTARY INFORMATION**, as applicable. The proposal would also require covered entities to comply with ''clean holding company'' limitations on certain corporate practices and transactions that could complicate the orderly resolution of such firms, as described in section VI of this **SUPPLEMENTARY INFORMATION**. Further, the proposal would require banking organizations subject to the capital deduction framework contained in the agencies' capital rule to deduct from regulatory capital external LTD issued by covered entities and externally issuing IDIs to meet the proposal's LTD requirements. Finally, as described in section X of this **SUPPLEMENTARY INFORMATION**, TLAC companies would have to comply with the primarily technical and harmonizing amendments to the Board's TLAC rule. For U.S. GSIBs, these proposed amendments to the TLAC rule would require the public disclosures of certain qualitative and quantitative information regarding their creditor rankings.

With respect to the impact of the proposal on small banking organizations, as discussed above, the Board believes that no such small banking organizations will be subject to the proposal's compliance requirements. Because no small banking organizations will bear additional costs under the proposal, the Board believes that the proposal will not have a significant economic impact on a substantial number of small entities.

5. Duplicative, Overlapping, and Conflicting Rules

The agencies are not aware of any Federal rules that may be duplicative, overlap with, or conflict with the proposed rule.

6. Significant Alternatives Considered

The Board did not consider any significant alternatives to the proposed rule. The Board believes that requiring the availability of LTD funding at covered entities and covered IDIs is the best way to achieve the Board's objectives of safeguarding financial stability by ensuring the orderly resolution of covered entities and covered IDIs should such an entity fail.

FDIC

The Regulatory Flexibility Act (RFA) generally requires an agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.[117] However, an initial regulatory flexibility analysis is not required if the agency certifies that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets

[115] *See* 13 CFR 121.201 (NAICS codes 522110–522210).

[116] In any event, consistent with the SBA's General Principles of Affiliation, the Board may count the assets of affiliated IDIs together when determining whether to classify a state member bank that could be subject to the proposed rule by virtue of an affiliate relationship with an IDI with $100 billion or more in total assets as a small entity for purposes of the RFA. *See* 13 CFR 121.103(a). In such a case, the combined assets of the affiliated IDIs would far exceed the $850 million total asset threshold below which a banking organization qualifies as a small entity.

[117] 5 U.S.C. 601 *et seq.*

of less than or equal to $850 million.[118] Generally, the FDIC considers a significant economic impact to be a quantified effect in excess of 5 percent of total annual salaries and benefits or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of one or more of these thresholds typically represent significant economic impacts for FDIC-supervised institutions. For the reasons described below and under section 605(b) of the RFA, the FDIC certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. As of March 31, 2023, the FDIC supervised 3,012 depository institutions, of which 2,306 the FDIC identifies as a ''small entity'' for purposes of the RFA.[119]

As described above in subsection A. ''Scope of Application'' of sections III and IV of this **SUPPLEMENTARY INFORMATION**, the proposed rule would require three categories of IDIs to issue eligible LTD. The proposed rule would apply to Category II, III, and IV BHCs, SLHCs, and U.S. IHCs that are not currently subject to the existing TLAC rule as defined under the Board's Regulations LL and YY and their consolidated IDI subsidiaries. The proposed rule would also apply to IDIs that are not consolidated subsidiaries of U.S. GSIBs and that (i) have at least $100 billion in consolidated assets or (ii) are affiliated with IDIs that have at least $100 billion in consolidated assets. As of March 31, 2023, there are no small, FDIC-supervised institutions that are covered IDIs.[120] In light of the foregoing, the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities supervised.

The FDIC invites comments on all aspects of the supporting information provided in this RFA section.

Question 67: In particular, would this proposed rule have any significant effects on small entities that the FDIC has not identified?

[118] The SBA defines a small banking organization as having $850 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 87 FR 69118, effective December 19, 2022). 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 an insured depository institution's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the insured depository institution is ''small'' for the purposes of RFA.

[119] FDIC Call Report data, March 31, 2023.

[120] *Id.*

C. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[121] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on IDIs, each Federal banking agency must consider, consistent with the principle of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA, requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions, including for good cause.[122]

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.

D. Solicitation of Comments on the Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act[123] (Pub. L. 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the proposed rule in a simple and straightforward manner and invite comment on the use of plain language and whether any part of the proposed rule could be more clearly stated. For example:

- Have the agencies presented the material in an organized manner that meets your needs? If not, how could this material be better organized?
- Are the requirements in the notice of proposed rulemaking clearly stated? If not, how could the proposed rule be more clearly stated?
- Does the proposed rule contain language 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 rule easier to understand? If so, what changes to the format would make the proposed rule easier to understand?
- What else could the agencies do to make the proposed rule easier to understand?

[121] 12 U.S.C. 4802(a).

[122] 12 U.S.C. 4802(b).

[123] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999), 12 U.S.C. 4809.

E. OCC Unfunded Mandates Reform Act of 1995 Determination

The OCC has analyzed the proposed rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes a 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 in any one year (adjusted annually for inflation).

The OCC has determined this proposed rule is likely to result in the expenditure by the private sector of $100 million or more in any one year (adjusted annually for inflation). The OCC has prepared an impact analysis and identified and considered alternative approaches. When the proposed rule is published in the **Federal Register**, the full text of the OCC's analysis will be available at: *http://www.regulations.gov,* Docket ID OCC–2023–0011.

F. Providing Accountability Through Transparency Act of 2023

The Providing Accountability Through Transparency Act of 2023 (12 U.S.C. 553(b)(4)) requires that a notice of proposed rulemaking include the internet address of a summary of not more than 100 words in length of a proposed rule, in plain language, that shall be posted on the internet website under section 206(d) of the E-Government Act of 2002 (44 U.S.C. 3501 note).

In summary, the bank regulatory agencies request comment on a proposal to improve the resolvability and resilience of large banking organizations. The proposal would require certain banking organizations to maintain outstanding a minimum amount of long-term debt that could absorb losses in resolution. The proposal would also impose requirements on the corporate practices of certain holding companies to improve their resolvability, and apply a stringent capital treatment to large banking organizations' holdings of long-term debt issued by other banking

organizations. Lastly, the proposal would amend existing total loss absorbing capacity requirements for global systemically important banks.

The proposal and the required summary can be found at *https://www.regulations.gov, https://occ.gov/topics/laws-and-regulations/occ-regulations/proposed-issuances/index-proposed-issuances.html, https://www.federalreserve.gov/supervisionreg/reglisting.htm,* and *https://www.fdic.gov/resources/regulations/federal-register-publications/.*

Text of Common Rule

(All Agencies)

PART [____]—LONG-TERM DEBT REQUIREMENTS

Sec.

____.1 Applicability, reservations of authority, and timing.

____.2 Definitions.

____.3 Long-term debt requirement.

Authority: [AGENCY AUTHORITY].

§ ____.1 Applicability, reservations of authority, and timing.

(a) *Applicability.* (1) *[BANKS] that are consolidated subsidiaries of companies subject to a long-term debt requirement.* A [BANK] is subject to the requirements of this part if the [BANK]:

(i) Has $100 billion or more of total consolidated assets, as reported on the [BANK's] most recent Call Report; and

(ii) Is a consolidated subsidiary of:

(A) A depository institution holding company that is subject to a long-term debt requirement set forth in § 238.182 or § 252.62 of this title and that is not a global systemically important BHC; or

(B) A U.S. intermediate holding company that is subject to a long-term debt requirement set forth in § 252.162 of this title.

(2) *[BANKS] that are not consolidated subsidiaries of companies subject to a long-term debt requirement.*

(i) A [BANK] is subject to the requirements of this part if the [BANK]:

(A) Is not a consolidated subsidiary of a depository institution holding company or U.S. intermediate holding company that is subject to a long-term debt requirement set forth in § 238.182, 252.62, or § 252.162 of this title; and

(B) Has total consolidated assets, calculated based on the average of the [BANK's] total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $100 billion or more. If the [BANK] has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets is calculated based on its total consolidated assets, as reported on the Call Report, for the most recent quarter or average of the most recent quarters, as applicable.

(ii) After meeting the criteria in paragraphs (a)(2)(i)(A) and (B) of this section, a [BANK] continues to be subject to the requirements of this part pursuant to paragraph (a)(2) of this section until the [BANK] has less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters.

(3) *[BANKS] affiliated with insured depository institutions subject to the rule.* A [BANK] is subject to the requirements of this part if the [BANK] is an affiliate of an insured depository institution described in paragraphs (a)(1) or (2) of this section, or [OTHER AGENCIES' SCOPING PARAGRAPHS].

(b) *Timing.* A [BANK] must comply with the requirements of this part beginning three years after the date on which the [BANK] becomes subject to this part, [OTHER AGENCIES' LONG-TERM DEBT REQUIREMENT], except that a [BANK] must have an outstanding eligible long-term debt amount that is no less than:

(1) 25 percent of the amount required under § ____.3 by one year after the date on which the [BANK] first becomes subject to this part, [OTHER AGENCIES' LONG-TERM DEBT REQUIREMENT]; and

(2) 50 percent of the amount required under § ____.3 by two years after the date on which the [BANK] first becomes subject to this part, [OTHER AGENCIES' LONG-TERM DEBT REQUIREMENT].

(c) *Reservation of authority.* The [AGENCY] may require a [BANK] to maintain an eligible long-term debt amount greater than otherwise required under this part if the [AGENCY] determines that the [BANK's] long-term debt requirement under this part is not commensurate with the risk the activities of the [BANK] pose to public and private stakeholders in the event of material distress and failure of the [BANK]. In making a determination under this paragraph (c), the [AGENCY] will apply notice and response procedures in the same manner as the notice and response procedures in [AGENCY NOTICE PROVISION].

§ ____.2 Definitions.

For purposes of this part, the following definitions apply:

Affiliate means, with respect to a company, any company that controls, is controlled by, or is under common control with, the company.

Average total consolidated assets means the denominator of the leverage ratio as described in [AGENCY LEVERAGE RATIO].

Bank holding company means a bank holding company as defined in section 2 of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841).

Call Report means Consolidated Reports of Condition and Income.

Control. A person or company controls a company if it:

(1) Owns, controls, or holds with the power to vote 25 percent or more of a class of voting securities of the company; or

(2) Consolidates the company for financial reporting purposes.

Deposit has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

Depository institution holding company means a bank holding company or savings and loan holding company.

Eligible debt security means an eligible internal debt security except that, with respect to an externally issuing [BANK], eligible debt security means an eligible external debt security and an eligible internal debt security.

Eligible external debt security means:

(1) *New issuances.* A debt instrument that:

(i) Is paid in, and issued by the [BANK] to, and remains held by, a person that is not an affiliate of the [BANK], unless the affiliate controls but does not consolidate the [BANK];

(ii) Is not secured, not guaranteed by the [BANK] or an affiliate of the [BANK], and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(iii) Has a maturity of greater than or equal to one year from the date of issuance;

(iv) Is governed by the laws of the United States or any State thereof;

(v) Does not provide the holder of the instrument a contractual right to accelerate payment of principal or interest on the instrument, except a right that is exercisable on one or more dates that are specified in the instrument or in the event of:

(A) A receivership, insolvency, liquidation, or similar proceeding of the [BANK]; or

(B) A failure of the [BANK] to pay principal or interest on the instrument when due and payable that continues for 30 days or more;

(vi) Does not have a credit-sensitive feature, such as an interest rate that is reset periodically based in whole or in part on the [BANK's] credit quality, but may have an interest rate that is adjusted periodically independent of the [BANK's] credit quality, in relation to general market interest rates or similar adjustments;

(vii) Is not a structured note;

(viii) Does not provide that the instrument may be converted into or exchanged for equity of the [BANK]; and

(ix) Is not issued in denominations of less than $400,000 and must not be exchanged for smaller denominations by the [BANK]; and

(x) Is contractually subordinated to claims of depositors and general unsecured creditors in a receivership, for purposes of 12 U.S.C. 1821(d)(11)(A)(iv), or any similar proceeding.

(2) *Legacy external long-term debt.* A debt instrument issued prior to [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], that:

(i) Is paid in, and issued by the [BANK] to, and remains held by, a person that is not an affiliate of the [BANK], unless the affiliate controls but does not consolidate the [BANK];

(ii) Is not secured, not guaranteed by the [BANK] or an affiliate of the [BANK], and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(iii) Has a maturity of greater than or equal to one year from the date of issuance;

(iv) Is governed by the laws of the United States or any State thereof;

(v) Does not have a credit-sensitive feature, such as an interest rate that is reset periodically based in whole or in part on the [BANK's] credit quality, but may have an interest rate that is adjusted periodically independent of the [BANK's] credit quality, in relation to general market interest rates or similar adjustments;

(vi) Is not a structured note;

(vii) Does not provide that the instrument may be converted into or exchanged for equity of the [BANK]; and

(viii) Would represent a claim in a receivership or similar proceeding that is subordinated to a deposit.

Eligible internal debt security means:

(1) *New issuances.* A debt instrument that:

(i) Is paid in, and issued by the [BANK];

(ii) Is not secured, not guaranteed by the [BANK] or an affiliate of the [BANK], and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(iii) Has a maturity of greater than or equal to one year from the date of issuance;

(iv) Is governed by the laws of the United States or any State thereof;

(v) Does not provide the holder of the instrument a contractual right to accelerate payment of principal or interest on the instrument, except a right that is exercisable on one or more dates that are specified in the instrument or in the event of:

(A) A receivership, insolvency, liquidation, or similar proceeding of the [BANK]; or

(B) A failure of the [BANK] to pay principal or interest on the instrument when due and payable that continues for 30 days or more;

(vi) Does not have a credit-sensitive feature, such as an interest rate that is reset periodically based in whole or in part on the [BANK's] credit quality, but may have an interest rate that is adjusted periodically independent of the [BANK's] credit quality, in relation to general market interest rates or similar adjustments;

(vii) Is not a structured note;

(viii) Is issued to and remains held by a company:

(A) Of which [BANK] is a consolidated subsidiary; and

(B) In the case of a [BANK] that is a consolidated subsidiary of a U.S. intermediate holding company, that is domiciled in the United States;

(ix) Does not provide that the instrument may be converted into or exchanged for equity of the [BANK]; and

(x) Is contractually subordinated to claims of depositors and general unsecured creditors in a receivership, for purposes of 12 U.S.C. 1821(d)(11)(A)(iv), or any similar proceeding.

(2) *Legacy internal long-term debt.* A debt instrument issued prior to [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**] that:

(i) Is paid in, and issued by the [BANK] to, and remains held by, a person that is not an affiliate of the [BANK], unless the affiliate controls but does not consolidate the [BANK];

(ii) Is not secured, not guaranteed by the [BANK] or an affiliate of the [BANK], and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(iii) Has a maturity of greater than or equal to one year from the date of issuance;

(iv) Is governed by the laws of the United States or any State thereof;

(v) Does not have a credit-sensitive feature, such as an interest rate that is reset periodically based in whole or in part on the [BANK's] credit quality, but may have an interest rate that is adjusted periodically independent of the [BANK's] credit quality, in relation to general market interest rates or similar adjustments;

(vi) Is not a structured note;

(vii) Does not provide that the instrument may be converted into or exchanged for equity of the [BANK]; and

(viii) Would represent a claim in a receivership or similar proceeding that is subordinated to a deposit.

Externally issuing [BANK] means a [BANK] subject to this part that is not a consolidated subsidiary of a depository institution holding company or U.S. intermediate holding company that is subject to a long-term debt requirement set forth in § 238.182, § 252.62, or § 252.162 of this title.

FDIC means the Federal Deposit Insurance Corporation.

GAAP means generally accepted accounting principles as used in the United States.

Global systemically important BHC means a bank holding company identified as a global systemically important BHC pursuant to § 217.402 of this title.

Insured depository institution means an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

Person includes an individual, bank, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity.

Savings and loan holding company means a savings and loan holding company as defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a).

State means any state, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

Structured note—

(1) Means a debt instrument that:

(i) Has a principal amount, redemption amount, or stated maturity that is subject to reduction based on the performance of any asset, entity, index, or embedded derivative or similar embedded feature;

(ii) Has an embedded derivative or similar embedded feature that is linked to one or more equity securities, commodities, assets, or entities;

(iii) Does not specify a minimum principal amount that becomes due and payable upon acceleration or early termination; or

(iv) Is not classified as debt under GAAP.

(2) Notwithstanding paragraph (1) of this definition, an instrument is not a structured note solely because it is one or both of the following:

(i) A non-dollar-denominated instrument, or

(ii) An instrument whose interest payments are based on an interest rate index.

Subsidiary means, with respect to a company, a company controlled by that company.

Supplementary leverage ratio has the same meaning as in [AGENCY SUPPLEMENTARY LEVERAGE RATIO].

Total leverage exposure has the same meaning as in [AGENCY TOTAL LEVERAGE EXPOSURE].

Total risk-weighted assets means—

(1) For a [BANK] that has completed the parallel run process and received notification from the [AGENCY] pursuant to [AGENCY AA NOTIFICATION PROVISION], the greater of:

(i) Standardized total risk-weighted assets as defined in [AGENCY CAPITAL RULE DEFINITIONS]; and

(ii) Advanced approaches total risk-weighted assets as defined in [AGENCY CAPITAL RULE DEFINITIONS]; and

(2) For any other [BANK], standardized total risk-weighted assets as defined in [AGENCY CAPITAL RULE DEFINITIONS].

U.S. intermediate holding company means a company that is required to be established or designated pursuant to § 252.153 of this title.

§ ____.3 Long-term debt requirement.

(a) *Long-term debt requirement.* A [BANK] subject to this part must have an outstanding eligible long-term debt amount that is no less than the amount equal to the greater of:

(1) 6 percent of the [BANK's] total risk-weighted assets;

(2) If the [BANK] is required to maintain a minimum supplementary leverage ratio, 2.5 percent of the [BANK's] total leverage exposure; and

(3) 3.5 percent of the [BANK's] average total consolidated assets.

(b) *Outstanding eligible long-term debt amount.* (1) A [BANK's] outstanding eligible long-term debt amount is the sum of:

(i) One hundred (100) percent of the amount due to be paid of unpaid principal of the outstanding eligible debt securities issued by the [BANK] in greater than or equal to two years;

(ii) Fifty (50) percent of the amount due to be paid of unpaid principal of the outstanding eligible debt securities issued by the [BANK] in greater than or equal to one year and less than two years; and

(iii) Zero (0) percent of the amount due to be paid of unpaid principal of the outstanding eligible debt securities issued by the [BANK] in less than one year.

(2) For purposes of paragraph (b)(1) of this section, the date on which principal is due to be paid on an outstanding eligible debt security is calculated from the earlier of:

(i) The date on which payment of principal is required under the terms governing the instrument, without respect to any right of the holder to accelerate payment of principal; and

(ii) The date the holder of the instrument first has the contractual right to request or require payment of the amount of principal, provided that, with respect to a right that is exercisable on one or more dates that are specified in the instrument only on the occurrence of an event (other than an event of a receivership, insolvency, liquidation, or similar proceeding of the [BANK], or a failure of the [BANK] to pay principal or interest on the instrument when due), the date for the outstanding eligible debt security under this paragraph (b)(2)(ii) will be calculated as if the event has occurred.

(3) After applying notice and response procedures in the same manner as the notice and response procedures in [AGENCY NOTICE PROVISION], the [AGENCY] may order a [BANK] to exclude from its outstanding eligible long-term debt amount any debt security with one or more features that would significantly impair the ability of such debt security to take losses.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Banks, banking, Federal Reserve System, Investments, National banks, Reporting and recordkeeping requirements, Savings association.

12 CFR Part 54

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk, Savings associations.

12 CFR Part 216

Administrative practice and procedure, Banks, banking, Capital, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Risk.

12 CFR Part 217

Administrative practice and procedure, Banks, banking, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

12 CFR Part 238

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 252

Administrative practice and procedure, Banks, banking, Credit, Federal Reserve System, Holding companies, Investments, Qualified financial contracts, Reporting and recordkeeping requirements, Securities.

12 CFR Part 324

Administrative practice and procedure, Banks, banking, Confidential business information, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 374

Administrative practice and procedure, Banks, banking, Capital, Confidential business information, Investments, Reporting and recordkeeping requirements, Savings associations, State banking.

Adoption of the Common Rule Text

The proposed adoption of the common rules by the agencies, as modified by agency-specific text, is set forth below:

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 5412(b)(2)(B), the Office of the Comptroller of the Currency proposes to amend chapter I of title 12, Code of Federal Regulations, as follows:

PART 3—CAPITAL ADEQUACY STANDARDS

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

Authority: 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, 5412(b)(2)(B), and Pub. L. 116–136, 134 Stat. 281.

■ 2. In § 3.2, revise the definition of ''Covered debt instrument'' to read as follows:

§ 3.2 Definitions.

* * * * *

Covered debt instrument means an unsecured debt instrument that is:

(1) Both:

(i) Issued by a depository institution holding company that is subject to a long-term debt requirement set forth in §§ 238.182 or 252.62 of this title, as applicable, or a subsidiary of such depository institution holding company; and

(ii) An eligible debt security, as defined in §§ 238.181 or 252.61 of this title, as applicable, or that is pari passu or subordinated to any eligible debt security issued by the depository institution holding company; or

(2) Both:

(i) Issued by a U.S. intermediate holding company or insured depository institution that is subject to a long-term debt requirement set forth in § 54.3 of this chapter or §§ 216.3, 252.162, or 374.3 of this title, as applicable, or a subsidiary of such U.S. intermediate holding company or insured depository institution; and

(ii) An eligible external debt security, as defined in § 54.2 of this chapter or § 216.2, § 252.161, or § 374.2 of this title, as applicable, or that is pari passu or subordinated to any eligible external debt security issued by the U.S. intermediate holding company or insured depository institution.

(3) Issued by a global systemically important banking organization, as defined in § 252.2 of this title other than a global systemically important BHC; or issued by a subsidiary of a global systemically important banking organization that is not a global systemically important BHC, other than a U.S. intermediate holding company subject to a long-term debt requirement set forth in § 252.162 of this title; and where,

(i) The instrument is eligible for use to comply with an applicable law or regulation requiring the issuance of a minimum amount of instruments to absorb losses or recapitalize the issuer or any of its subsidiaries in connection with a resolution, receivership, insolvency, or similar proceeding of the issuer or any of its subsidiaries; or

(ii) The instrument is pari passu or subordinated to any instrument described in paragraph (3)(i) of this definition; for purposes of this paragraph (3)(ii) of this definition, if the issuer may be subject to a special resolution regime, in its jurisdiction of incorporation or organization, that addresses the failure or potential failure of a financial company and any instrument described in paragraph (3)(i) of this definition is eligible under that special resolution regime to be written down or converted into equity or any other capital instrument, then an instrument is pari passu or subordinated to any instrument described in paragraph (3)(i) of this definition if that instrument is eligible under that special resolution regime to be written down or converted into equity or any other capital instrument ahead of or proportionally with any instrument described in paragraph (3)(i) of this definition; and

(4) Provided that, for purposes of this definition, *covered debt instrument* does not include a debt instrument that qualifies as tier 2 capital pursuant to § 3.20(d) or that is otherwise treated as regulatory capital by the primary supervisor of the issuer.

* * * * *

■ 3. Amend § 3.22, by revising paragraphs (c),(h)(3) introductory text, (h)(3)(iii) and (h)(3)(iii)(A) to read as follows:

§ 3.22 Regulatory capital adjustments and deductions.

* * * * *

(c) *Deductions from regulatory capital related to investments in capital instruments or covered debt instruments*[23]*—(1) Investment in the national bank's or Federal savings association's own capital or covered debt instruments.* A national bank or Federal savings association must deduct an investment in its own capital instruments, and an advanced approaches national bank or Federal savings association also must deduct an investment in its own covered debt instruments, as follows:

(i) A national bank or Federal savings association must deduct an investment in the national bank's or Federal savings association's own common stock instruments from its common equity tier 1 capital elements to the extent such instruments are not excluded from regulatory capital under § 3.20(b)(1);

(ii) A national bank or Federal savings association must deduct an investment in the national bank's or Federal savings association's own additional tier 1 capital instruments from its additional tier 1 capital elements;

(iii) A national bank or Federal savings association must deduct an investment in the national bank's or Federal savings association's own tier 2 capital instruments from its tier 2 capital elements; and

(iv) An advanced approaches national bank or Federal savings association must deduct an investment in the national bank's or Federal savings association's own covered debt instruments from its tier 2 capital elements, as applicable. If the advanced approaches national bank or Federal savings association does not have a sufficient amount of tier 2 capital to effect this deduction, the national bank or Federal savings association must deduct the shortfall amount from the next higher (that is, more subordinated) component of regulatory capital.

* * * * *

(h) * * *

(3) Adjustments to reflect a short position. In order to adjust the gross long position to recognize a short position in the same instrument under paragraph (h)(1) of this section, the following criteria must be met:

* * * * *

(iii) For an investment in a national banks' or Federal savings association's own capital instrument under paragraph (c)(1) of this section, an investment in the capital of an unconsolidated financial institution under paragraphs (c)(4) through (6) and (d) of this section (as applicable), and an investment in a covered debt instrument under paragraphs (c)(1), (5), and (6) of this section:

(A) The national bank or Federal savings association may only net a short position against a long position in an investment in the national bank's or Federal savings association's own capital instrument or own covered debt instrument under paragraph (c)(1) of this section if the short position involves no counterparty credit risk;

* * * * *

PART 54—LONG-TERM DEBT REQUIREMENTS

■ 4. Add part 54 as set forth at the end of the common preamble.

■ 5. Amend part 54 by:

■ a. Removing ''[AGENCY]'' and adding ''Office of the Comptroller of the Currency'' in its place wherever it appears.

■ b. Removing ''[AGENCY AUTHORITY]'' and adding ''12 U.S.C. 1(a), 93a, 161, 1462, 1462a, 1463, 1818, 1828(n), 1828 note, 1831n note, 1831p–1, 1835, 3907, 3909, 5371, and 5412(b)(2)(B).''

■ c. Removing ''[AGENCY TOTAL LEVERAGE EXPOSURE]'' and adding ''12 CFR 3.10(c)(2)'' in its place wherever it appears.

■ d. Removing ''[BANK]'' and adding ''national bank or Federal savings association'' wherever it appears.

■ e. Removing ''[BANK's]'' and adding ''national bank's or Federal savings association's'' in its place wherever it appears.

[23] The national bank or Federal savings association must calculate amounts deducted under paragraphs (c) through (f) of this section after it calculates the amount of ALLL or AACL, as applicable, includable in tier 2 capital under § 3.20(d)(3).

■ f. Removing ''[BANKS]'' and adding ''national banks and Federal savings associations'' in its place wherever it appears.
■ g. Removing ''[AGENCY NOTICE PROVISION]'' and adding ''§ 3.404 of this chapter'' in its place wherever it appears.
■ h. Removing ''[AGENCY LEVERAGE RATIO]'' and adding ''12 CFR 3.10(b)(4)'' in its place wherever it appears.
■ i. Removing ''[AGENCY SUPPLEMENTARY LEVERAGE RATIO]'' and adding ''12 CFR 3.10(c)(1)'' in its place wherever it appears.
■ j. Removing ''[OTHER AGENCIES' LONG-TERM DEBT REQUIREMENT]'' and adding ''part 216 of this title, or part 374 of this title'' in its place wherever it appears.
■ k. Removing ''[OTHER AGENCIES' SCOPING PARAGRAPHS]'' and adding ''§ 216.1(a)(1) through (2) of this title, or § 374.1(a)(1) through (2) of this title'' in its place wherever it appears.
■ l. Removing ''[AGENCY AA NOTIFICATION PROVISION]'' and adding ''§ 3.121(d) of this chapter'' in its place wherever it appears.
■ m. Removing ''[AGENCY CAPITAL RULE DEFINITIONS]'' and adding ''§ 3.2 of this chapter'' in its place wherever it appears.
■ n. Amend § 54.2 by adding a definition in alphabetical order for ''Federal savings association'' to read as follows:

§ 54.2 Definitions.

* * * * *

Federal savings association means an insured Federal savings association or an insured Federal savings bank chartered under section 5 of the Home Owners' Loan Act of 1933.

* * * * *

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the common preamble, the Board proposes to amend chapter II of title 12 of the Code of Federal Regulations as follows:

PART 216—LONG-TERM DEBT REQUIREMENTS (REGULATION P)

■ 6. In part 216:
■ a. Add the text of the common rule as set forth at the end of the common preamble.
■ b. Revise the part heading to read as set forth above.
■ c. Remove ''[AGENCY]'' and add ''Board'' in its place wherever it appears;
■ d. Remove ''[AGENCY AUTHORITY]'' and add ''12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–1, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371, and 5371 note.'';
■ e. Remove ''[AGENCY TOTAL LEVERAGE EXPOSURE]'' and add ''§ 217.10(c)(2) of this chapter'' in its place wherever it appears;
■ f. Remove ''[BANK]'' and add ''state member bank'' in its place wherever it appears;
■ g. Remove ''[BANK's]'' and add ''state member bank's'' in its place wherever it appears;
■ h. Remove ''[BANKS]'' and add ''state member banks'' in its place wherever it appears.
■ i. Remove ''[AGENCY NOTICE PROVISION]'' and add ''§ 263.202 of this chapter'' in its place wherever it appears;
■ j. Remove ''[AGENCY LEVERAGE RATIO]'' and add ''§ 217.10(b)(4) of this chapter'' in its place wherever it appears;
■ k. Remove ''[AGENCY SUPPLEMENTARY LEVERAGE RATIO]'' and add ''§ 217.10(c)(1) of this chapter'' in its place wherever it appears;
■ l. Remove ''of this title'' and add ''of this chapter'' in its place wherever it appears.
■ m. Remove ''[OTHER AGENCIES' LONG-TERM DEBT REQUIREMENT]'' and add ''part 54 of this title, or part 374 of this title'' in its place wherever it appears; and
■ n. Remove ''[OTHER AGENCIES' SCOPING PARAGRAPHS]'' and add ''§ 54.1(a)(1) through (2) of this title, or § 374.1(a)(1) through (2) of this title'' in its place wherever it appears.
■ o. Remove ''[AGENCY AA NOTIFICATION PROVISION]'' and add ''§ 217.121(d) of this chapter'' in its place wherever it appears.
■ p. Remove ''[AGENCY CAPITAL RULE DEFINITIONS]'' and add ''§ 217.2 of this chapter'' in its place wherever it appears.
■ 7. In § 216.2, add definitions for ''Board'', ''insured state bank'', ''state bank'', and ''state member bank'' in alphabetical order to read as follows:

§ 216.2 Definitions.

* * * * *

Board means the Board of Governors of the Federal Reserve System.

* * * * *

Insured state bank means a state bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*).

* * * * *

State bank means any bank incorporated by special law of any State, or organized under the general laws of any State, or of the United States, including a Morris Plan bank, or other incorporated banking institution engaged in a similar business.

State member bank means an insured state bank that is a member of the Federal Reserve System.

* * * * *

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

■ 8. The authority citation for part 217 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–1, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371, 5371 note, and sec. 4012, Pub. L. 116–136, 134 Stat. 281.

■ 9. In § 217.2, revise the definition of ''Covered debt instrument'' to read as follows:

§ 217.2 Definitions.

* * * * *

Covered debt instrument means an unsecured debt instrument that is:

(1) Both:

(i) Issued by a depository institution holding company that is subject to a long-term debt requirement set forth in § 238.182 or § 252.62 of this chapter, as applicable, or a subsidiary of such depository institution holding company; and

(ii) An eligible debt security, as defined in § 238.181 or § 252.61 of this chapter, as applicable, or that is pari passu or subordinated to any eligible debt security issued by the depository institution holding company; or

(2) Both:

(i) Issued by a U.S. intermediate holding company or insured depository institution that is subject to a long-term debt requirement set forth in § 216.3 or § 252.162 of this chapter or § 54.3 or § 374.3 of this title, as applicable, or a subsidiary of such U.S. intermediate holding company or insured depository institution; and

(ii) An eligible external debt security, as defined in § 216.2 or § 252.161 of this chapter or § 54.2 or § 374.2 of this title, as applicable, or that is pari passu or subordinated to any eligible external debt security issued by the U.S. intermediate holding company or insured depository institution; or

(3) Issued by a global systemically important banking organization, as defined in § 252.2 of this chapter, other

than a global systemically important BHC; or issued by a subsidiary of a global systemically important banking organization that is not a global systemically important BHC, other than a U.S. intermediate holding company subject to a long-term debt requirement set forth in § 252.162 of this chapter; and where:

(i) The instrument is eligible for use to comply with an applicable law or regulation requiring the issuance of a minimum amount of instruments to absorb losses or recapitalize the issuer or any of its subsidiaries in connection with a resolution, receivership, insolvency, or similar proceeding of the issuer or any of its subsidiaries; or

(ii) The instrument is pari passu or subordinated to any instrument described in paragraph (3)(i) of this definition; for purposes of this paragraph (3)(ii), if the issuer may be subject to a special resolution regime, in its jurisdiction of incorporation or organization, that addresses the failure or potential failure of a financial company, and any instrument described in paragraph (3)(i) of this definition is eligible under that special resolution regime to be written down or converted into equity or any other capital instrument, then an instrument is pari passu or subordinated to any instrument described in paragraph (3)(i) of this definition if that instrument is eligible under that special resolution regime to be written down or converted into equity or any other capital instrument ahead of or proportionally with any instrument described in paragraph (3)(i) of this definition; and

(4) Provided that, for purposes of this definition, *covered debt instrument* does not include a debt instrument that qualifies as tier 2 capital pursuant to § 217.20(d) or that is otherwise treated as regulatory capital by the primary supervisor of the issuer.

* * * * *

PART 238—SAVINGS AND LOAN HOLDING COMPANIES (REGULATION LL)

■ 10. The authority citation for part 238 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462, 1462a, 1463, 1464, 1467, 1467a, 1468, 5365; 1813, 1817, 1829e, 1831i, 1972; 15 U.S.C. 78*l*.

■ 11. Add subpart T to read as follows:

Subpart T—External Long-term Debt Requirement and Restrictions on Corporate Practices for U.S. Savings and Loan Holding Companies With Total Consolidated Assets of $100 Billion or More

Sec.

238.180 Applicability and reservation of authority.
238.181 Definitions.
238.182 External long-term debt requirement.
238.183 Restrictions on corporate practices.
238.184 Requirement to purchase subsidiary long-term debt.

§ 238.180 Applicability and reservation of authority.

(a) *General applicability.* This subpart applies to any Category II savings and loan holding company, Category III savings and loan holding company, or Category IV savings and loan holding company.

(b) *Initial applicability.* A covered company must comply with the requirements of this subpart beginning three years after the date on which the company becomes subject to this part or part 252, subpart G of this chapter.

(c) *Timing.* Notwithstanding paragraph (b) of this section, a covered company must have an outstanding eligible long-term debt amount that is no less than:

(1) 25 percent of the amount required under § 238.182 by one year after the date on which the covered company first becomes subject to this subpart or part 252, subpart G of this chapter;

(2) 50 percent of the amount required under § 238.182 by two years after the date on which the covered company first becomes subject to this subpart or part 252, subpart G of this chapter.

(d) *Reservation of authority.* The Board may require a covered company to maintain an outstanding eligible external long-term debt amount that is greater than or less than what is otherwise required under this subpart if the Board determines that the requirements under this subpart are not commensurate with the risk the activities of the covered company pose to public and private stakeholders in the event of material distress and failure of the covered company. In making a determination under this paragraph (d), the Board will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in § 263.202 of this chapter.

§ 238.181 Definitions.

For purposes of this subpart:

Additional tier 1 capital has the same meaning as in § 217.20(c) of this chapter.

Average total consolidated assets means the denominator of the leverage ratio as described in § 217.10(b)(4) of this chapter.

Common equity tier 1 capital has the same meaning as in § 217.20(b) of this chapter.

Covered company means a Category II savings and loan holding company, Category III savings and loan holding company, or Category IV savings and loan holding company.

Default right—

(1) Means any:

(i) Right of a party, whether contractual or otherwise (including rights incorporated by reference to any other contract, agreement or document, and rights afforded by statute, civil code, regulation and common law), to liquidate, terminate, cancel, rescind, or accelerate the agreement or transactions thereunder, set off or net amounts owing in respect thereto (except rights related to same-day payment netting), exercise remedies in respect of collateral or other credit support or property related thereto (including the purchase and sale of property), demand payment or delivery thereunder or in respect thereof (other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure), suspend, delay, or defer payment or performance thereunder, modify the obligations of a party thereunder or any similar rights; and

(ii) Right or contractual provision that alters the amount of collateral or margin that must be provided with respect to an exposure thereunder, including by altering any initial amount, threshold amount, variation margin, minimum transfer amount, the margin value of collateral or any similar amount, that entitles a party to demand the return of any collateral or margin transferred by it to the other party or a custodian or that modifies a transferee's right to reuse collateral or margin (if such right previously existed), or any similar rights, in each case, other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure; and

(2) Does not include any right under a contract that allows a party to terminate the contract on demand or at its option at a specified time, or from time to time, without the need to show cause.

Eligible debt security means, with respect to a covered company:

(1) *New issuances.* A debt instrument that:

(i) Is paid in, and issued by the covered company to, and remains held by, a person that is not an affiliate of the covered company;

(ii) Is not secured, not guaranteed by the covered company or a subsidiary of the covered company, and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(iii) Has a maturity of greater than or equal to one year from the date of issuance;

(iv) Is governed by the laws of the United States or any State thereof;

(v) Does not provide the holder of the instrument a contractual right to accelerate payment of principal or interest on the instrument, except a right that is exercisable on one or more dates that are specified in the instrument or in the event of:

(A) A receivership, insolvency, liquidation, or similar proceeding of the covered company; or

(B) A failure of the covered company to pay principal or interest on the instrument when due and payable that continues for 30 days or more;

(vi) Does not have a credit-sensitive feature, such as an interest rate that is reset periodically based in whole or in part on the covered company's credit quality, but may have an interest rate that is adjusted periodically independent of the covered company's credit quality, in relation to general market interest rates or similar adjustments;

(vii) Is not a structured note;

(viii) Does not provide that the instrument may be converted into or exchanged for equity of the covered company; and

(ix) Is not issued in denominations of less than $400,000 and must not be exchanged for smaller denominations by the covered company; and

(2) *Legacy long-term debt.* A debt instrument issued prior to [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], that:

(i) Is paid in, and issued by the covered company or an insured depository institution that is a consolidated subsidiary of the covered company to, and remains held by, a person that is not an affiliate of the covered company;

(ii) Is not secured, not guaranteed by the covered company or a subsidiary of the covered company, and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(iii) Has a maturity of greater than or equal to one year from the date of issuance;

(iv) Is governed by the laws of the United States or any State thereof;

(v) Does not have a credit-sensitive feature, such as an interest rate that is reset periodically based in whole or in part on the covered company's credit quality, but may have an interest rate that is adjusted periodically independent of the covered company's credit quality, in relation to general market interest rates or similar adjustments;

(vi) Is not a structured note; and

(vii) Does not provide that the instrument may be converted into or exchanged for equity of the covered company's.

Insured depository institution has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

Outstanding eligible external long-term debt amount is defined in § 238.182(b).

Qualified financial contract has the same meaning as in section 210(c)(8)(D) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5390(c)(8)(D)).

Structured note—

(1) Means a debt instrument that:

(i) Has a principal amount, redemption amount, or stated maturity that is subject to reduction based on the performance of any asset, entity, index, or embedded derivative or similar embedded feature;

(ii) Has an embedded derivative or similar embedded feature that is linked to one or more equity securities, commodities, assets, or entities;

(iii) Does not specify a minimum principal amount that becomes due upon acceleration or early termination; or

(iv) Is not classified as debt under GAAP.

(2) Notwithstanding paragraph (1) of this definition, an instrument is not a structured note solely because it is one or both of the following:

(i) An instrument that is not denominated in U.S. dollars; or

(ii) An instrument where interest payments are based on an interest rate index.

Supplementary leverage ratio has the same meaning as in § 217.10(c)(1) of this chapter.

Total leverage exposure has the same meaning as in § 217.10(c)(2) of this chapter.

Total risk-weighted assets means—

(1) For a covered company that has completed the parallel run process and received notification from the Board pursuant to § 217.121(d) of this chapter, the greater of—

(i) Standardized total risk-weighted assets as defined in § 217.2 of this chapter; and

(ii) Advanced approaches total risk-weighted assets as defined in § 217.2 of this chapter; and

(2) For any other covered company, standardized total risk-weighted assets as defined in § 217.2 of this chapter.

U.S. Federal banking agency means the Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency.

§ 238.182 External long-term debt requirement.

(a) *External long-term debt requirement for covered companies.* Except as provided under paragraph (c) of this section, a covered company must maintain an outstanding eligible external long-term debt amount that is no less than the amount equal to the greater of:

(1) Six percent of the covered company's total risk-weighted assets;

(2) If the covered company is required to maintain a minimum supplementary leverage ratio under part 217 of this chapter, 2.5 percent of the covered company's total leverage exposure; and

(3) 3.5 percent of the covered company's average total consolidated assets.

(b) *Outstanding eligible external long-term debt amount.* (1) A covered company's outstanding eligible external long-term debt amount is the sum of:

(i) One hundred (100) percent of the amount due to be paid of unpaid principal of the outstanding eligible debt securities issued by the covered company in greater than or equal to two years;

(ii) Fifty (50) percent of the amount due to be paid of unpaid principal of the outstanding eligible debt securities issued by the covered company in greater than or equal to one year and less than two years; and

(iii) Zero (0) percent of the amount due to be paid of unpaid principal of the outstanding eligible debt securities issued by the covered company in less than one year.

(2) For purposes of paragraph (b)(1) of this section, the date on which principal is due to be paid on an outstanding eligible debt security is calculated from the earlier of:

(i) The date on which payment of principal is required under the terms governing the instrument, without respect to any right of the holder to accelerate payment of principal; and

(ii) The date the holder of the instrument first has the contractual right to request or require payment of the amount of principal, provided that, with

respect to a right that is exercisable on one or more dates that are specified in the instrument only on the occurrence of an event (other than an event of a receivership, insolvency, liquidation, or similar proceeding of the covered company, or a failure of the covered company to pay principal or interest on the instrument when due), the date for the outstanding eligible debt security under this paragraph (b)(2)(ii) will be calculated as if the event has occurred.

(3) After notice and response proceedings consistent with part 263, subpart E of this chapter the Board may order a covered company to exclude from its outstanding eligible long-term debt amount any debt security with one or more features that would significantly impair the ability of such debt security to take losses.

(c) *Redemption and repurchase.* A covered company may not redeem or repurchase any outstanding eligible debt security without the prior approval of the Board if, immediately after the redemption or repurchase, the covered company would not meet its external long-term debt requirement under paragraph (a) of this section.

§ 238.183 Restrictions on corporate practices.

(a) *Prohibited corporate practices.* A covered company must not directly:

(1) Issue any debt instrument with an original maturity of less than one year, including short term deposits and demand deposits, to any person, unless the person is a subsidiary of the covered company;

(2) Issue any instrument, or enter into any related contract, with respect to which the holder of the instrument has a contractual right to offset debt owed by the holder or its affiliates to a subsidiary of the covered company against the amount, or a portion of the amount, owed by the covered company under the instrument;

(3) Enter into a qualified financial contract with a person that is not a subsidiary of the covered company, except for a qualified financial contract that is:

(i) A credit enhancement;

(ii) An agreement with one or more underwriters, dealers, brokers, or other purchasers for the purpose of issuing or distributing the securities of the covered company, whether by means of an underwriting syndicate or through an individual dealer or broker;

(iii) An agreement with an unaffiliated broker-dealer in connection with a stock repurchase plan of the covered company, where the covered company enters into a forward contract with the broker-dealer that is fully prepaid and where the broker-dealer agrees to purchase the issuer's stock in the market over the term of the agreement in order to deliver the shares to the covered company;

(iv) An agreement with an employee or director of the covered company granting the employee or director the right to purchase a specific number of shares of the covered company at a fixed price within a certain period of time, or, if such right is to be cash-settled, to receive a cash payment reflecting the difference between the agreed-upon price and the market price at the time the right is exercised; and

(v) Any other agreement if the Board determines that exempting the agreement from the prohibition in this paragraph (a)(3) would not pose a material risk to the orderly resolution of the covered company or the stability of the U.S. banking or financial system.

(4) Enter into an agreement in which the covered company guarantees a liability of a subsidiary of the covered company if such liability permits the exercise of a default right that is related, directly or indirectly, to the covered company becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding other than a receivership proceeding under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381 through 5394) unless the liability is subject to requirements of the Board restricting such default rights or subject to any similar requirements of another U.S. Federal banking agency; or

(5) Enter into, or otherwise begin to benefit from, any agreement that provides for its liabilities to be guaranteed by any of its subsidiaries.

(b) *Limit on unrelated liabilities.* (1) The aggregate amount, on an unconsolidated basis, of unrelated liabilities of a covered company owed to persons that are not affiliates of the covered company may not exceed 5 percent of the sum of the covered company's:

(i) Common equity tier 1 capital (excluding any common equity tier 1 minority interest);

(ii) Additional tier 1 capital (excluding any tier 1 minority interest); and

(iii) Outstanding eligible long-term debt amount as calculated pursuant to § 238.182(b).

(2) For purposes of this paragraph (b), an unrelated liability is any noncontingent liability of the covered company owed to a person that is not an affiliate of the covered company other than:

(i) The instruments included in the covered company's common equity tier 1 capital (excluding any common equity tier 1 minority interest), the covered company's additional tier 1 capital (excluding any common equity tier 1 minority interest), and the covered company's outstanding eligible external LTD amount as calculated under § 238.182(a);

(ii) Any dividend or other liability arising from the instruments set forth in paragraph (b)(2)(i) of this section;

(iii) An eligible debt security that does not provide the holder of the instrument with a currently exercisable right to require immediate payment of the total or remaining principal amount; and

(iv) A secured liability, to the extent that it is secured, or a liability that otherwise represents a claim that would be senior to eligible debt securities in Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5390(b)) and the Bankruptcy Code (11 U.S.C. 101 *et seq.*).

(c) *Exemption from limit.* A covered company is not subject to paragraph (b) of this section if all of the eligible debt securities issued by the covered company would represent the most subordinated debt claim in a receivership, insolvency, liquidation, or similar proceeding of the covered company.

§ 238.184 Requirement to purchase subsidiary long-term debt.

Whenever necessary for an insured depository institution that is a consolidated subsidiary of a covered company to satisfy the minimum long-term debt requirement set forth in § 216.3(a) of this chapter, or § 54.3(a) or § 374.3(a) of this title, if applicable, the covered company or any subsidiary of the covered company of which the insured depository institution is a consolidated subsidiary must purchase eligible internal debt securities, as defined in § 216.2 of this chapter, or § 54.2 or § 374.2 of this title, if applicable, from the insured depository institution in the amount necessary to satisfy such requirement.

PART 252—ENHANCED PRUDENTIAL STANDARDS (REGULATION YY)

■ 12. The authority citation for part 252 continues to read as follows:

Authority: 12 U.S.C. 321–338a, 481–486, 1467a, 1818, 1828, 1831n, 1831o, 1831p–1, 1831w, 1835, 1844(b), 1844(c), 3101 *et seq.,* 3101 note, 3904, 3906–3909, 4808, 5361, 5362, 5365, 5366, 5367, 5368, 5371.

Subpart A—General Provisions

■ 13. In § 252.2, add definitions for ''Additional tier 1 capital'', ''Common equity tier1 capital'', ''Common equity

tier 1 capital ratio'', ''Common equity tier 1 minority interest'', ''Discretionary bonus payment'', ''Distribution'', ''GSIB surcharge'', ''Insured depository institution'', ''Supplementary leverage ratio'', ''Tier 1 capital'', ''Tier 1 minority interest'', ''Tier 2 capital'', ''Total leverage exposure'', ''Total risk-weighted assets'', and ''U.S. Federal banking agency'' to read as follows:

§ 252.2 Definitions.

* * * * *

Additional tier 1 capital has the same meaning as in § 217.20(c) of this chapter.

* * * * *

Common equity tier 1 capital has the same meaning as in § 217.20(b) of this chapter.

Common equity tier 1 capital ratio has the same meaning as in §§ 217.10(b)(1) and (d)(1) of this chapter, as applicable.

Common equity tier 1 minority interest has the same meaning as in § 217.2 of this chapter.

* * * * *

Discretionary bonus payment has the same meaning as in § 217.2 of this chapter.

Distribution has the same meaning as in § 217.2 of this chapter.

* * * * *

GSIB surcharge has the same meaning as in § 217.2 of this chapter.

* * * * *

Insured depository institution has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

* * * * *

Supplementary leverage ratio has the same meaning as in 217.10(c)(1) of this chapter.

Tier 1 capital has the same meaning as in § 217.2 of this chapter.

Tier 1 minority interest has the same meaning as in § 217.2 of this chapter.

Tier 2 capital has the same meaning as in § 217.20(d) of this chapter.

* * * * *

Total leverage exposure has the same meaning as in § 217.10(c)(2) of this chapter.

* * * * *

Total risk-weighted assets means—

(1) For a bank holding company, or a U.S. intermediate holding company, that has completed the parallel run process and received notification from the Board pursuant to § 217.121(d) of this chapter, the greater of—

(i) Standardized total risk-weighted assets as defined in § 217.2 of this chapter; and

(ii) Advanced approaches total risk-weighted assets as defined in § 217.2 of this chapter; and

(2) For any other bank holding company or U.S. intermediate holding company, standardized total risk-weighted assets as defined in § 217.2 of this chapter.

* * * * *

U.S. Federal banking agency means the Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency.

* * * * *

■ 14. Revise subpart G to read as follows:

Subpart G—External Long-Term Debt Requirement, External Total Loss-Absorbing Capacity Requirement and Buffer, and Restrictions on Corporate Practices for U.S. Banking Organizations With Total Consolidated Assets of $100 Billion or More

Sec.

252.60 Applicability and reservation of authority.
252.61 Definitions.
252.62 External long-term debt requirement.
252.63 External total loss-absorbing capacity requirement and buffer for global systemically important BHCs.
252.64 Restrictions on corporate practices.
252.65 Requirement to purchase subsidiary long-term debt.
252.66 Disclosure requirements.

§ 252.60 Applicability and reservation of authority.

(a) *General applicability.* This subpart applies to any global systemically important BHC, Category II bank holding company, Category III bank holding company, or Category IV bank holding company, in each case that is not a covered IHC as defined in § 252.161.

(b) *Initial applicability.* A covered BHC must comply with the requirements of this subpart beginning on:

(1) In the case of a global systemically important BHC, three years after the date on which the company becomes a global systemically important BHC.

(2) In the case of a covered BHC that is not a global systemically important BHC, the later of:

(i) [THREE YEARS AFTER THE DATE OF THE FINAL RULE PUBLISHED IN THE **FEDERAL REGISTER**; or

(ii) Three years after the date on which the company becomes subject to this part or to part 238, subpart T of this chapter.

(c) *Timing.* Notwithstanding paragraph (b) of this section, a covered BHC that is not a global systemically important BHC must have an outstanding eligible long-term debt amount that is no less than:

(1) 25 percent of the amount required under § 252.62 by one year after the date on which the covered BHC first becomes subject to this subpart or part 238, subpart T of this chapter; and

(2) 50 percent of the amount required under § 252.62 by two years after the date on which the covered BHC first becomes subject to this subpart or part 238, subpart T of this chapter.

(d) *Transition to global systemically important BHC.* During the three-year period set forth in paragraph (b)(1) of this section, a global systemically important BHC must continue to comply with the requirements of this subpart that applied to the covered BHC the day before the date on which the covered BHC became a global systemically important BHC.

(e) *Reservation of authority.* The Board may require a covered BHC to maintain an outstanding eligible external long-term debt amount or outstanding external total loss-absorbing capacity amount, if applicable, that is greater than or less than what is otherwise required under this subpart if the Board determines that the requirements under this subpart are not commensurate with the risk the activities of the covered BHC pose to public and private stakeholders in the event of material distress and failure of the covered company. In making a determination under this paragraph (e), the Board will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in § 263.202 of this chapter.

§ 252.61 Definitions.

For purposes of this subpart:

Covered BHC means a global systemically important BHC, Category II bank holding company, Category III bank holding company, or Category IV bank holding company, in each case that is not a covered IHC as defined in § 252.161.

Default right:

(1) *Means any:*

(i) Right of a party, whether contractual or otherwise (including rights incorporated by reference to any other contract, agreement, or document, and rights afforded by statute, civil code, regulation, and common law), to liquidate, terminate, cancel, rescind, or accelerate the agreement or transactions thereunder, set off or net amounts owing in respect thereto (except rights related to same-day payment netting), exercise remedies in respect of collateral or other credit support or property related thereto (including the purchase and sale of property), demand payment or delivery thereunder or in respect thereof (other than a right or operation of a contractual provision arising solely from

a change in the value of collateral or margin or a change in the amount of an economic exposure), suspend, delay, or defer payment or performance thereunder, modify the obligations of a party thereunder or any similar rights; and

(ii) Right or contractual provision that alters the amount of collateral or margin that must be provided with respect to an exposure thereunder, including by altering any initial amount, threshold amount, variation margin, minimum transfer amount, the margin value of collateral or any similar amount, that entitles a party to demand the return of any collateral or margin transferred by it to the other party or a custodian or that modifies a transferee's right to reuse collateral or margin (if such right previously existed), or any similar rights, in each case, other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure; and

(2) Does not include any right under a contract that allows a party to terminate the contract on demand or at its option at a specified time, or from time to time, without the need to show cause.

Eligible debt security means, with respect to a covered BHC:

(1) *New issuances.* A debt instrument that:

(i) Is paid in, and issued by the covered BHC to, and remains held by, a person that is not an affiliate of the covered BHC;

(ii) Is not secured, not guaranteed by the covered BHC or a subsidiary of the covered BHC, and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(iii) Has a maturity of greater than or equal to one year from the date of issuance;

(iv) Is governed by the laws of the United States or any State thereof;

(v) Does not provide the holder of the instrument a contractual right to accelerate payment of principal or interest on the instrument, except a right that is exercisable on one or more dates that are specified in the instrument or in the event of:

(A) A receivership, insolvency, liquidation, or similar proceeding of the covered BHC; or

(B) A failure of the covered BHC to pay principal or interest on the instrument when due and payable that continues for 30 days or more;

(vi) Does not have a credit-sensitive feature, such as an interest rate that is reset periodically based in whole or in part on the covered BHC's credit quality, but may have an interest rate that is adjusted periodically independent of the covered BHC's credit quality, in relation to general market interest rates or similar adjustments;

(vii) Is not a structured note;

(viii) Does not provide that the instrument may be converted into or exchanged for equity of the covered BHC; and

(ix) In the case of a debt instrument issued on or after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], is not issued in denominations of less than $400,000 and must not be exchanged for smaller denominations by the covered BHC; and

(2) *Legacy long-term debt issued by a global systemically important BHC.* A debt instrument issued prior to December 31, 2016 that:

(i) Is paid in, and issued by the global systemically important BHC;

(ii) Is not secured, not guaranteed by the global systemically important BHC or a subsidiary of the global systemically important BHC, and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(iii) Has a maturity of greater than or equal to one year from the date of issuance;

(iv) Does not have a credit-sensitive feature, such as an interest rate that is reset periodically based in whole or in part on the global systemically important BHC's credit quality, but may have an interest rate that is adjusted periodically independent of the global systemically important BHC's credit quality, in relation to general market interest rates or similar adjustments;

(v) Is not a structured note; and

(vi) Does not provide that the instrument may be converted into or exchanged for equity of the global systemically important BHC.

(3) *Legacy long-term debt issued by a covered BHC that is not a global systemically important BHC, or by its consolidated subsidiary insured depository institution.* With respect to a covered BHC that is not a global systemically important BHC, a debt instrument issued prior to [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], that:

(i) Is paid in, and issued by the covered BHC or an insured depository institution that is a consolidated subsidiary of the covered BHC to, and remains held by, a person that is not an affiliate of the covered BHC;

(ii) Is not secured, not guaranteed by the covered BHC or a subsidiary of the covered BHC, and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(iii) Has a maturity of greater than or equal to one year from the date of issuance;

(iv) Is governed by the laws of the United States or any State thereof;

(v) Does not have a credit-sensitive feature, such as an interest rate that is reset periodically based in whole or in part on the covered BHC's or insured depository institution's credit quality, but may have an interest rate that is adjusted periodically independent of the covered BHC's or insured depository institution's credit quality, in relation to general market interest rates or similar adjustments;

(vi) Is not a structured note; and

(vii) Does not provide that the instrument may be converted into or exchanged for equity of the covered BHC or an insured depository institution that is a consolidated subsidiary of the covered BHC.

External TLAC risk-weighted buffer means, with respect to a global systemically important BHC, the sum of 2.5 percent, any applicable countercyclical capital buffer under 12 CFR 217.11(b) (expressed as a percentage), and the global systemically important BHC's method 1 capital surcharge.

Method 1 capital surcharge means, with respect to a global systemically important BHC, the most recent method 1 capital surcharge (expressed as a percentage) the global systemically important BHC was required to calculate pursuant to subpart H of Regulation Q (12 CFR 217.400 through 217.406).

Outstanding eligible external long-term debt amount is defined in § 252.62(c).

Person has the same meaning as in § 225.2(*l*) of this chapter.

Qualified financial contract has the same meaning as in section 210(c)(8)(D) of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5390(c)(8)(D)).

Structured note—

(1) Means a debt instrument that:

(i) Has a principal amount, redemption amount, or stated maturity that is subject to reduction based on the performance of any asset, entity, index, or embedded derivative or similar embedded feature;

(ii) Has an embedded derivative or similar embedded feature that is linked to one or more equity securities, commodities, assets, or entities;

(iii) Does not specify a minimum principal amount that becomes due upon acceleration or early termination; or

(iv) Is not classified as debt under GAAP.

(2) Notwithstanding paragraph (1) of this definition, an instrument is not a structured note solely because it is one or both of the following:

(i) An instrument that is not denominated in U.S. dollars; or

(ii) An instrument where interest payments are based on an interest rate index.

§ 252.62 External long-term debt requirement.

(a) *External long-term debt requirement for global systemically important BHCs.* Except as provided under paragraph (d) of this section, a global systemically important BHC must maintain an outstanding eligible external long-term debt amount that is no less than the amount equal to the greater of:

(1) The global systemically important BHC's total risk-weighted assets multiplied by the sum of 6 percent plus the global systemically important BHC's GSIB surcharge (expressed as a percentage); and

(2) 4.5 percent of the global systemically important BHC's total leverage exposure.

(b) *External long-term debt requirement for covered BHCs that are not global systemically important BHCs.* Except as provided under paragraph (d) of this section, a covered BHC that is not a global systemically important BHC must maintain an outstanding eligible external long-term debt amount that is no less than the amount equal to the greater of:

(1) 6 percent of the total risk-weighted assets of the covered BHC that is not a global systemically important BHC;

(2) 2.5 percent of the leverage exposure of the covered BHC that is not a global systemically important BHC, if the covered BHC is required to maintain a minimum supplementary leverage ratio under part 217 of this chapter; and

(3) 3.5 percent of the average total consolidated assets of the covered BHC that is not a global systemically important BHC.

(c) *Outstanding eligible external long-term debt amount.*

(1) A covered BHC's outstanding eligible external long-term debt amount is the sum of:

(i) One hundred (100) percent of the amount due to be paid of unpaid principal of the outstanding eligible debt securities issued by the covered BHC in greater than or equal to two years;

(ii) Fifty (50) percent of the amount due to be paid of unpaid principal of the outstanding eligible debt securities issued by the covered BHC in greater than or equal to one year and less than two years; and

(iii) Zero (0) percent of the amount due to be paid of unpaid principal of the outstanding eligible debt securities issued by the covered BHC in less than one year.

(2) For purposes of paragraph (c)(1) of this section, the date on which principal is due to be paid on an outstanding eligible debt security is calculated from the earlier of:

(i) The date on which payment of principal is required under the terms governing the instrument, without respect to any right of the holder to accelerate payment of principal; and

(ii) The date the holder of the instrument first has the contractual right to request or require payment of the amount of principal, provided that, with respect to a right that is exercisable on one or more dates that are specified in the instrument only on the occurrence of an event (other than an event of a receivership, insolvency, liquidation, or similar proceeding of the covered BHC, or a failure of the covered BHC to pay principal or interest on the instrument when due), the date for the outstanding eligible debt security under this paragraph (c)(2)(ii) will be calculated as if the event has occurred.

(3) After notice and response proceedings consistent with 12 CFR part 263, subpart E, the Board may order a covered BHC to exclude from its outstanding eligible long-term debt amount any debt security with one or more features that would significantly impair the ability of such debt security to take losses.

(d) *Redemption and repurchase.* A covered BHC may not redeem or repurchase any outstanding eligible debt security without the prior approval of the Board if, immediately after the redemption or repurchase, the covered BHC would not meet its external long-term debt requirement under paragraphs (a) or (b) of this section, or, if applicable, its external total loss-absorbing capacity requirement under § 252.63(a).

§ 252.63 External total loss-absorbing capacity requirement and buffer for global systemically important BHCs.

(a) *External total loss-absorbing capacity requirement.* A global systemically important BHC must maintain an outstanding external total loss-absorbing capacity amount that is no less than the amount equal to the greater of:

(1) 18 percent of the global systemically important BHC's total risk-weighted assets; and

(2) 7.5 percent of the global systemically important BHC's total leverage exposure.

(b) *Outstanding external total loss-absorbing capacity amount.* A global systemically important BHC's outstanding external total loss-absorbing capacity amount is the sum of:

(1) The global systemically important BHC's common equity tier 1 capital (excluding any common equity tier 1 minority interest);

(2) The global systemically important BHC's additional tier 1 capital (excluding any tier 1 minority interest); and

(3) The global systemically important BHC's outstanding eligible external long-term debt amount as calculated pursuant § 252.62(c).

(c) *External TLAC buffer—*

(1) *Composition of the external TLAC risk-weighted buffer.* The external TLAC risk-weighted buffer is composed solely of common equity tier 1 capital.

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

(i) *Eligible retained income.* The eligible retained income of a global systemically important BHC is the greater of:

(A) The global systemically important BHC's net income, calculated in accordance with the instructions to the FR Y–9C, for the four calendar quarters preceding the current calendar quarter, net of any distributions and associated tax effects not already reflected in net income; and

(B) The average of the global systemically important BHC's net income, calculated in accordance with the instructions to the FR Y–9C, for the four calendar quarters preceding the current calendar quarter.

(ii) *Maximum external TLAC risk-weighted payout ratio.* The maximum external TLAC risk-weighted payout ratio is the percentage of eligible retained income that a global systemically important BHC can pay out in the form of distributions and discretionary bonus payments during the current calendar quarter. The maximum external TLAC risk-weighted payout ratio is based on the global systemically important BHC's external TLAC risk-weighted buffer level, calculated as of the last day of the previous calendar quarter, as set forth in Table 1 to paragraph (c)(2)(iii) of this section.

(iii) *Maximum external TLAC risk-weighted payout amount.* A global systemically important BHC's maximum external TLAC risk-weighted payout amount for the current calendar quarter is equal to the global systemically

important BHC's eligible retained income, multiplied by the applicable maximum external TLAC risk-weighted payout ratio, as set forth in Table 1 to this paragraph (c)(2)(iii).

TABLE 1 TO PARAGRAPH (c)(2)(iii)—CALCULATION OF MAXIMUM EXTERNAL TLAC RISK-WEIGHTED PAYOUT AMOUNT

External TLAC risk-weighted buffer level	Maximum external TLAC risk-weighted payout ratio (as a percentage of eligible retained income)
Greater than the external TLAC risk-weighted buffer	No payout ratio limitation applies.
Less than or equal to the external TLAC risk-weighted buffer, *and* greater than 75 percent of the external TLAC risk-weighted buffer.	60 percent.
Less than or equal to 75 percent of the external TLAC risk-weighted buffer, *and* greater than 50 percent of the external TLAC risk-weighted buffer.	40 percent.
Less than or equal to 50 percent of the external TLAC risk-weighted buffer, *and* greater 25 percent of the external TLAC risk-weighted buffer.	20 percent.
Less than or equal to 25 percent of the external TLAC risk-weighted buffer	0 percent.

(iv) *Maximum external TLAC leverage payout ratio.* The maximum external TLAC leverage payout ratio is the percentage of eligible retained income that a global systemically important BHC can pay out in the form of distributions and discretionary bonus payments during the current calendar quarter. The maximum external TLAC leverage payout ratio is based on the global systemically important BHC's external TLAC leverage buffer level, calculated as of the last day of the previous calendar quarter, as set forth in Table 2 to paragraph (c)(2)(v) of this section.

(v) *Maximum external TLAC leverage payout amount.* A global systemically important BHC's maximum external TLAC leverage payout amount for the current calendar quarter is equal to the global systemically important BHC's eligible retained income, multiplied by the applicable maximum TLAC leverage payout ratio, as set forth in Table 2 to this paragraph (c)(2)(v).

TABLE 2 TO PARAGRAPH (c)(2)(v)—CALCULATION OF MAXIMUM EXTERNAL TLAC LEVERAGE PAYOUT AMOUNT

External TLAC leverage buffer level	Maximum external TLAC leverage payout ratio (as a percentage of eligible retained income)
Greater than 2.0 percent	No payout ratio limitation applies.
Less than or equal to 2.0 percent, and greater than 1.5 percent	60 percent.
Less than or equal to 1.5 percent, and greater than 1.0 percent	40 percent.
Less than or equal to 1.0 percent, and greater than 0.5 percent	20 percent.
Less than or equal to 0.5 percent	0 percent.

(3) *Calculation of the external TLAC risk-weighted buffer level.* (i) A global systemically important BHC's external TLAC risk-weighted buffer level is equal to the global systemically important BHC's common equity tier 1 capital ratio (expressed as a percentage) minus the greater of zero and the following amount:

(A) 18 percent; minus

(B) The ratio (expressed as a percentage) of the global systemically important BHC's additional tier 1 capital (excluding any tier 1 minority interest) to its total risk-weighted assets; and minus

(C) The ratio (expressed as a percentage) of the global systemically important BHC's outstanding eligible external long-term debt amount as calculated in § 252.62(c) to total risk-weighted assets.

(ii) Notwithstanding paragraph (c)(3)(i) of this section, if the ratio (expressed as a percentage) of a global systemically important BHC's external total loss-absorbing capacity amount as calculated under paragraph (b) of this section to its risk-weighted assets is less than or equal to 18 percent, the global systemically important BHC's external TLAC risk-weighted buffer level is zero.

(4) *Limits on distributions and discretionary bonus payments.* (i) A global systemically important BHC shall not make distributions or discretionary bonus payments or create an obligation to make such distributions or payments during the current calendar quarter that, in the aggregate, exceed the maximum external TLAC risk-weighted payout amount or the maximum external TLAC leverage payout amount.

(ii) A global systemically important BHC with an external TLAC risk-weighted buffer level that is greater than the external TLAC risk-weighted buffer and an external TLAC leverage buffer level that is greater than 2.0 percent, in accordance with paragraph (c)(5) of this section, is not subject to a maximum external TLAC risk-weighted payout amount or a maximum external TLAC leverage payout amount.

(iii) Except as provided in paragraph (c)(4)(iv) of this section, a global systemically important BHC may not make distributions or discretionary bonus payments during the current calendar quarter if the global systemically important BHC's:

(A) Eligible retained income is negative; and

(B) External TLAC risk-weighted buffer level was less than the external TLAC risk-weighted buffer as of the end of the previous calendar quarter or external TLAC leverage buffer level was less than 2.0 percent as of the end of the previous calendar quarter.

(iv) Notwithstanding the limitations in paragraphs (c)(4)(i) through (iii) of

this section, the Board may permit a global systemically important BHC to make a distribution or discretionary bonus payment upon a request of the global systemically important BHC, if the Board determines that the distribution or discretionary bonus payment would not be contrary to the purposes of this section, or to the safety and soundness of the global systemically important BHC. In making such a determination, the Board will consider the nature and extent of the request and the particular circumstances giving rise to the request.

(v)(A) A global systemically important BHC is subject to the lowest of the maximum payout amounts as determined under § 217.11(a)(2) of this chapter, the maximum external TLAC risk-weighted payout amount as determined under this paragraph (c), and the maximum external TLAC leverage payout amount as determined under this paragraph (c).

(B) Additional limitations on distributions may apply to a global systemically important BHC under §§ 225.4, 225.8, and 263.202 of this chapter.

(5) *External TLAC leverage buffer*—

(i) *General.* A global systemically important BHC is subject to the lower of the maximum external TLAC risk-weighted payout amount as determined under paragraph (c)(2)(iii) of this section and the maximum external TLAC leverage payout amount as determined under paragraph (c)(2)(v) of this section.

(ii) *Composition of the external TLAC leverage buffer.* The external TLAC leverage buffer is composed solely of tier 1 capital.

(iii) *Calculation of the external TLAC leverage buffer level.* (A) A global systemically important BHC's external TLAC leverage buffer level is equal to the global systemically important BHC's supplementary leverage ratio (expressed as a percentage) minus the greater of zero and the following amount:

(*1*) 7.5 percent; minus

(*2*) The ratio (expressed as a percentage) of the global systemically important BHC's outstanding eligible external long-term debt amount as calculated in § 252.62(c) to total leverage exposure.

(B) Notwithstanding paragraph (c)(5)(iii) of this section, if the ratio (expressed as a percentage) of a global systemically important BHC's external total loss-absorbing capacity amount as calculated under paragraph (b) of this section to its total leverage exposure is less than or equal to 7.5 percent, the global systemically important BHC's external TLAC leverage buffer level is zero.

§ 252.64 Restrictions on corporate practices.

(a) *Prohibited corporate practices.* A covered BHC must not directly:

(1) Issue any debt instrument with an original maturity of less than one year, including short term deposits and demand deposits, to any person, unless the person is a subsidiary of the covered BHC;

(2) Issue any instrument, or enter into any related contract, with respect to which the holder of the instrument has a contractual right to offset debt owed by the holder or its affiliates to a subsidiary of the covered BHC against the amount, or a portion of the amount, owed by the covered BHC under the instrument;

(3) Enter into a qualified financial contract with a person that is not a subsidiary of the covered BHC, except for a qualified financial contract that is:

(i) A credit enhancement;

(ii) An agreement with one or more underwriters, dealers, brokers, or other purchasers for the purpose of issuing or distributing the securities of the covered BHC, whether by means of an underwriting syndicate or through an individual dealer or broker;

(iii) An agreement with an unaffiliated broker-dealer in connection with a stock repurchase plan of the covered BHC, where the covered BHC enters into a forward contract with the broker-dealer that is fully prepaid and where the broker-dealer agrees to purchase the covered BHC's stock in the market over the term of the agreement in order to deliver the shares to the covered BHC;

(iv) An agreement with an employee or director of the covered BHC granting the employee or director the right to purchase a specific number of shares of the covered BHC at a fixed price within a certain period of time, or, if such right is to be cash-settled, to receive a cash payment reflecting the difference between the agreed-upon price and the market price at the time the right is exercised; and

(v) Any other agreement for which the Board determines that exempting the agreement from the prohibition in this paragraph (a)(3) would not pose a material risk to the orderly resolution of the covered BHC or the stability of the U.S. banking or financial system.

(4) Enter into an agreement in which the covered BHC guarantees a liability of a subsidiary of the covered BHC if such liability permits the exercise of a default right that is related, directly or indirectly, to the covered BHC becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding other than a receivership proceeding under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381 through 5394) unless the liability is subject to requirements of the Board restricting such default rights or subject to any similar requirements of another U.S. Federal banking agency; or

(5) Enter into, or otherwise begin to benefit from, any agreement that provides for its liabilities to be guaranteed by any of its subsidiaries.

(b) *Limit on unrelated liabilities.* (1) The aggregate amount, on an unconsolidated basis, of unrelated liabilities of a covered BHC owed to persons that are not affiliates of the covered BHC must not exceed:

(i) In the case of a global systemically important BHC, 5 percent of the covered BHC's external total loss-absorbing capacity amount, as calculated under § 252.63(b); and

(ii) In the case of a covered BHC that is not a global systemically important BHC, 5 percent of the sum of the covered BHC's:

(A) Common equity tier 1 capital (excluding any common equity tier 1 minority interest);

(B) Additional tier 1 capital (excluding any tier 1 minority interest); and

(C) Outstanding eligible external long-term debt amount as calculated pursuant to § 252.62(c).

(2) For purposes of paragraph (b)(1) of this section, an unrelated liability is any non-contingent liability of the covered BHC owed to a person that is not an affiliate of the covered BHC other than:

(i) The instruments included in the covered BHC's common equity tier 1 capital (excluding any common equity tier 1 minority interest), the covered BHC's additional tier 1 capital (excluding any common equity tier 1 minority interest), and the covered BHC's outstanding eligible external LTD amount as calculated under § 252.62(a) or § 252.62(b), as applicable;

(ii) Any dividend or other liability arising from the instruments described in paragraph (b)(2)(i) of this section;

(iii) An eligible debt security that does not provide the holder of the instrument with a currently exercisable right to require immediate payment of the total or remaining principal amount; and

(iv) A secured liability, to the extent that it is secured, or a liability that otherwise represents a claim that would be senior to eligible debt securities in Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5390(b)) and the Bankruptcy Code (11 U.S.C. 101 *et seq.*).

(c) A covered BHC is not subject to paragraph (b) of this section if all of the

eligible debt securities issued by the covered BHC would represent the most subordinated debt claim in a receivership, insolvency, liquidation, or similar proceeding of the covered BHC.

§ 252.65 Requirement to purchase subsidiary long-term debt.

Whenever necessary for an insured depository institution that is a consolidated subsidiary of a covered BHC to satisfy the minimum long-term debt requirement set forth in § 216.3(a) of this chapter, or § 54.3(a) or § 374.3(a) of this title, if applicable, the covered BHC or any subsidiary of the covered BHC of which the insured depository institution is a consolidated subsidiary must purchase eligible internal debt securities, as defined in § 216.2 of this chapter, or § 54.2 or § 374.2 of this title, if applicable, from the insured depository institution in the amount necessary to satisfy such requirement.

§ 252.66 Disclosure requirements for global systemically important BHCs.

(a) *Financial consequences disclosure.* (1) A global systemically important BHC must publicly disclose a description of the financial consequences to unsecured debtholders of the global systemically important BHC entering into a resolution proceeding in which the global systemically important BHC is the only entity that would be subject to the resolution proceeding.

(2) A global systemically important BHC must provide the disclosure required by paragraph (a)(1) of this section:

(i) In the offering documents for all of its eligible debt securities issued after the global systemically important BHC becomes subject to this subpart; and

(ii) Either:

(A) On the global systemically important BHC's website; or

(B) In more than one public financial report or other public regulatory reports, provided that the global systemically important BHC publicly provides a summary table specifically indicating the location(s) of this disclosure.

(b) *Creditor ranking disclosures for global systemically important BHCs*—(1) *In general.* Subject to the requirements of this paragraph (b), a global systemically important BHC must publicly disclose the information set forth in Table 1 to paragraph (b)(5)(iii) of this section in a format that is substantially similar to that of Table 1 to paragraph (b)(5)(iii) of this section.

(2) *Timing and method of disclosure.* (i) A global systemically important BHC must provide the public disclosure required by paragraph (b)(1) of this section on a timely basis at least every six months in a direct and prominent manner either:

(A) On the global systemically important BHC's website; or

(B) In more than one public financial report or other public regulatory reports, provided that the global systemically important BHC publicly provides a summary table specifically indicating the location(s) of this disclosure.

(ii) A global systemically important BHC must make a public disclosure required by paragraph (b)(1) of this section publicly available for at least three years after the public disclosure is initially made.

(3) *Requirements for the board of directors and senior officers.* A global systemically important BHC must comply with the requirements in § 217.62(b) of this chapter with respect to the disclosure required by paragraph (b)(1) of this section.

(4) *Columns.* (i) The table required by paragraph (b)(1) of this section must include the same first and last columns as Table 1 to paragraph (b)(5)(iii) of this section.

(ii) The table required by paragraph (b)(1) of this section must include a separate column for each category of liability or equity instrument issued by the global systemically important BHC that:

(A) Is reported on the global systemically important BHC's balance sheet as a liability of, or equity instrument issued by, the global systemically important BHC; and

(B) Would represent a claim with a priority equal to or less than the claim represented by the global systemically important BHC's most senior class of eligible debt security under the Bankruptcy Code (11 U.S.C. 101 *et seq.*).

(C) Notwithstanding paragraphs (b)(4)(ii)(A) and (B), liabilities or equity instruments issued by the global systemically important BHC that would have the same ranking under the Bankruptcy Code (11 U.S.C. 101 *et seq.*) may be aggregated and reported in the same column.

(iii) The columns for each ranking position must be reported in the table in order from most junior claim level to most senior claim level.

(5) *Rows.* For purposes of the disclosure required under this paragraph (b):

(i) The amount required by row 2 equals the total balance sheet amount associated with the global systemically important BHC's liabilities and outstanding equity instruments in the applicable column.

(ii) For purposes of row 3, ''excluded liabilities'' refers to liabilities reported in row 2 that are:

(A) Derivative liabilities;

(B) Structured notes;

(C) Liabilities not arising through a contract, including tax liabilities;

(D) Liabilities which that have a greater priority than senior unsecured creditors under the Bankruptcy Code (11 U.S.C. 101 *et seq.*); or

(E) Any liabilities that, under the laws of the United States or any State applicable to the global systemically important BHC, may not be written down or converted into equity by a resolution authority or bankruptcy court without giving rise to material risk of successful legal challenge or valid compensation claims.

(iii) For purposes of rows 3 through 5, ''TLAC'' refers to outstanding external total loss-absorbing capacity amount as defined in § 252.63(b).

TABLE 1 TO PARAGRAPH (b)(5)(iii)—CREDITOR RANKING FOR RESOLUTION ENTITY

Creditor ranking	1 (most junior)	2	3 (most senior)	Total
1. Description of the category of liability or equity instrument with the column's ranking to include, if possible, examples of such liability or equity instrument.				
2. Total liabilities and equity.				
3. Amount of row 2 less excluded liabilities.				
4. Total liabilities and equities less non-TLAC amounts (row 2 minus row 3).				
5. Subset of the amount in row 4 that are potentially eligible as TLAC.				
6. Subset of the amount in row 5 with residual maturity greater than or equal to one year and less than two years.				

TABLE 1 TO PARAGRAPH (b)(5)(iii)—CREDITOR RANKING FOR RESOLUTION ENTITY—Continued

Creditor ranking	1 (most junior)	2	3 (most senior)	Total
7. Subset of the amount in row 5 with residual maturity greater than or equal to two years and less than five years.				
8. Subset of the amount in row 5 with residual maturity greater than or equal to five years and less than ten years.				
9. Subset of the amount in row 5 with residual maturity greater than or equal to 10 years that do not have perpetual maturities.				
10. Subset of the amount in row 5 with perpetual maturities.				

■ 15. Revise subpart P to read as follows:

Subpart P—Long-Term Debt Requirement, External Total Loss-Absorbing Capacity Requirement and Buffer, and Restrictions on Corporate Practices for U.S. Intermediate Holding Companies

Sec.

252.160 Applicability and reservation of authority.
252.161 Definitions.
252.162 Covered IHC long-term debt requirement.
252.163 Internal debt conversion order.
252.164 Identification as a resolution covered IHC or a non-resolution covered IHC of a foreign banking organization.
252.165 Total loss-absorbing capacity requirement and buffer for IHCs of global systemically important foreign banking organizations.
252.166 Restrictions on corporate practices of a covered IHC.
252.167 Requirement to purchase subsidiary long-term debt.
252.168 Disclosure requirements for resolution covered IHCs controlled by global systemically important foreign banking organizations.

§ 252.160 Applicability and reservation of authority.

(a) *Applicability.* This subpart applies to a U.S. intermediate holding company that either:

(1) Is controlled by a global systemically important foreign banking organization; or

(2) Is not controlled by a global systemically important foreign banking organization and is a Category II U.S. intermediate holding company, Category III U.S. intermediate holding company, or a Category IV U.S. intermediate holding company.

(b) *Timing of requirements.* (1) Except with respect to § 252.164, a covered IHC must comply with the requirements of this subpart before:

(i) In the case of a covered IHC controlled by a global systemically important foreign banking organization, three years after the date on which the company becomes a covered IHC controlled by a global systemically important foreign banking organization; and

(ii) In the case of a covered IHC that is not controlled by a global systemically important foreign banking organization, the later of:

(A) Three years after the [DATE OF FINALIZATION OF PROPOSED RULE]; or

(B) Three years after the date on which the company becomes a covered IHC.

(2) A covered IHC must comply with the requirements of § 252.164 before:

(i) In the case of a covered IHC controlled by a global systemically important foreign banking organization, two years after the date on which the company becomes a covered IHC; and

(ii) In the case of a covered IHC that is not controlled by a global systemically important foreign banking organization, six months after the date on which the company becomes a covered IHC.

(c) Notwithstanding paragraph (b) of this section, a covered IHC that is not controlled by a global systemically important foreign banking organization must have an outstanding eligible long-term debt amount that is no less than:

(1) 25 percent of the amount required under § 252.162 by one year after the date on which the covered IHC first becomes subject to this subpart; and

(2) 50 percent of the amount required under § 252.162 by two years after the date on which the covered IHC first becomes subject to this subpart.

(d) *Transition to being controlled by a global systemically important foreign banking organization.* Notwithstanding paragraphs (a) and (b) of this section, if a covered IHC was subject to this subpart the day before the date on which the covered IHC becomes controlled by a global systemically important foreign banking organization:

(1) During the three-year period set forth in paragraph (b)(1)(i) of this section, a covered IHC must continue to comply with the requirements of this subpart that applied to the covered IHC the day before the date on which the covered IHC became controlled by a foreign global systemically important banking organization; and

(2) The last certification provided by a covered IHC pursuant to § 252.164 will be treated as the initial certification required by the covered IHC pursuant to § 252.164 the day it becomes controlled by a global systemically important foreign banking organization.

(e) *Reservation of authority.* The Board may require a covered IHC to maintain an outstanding eligible long-term debt amount or outstanding total loss-absorbing capacity amount, if applicable, that is greater than or less than what is otherwise required under this subpart if the Board determines that the requirements under this subpart are not commensurate with the risk the activities of the covered IHC pose to public and private stakeholders in the event of material distress and failure of the covered company. In making a determination under this paragraph (e), the Board will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in § 263.202 of this chapter.

§ 252.161 Definitions.

For purposes of this subpart:

Average total consolidated assets means the denominator of the leverage ratio as described in § 217.10(b)(4) of this chapter.

Covered IHC means a U.S. intermediate holding company described in § 252.160(a).

Covered IHC TLAC buffer means, with respect to a covered IHC that is controlled by a global systemically important foreign banking organization, the sum of 2.5 percent and any applicable countercyclical capital buffer under 12 CFR 217.11(b) (expressed as a percentage).

Covered IHC total loss-absorbing capacity amount is defined in § 252.165(c).

Default right (1) Means any:

(i) Right of a party, whether contractual or otherwise (including rights incorporated by reference to any other contract, agreement or document, and rights afforded by statute, civil

code, regulation and common law), to liquidate, terminate, cancel, rescind, or accelerate such agreement or transactions thereunder, set off or net amounts owing in respect thereto (except rights related to same-day payment netting), exercise remedies in respect of collateral or other credit support or property related thereto (including the purchase and sale of property), demand payment or delivery thereunder or in respect thereof (other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure), suspend, delay, or defer payment or performance thereunder, modify the obligations of a party thereunder or any similar rights; and

(ii) Right or contractual provision that alters the amount of collateral or margin that must be provided with respect to an exposure thereunder, including by altering any initial amount, threshold amount, variation margin, minimum transfer amount, the margin value of collateral or any similar amount, that entitles a party to demand the return of any collateral or margin transferred by it to the other party or a custodian or that modifies a transferee's right to reuse collateral or margin (if such right previously existed), or any similar rights, in each case, other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure; and

(2) Does not include any right under a contract that allows a party to terminate the contract on demand or at its option at a specified time, or from time to time, without the need to show cause.

Eligible covered IHC debt security with respect to a non-resolution covered IHC means an eligible internal debt security issued by the non-resolution covered IHC, and with respect to a resolution covered IHC means an eligible internal debt security or an eligible external debt security issued by the resolution covered IHC.

Eligible external debt security means:

(1) *New issuances.* A debt instrument that:

(i) Is paid in, and issued by the covered IHC to, and remains held by, a person that does not directly or indirectly control the covered IHC and is not a wholly owned subsidiary;

(ii) Is not secured, not guaranteed by the covered IHC or a subsidiary of the covered IHC, and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(iii) Has a maturity of greater than or equal to one year from the date of issuance;

(iv) Is governed by the laws of the United States or any State thereof;

(v) Does not provide the holder of the instrument a contractual right to accelerate payment of principal or interest on the instrument, except a right that is exercisable on one or more dates that are specified in the instrument or in the event of:

(A) A receivership, insolvency, liquidation, or similar proceeding of the covered IHC; or

(B) A failure of the covered IHC to pay principal or interest on the instrument when due and payable that continues for 30 days or more;

(vi) Does not have a credit-sensitive feature, such as an interest rate that is reset periodically based in whole or in part on the covered IHC's credit quality, but may have an interest rate that is adjusted periodically independent of the covered IHC's credit quality, in relation to general market interest rates or similar adjustments;

(vii) Is not a structured note;

(viii) Does not provide that the instrument may be converted into or exchanged for equity of the covered IHC; and

(ix) In the case of a debt instrument issued on or after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], is not issued in denominations of less than $400,000 and must not be exchanged for smaller denominations by the covered IHC; and

(2) *Legacy long-term debt issued by a covered IHC that is controlled by a global systemically important foreign banking organization.* A debt instrument issued prior to December 31, 2016, that:

(i) Is paid in, and issued by the covered IHC to, and remains held by, a person that does not directly or indirectly control the covered IHC and is not a wholly owned subsidiary;

(ii) Is not secured, not guaranteed by the covered IHC or a subsidiary of the covered IHC, and not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(iii) Has a maturity of greater than or equal to one year from the date of issuance;

(iv) Does not have a credit-sensitive feature, such as an interest rate that is reset periodically based in whole or in part on the covered IHC's credit quality, but may have an interest rate that is adjusted periodically independent of the covered IHC's credit quality, in relation to general market interest rates or similar adjustments;

(v) Is not a structured note; and

(vi) Does not provide that the instrument may be converted into or exchanged for equity of the covered IHC; and

(3) *Legacy long-term debt issued by a covered IHC that is not controlled by a global systemically important foreign banking organization or a consolidated subsidiary insured depository institution of the covered IHC.* A debt instrument issued prior to [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], that:

(i) Is paid in, and issued by the covered IHC or an insured depository institution that is a consolidated subsidiary of the covered IHC to, and remains held by, a person that is not an affiliate of the covered IHC;

(ii) Is not secured, not guaranteed by the covered IHC or a subsidiary of the covered IHC, and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(iii) Has a maturity of greater than or equal to one year from the date of issuance;

(iv) Is governed by the laws of the United States or any State thereof;

(v) Does not have a credit-sensitive feature, such as an interest rate that is reset periodically based in whole or in part on the covered IHC's or insured depository institution's credit quality, but may have an interest rate that is adjusted periodically independent of the covered IHC's or insured depository institution's credit quality, in relation to general market interest rates or similar adjustments;

(vi) Is not a structured note; and

(vii) Does not provide that the instrument may be converted into or exchanged for equity of the covered IHC or an insured depository institution that is a consolidated subsidiary of the covered IHC.

Eligible internal debt security means a debt instrument that:

(i) Is paid in, and issued by the covered IHC;

(ii) Is not secured, not guaranteed by the covered IHC or a subsidiary of the covered IHC, and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(iii) Has a maturity of greater than or equal to one year from the date of issuance;

(iv) Is governed by the laws of the United States or any State thereof;

(v) Does not provide the holder of the instrument a contractual right to accelerate payment of principal or interest on the instrument, except a right that is exercisable on one or more

dates that are specified in the instrument or in the event of:

(A) A receivership, insolvency, liquidation, or similar proceeding of the covered IHC; or

(B) A failure of the covered IHC to pay principal or interest on the instrument when due and payable that continues for 30 days or more;

(vi) Is not a structured note;

(vii) Is issued to and remains held by a company that is incorporated or organized outside of the United States, and directly or indirectly controls the covered IHC or is a wholly owned subsidiary; and

(viii) Has a contractual provision that is approved by the Board that provides for the immediate conversion or exchange of the instrument into common equity tier 1 of the covered IHC upon issuance by the Board of an internal debt conversion order.

Internal debt conversion order means an order by the Board to immediately convert to, or exchange for, common equity tier 1 capital an amount of eligible internal debt securities of the covered IHC specified by the Board in its discretion, as described in § 252.163.

Non-resolution covered IHC means a covered IHC identified as or determined to be a non-resolution covered IHC pursuant to § 252.164.

Outstanding eligible covered IHC long-term debt amount is defined in § 252.162(b).

Person has the same meaning as in § 225.2(*l*) of this chapter.

Qualified financial contract has the same meaning as in section 210(c)(8)(D) of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5390(c)(8)(D)).

Resolution covered IHC means a covered IHC identified as or determined to be a resolution covered IHC pursuant to § 252.164.

Structured note—

(1) Means a debt instrument that:

(i) Has a principal amount, redemption amount, or stated maturity that is subject to reduction based on the performance of any asset, entity, index, or embedded derivative or similar embedded feature;

(ii) Has an embedded derivative or other similar embedded feature that is linked to one or more equity securities, commodities, assets, or entities;

(iii) Does not specify a minimum principal amount that becomes due and payable upon acceleration or early termination; or

(iv) Is not classified as debt under GAAP.

(2) Notwithstanding paragraph (1) of this definition, an instrument is not a structured note solely because it is one or both of the following:

(i) A non-dollar-denominated instrument, or

(ii) An instrument whose interest payments are based on an interest rate index.

Wholly owned subsidiary means an entity, all of the outstanding ownership interests of which are owned directly or indirectly by a global systemically important foreign banking organization that directly or indirectly controls a covered IHC, except that up to 0.5 percent of the entity's outstanding ownership interests may be held by a third party if the ownership interest is acquired or retained by the third party for the purpose of establishing corporate separateness or addressing bankruptcy, insolvency, or similar concerns.

§ 252.162 Covered IHC long-term debt requirement.

(a) *Covered IHC long-term debt requirement.* Except as provided under paragraph (c) of this section, a covered IHC must have an outstanding eligible covered IHC long-term debt amount that is no less than the amount equal to the greatest of:

(1) Six percent of the covered IHC's total risk-weighted assets;

(2) If the covered IHC is required to maintain a minimum supplementary leverage ratio, 2.5 percent of the covered IHC's total leverage exposure; and

(3) 3.5 percent of the covered IHC's average total consolidated assets.

(b) *Outstanding eligible covered IHC long-term debt amount.*

(1) A covered IHC's outstanding eligible covered IHC long-term debt amount is the sum of:

(i) One hundred (100) percent of the amount due to be paid of unpaid principal of the outstanding eligible covered IHC debt securities issued by the covered IHC in greater than or equal to two years; and

(ii) Fifty (50) percent of the amount due to be paid of unpaid principal of the outstanding eligible covered IHC debt securities issued by the covered IHC in greater than or equal to one year and less than two years;

(iii) Zero (0) percent of the amount due to be paid of unpaid principal of the outstanding eligible covered IHC debt securities issued by the covered IHC in less than one year.

(2) For purposes of paragraph (b)(1) of this section, the date on which principal is due to be paid on an outstanding eligible covered IHC debt security is calculated from the earlier of:

(i) The date on which payment of principal is required under the terms governing the instrument, without respect to any right of the holder to accelerate payment of principal; and

(ii) The date the holder of the instrument first has the contractual right to request or require payment of the amount of principal, provided that, with respect to a right that is exercisable on one or more dates that are specified in the instrument only on the occurrence of an event (other than an event of a receivership, insolvency, liquidation, or similar proceeding of the covered IHC, or a failure of the covered IHC to pay principal or interest on the instrument when due), the date for the outstanding eligible covered IHC debt security under this paragraph (b)(2)(ii) will be calculated as if the event has occurred.

(3) After notice and response proceedings consistent with 12 CFR part 263, subpart E, the Board may order a covered IHC to exclude from its outstanding eligible covered IHC long-term debt amount any debt security with one or more features that would significantly impair the ability of such debt security to take losses.

(c) *Redemption and repurchase.* Without the prior approval of the Board, a covered IHC may not redeem or repurchase any outstanding eligible covered IHC debt security if, immediately after the redemption or repurchase, the covered IHC would not have an outstanding eligible covered IHC long-term debt amount that is sufficient to meet its covered IHC long-term debt requirement under paragraph (a) of this section or, if applicable, its total loss-absorbing capacity requirement under § 252.165(a) or (b).

§ 252.163 Internal debt conversion order.

(a) The Board may issue an internal debt conversion order if:

(1) The Board has determined that the covered IHC is in default or danger of default; and

(2) Any of the following circumstances apply:

(i) A foreign banking organization that directly or indirectly controls the covered IHC or any subsidiary of the top-tier foreign banking organization has been placed into resolution proceedings (including the application of statutory resolution powers) in its home country;

(ii) The home country supervisor of the top-tier foreign banking organization has consented or not promptly objected after notification by the Board to the conversion or exchange of the eligible internal debt securities of the covered IHC; or

(iii) The Board has made a written recommendation to the Secretary of the Treasury pursuant to 12 U.S.C. 5383(a) regarding the covered IHC.

(b) For purposes of paragraph (a) of this section, the Board will consider:

(1) A covered IHC in default or danger of default if

(i) A case has been, or likely will promptly be, commenced with respect to the covered IHC under the Bankruptcy Code (11 U.S.C. 101 *et seq.*);

(ii) The covered IHC has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the covered IHC to avoid such depletion;

(iii) The assets of the covered IHC are, or are likely to be, less than its obligations to creditors and others; or

(iv) The covered IHC is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business; and

(2) An objection by the home country supervisor to the conversion or exchange of the eligible internal debt securities to be prompt if the Board receives the objection no later than 24 hours after the Board requests such consent or non-objection from the home country supervisor.

§ 252.164 Identification as a resolution covered IHC or a non-resolution covered IHC.

(a) *Initial certification.* On the first business day a covered IHC is required to comply with this section pursuant to § 252.160, the top-tier foreign banking organization of a covered IHC must certify to the Board whether the planned resolution strategy of the top-tier foreign banking organization involves the covered IHC or the subsidiaries of the covered IHC entering resolution, receivership, insolvency, or similar proceedings in the United States.

(b) *Certification update.* The top-tier foreign banking organization of a covered IHC must provide an updated certification to the Board upon a change in the resolution strategy described in the certification provided pursuant to paragraph (a) of this section.

(c) *Identification of a resolution covered IHC.* A covered IHC is a resolution covered IHC if the most recent certification provided pursuant to paragraphs (a) and (b) of this section indicates that the top-tier foreign banking organization's planned resolution strategy involves the covered IHC or the subsidiaries of the covered IHC entering resolution, receivership, insolvency, or similar proceedings in the United States.

(d) *Identification of a non-resolution covered IHC.* A covered IHC is a non-resolution covered IHC if the most recent certification provided pursuant to paragraphs (a) and (b) of this section indicates that the top-tier foreign banking organization's planned resolution strategy involves neither the covered IHC nor the subsidiaries of the covered IHC entering resolution, receivership, insolvency, or similar proceedings in the United States.

(e) *Board determination.* The Board may determine in its discretion that a non-resolution covered IHC identified pursuant to paragraph (d) of this section is a resolution covered IHC, or that a resolution covered IHC identified pursuant to paragraph (c) of this section is a non-resolution covered IHC.

(f) *Transition.* (1) A covered IHC identified as a resolution covered IHC pursuant to paragraph (b) of this section or determined by the Board to be a resolution covered IHC pursuant to paragraph (e) of this section must comply with the requirements in this subpart applicable to a resolution covered IHC within one year after such identification or determination, unless such time period is extended by the Board in its discretion.

(2) A covered IHC identified as a non-resolution covered IHC pursuant to paragraph (b) of this section or determined by the Board to be a non-resolution covered IHC pursuant to paragraph (e) of this section must comply with the requirements in this subpart applicable to a non-resolution covered IHC one year after such identification or determination, unless such time period is extended by the Board in its discretion.

§ 252.165 Total loss-absorbing capacity requirement and buffer for covered IHCs of global systemically important foreign banking organizations.

(a) *Total loss-absorbing capacity requirement for a resolution covered IHC of a global systemically important foreign banking organization.* A resolution covered IHC of a global systemically important foreign banking organization must have an outstanding covered IHC total loss-absorbing capacity amount that is no less than the amount equal to the greatest of:

(1) 18 percent of the resolution covered IHC's total risk-weighted assets;

(2) If the Board requires the resolution covered IHC to maintain a minimum supplementary leverage ratio, 6.75 percent of the resolution covered IHC's total leverage exposure; and

(3) Nine (9) percent of the resolution covered IHC's average total consolidated assets.

(b) *Total loss-absorbing capacity requirement for a non-resolution covered IHC of a global systemically important foreign banking organization.* A non-resolution covered IHC of a global systemically important foreign banking organization must have an outstanding covered IHC total loss-absorbing capacity amount that is no less than the amount equal to the greatest of:

(1) 16 percent of the non-resolution covered IHC's total risk-weighted assets;

(2) If the Board requires the non-resolution covered IHC to maintain a minimum supplementary leverage ratio, 6 percent of the non-resolution covered IHC's total leverage exposure; and

(3) Eight (8) percent of the non-resolution covered IHC's average total consolidated assets.

(c) *Covered IHC Total loss-absorbing capacity amount.* (1) A non-resolution covered IHC's covered IHC total loss-absorbing capacity amount is equal to the sum of:

(i) The covered IHC's common equity tier 1 capital (excluding any common equity tier 1 minority interest) held by a company that is incorporated or organized outside of the United States and that directly or indirectly controls the covered IHC;

(ii) The covered IHC's additional tier 1 capital (excluding any tier 1 minority interest) held by a company that is incorporated or organized outside of the United States and that directly or indirectly controls the covered IHC; and

(iii) The covered IHC's outstanding eligible covered IHC long-term debt amount as calculated in § 252.162(b).

(2) A resolution covered IHC's covered IHC total loss-absorbing capacity amount is equal to the sum of:

(i) The covered IHC's common equity tier 1 capital (excluding any common equity tier 1 minority interest);

(ii) The covered IHC's additional tier 1 capital (excluding any tier 1 minority interest); and

(iii) The covered IHC's outstanding eligible covered IHC long-term debt amount as calculated in to § 252.162(b).

(d) *Covered IHC of a global systemically important foreign banking organization TLAC buffer—*

(1) *Composition of the covered IHC TLAC buffer.* The covered IHC TLAC buffer is composed solely of common equity tier 1 capital.

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

(i) *Eligible retained income.* The eligible retained income of a covered IHC is the greater of:

(A) The covered IHC's net income, calculated in accordance with the instructions to the FR Y–9C, for the four calendar quarters preceding the current calendar quarter, net of any distributions and associated tax effects not already reflected in net income; and

(B) The average of the covered IHC's net income, calculated in accordance

with the instructions to the FR Y–9C, for the four calendar quarters preceding the current calendar quarter.

(ii) *Maximum covered IHC TLAC payout ratio.* The maximum covered IHC TLAC payout ratio is the percentage of eligible retained income that a covered IHC can pay out in the form of distributions and discretionary bonus payments during the current calendar quarter. The maximum covered IHC TLAC payout ratio is based on the covered IHC's covered IHC TLAC buffer level, calculated as of the last day of the previous calendar quarter, as set forth in Table 1 to paragraph (d)(2)(iii) of this section.

(iii) *Maximum covered IHC TLAC payout amount.* A covered IHC's maximum covered IHC TLAC payout amount for the current calendar quarter is equal to the covered IHC's eligible retained income, multiplied by the applicable maximum covered IHC TLAC payout ratio, as set forth in Table 1 to this paragraph (d)(2)(iii).

TABLE 1 TO PARAGRAPH (d)(2)(iii)—CALCULATION OF MAXIMUM COVERED IHC TLAC PAYOUT AMOUNT

Covered IHC TLAC buffer level	Maximum covered IHC TLAC payout ratio (as a percentage of eligible retained income)
Greater than the covered IHC TLAC buffer	No payout ratio limitation applies.
Less than or equal to the covered IHC TLAC buffer, *and* greater than 75 percent of the covered IHC TLAC buffer	60 percent.
Less than or equal to 75 percent of the covered IHC TLAC buffer, *and* greater than 50 percent of the covered IHC TLAC buffer.	40 percent.
Less than or equal to 50 percent of the covered IHC TLAC buffer, *and* greater 25 percent of the covered IHC TLAC buffer.	20 percent.
Less than or equal to 25 percent of the covered IHC TLAC buffer	0 percent.

(3) *Calculation of the covered IHC TLAC buffer level.* (i) A covered IHC's covered IHC TLAC buffer level is equal to the covered IHC's common equity tier 1 capital ratio (expressed as a percentage) minus the greater of zero and the following amount:

(A) 16 percent for a non-resolution covered IHC, and 18 percent for a resolution covered IHC; minus

(B) The ratio (expressed as a percentage) of the covered IHC's outstanding eligible covered IHC long-term debt amount as calculated in § 252.162(b) to total risk-weighted assets; minus

(C) For a covered IHC that is:

(*1*) A non-resolution covered IHC, the ratio (expressed as a percentage) of the covered IHC's additional tier 1 capital (excluding any tier 1 minority interest) held by a company that is incorporated or organized outside of the United States and that directly or indirectly controls the covered IHC to the covered IHC's total risk-weighted assets;

(*2*) A resolution covered IHC, the ratio (expressed as a percentage of the covered IHC's additional tier 1 capital (excluding any tier 1 minority interest) to the covered IHC's total-risk weighted assets; and minus

(ii) Notwithstanding paragraph (d)(3)(i) of this section, with respect to a resolution covered IHC, if the ratio (expressed as a percentage) of the resolution covered IHC's covered IHC total loss-absorbing capacity amount, as calculated under § 252.165(a), to the resolution covered IHC's risk-weighted assets is less than or equal to, 18 percent, the covered IHC's covered IHC TLAC buffer level is zero.

(iii) Notwithstanding paragraph (d)(3)(i) of this section, with respect to a non-resolution covered IHC, if the ratio (expressed as a percentage) of the non-resolution covered IHC's covered IHC total loss-absorbing capacity amount, as calculated under § 252.165(b), to the covered IHC's risk-weighted assets is less than or equal to 16 percent, the non-resolution covered IHC's covered IHC TLAC buffer level is zero.

(4) *Limits on distributions and discretionary bonus payments.* (i) A covered IHC of a global systemically important foreign banking organization must not make distributions or discretionary bonus payments or create an obligation to make such distributions or payments during the current calendar quarter that, in the aggregate, exceed the maximum covered IHC TLAC payout amount.

(ii) A covered IHC of a global systemically important foreign banking organization with a covered IHC TLAC buffer level that is greater than the covered IHC TLAC buffer is not subject to a maximum covered IHC TLAC payout amount.

(iii) Except as provided in paragraph (d)(4)(iv) of this section, a covered IHC of a global systemically important foreign banking organization must not make distributions or discretionary bonus payments during the current calendar quarter if the covered IHC's:

(A) Eligible retained income is negative; and

(B) Covered IHC TLAC buffer level was less than the covered IHC TLAC buffer as of the end of the previous calendar quarter.

(iv) Notwithstanding the limitations in paragraphs (d)(4)(i) through (iii) of this section, the Board may permit a covered IHC of a global systemically important foreign banking organization to make a distribution or discretionary bonus payment upon a request of the covered IHC, if the Board determines that the distribution or discretionary bonus payment would not be contrary to the purposes of this section, or to the safety and soundness of the covered IHC. In making such a determination, the Board will consider the nature and extent of the request and the particular circumstances giving rise to the request.

(v) A covered IHC of a global systemically important foreign banking organization is subject to the lowest of the maximum payout amounts as determined under § 217.11(a)(2) of this chapter and the maximum covered IHC TLAC payout amount as determined under this paragraph (d).

(vi) Additional limitations on distributions may apply to a covered IHC of a global systemically important foreign banking organization under §§ 225.8 and 263.202 of this chapter.

§ 252.166 Restrictions on corporate practices of a covered IHC.

(a) *Prohibited corporate practices.* A covered IHC must not directly:

(1) Issue any debt instrument with an original maturity of less than one year, including short term deposits and demand deposits, to any person, unless the person is an affiliate of the covered IHC;

(2) Issue any instrument, or enter into any related contract, with respect to which the holder of the instrument has

a contractual right to offset debt owed by the holder or its affiliates to the covered IHC or a subsidiary of the covered IHC against the amount, or a portion of the amount, owed by the covered IHC under the instrument;

(3) Enter into a qualified financial contract that is not a credit enhancement with a person that is not an affiliate of the covered IHC;

(4) Enter into an agreement in which the covered IHC guarantees a liability of an affiliate of the covered IHC if such liability permits the exercise of a default right that is related, directly or indirectly, to the covered IHC becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding other than a receivership proceeding under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381 through 5394) unless the liability is subject to requirements of the Board restricting such default rights or subject to any similar requirements of another U.S. Federal banking agency; or

(5) Enter into, or otherwise benefit from, any agreement that provides for its liabilities to be guaranteed by any of its subsidiaries.

(b) *Limit on unrelated liabilities.* (1) The aggregate amount, on an unconsolidated basis, of unrelated liabilities of a covered IHC must not exceed:

(i) In the case of a covered IHC controlled by a global systemically important foreign banking organization, 5 percent of the covered IHC's total loss-absorbing capacity amount, as calculated under § 252.165(c); and

(ii) In the case of a covered IHC that is not controlled by a global systemically important foreign banking organization, 5 percent of the covered IHC's:

(A) Common equity tier 1 capital (excluding any common equity tier 1 minority interest);

(B) Additional tier 1 capital (excluding any tier 1 minority interest); and

(C) Outstanding eligible long-term debt amount as calculated pursuant to § 252.162(b).

(2) For purposes of paragraph (b)(1) of this section, an unrelated liability includes:

(i) With respect to a non-resolution covered IHC, any non-contingent liability of the non-resolution covered IHC owed to a person that is not an affiliate of the non-resolution covered IHC other than those liabilities specified in paragraph (b)(3) of this section, and

(ii) With respect to a resolution covered IHC, any non-contingent liability of the resolution covered IHC owed to a person that is not a subsidiary of the resolution covered IHC other than those liabilities specified in paragraph (b)(3) of this section.

(3)(i) The instruments included in the covered IHC's common equity tier 1 capital (excluding any common equity tier 1 minority interest), the covered IHC's additional tier 1 capital (excluding any common equity tier 1 minority interest), and the covered IHC's outstanding eligible external LTD amount as calculated under § 252.162(a);

(ii) Any dividend or other liability arising from the instruments described in paragraph (b)(3)(i) of this section;

(iii) An eligible covered IHC debt security that does not provide the holder of the instrument with a currently exercisable right to require immediate payment of the total or remaining principal amount; and

(iv) A secured liability, to the extent that it is secured, or a liability that otherwise represents a claim that would be senior to eligible covered IHC debt securities in Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5390(b)) and the Bankruptcy Code (11 U.S.C. 101 *et seq.*).

(c) *Exemption from limit.* A covered IHC is not subject to paragraph (b) of this section if all of the eligible covered IHC debt securities issued by the covered IHC would represent the most subordinated debt claim in a receivership, insolvency, liquidation, or similar proceeding of the covered IHC.

§ 252.167 Requirement to purchase subsidiary long-term debt.

Whenever necessary for an insured depository institution that is a consolidated subsidiary of a covered IHC to satisfy the minimum long-term debt requirement set forth in § 216.3(a) of this chapter, or § 54.3(a) or § 374.3(a) of this title, if applicable, the covered IHC or any subsidiary of the covered IHC of which the insured depository institution is a consolidated subsidiary must purchase eligible internal debt securities, as defined in § 216.2 of this chapter, or § 54.2 or § 374.2 of this title, if applicable, from the insured depository institution in the amount necessary to satisfy such requirement.

§ 252.168 Disclosure requirements for resolution covered IHCs controlled by global systemically important foreign banking organizations.

(a) A resolution covered IHC that is controlled by a global systemically important foreign banking organization that has any outstanding eligible external debt securities must publicly disclose a description of the financial consequences to unsecured debtholders of the resolution covered IHC entering into a resolution proceeding in which the resolution covered IHC is the only entity in the United States that would be subject to the resolution proceeding.

(b) A resolution covered IHC must provide the disclosure required by paragraph (a) of this section:

(1) In the offering documents for all of its eligible external debt securities issued after the covered IHC becomes controlled by a global systemically important foreign banking organization; and

(2) Either:

(i) On the resolution covered IHC's website; or

(ii) In more than one public financial report or other public regulatory reports, provided that the resolution covered IHC publicly provides a summary table specifically indicating the location(s) of this disclosure.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the common preamble, the Federal Deposit Insurance Corporation proposes to amend chapter III, subchapter b of title 12, Code of Federal Regulations as follows:

PART 324—CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS

■ 16. The authority citation for part 324 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831*o,* 1835, 3907, 3909, 4808; 5371; 5412; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub. L. 111–203, 124 Stat. 1376, 1887 (15 U.S.C. 78o–7 note), Pub. L. 115–174; section 4014 § 201, Pub. L. 116–136, 134 Stat. 281 (15 U.S.C. 9052).

■ 17. In § 324.2, revise the definition of ''Covered debt instrument'' to read as follows:

§ 324.2 Definitions.

* * * * *

Covered debt instrument means an unsecured debt instrument that is:

(1) Both:

(i) Issued by a depository institution holding company that is subject to a long-term debt requirement set forth in

§ 238.182 or § 252.62 of this title, as applicable, or a subsidiary of such depository institution holding company; and

(ii) An eligible debt security, as defined in § 238.181 or § 252.61 of this title, as applicable, or that is pari passu or subordinated to any eligible debt security issued by the depository institution holding company; or

(2) Both:

(i) Issued by a U.S. intermediate holding company or insured depository institution that is subject to a long-term debt requirement set forth in § 374.3 of this chapter or § 54.3, § 216.3, or § 252.162 of this title, as applicable, or a subsidiary of such U.S. intermediate holding company or insured depository institution; and

(ii) An eligible external debt security, as defined in § 374.2 of this chapter or § 54.2, § 216.2, or § 252.161 of this title, as applicable, or that is pari passu or subordinated to any eligible external debt security issued by the U.S. intermediate holding company or insured depository institution; or

(3) Issued by a global systemically important banking organization, as defined in § 252.2 of this title other than a global systemically important BHC; or issued by a subsidiary of a global systemically important banking organization that is not a global systemically important BHC, other than a U.S. intermediate holding company subject to a long-term debt requirement set forth in § 252.162 of this title; and where,

(i) The instrument is eligible for use to comply with an applicable law or regulation requiring the issuance of a minimum amount of instruments to absorb losses or recapitalize the issuer or any of its subsidiaries in connection with a resolution, receivership, insolvency, or similar proceeding of the issuer or any of its subsidiaries; or

(ii) The instrument is pari passu or subordinated to any instrument described in paragraph (3)(i) of this definition; for purposes of this paragraph (3)(ii) of this definition, if the issuer may be subject to a special resolution regime, in its jurisdiction of incorporation or organization, that addresses the failure or potential failure of a financial company and any instrument described in paragraph (3)(i) of this definition is eligible under that special resolution regime to be written down or converted into equity or any other capital instrument, then an instrument is pari passu or subordinated to any instrument described in paragraph (3)(i) of this definition if that instrument is eligible under that special resolution regime to be written down or converted into equity or any other capital instrument ahead of or proportionally with any instrument described in paragraph (3)(i) of this definition; and

(4) Provided that, for purposes of this definition, *covered debt instrument* does not include a debt instrument that qualifies as tier 2 capital pursuant to § 324.20(d) or that is otherwise treated as regulatory capital by the primary supervisor of the issuer.

* * * * *

■ 18. In § 324.22, revise paragraphs (c)(1) and (h)(3)(iii) introductory paragraph to read as follows:

§ 324.22 Regulatory capital adjustments and deductions.

* * * * *

(c) * * *

(1) *Investment in the FDIC-supervised institution's own capital or covered debt instruments.* An FDIC-supervised institution must deduct an investment in its own capital instruments, and an advanced approaches FDIC-supervised institution also must deduct an investment in its own covered debt instruments, as follows:

(i) An FDIC-supervised institution must deduct an investment in the FDIC-supervised institution's own common stock instruments from its common equity tier 1 capital elements to the extent such instruments are not excluded from regulatory capital under § 324.20(b)(1);

(ii) An FDIC-supervised institution must deduct an investment in the FDIC-supervised institution's own additional tier 1 capital instruments from its additional tier 1 capital elements;

(iii) An FDIC-supervised institution must deduct an investment in the FDIC-supervised institution's own tier 2 capital instruments from its tier 2 capital elements; and

(iv) An advanced approaches FDIC-supervised institution must deduct an investment in the institution's own covered debt instruments from its tier 2 capital elements, as applicable. If the advanced approaches FDIC-supervised institution does not have a sufficient amount of tier 2 capital to effect this deduction, the institution must deduct the shortfall amount from the next higher (that is, more subordinated) component of regulatory capital.

* * * * *

(h) * * *

(3) * * *

(iii) For an investment in an FDIC-supervised institution's own capital instrument under paragraph (c)(1) of this section, an investment in the capital of an unconsolidated financial institution under paragraphs (c)(4) through (6) and (d) of this section (as applicable), and an investment in a covered debt instrument under paragraphs (c)(1), (5), and (6) of this section:

* * * * *

PART 374—LONG-TERM DEBT REQUIREMENTS

■ 19. Add part 374 as set forth at the end of the common preamble.

■ 20. Amend part 374 by:

■ a. Removing ''[AGENCY]'' and adding ''FDIC'' in its place wherever it appears.

■ b. Removing ''[AGENCY AUTHORITY]'' and adding ''12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1831o, 1835, 3907, 3909; 5371; 5412; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note).''

■ c. Removing ''[AGENCY TOTAL LEVERAGE EXPOSURE]'' and adding ''§ 324.10(c)(2) of this chapter'' in its place wherever it appears.

■ d. Removing ''[BANK]'' and adding ''FDIC-supervised institution'' in its place wherever it appears.

■ e. Removing ''A FDIC-supervised institution'' and adding ''An FDIC-supervised institution'' in its place wherever it appears.

■ f. Removing ''a FDIC-supervised institution'' and adding ''an FDIC-supervised institution'' in its place wherever it appears.

■ g. Removing ''[BANK's]'' and adding ''FDIC-supervised institution's'' in its place wherever it appears.

■ h. Removing ''[BANKS]'' and adding ''FDIC-supervised institutions'' in its place wherever it appears.

■ i. Removing ''[AGENCY NOTICE PROVISION]'' and adding ''§ 324.5 of this chapter'' in its place wherever it appears.

■ j. Removing ''[AGENCY LEVERAGE RATIO]'' and adding ''§ 324.10(b)(4) of this chapter'' in its place wherever it appears.

■ k. Removing ''[AGENCY SUPPLEMENTARY LEVERAGE RATIO]'' and adding ''§ 324.10(c)(1) of this chapter'' in its place wherever it appears.

■ l. Removing ''[OTHER AGENCIES' LONG–TERM DEBT REQUIREMENT]'' and adding ''part 54 of this title, or part 216 of this title'' in its place wherever it appears.

■ m. Removing ''[OTHER AGENCIES' SCOPING PARAGRAPHS]'' and adding

''§§ 54.1(a)(1) through (2) of this title, or §§ 216.1(a)(1) through (2) of this title'' in its place wherever it appears.

■ n. Removing ''[AGENCY AA NOTIFICATION PROVISION]'' and adding ''§ 324.121(d) of this chapter'' in its place wherever it appears.

■ o. Removing ''[AGENCY CAPITAL RULE DEFINITIONS]'' and adding ''§ 324.2 of this chapter'' in its place wherever it appears.

■ 21. Amend § 374.2 by adding definitions for ''FDIC-supervised institution'', ''State nonmember bank'', and ''State savings association'' in alphabetical order to read as follows:

§ 374.2 Definitions.

* * * * *

FDIC-supervised institution means any state nonmember bank or state savings association.

* * * * *

State nonmember bank means a State bank that is not a member of the Federal Reserve System as defined in section 3(e)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(e)(2)), the deposits of which are insured by the FDIC.

* * * * *

State savings association means a State savings association as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3)), the deposits of which are insured by the FDIC. It includes a building and loan, savings and loan, or homestead association, or a cooperative bank (other than a cooperative bank which is a state bank as defined in section 3(a)(2) of the Federal Deposit Insurance Act) organized and operating according to the laws of the State in which it is chartered or organized, or a corporation (other than a bank as defined in section 3(a)(1) of the Federal Deposit Insurance Act) that the Board of Directors of the FDIC determine to be operating substantially in the same manner as a state savings association.

* * * * *

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 August 29, 2023.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–19265 Filed 9–18–23; 8:45 am]

BILLING CODE 4810–33– 6210–01–6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 360

RIN 3064–AF90

Resolution Plans Required for Insured Depository Institutions With $100 Billion or More in Total Assets; Informational Filings Required for Insured Depository Institutions With at Least $50 Billion But Less Than $100 Billion in Total Assets

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The FDIC is seeking comment on a proposal to revise its current rule that requires the submission of resolution plans by insured depository institutions (IDIs) with $50 billion or more in total assets. The proposal would modify the current rule by revising the requirements regarding the content and timing of resolution submissions as well as interim supplements to those submissions provided to the FDIC by IDIs with $50 billion or more in total assets in order to support the FDIC's resolution readiness in the event of material distress and failure of these large IDIs. IDIs with $100 billion or more in total assets will submit full resolution plans, while IDIs with total assets between $50 and $100 billion will submit informational filings. The proposed rule would also enhance how the credibility of resolution submissions will be assessed, expand expectations regarding engagement and capabilities testing, and explain expectations regarding the FDIC's review and enforcement of IDIs' compliance with the rule.

DATES: Comments must be received by November 30, 2023.

ADDRESSES: You may submit comments on the notice of proposed rulemaking, identified by RIN 3064–AF90, by any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/. Follow instructions for submitting comments on the FDIC's website.*
- *Email: comments@fdic.gov.* Include ''RIN 3064–AF90'' in the subject line of the message.
- *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments/Legal OES (RIN 3064–AF90), 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: All comments received, including any personal information provided, will 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 document 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: Elizabeth Falloon, Senior Advisor, Division of Complex Institution Supervision and Resolution, 202–898–6626, *efalloon@fdic.gov*; Kent R. Bergey, Associate Director, Division of Complex Institution Supervision and Resolution, 917–320–2834, *kebergey@fdic.gov*; Aaron Wishart, Chief, Policy Analysis, Division of Complex Institution Supervision and Resolution 202–898–6982, *awishart@fdic.gov*; Audra Cast, Deputy Director, Division of Resolutions and Receiverships 312–382–7577, *acast@fdic.gov*; Shawn Khani, Deputy Director, Division of Resolutions and Receiverships 703–254–0843, *skhani@fdic.gov*; Varanessa Marshall, Assistant Director, Division of Resolution and Receiverships 678–916–2233, *vamarshall@fdic.gov*; Celia Van Gorder, Senior Counsel, Legal Division 202–898–6749, *cvangorder@fdic.gov*; F. Angus Tarpley, III, Counsel, Legal Division 202–898–8521, *ftarpley@fdic.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction/Policy Objective
II. Background
III. Proposed Rule
A. Resolution Submissions
1. Scope
2. Submission Schedules
a. Submission Cycle and Additional Information Between Submissions

b. Resolution Submission by New CIDIs; Changes to Submission Dates
c. Status as a CIDI
3. Content Requirements
a. Identified Strategy
b. Failure Scenario
c. New and Modified Definitions
d. All Other Content Requirements
e. Interim Supplement
B. Credibility; Review of Resolution Submissions
1. Credibility Criteria
2. Resolution Submission Review and Credibility Determination; Resubmission; Notice of Feedback
C. Engagement and Capabilities Testing
1. Engagement
2. Capabilities Testing
3. Conclusion Letter
D. Enforcement
E. Additional Provisions
1. Approval by the CIDI Board of Directors
2. Incorporation from Other Sources
3. Financial Information
4. Indexing of Information and Analysis to Resolution Submission and Interim Supplement Content Requirements
5. Combined Resolution Submission and Interim Supplement by Affiliated CIDIs
6. Form of Resolution Submissions; Confidential Treatment of Resolution Submissions
7. Extensions and Exemptions
8. Transition
IV. Expected Effects
A. Proposed Changes to Current Rule, as Implemented
1. Effects on Group A CIDIs
a. Previously-Exempted Content Reinstated
b. No Routine FDIC-Issued Case-By-Case Exemptions
c. Codifying Guidance, New and Modified Plan Content Requirements, and Deleting Plan Content Requirements
d. Updated Reporting Compliance Estimates
2. Effects on Group B CIDIs
3. Marginal Effect of Proposed Changes
a. Marginal Effect of Proposed Change to Biennial Filing Cycle
b. Marginal Effect of Proposed Changes in Content
B. Effects on Insured Deposits and the Deposit Insurance Fund
C. Additional Economic Considerations and Effects
D. Overall Effects
V. Alternatives Considered
VI. Regulatory Analysis and Procedures
A. Paperwork Reduction Act
B. Regulatory Flexibility Act
C. Plain Language
D. Riegle Community Development and Regulatory Improvement Act of 1994

I. Introduction/Policy Objective

The FDIC's regulation ''Resolution plans required for insured depository institutions with $50 billion or more in total assets,[1]'' issued in 2012 [2] (current rule), requires insured depository institutions (IDIs) with $50 billion or more in total assets (covered IDIs or CIDIs) to submit resolution plans periodically. This resolution plan requirement was established to facilitate the FDIC's readiness to resolve a CIDI under the Federal Deposit Insurance Act of 1950, as amended (FDI Act) in the event of its insolvency.

This proposal builds on the FDIC's more than a decade-long experience implementing the current rule, providing guidance and feedback to CIDIs, and leveraging the content of submissions for the development of resolution strategies by the FDIC. Through this process, the FDIC has gained a better understanding of the challenges of resolving CIDIs and the importance of resolution plans and other related submissions to facilitate the FDIC's readiness in the event of a failure of one of these CIDIs. Part of the challenge arises from the wide range of business models and structures among CIDIs. While some of these CIDIs are engaged largely in traditional banking activities, with nearly all assets and activities conducted within the CIDI or its subsidiaries (the bank chain), others conduct significant non-banking activities. Many of the CIDIs have a broker-dealer subsidiary or affiliate that provides services to bank customers. The CIDIs subject to the current rule also include banks primarily engaged in a particular business segment, such as credit card services, as well as U.S. IDIs that are part of large foreign banking organizations. There is no one-size-fits-all resolution approach for these institutions; rather, the FDIC must be prepared to execute a range of resolution options, recognizing the trade-offs among those options. The FDIC's development of resolution strategies—and its assessment of the options and trade-offs that inform them—benefit from the CIDI's knowledge of its own firm, an understanding of the CIDI's relevant capabilities, and an awareness of the impediments to executing an orderly resolution of the CIDI. Across the different CIDI business models and structures, there are a variety of factors that increase the challenges and complexity of resolution in the event of the failure of these large banks. These factors include deposit profile as well as size and organizational complexity.

In general, the CIDIs tend to have a more significant proportion of uninsured deposits as compared to smaller banks. In the aggregate, more than 42 percent of deposits of IDIs over $50 billion in total assets are uninsured. High ratios of uninsured deposits increase resolution challenges, as was recently demonstrated in the failures of three large banks in the spring of 2023; Silicon Valley Bank (SVB), Signature Bank and First Republic Bank (First Republic). All were over $100 billion in size,[3] and at the time shortly before their distress and failure, the vast majority of their deposits was uninsured.[4]

The failures of SVB and Signature Bank on March 10 and 12, 2023, respectively were primarily caused by illiquidity precipitated by contagion effects, especially those resulting from withdrawals by uninsured depositors at unprecedented speed and volumes. The withdrawals were prompted in part by news of stress amplified through social media and other channels. As a result, the FDIC's resolution preparation runway and ability to market pre-failure were severely compressed. For both IDIs, the FDIC established a bridge depository institution (BDI) to continue bank operations during a brief marketing period. Less than two months following those failures, First Republic was placed in receivership and sold; although First Republic had a similar profile of largely uninsured deposits, it was able to manage its liquidity for several weeks prior to failure. With additional time to market First Republic pre-failure, the FDIC was able to transfer all of the assets and liabilities to a single acquirer without the necessity of establishing a BDI, although the FDIC stood ready to exercise the authority to form a BDI if needed.

In addition, the FDIC lacked important resolution planning information to facilitate marketing the IDIs. While SVB and First Republic had filed their first resolution plans just a few months before their failures, the

[1] The proposed rule would determine total assets for the purpose of identifying CIDIs, including group A CIDIs and group B CIDIs, as described in proposed § 360.10(b), which adopts the approach used in the current rule. The phrase ''total assets'' refers to the total assets of the IDI as described in that section.

[2] 12 CFR 360.10. The rule was published as an interim final rule with an effective date of January 1, 2012, 76 FR 2011 (Sept 11, 2011); the final rule was effective April 1, 2012, 77 FR 3075 (January 23, 2012).

[3] The failure of Washington Mutual Bank in 2008 remains the largest bank failure in U.S. history. At the time of its failure, its assets totaled approximately $300 billion. First Republic, SVB, and Signature Bank, respectively, were the second, third, and fourth largest bank failures in history.

[4] As of December 31, 2022, SVB reported 88% of its deposits were uninsured; its total assets were approximately $209 billion. Signature Bank reported 90% uninsured deposits and total assets of approximately $110 billion. First Republic reported 68% uninsured deposits and total assets of approximately $213 billion.

FDIC had neither completed review nor had the opportunity to provide feedback on those plans. In general, the FDIC has found that development of fulsome resolution plans is an iterative process, building on feedback. Signature Bank had not yet filed any resolution plan, as its first submission was due in June 2023. Thorough and timely resolution planning information would have supported the FDIC's ability to prepare to more effectively and efficiently market the failed IDIs, including providing options for franchise components and asset portfolios that could have been offered in useful combinations and alternatives.

In addition to increasing the risk of a precipitous liquidity failure, a high level of uninsured deposits also increases resolution complexity in other ways. Under the FDI Act, any transaction using FDIC assistance—including where assistance is provided in connection with the establishment of a BDI—must meet the least-cost test, absent a systemic risk exception. Under the least-cost test, the cost to the deposit insurance fund (DIF) as a result of any sale needs to be less than the cost to the DIF from simply liquidating the bank's assets and paying off insured deposits. Where the proportion of insured deposits is very low, potential costs to the DIF of paying out insured depositors and liquidating is low relative to any other option in resolution. In the case of SVB and Signature Bank, a systemic risk exception to the least-cost test was necessary to protect uninsured depositors to maintain franchise value and mitigate adverse effects on economic conditions or financial stability, including the risk of contagion to other IDIs.

Size of an IDI also can significantly impact the resolution options available to the FDIC under the FDI Act, as well as provide a marker for other resolution challenges, such as organizational complexity and higher levels of uninsured deposits. In particular, as IDIs increase in size, the likelihood of a timely sale to a single acquirer diminishes. Currently, there are 45 IDIs with at least $50 billion in total assets and 31 over $100 billion. As a group, these CIDIs represent approximately $13.8 trillion in total deposits. While a closing weekend sale may be an option in some cases, its availability cannot be assumed in view of the size, complexity, and potential speed of failure of a CIDI. This is particularly true for the largest CIDIs with $100 billion or more in total assets because the pool of potential acquirers for these institutions is extremely limited, and the complexity of any possible transaction is increased. While there is a larger pool of possible acquiring institutions for CIDIs in the $50 to $100 billion total asset range, some of these institutions engage in highly complex activities and pose similar levels of operational complexity as those over $100 billion in total assets. As such, these activities must be identified and considered when contemplating resolution strategies.

Thus, this proposal addresses two distinct groups of CIDIs based on size, with differing corresponding obligations for each group under the proposed rule.

The first group comprises those IDIs with $100 billion or more in total assets (group A CIDIs). The proposed rule would require group A CIDIs to submit full resolution plans containing an identified strategy appropriate to the CIDI for its orderly and efficient resolution, as well as providing all other content elements described in the proposed rule. The second group comprises those IDIs with at least $50 billion but less than $100 billion in total assets (group B CIDIs). The proposed rule would require resolution submissions from group B CIDIs in the form of an informational filing. The informational filing would not require development of an identified strategy for resolution nor the demonstration of capabilities necessary to produce valuations needed in assessing the least-cost test. All CIDIs would be required to participate in engagement and capabilities testing regarding matters related to their resolution submissions.

Based upon these considerations, and the FDIC's experience in planning for and executing bank resolutions since the adoption of the current rule, the FDIC is proposing changes intended to make the resolution submissions more useful and appropriately focused on the resolution challenges presented by both group A CIDIs and group B CIDIs.

Specifically, this proposal would:

- Clarify and enhance resolution submission requirements applicable to IDIs with $50 billion or more in total assets, including resolution plans submitted by group A CIDIs and informational filings submitted by group B CIDIs;
- Require each group A CIDI to provide an identified strategy for resolution that ensures timely access to insured deposits, maximizes value from the sale or disposition of assets, minimizes any losses realized by creditors of the group A CIDI in resolution, and addresses potential risks of adverse effects on U.S. economic conditions or financial stability;
- Clarify requirements with respect to the assumptions for the failure scenario used by group A CIDIs in the resolution plan submission and reserve the ability of the FDIC to provide additional parameters for the failure scenario for all group A CIDIs or specific individual group A CIDIs in future plan submission cycles;
- Strengthen resolution submission content elements and associated requirements regarding capabilities to support optionality available to the FDIC and ensure that the FDIC's development of resolution strategies reflects considerations related to the characteristics of the individual CIDI and potential challenges that could be faced in resolution;
- Refine the requirements for group A CIDIs with respect to least-cost analysis and focus on ensuring that the FDIC has the building blocks and capabilities it needs to undertake the least-cost test in resolution in the event of failure of a group A CIDI;
- Adjust the frequency of resolution submissions to accommodate a two-year cycle that includes engagement and capabilities testing as well as periodic interim supplements containing specified resolution submission content items;
- Establish an enhanced credibility standard for resolution submissions and clarify the process for review and feedback to identify and address weaknesses in resolution submissions and enforce the rule;
- Establish a requirement for informational filings to be submitted by group B CIDIs that is focused on information most important and appropriate for resolution of those CIDIs, and establish a credibility standard appropriate to the informational filings; and
- Codify certain aspects of guidance and feedback previously issued to IDIs subject to the current rule.

In finalizing this proposal, the FDIC proposes to supersede all prior guidance and feedback related to the current rule.

The proposed rule retains the approach of the current rule in requiring each group A CIDI to develop a strategy for resolution that is appropriate for its size, complexity, and risk profile. However, the FDIC is mindful that the scenario for failure of a large, complex IDI cannot be predicted and could occur across a wide range of circumstances, both idiosyncratic to the institution and with respect to the greater economy. The FDIC will need to determine the strategy most appropriate to the scenario at the time, which may or may not be the strategy described in the group A CIDI's resolution plan.

While approximately 95 percent of the resolutions conducted by the FDIC since 2007 involved the sale of the IDI's

franchise and assets to an open institution, the option of a transaction with a single acquirer where nearly all of the liabilities of the failed IDI are assumed that can close at the time of failure cannot be assumed to always be available to the FDIC. In particular, for the group A CIDIs under the proposed rule, the likelihood of a closing weekend sale is diminished because of the potential for a rapid liquidity failure, the limited pool of possible acquirers, and the complexity of such a transaction. Thus, while a transaction with a single acquirer over closing weekend poses the least execution risk for the FDIC, and is often the least disruptive and most efficient, it may not be available. In that case, the FDIC would likely consider an approach that relies on the establishment of a limited-duration BDI, pursuant to a charter granted by the Office of the Comptroller of the Currency (OCC), that can continue the operations of the group A CIDI while it is being restructured, sold, or otherwise returned to private ownership in whole or in parts, or wound down in an orderly fashion. Accordingly, the group A CIDI's identified strategy would need to provide for the establishment and stabilization of a BDI and an exit in which the IDI is sold to one or more acquirers. This approach provides considerable useful optionality to the FDIC in preparing for a resolution across a wide range of possible failure scenarios. As noted above, the FDIC did not have sufficient time to widely market SVB and Signature Bank prior to their failure. In order to provide time for bidders to conduct appropriate due diligence, the FDIC established BDIs for both banks, and provided flexible bidding options with respect to businesses and assets acquired. The rapid failure and lack of advanced resolution planning information created challenges in establishing optionality with respect to the components offered in the bidding framework. This resulted in a broad range of bidding structures that added challenge and complexity to evaluating bids and combinations of bids.

Although the FDIC believes that the proposed requirement to develop a scenario using a BDI will enable the FDIC to adopt a strategic approach with useful optionality to support resolution in most cases, the FDIC is aware that for some group A CIDIs, the structure and profile of the institution may suggest that another resolution strategy is better suited to the goals described in the proposed rule. In such a case, the group A CIDI may use a different identified strategy that best meets the goals established in the proposed rule, such as a payout and liquidation of the bank, or a BDI to a different exit option. The proposed rule would not, however, permit the CIDI's identified strategy to be simply a sale of substantially all assets and liabilities over closing weekend. As noted, the FDIC cannot rely upon the availability of that strategy for group A CIDIs. In addition, its use as an identified strategy would provide less benefit to the FDIC in terms of information upon which to build optionality, as compared to a BDI strategy or liquidation. Regardless of the identified strategy used, the proposed rule would seek information and analysis that would inform the decisions that would be made by the FDIC at the time of an actual failure, and development of the strategic approaches appropriate to the actual scenario. The FDIC's goals in resolution are unchanged from those expressed in the current rule, and the proposed rule would seek to embed them more explicitly in an enhanced credibility standard and reflect them more fully in the requirements for resolution submission content. In order to meet the goals of an orderly resolution that is least-costly to the DIF, protects depositors, and maximizes return, the FDIC must have an understanding of the obstacles to an individual IDI's resolution—and potential mitigants to those obstacles—including the impact of separation of the IDI from its parent company and affiliates and the impact on the business of the IDI and the continuity of its critical services. Because the use of a BDI may be a likely approach in many scenarios, an important focus of the proposed rule is the information, analysis, and capabilities necessary to establish and stabilize a BDI, including valuation information and capabilities that would support the FDIC's least-cost test analysis in evaluating a BDI strategy against other options.

The proposed rule requires a more limited informational filing from group B CIDIs, and does not require group B CIDIs to develop a resolution strategy or submit certain other content elements. The FDIC believes that the approach taken for group B CIDI requirements appropriately recognizes the additional complexity and greater resolution challenges applicable to the group A CIDIs. The threshold of $100 billion in total assets—which is also used in the Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended (Dodd-Frank Act) [5] and other rulemakings as a basis for assessing a banking organization's financial stability and safety and soundness risks [6]—is an appropriate threshold to apply to distinguish resolution submission requirements for group A and group B CIDIs.

Finally, the proposed rule would establish an expectation of complete resolution submissions by the CIDIs biennially. This biennial submission cycle is intended to balance the need for up-to-date information the time that it takes for CIDIs to prepare a complete submission, and to allow for thorough plan review, engagement and capabilities testing to supplement that review. In order to facilitate the FDIC's planning and readiness, CIDIs would be required to provide current information in non-submission years through an interim supplement that would include limited specified information that would be provided in years where a complete submission is not required.

II. Background

The current rule was proposed in 2010 and became effective in 2012; [7] it has not been amended to date. It requires IDIs with $50 billion or more in total assets to periodically submit resolution plans that should enable the FDIC to resolve the CIDI in the event of its insolvency under the FDI Act. Since issuing the current rule, the FDIC and many CIDIs have been through multiple resolution plan submission cycles. As a result of this experience, the FDIC has identified those aspects of the resolution planning process that are most valuable and those that could be clarified or enhanced to ensure that the CIDIs' submissions and participation better support the rule's objectives.

In 2014, the FDIC provided further clarification, guidance, and direction for the preparation of subsequent CIDI resolution plans with a focus on the failure scenario, resolution strategies, least-cost analysis, and identified obstacles to be discussed in the

[5] *See* 12 U.S.C. 5365(a)(2)(C). The threshold for enhanced prudential standards under that provision was established through passage of the Economic Growth, Regulatory Relief, and Consumer Protection Act in 2018.

[6] *See, e.g.,* 84 FR 59230 (Nov. 1, 2019) (codified at 12 CFR parts 3, 50, 217, 249, 324, & 329).

[7] 77 FR 3075 (Jan. 23, 2012) (Final Rule); 76 FR 58379 (Sep. 21, 2011) (Interim Final Rule); 75 FR 27464 (May 17, 2010) (Proposed Rule). In 2014, the FDIC issued guidance for CIDIs' resolution plans. Guidance for Covered Insured Depository Institution Resolution Plan Submissions (2014), *https://www.fdic.gov/news/news/press/2014/pr14109a.pdf.*

resolution plan.[8] In addition, following each resolution plan submission cycle, the FDIC issued feedback letters to CIDIs with information for the subsequent plan submission.

After several plan submission cycles, in 2018 the FDIC announced a moratorium (moratorium) on the rule's requirements for all institutions pending completion of a new rulemaking.[9] At the time the moratorium was adopted, the FDIC also published an advance notice of proposed rulemaking (ANPR),[10] which requested comment on how to tailor and improve the current rule, including how to reduce the burden associated with the least-cost test analysis and whether requirements should be tiered based on size or complexity factors of cohorts of CIDIs. The ANPR also requested comment on potential enhancement of engagement and capabilities testing. At that time, the FDIC extended the due date for future plan submissions pending completion of the rulemaking process.

Following the issuance of the ANPR, the FDIC continued to further develop its thinking regarding resolution planning for large IDIs and how to maximize the FDIC's resolution readiness. In 2020–2021, the FDIC undertook targeted engagement with select CIDIs on their 2018 plan submissions, a step consistent with the enhanced emphasis on engagement and capabilities testing envisioned under the ANPR.

In January 2021, the FDIC Board took action to lift the moratorium on the resolution plan requirement for CIDIs with $100 billion or more in assets [11] and, in June 2021, the FDIC issued a policy statement (Statement) to describe how it planned to implement going forward certain aspects of the current rule with respect to those CIDIs. All prior guidance and feedback was superseded by this Statement.[12] For CIDIs with total assets of at least $50 billion and less than $100 billion, the moratorium on submission of resolution plans remained in effect. CIDIs with $100 billion or more in total assets are submitting resolution plans in accordance with a schedule established by the FDIC from December 1, 2022, through December 1, 2023. Consistent with the Statement, each of these CIDIs received exemptions from certain content requirements under the current rule and may submit streamlined resolution plans for review in this cycle. The proposed rule would build upon the Statement, eliminating on a permanent basis some of the content elements where exemptions were provided to all or some CIDIs for the current submission cycle and adjusting and providing additional context and clarity to others, as well as incorporating limited proposed new content requirements. It also would propose a modified approach to the CIDIs with at least $50 billion and less than $100 billion in total assets that provides clarity and certainty with respect to the requirements applicable to those CIDIs and limits the submission requirements for those CIDIs to an informational filing that is appropriate to the relative complexity of the resolution of those CIDIs.

In addition to enacting and implementing the current rule, the FDIC has instituted several rulemakings that support its mission as deposit insurer to make timely insured deposit payments and, as resolution authority, to resolve a failed IDI in the manner that is least costly to the DIF. These separate rulemakings address certain difficulties the FDIC could face in the closing of a large, complex IDI, and include *Recordkeeping for Timely Deposit Insurance Determination* (part 370) and *Recordkeeping Requirements for Qualified Financial Contracts* (part 371).[13] Part 370 requires covered institutions, namely IDIs with two million or more deposit accounts, to put in place mechanisms to facilitate prompt deposit insurance determinations. Part 371 requires IDIs in a troubled condition to keep detailed records in a specified, standard format regarding their qualified financial contracts. This information would be used by the FDIC, were it appointed receiver, in making a determination of which qualified financial contracts entered into by the failed institution (if any) will be transferred within the brief statutory window.[14]

Separate from the FDI Act and the current rule's requirements, section 165(d) of the Dodd-Frank Act mandates that certain bank holding companies and nonbank financial companies (covered companies) submit resolution plans (DFA resolution plans) for the rapid and orderly resolution of the covered company under the U.S. Bankruptcy Code.[15] The goal of DFA resolution plans, which is different from that of resolution plans under the current rule, is to reduce the likelihood that the financial distress or failure of a covered company would have serious adverse effects on financial stability in the United States by requiring covered companies to report periodically their plans for rapid and orderly resolution under the U.S. Bankruptcy Code in the event of material financial distress or failure and without public support.

In November 2019, the Board of Governors of the Federal Reserve System (FRB) and the FDIC published a joint final rule (section 165(d) rule) [16] to reflect improvements identified since the FDIC and the FRB finalized their initial joint resolution plan rule in November 2011 [17] and to address amendments to the Dodd-Frank Act made by the Economic Growth, Regulatory Relief, and Consumer Protection Act.[18] Key changes to the initial section 165(d) rule include an extension of the DFA resolution plan filing cycle from annual to once every two or three years and the establishment of risk-based categories for determining the frequency and scope of resolution plan submissions.

While the current rule and the section 165(d) rule both require planning for the resolution of large, complex financial institutions, to minimize the cost and disruption of failures, there are some noteworthy differences between the section 165(d) rule requirements and the current rule. Most fundamentally, the section 165(d) rule requirements are focused on financial stability and mitigating systemic risk. The current rule's requirements, by contrast, are focused on the FDIC's ability to resolve a particular IDI. This focus includes two critical priorities: (1) that insured depositors have access to their cash in an orderly fashion and as quickly as possible; and (2) that the FDIC must

[8] *See* FDIC Issues Guidance for the Resolution Plans of Large Banks (Dec. 17, 2014), *https://archive.fdic.gov/view/fdic/4821*.

[9] *See* Press Release, Fed. Deposit Ins. Corp., FDIC Seeks Comment on New Approaches to Insured Depository Institution Resolution Planning (Apr. 16, 2019), available at *https://www.fdic.gov/news/press-releases/2019/pr19034.html*.

[10] *See* FDIC Seeks Comment on New Approaches to Insured Depository Institution Resolution Planning (April 16, 2019), *https://www.fdic.gov/news/press-releases/2019/pr19034.html*.

[11] *See* FDIC Announces Lifting IDI Plan Moratorium (Jan. 19, 2021), *https://www.fdic.gov/resauthority/idi-statement-01-19-2021.pdf*.

[12] Superseded guidance and feedback included the guidance issued in 2014 and the feedback letters provided to IDIs following review of IDIs' 2015 and 2016 resolution plan submissions.

[13] Codified at 12 CFR part 370 and 12 CFR part 371, respectively.

[14] The period between the day on which the FDIC is appointed receiver and 5:00 p.m. Eastern time on the following business day; *see* 12 U.S.C. 1821(e)(8)(G)(ii)(II).

[15] 12 U.S.C. 5365(d). The DFA resolution plan of a foreign-based covered company must provide for the rapid and orderly resolution of its U.S. operations and entities.

[16] 84 FR 59194 (Nov. 1, 2019) (codified at 12 CFR parts 243 & 381).

[17] 76 FR 67323 (Nov. 1, 2011).

[18] Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law 115–174, 132 Stat. 1296 (2018).

protect taxpayers and minimize potential losses to the DIF, which taxpayers stand behind.

Another difference between the section 165(d) rule requirements and the current rule is that the section 165(d) rule focuses on the entire banking organization, including the holding company and nonbank affiliates and envisions a resolution under the U.S. Bankruptcy Code.[19] By contrast, the current rule (and likewise the proposed rule) focuses only on the IDI subsidiary and envisions a resolution using the FDIC's traditional resolution tools under the FDI Act. In some cases, the preferred strategy in a firm's DFA resolution plan includes the separate resolution of material entities within the group under applicable insolvency regimes other than bankruptcy, including resolution of a subsidiary IDI under the FDI Act, and the FDIC would need to be prepared to execute that portion of a multiple point of entry strategy where necessary. Thus, while there are important differences between the two rules, they are complementary, with the IDI plans specifically focused on the execution of a resolution by the FDIC under the FDI Act and DFA resolution plans addressing the resolution considerations of the group as whole.

In keeping with the complementary purposes of the current rule and the section 165(d) rule, in developing this proposal, the FDIC has been mindful of the guidance that the FDIC and the FRB anticipate developing to help certain firms further develop their DFA resolution plans. That guidance is expected to be specifically addressed to Category II and Category III banking organizations,[20] a group that includes some firms with a subsidiary IDI that would be a CIDI under the proposed rule. The FDIC will continue to coordinate the elements of this proposal with the forthcoming guidance. In addition, where the information or content expectations of the section 165(d) rule and the proposed rule overlap, the proposed rule would specifically allow the incorporation of information from an affiliate's DFA resolution plan into a CIDI's resolution plan.

Recent events underscore the importance of robust resolution planning in advance of failure, particularly for these large and complex CIDIs. The speed of bank runs has been accelerated by advances in banking technology that allow deposits to move electronically, with no need to stand in line or wait for physical checks or bills. Advances in communications technology allow a message to reach hundreds of millions of screens instantaneously. In the case of SVB, the speed of the run was the fastest and largest withdrawal of deposits in a single day in the nation's history. From a resolution planning perspective, this new reality underscores the need for effective resolution planning long before a bank's failure is on the horizon.

III. Proposed Rule

A. Resolution Submissions

1. Scope

Like the current rule, the proposed rule would apply to all IDIs with $50 billion or more in total assets. Under the proposed rule, however, the requirements pertaining to group A CIDIs (*i.e.,* IDIs with $100 billion or more in total assets) would differ from those pertaining to group B CIDIs (*i.e.,* IDIs with at least $50 billion but less than $100 billion in total assets).

Each group A CIDI would be required to periodically submit a resolution plan to the FDIC, including an identified resolution strategy for its resolution under an identified failure scenario. The development of this strategy, together with a description and analysis of institution-specific information and capabilities relevant to resolution, will facilitate the FDIC's ability to resolve a group A CIDI across a range of scenarios in a manner that ensures timely access to insured deposits, maximizes value from the sale or disposition of assets, minimizes any losses realized by creditors of the CIDI in resolution, and addresses potential risk of adverse effects on U.S. economic conditions or financial stability, while minimizing the cost of the resolution to the DIF. The resolution plan would be assessed based on the credibility of the resolution strategy as well as with respect to other information, analysis and capabilities included and described in the resolution plan. Each group A CIDI would also be required to participate in engagement and capabilities testing as described below in section III.C.

Each group B CIDI would be required to periodically submit an informational filing to the FDIC that would consist of the informational content required under the proposed rule, but would not include the requirement for the development of an identified strategy as described in section III.A.3.a below, or the requirement to develop capabilities necessary to produce valuations needed in assessing the least-cost test and provide the related content described in section III.A.3.d below. The informational filing would assist the FDIC in developing its own resolution strategy for the firm. Each group B CIDI would be required to participate in engagement and capabilities testing as described below in section III.C.

The FDIC invites comment on all aspects of the scope of the proposed rule and the tiering of requirements for group A and group B CIDIs. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(1) Do commenters believe that total assets is the right metric to use to determine the scope of IDIs subject to the rule? If not, please suggest any better metrics to use to determine the scope of IDIs subject to the proposed rule's requirements.

(2) Do commenters believe that $50 billion is the right amount of total assets to use to distinguish CIDIs from IDIs not subject to the proposed rule? If not, please suggest a better threshold to use to establish the scope of IDIs subject to the proposed rule, and explain why the suggested threshold is a better option.

(3) Do commenters believe that there are CIDIs with less than $50 billion in total assets that should be subject to the proposed rule due to their complexity or other factors? If so, please explain the factors that suggest an IDI should be a CIDI regardless of its total assets and explain why those factors show that an IDI should be treated as a CIDI.

(4) Do commenters believe that total assets is the right metric to use to distinguish between group A CIDIs and group B CIDIs? If not, please suggest any better metrics to use to distinguish between groups of CIDIs and explain why the suggested metrics are preferable.

(5) Do commenters believe that $100 billion is the right level of total assets to use to distinguish between group A CIDIs and group B CIDIs? If not please suggest an alternative amount of total assets to use to distinguish between groups of CIDIs and explain why the suggested amount is preferable.

(6) Do commenters believe that there are CIDIs with between $50–$100 billion in total assets that would warrant group A CIDI status due to their complexity or other factors? If so, please explain the factors that suggest these CIDIs should

[19] In the case of a foreign-banking organization, the section 165(d) rule's focus on U.S. entities and operations may include U.S. nonbank operations and intermediate holding companies.

[20] Category II and III banking organizations generally comprise banking organizations, other than the Category I U.S. global systemically important bank holding companies, that have over $250 billion in qualifying assets or over $100 billion in qualifying assets and meet certain other risk-based indicators. Qualifying assets are, for a domestic banking organization, average total consolidated assets, or, for a foreign-based organization, average combined U.S. assets. *See* 12 CFR 252.5.

be group A CIDIs regardless of their average total assets and explain why those factors show the CIDI warrants group A CIDI treatment.

2. Submission Schedules

a. Submission Cycle and Additional Information Between Submissions

Since the current rule's enactment in 2012, the FDIC has observed that the annual plan submission requirement has been challenging for both the CIDIs and the FDIC. An annual submission cycle does not allow the FDIC sufficient time to thoroughly review CIDIs' submissions and develop meaningful feedback, nor does it provide sufficient time for CIDIs to incorporate that feedback into their subsequent submissions. Moreover, an annual cycle limits the opportunity for meaningful engagement between the FDIC and a CIDI between submissions. As discussed in section III.C below, the FDIC expects engagement and capabilities testing to be significant components of the resolution planning process under the proposed rule. At the same time, the FDIC is aware of the importance of up-to-date submissions, particularly as CIDIs continue to change, in some cases rapidly. In the case of rapid liquidity failures, which are more likely for large banks as reflected in the failures of spring 2023, timely information on hand is needed to support a short period to prepare for resolution, including establishment of a BDI and marketing the IDI franchise and the franchise components.

To balance these considerations, going forward, the FDIC proposes to establish a submission schedule that provides adequate time for review of a submission and the development of feedback; engagement and capabilities testing; and the CIDI's development of content for the next resolution submission that is responsive to feedback, as well as requiring limited interim supplements to provide timely updates of the most critical information.

Accordingly, under proposed § 360.10(c)(1), each CIDI would provide a complete resolution submission to the FDIC every two years, with the submission of a limited interim supplement every other year. The interim supplement is intended to provide critical up-to-date information that will update certain limited elements of submission content. In considering what information should be included in the supplement, the FDIC intends to limit the information to the most essential data elements that are can be efficiently updated year over year to maximize the utility of the information to the FDIC, while limiting the burden to CIDIs of the interim supplement requirement.

The FDIC retains the discretion to alter the submission dates upon written notice to the CIDI. Consistent with past practice, the FDIC expects to provide notice of a different schedule in a timely fashion to accommodate appropriate time for preparation of the submission.

Under the proposed submission schedule, the FDIC would create two submission cohorts of group A CIDIs, comprising roughly the same number of CIDIs, with each cohort to file a complete resolution plan on a date that will be specified by the FDIC every other year, beginning at least 270 days from the effective date of the final rule. This approach would allow for improved workflow and efficiency, would permit the FDIC to create filing cohorts of group A CIDIs with like characteristics to support horizontal analysis across the submission cohort, and would further support engagement and capabilities testing. Section III.E.8 below discusses in more detail the proposed approach to transition to filing under the amended rule's requirements after it is finalized.

All group B CIDIs would be in the same cohort, with an initial filing date at least 270 days from the effective date of the final rule.

The proposed rule would retain in modified form the existing section of the current rule concerning the provision of information in the event of material changes to CIDIs between resolution submissions. Proposed § 360.10(c)(4)(i) would retain the requirement of the current rule that a CIDI must provide the FDIC with a notice and explanation no later than 45 days after certain events. The proposed rule also would retain the current rule's exemption from this requirement if the date on which the CIDI would be required to submit the notice would be within 90 days before the date on which the CIDI is required to provide a regular submission. The proposed rule would, however, modify the set of events triggering the notice requirement. Proposed § 360.10(c)(4)(i) would replace the current trigger—a ''material event''—with ''material change.'' Under the current rule, a ''material event'' is ''any event, occurrence, change in conditions or circumstances or other change that results in, or could reasonably be foreseen to have, a material effect on the resolution plan of the CIDI.'' [21] Under the proposed rule, a ''material change'' would be a change in a CIDI's identified material entities, critical services, or franchise components or in its capabilities described in the most recent submission. ''Material change'' also would include a change to the CIDI's organizational structure, core business lines, size, or complexity, for example by merger, acquisition, or divestiture of assets, or similar transaction that may have significant impact on the CIDI's identified strategy. The purpose of the proposed change is twofold: first, to better reflect the modified informational requirements of the proposed rule; and second, to reflect the FDIC's experience under the current rule concerning the types of events for which contemporaneous notice is most useful to the FDIC.

The FDIC requests comments on all aspects of the proposed definition of material change and the proposed requirement that the CIDI provide notice of any material change. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(7) Is the proposed ''material change'' definition clear? Should other or different events trigger this notice requirement? Is 45 days an appropriate time frame for the notice requirement? The term ''material change'' is used in a similar context in the section 165(d) rule (12 CFR 381.2). Should the definition be revised to more closely align to the definition in the section 165(d) rule?

(8) Is the definition of material change over- or under-inclusive? Does it include all material events that would significantly impact the resolution submission and provide the FDIC with the notice it needs to assure consideration of whether new or updated resolution submission content would be important, necessary, or useful as a result of the change?

b. Resolution Submission by New CIDIs; Changes to Submission Dates

Under proposed § 360.10(c)(2), an IDI that becomes a CIDI after the effective date of the final rule would be required to provide its initial submission upon the date specified in writing by the FDIC, which would be no earlier than 270 days after the insured depository institution became a CIDI. The current rule provides that an IDI that becomes a CIDI after April 1, 2012, must submit its initial resolution plan no later than the following July 1, provided such date occurs no earlier than 270 days after the date it became a CIDI.[22]

The FDIC invites comments as to all aspects of the proposed submission schedule and the timing of submission

[21] 12 CFR 360.10(c)(1)(v)(A).

[22] 12 CFR 360.10(c)(1)(ii).

of resolution plans by group A CIDIs and informational filings by group B CIDIs, including the two-year cycle, the interim supplements, the FDIC's discretion to change the timing of submissions, and the treatment of material changes at a CIDI. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(9) Is the proposed two-year submission cycle appropriate? What would be the benefits or trade-offs of a longer or shorter period between submissions?

(10) Does a two-year cycle provide adequate time for all aspects of the resolution submission cycle (review, engagement, capabilities testing, provision of feedback, and development of responsive content in the next submission)?

(11) The FDIC is interested in comments on the dates of submissions, which would be commenced approximately a year after the effective date of the final rule. In the past, submissions have been required on December 1, December 31, or July 1. The FDIC may also consider other dates. In considering timing of submissions, are there dates that are more suitable or should be avoided? If so, what makes those dates more suitable or problematic?

(12) Under the current rule, the FDIC retained discretion to obtain material updates to a submission at its discretion upon notice to the CIDI, including but not limited to upon the occurrence of a material change. The proposed rule would eliminate that specific authority, relying upon the biennial complete submissions and interim supplements and would retain the FDIC's ability to change filing dates upon notice to the CIDIs. The FDIC seeks comment on whether the FDIC should retain the flexibility to change one or more filing dates upon its discretion, or upon the occurrence of a material change, or require additional interim updates, and if so, on what terms or conditions.

(13) Is a minimum of 270 days enough time for an IDI that becomes a CIDI to prepare a complete resolution submission? The FDIC notes that, under the proposed rule, the FDIC would have the authority to change the date by which a CIDI must submit its resolution submission subsequent to its initial submission, and that the FDIC would endeavor to provide written notice of the revised submission date at least one calendar year before the resolution submission is due.

c. Status as a CIDI

The proposed rule would clarify aspects of the current rule concerning when an IDI becomes, or ceases to be, a CIDI. The proposed rule also would address a CIDI moving between group A and group B.

First, the proposed rule would retain the approach taken in the current rule, that an IDI is deemed to be a CIDI based upon whether it has crossed the threshold of $50 billion based on the average of the total assets as shown on its four most recent reports of Condition and Income. For clarity, the proposed rule would expressly address the event of an increase in size due to merger or acquisition of assets, which is not explicitly addressed in the current rule. Proposed § 360.10(b) would provide that in the case of an IDI whose total assets have increased as the result of a merger, acquisition, combination, or similar transaction, the status of the IDI as a CIDI or a group A CIDI will be based upon the date of the consummation of the merger, acquisition, combination or other transaction. While the four quarter average protects against the possibility that firms move quickly in and out of the rule's scope, growth by merger and acquisition tends not to be transitory, and the combined IDI should become subject to the rule promptly, based upon its combined balance sheet.

In addition, the proposed rule would add clarity about when an IDI ceases to be a CIDI. The current rule defines a CIDI as an IDI with $50 billion or more in total assets, but does not specifically address how and when an IDI ceases being a CIDI.[23] Under proposed § 360.10(b), an IDI would cease to be a CIDI when it has less than $50 billion in total assets, as determined based upon the average of the institution's four most recent Reports of Condition and Income. The proposed rule provides a similar provision addressing when a group B CIDI would become—or cease to become—a group A CIDI. Addressing explicitly the circumstances under which an IDI ceases to be a CIDI would add useful clarity for IDIs and the public and would facilitate the FDIC's administration of the rule.

The FDIC requests comments on all aspects of the proposed approach to determining whether an IDI is a CIDI and whether it is a group A or a group B CIDI. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(14) Are the proposed changes to the rule concerning the process for determining when an IDI becomes, and ceases to be a CIDI, clear and appropriate? Should the FDIC consider Report of Condition and Income data for a period other than four consecutive quarters in ascertaining whether an IDI is a CIDI and whether a CIDI is a group A CIDI or a group B CIDI? This approach, which is also used in determining applicable requirements under the section 165(d) rule, *lessens the likelihood that IDIs bounce back and forth across the $50 billion or $100 billion threshold, but also delays the imposition of the requirements of the rule for IDIs that experience rapid growth, as was the case of SVB and Signature Bank. Should the FDIC consider other approaches to determining whether an IDI is subject to the requirements of the rule, or whether a CIDI is a group A CIDI, and if so, what other approaches should the FDIC consider, in weighing the balance between obtaining information promptly in the event of rapid growth, versus the risk that an IDI becomes subject to the requirements of the rule temporarily, if it hovers near the asset thresholds?*

(15) Is the approach in the proposed rule to a change due to merger, acquisition, or similar transaction, based on the date of consummation of the transaction, appropriate for determining whether an IDI is a CIDI, or a group A or B CIDI, appropriate and clear? If not, please suggest an alternative with justification.

3. Content Requirements

a. Identified Strategy

Like the current rule, the proposed rule would require a CIDI to develop a strategy for resolution that is appropriate for its size, complexity, and risk profile. As noted, however, this requirement would apply only to group A CIDIs and not to group B CIDIs. Since the current rule was issued in 2012, the FDIC and CIDIs have been through multiple resolution plan submission cycles, allowing the FDIC to further its resolution readiness and strategic planning for the resolution of CIDIs. In reviewing and evaluating options for resolution of CIDIs, the FDIC has considered a variety of resolution strategies across the range of CIDIs. This has informed the approach in the proposed rule and the parameters provided as to the expectations for the development of an identified strategy.

The current rule requires the resolution plan to provide a ''strategy for the sale or disposition of the deposit franchise, including branches, core business lines and major assets of the CIDI in a manner that ensures that depositors receive access to their

[23] 12 CFR 360.10(b)(4).

insured deposits within one business day of the institution's failure (two business days if the failure occurs on a day other than Friday), maximizes the net present value return from the sale or disposition of such assets and minimizes the amount of any loss realized in the resolution of cases.'' [24] The current rule also requires the resolution plan to provide a ''strategy to unwind or separate the CIDI and its subsidiaries from the organizational structure of its parent company in a cost-effective and timely fashion.'' [25]

In guidance and the preamble to the current rule, the FDIC has provided insight regarding strategies to be considered by CIDIs as they prepare their resolution plans, including a cash payment of insured deposits, a purchase and assumption agreement with an insured depository institution to assume only insured or all deposits, a purchase and assumption agreement with multiple insured depository institutions in which branches are broken up and sold separately, and a transfer of insured deposits to a BDI. Over time, the FDIC provided additional guidance and feedback with respect to the development of a strategy that includes transfer of assets and liabilities to, and the various options for exit from, a BDI, including through a multiple acquirer exit, initial public offering, or other capital markets transaction.

The proposed rule would require each group A CIDI to provide an identified strategy, which would describe the resolution from the point of failure through the sale or disposition of the group A CIDI's franchise, (including all of its significant business lines and segments and all of its major assets) in a manner that meets the credibility standard set forth in the proposed rule.[26] Because of the size and complexity of CIDIs, the development of an identified strategy that takes into account each IDI's organization, structure, business lines, and other characteristics provides significant insight into the obstacles that the FDIC might face in resolving the IDI, and what mitigating actions it can take to address those obstacles.

The strategic option that the FDIC considers most likely to be implemented for the group A CIDIs across the widest range of scenarios is the establishment of a BDI that can continue the operations of the CIDI. Generally, a BDI approach will allow the continuity of business operations and thereby preserve franchise value, and will allow time for restructuring and marketing to facilitate the sale or disposition of the business lines and related assets, while providing insured depositors with prompt access to their accounts. Accordingly, the proposed rule would establish the BDI approach as the default identified strategy. A BDI strategy must provide for the establishment and stabilization of a BDI and an exit strategy from the bridge, such as a multiple acquirer exit involving the regional breakup of the group A CIDI or sale of business segments, an orderly wind down of certain business lines and asset sales, an exit via restructuring and subsequent initial public offering or other capital markets transaction, or another exit strategy appropriate to the size, structure and complexity of the CIDI.

In addressing the establishment of the BDI, the proposed rule would not require that a resolution plan demonstrate that the identified strategy be the least-costly to the DIF of all available strategies; in particular, it would not be required to demonstrate that it would be less costly to the DIF than liquidation. Similarly, it would not be required to demonstrate satisfaction of the chartering condition set forth in section 11(n)(2)(A) of the FDI Act such as by demonstrating that the amount which is reasonably necessary to operate the BDI will not exceed the amount which is reasonably necessary to save the cost of liquidating the IDI.[27] Rather, each group A CIDI would be required to support its estimation that the identified strategy maximizes value and minimizes losses to the creditors of the group A CIDI. Valuation analysis discussed in section III.A.3.d below will support the FDIC's ability to evaluate the strategy's impact on value and its potential costs to the DIF across a range of options.

In addressing the stabilization of the BDI, the identified strategy may assume continuation of Federal Home Loan Bank advances and the availability of short-term liquidity advances from the DIF to meet temporary liquidity needs, provided that the identified strategy provides for timely repayment of those funds. The identified strategy should not assume use of the DIF to avoid losses to creditors of the BDI; all DIF advances must be made through a loan with an assured means of timely repayment.

Recognizing that the BDI approach may not be optimal for all group A CIDIs, the proposed rule would permit a different identified strategy if that different strategy would best address prong (i) of the credibility criteria (discussed in section III.B.1 below), could reasonably be executed by the FDIC across a range of likely failure scenarios, and would be more appropriate for the size, complexity and risk profile of the specific group A CIDI. An alternative identified strategy under the proposed rule could include transferring some but not all business lines and assets to a BDI and liquidating others in a receivership. For some group A CIDIs, a cash payment of insured deposits [28] and liquidation of all business lines and assets in receivership may be the most appropriate identified strategy.

Regardless of the identified strategy, under the proposed rule, any identified strategy would be required to include meaningful optionality for execution across a range of scenarios and provide the information and analysis that would inform the decisions that would be made by the FDIC at the time of an actual failure that could support optionality for the FDIC in undertaking a resolution of the CIDI following its material stress and failure. Meaningful optionality reflects an expectation that an identified strategy be flexible so that it can be adapted to a change in the failure scenario or an unexpected obstacle to its execution. The nature and extent of meaningful optionality will vary based upon the size and complexity of the CIDI. For instance, a relatively smaller and less complex CIDI with a focus on traditional banking may identify only a breakup between two business lines, or the spinoff or sale of a separable business unit. For the largest or most complex CIDIs, meaningful optionality might include alternatives such as a breakup by business lines and a regional breakup, or by sale of one or more identified franchise components as options for a sale of the IDI franchise.

Unlike the current rule, the proposed rule would expressly provide that the identified strategy may not be based

[24] 12 CFR 360.10(c)(2)(vi).

[25] 12 CFR 360.10(c)(2)(v).

[26] Prong (i) of the credibility criteria provides that a resolution submission by a group A CIDI is not credible if it would not provide timely access to insured deposits, maximize value from the sale or disposition of assets, minimize any losses realized by creditors of the group A CIDI in resolution, and address potential risks of adverse effects on U.S. economic conditions or financial stability. Prong (ii) of the credibility criteria provides that a resolution submission is not credible if the information and analysis in the resolution submission is not supported with observable and verifiable capabilities and data and reasonable projections or the CIDI fails to comply in any material respect with the informational content requirements of the proposal.

[27] *See* section 11(n)(2)(A)(i) of the FDI Act. There are three alternative conditions specified in the FDI Act, any one of which must be met.

[28] This task could be accomplished through a Deposit Insurance National Bank (DINB) established by the FDIC pursuant to 12 U.S.C. 1821(m).

upon the sale of substantially all assets and liabilities over closing weekend. While the FDIC recognizes that such a resolution outcome may be the most favorable approach when it is available, the FDIC will not accept this as the identified strategy for the group A CIDIs. For group A CIDIs, the pool of possible acquirers is very limited and any such transaction may involve long timelines and complex restructuring. In addition, the FDIC has learned that a resolution plan that assumes a single-acquirer all-deposit sale does not comprehensively address the complexities that would arise if that approach were not available, including the establishment and stabilization of a BDI, continuity of critical services, and the identification of franchise components. Therefore, utilizing an identified strategy that is a full purchase and assumption over resolution weekend is less useful to the FDIC for its resolution readiness than the identified strategy that would be required under the proposed rule.

The FDIC invites comment on all aspects of the requirement to include an identified strategy in the resolution plan. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(16) The proposed rule establishes formation and stabilization of a BDI as the default identified strategy. Do commenters agree with this choice as the default strategy or do they believe there should be a different default strategy? If a different approach is preferable, what strategy should be used and why?

(17) Is there a resolution planning benefit in providing a wider range of strategies and/or exit options as possible default identified strategies from which a CIDI may choose?

(18) Are the criteria for a group A CIDI choosing a different identified strategy other than the default clear and appropriate?

b. Failure Scenario

The proposed rule would streamline and clarify the framework for development of the failure scenario under which group A CIDIs develop an identified strategy. This scenario, known as the ''failure scenario,'' would be also used in connection with valuation analysis. Under the current rule, resolution plans are required to ''take into account that failure of the CIDI may occur under the baseline, adverse and severely adverse economic conditions developed by the FRB pursuant to 12 U.S.C. 5365(i)(1)(B).'' [29] The proposed rule would require analysis considering severely adverse economic conditions only and not baseline or adverse conditions. This change generally would incorporate the approach that the FDIC has permitted in recent resolution plan submissions. While an IDI can fail under any economic conditions, a severely adverse scenario is a reasonable assumption, and the FDIC has found that analysis under three different scenarios does not provide significant additional resolution information of value.

The proposed rule also would incorporate more specific requirements concerning the circumstances assumed to lead to the CIDI's failure. In the FDIC's more than ten years of experience of reviewing resolution plans under the Dodd-Frank Act and the current rule, the FDIC has learned that the submission is most valuable when it is based on the assumption that the CIDI has experienced material financial distress such that its failure is a result of the depletion of capital and/or liquidity. While the resolution strategy may be based on an idiosyncratic event or action, including a series of compounding events, the firm should justify all assumptions, consistent with the conditions of the economic scenario. Where the identified strategy assumes the sale of franchise components or a multiple acquirer exit, the resolution plan should take into account all issues surrounding its ability to sell in market conditions present in the applicable economic condition at the time of sale. To ensure that the resolution plan addresses the challenges that may occur in a wider range of scenarios, the proposed rule would require the identified strategy to be based on a failure scenario that demonstrates that the CIDI is experiencing material financial distress.

More specifically, the failure scenario would be required to assume and demonstrate that the CIDI experienced a deterioration of its asset base and that its high quality assets have been depleted or pledged due to increased liquidity requirements from counterparties and deposit outflows. While the immediate cause of failure may be based on liquidity shortfalls, the failure scenario also should consider the likelihood of the depletion of capital and losses in the assets of the CIDI, which may include embedded losses that have been realized but may not have been recognized by the CIDI for financial reporting purposes. The failure scenario must assume that the U.S. parent holding company is in bankruptcy, as this is often the case in a bank failure, and is consistent with the approach taken in DFA resolution plans. This proposed failure scenario requirement draws upon the requirement that a DFA resolution plan must assume that the firm has experienced material financial distress.[30] The FDIC expects that this consistent approach to the failure scenario would facilitate incorporation of information from the affiliate's DFA resolution plan to the CIDI resolution plan, as would be permitted under the proposed rule.

While the FDIC anticipates that the proposed approach to the scenario for CIDI resolution planning would facilitate development of an identified strategy and other plan information that is most useful to the FDIC across a range of scenarios, the FDIC is aware that likely failure scenarios are different for CIDIs with different business models, balance sheets, and risks. In addition, in future plan reviews, the FDIC might find value in focusing on particular kinds of failure scenarios, such as a rapid failure due to a run on uninsured deposits or deposits associated with a particular line of business; or cyber or other operational risks; or other risks that focus on particular business lines. For that reason, the proposed rule includes flexibility for the FDIC to devise specific failure scenario assumptions, with respect to macroeconomic conditions or the precipitating cause of failure, for individual CIDIs, for cohorts of CIDIs, or for all group A CIDIs in future resolution plan submissions. Any specific failure scenarios would be communicated in writing, at least twelve months before the next resolution plan is due.

The FDIC invites comments on all aspects of the proposed failure scenario requirements. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(19) Are there additional factors which would make the failure scenario more useful for the FDIC in resolution planning? How do those factors improve the quality of resolution plans?

(20) Are there aspects of the proposed failure scenario requirement that are unclear? For example, would further explication of what would constitute Federal assistance in recapitalization provide helpful clarity?

(21) Under the proposed rule, the FDIC may provide additional or alternative parameters for the failure scenario. Will this flexibility improve the usefulness of resolution plans in resolution planning? Is the process and timing for identifying changes to scenario assumptions clear and appropriate?

[29] 12 CFR 360.10(c)(2).

[30] *See, e.g.,* 12 CFR 381.5(b)(i).

c. New and Modified Definitions

The proposed rule would introduce a number of new defined terms and modify others, while other terms will be unchanged from the current rule. The proposed new and revised defined terms are as follows:

Affiliate. The proposed definition would be substantively unchanged from the current rule. The proposed rule would make a non-substantive wording change.

Appropriate Federal banking agency. This term is used in the current rule but is not defined. The proposed rule would add a definition from the FDI Act.

BDI. The proposed rule would create this defined term using the FDI Act's definition of bridge depository institution.

Capabilities testing. The proposed rule would add this new defined term, which is discussed in section III.C.2 below.

CIDI or covered insured depository institution. This definition would be modified to reflect that the proposed rule would create two categories of CIDIs: group A CIDIs and group B CIDIs.

Control. This term is used in the current rule but is not defined. The proposed rule would define it using the term in the FDI Act.

Core business lines. In addition to a technical revision to the definition, core business lines would be revised to mean the CIDI's business lines that are significant to the CIDI's revenue, profit, or franchise. Under the current rule's definition, core business lines are those that, upon failure, would result in a material loss of revenue, profit, or franchise value. This change is intended to reflect the designation of core business lines used by CIDIs in their business and regulatory reporting.

Critical services. The proposed rule would not materially change the current rule's definition of critical services. The examples of critical services would be eliminated from the definition because proposed § 360.10(d)(8), which incorporates, clarifies, and builds upon past guidance, would provide more robust descriptions of the content required, including clarifying that critical services can include both shared and outsourced services. The proposed rule would also add that critical services includes the CIDI's services and operations that support the execution of the identified strategy.

Critical services support. The proposed rule would add this new defined term, which is discussed in section III.A.3.d below.

DFA resolution plan. The new defined term would mean a CIDI's parent company's resolution plan submission pursuant to 12 U.S.C. 5365(d).

Engagement. The proposed rule would add this new defined term, which is discussed in section III.C.1 below.

Failure scenario. The proposed rule would add this defined term, which is discussed in section III.A.3.b above.

FDI Act. The current rule defines this term in 12 CFR 360.10(a). The proposed rule would retain that definition in proposed § 360.10(a) and would add a cross-reference to that definition.

Franchise component. The proposed rule would add this new defined term, which is discussed in section III.A.3.d below.

Group A CIDI: The proposed rule would add this defined term to mean CIDIs with $100 billion or more in total assets that would be required to submit resolution plans under the proposed rule.

Group B CIDI: The proposed rule would add this defined term to mean CIDIs with between $50 billion and $100 billion in total assets that would be required to submit informational filings under the proposed rule.

Identified strategy. The proposed rule would require each group A CIDI to choose for its resolution plan a strategy for its resolution in the event of its failure. Accordingly, the proposed rule would create a defined term to refer to such a strategy.

IDI franchise. The proposed rule would introduce this new defined term to mean all core business lines and all other business segments, branches, and major assets that constitute the IDI and its business as a whole. The current rule uses the term ''deposit franchise'' to mean a similar idea, but the current rule does not define this term.

Informational filing. The proposed rule would introduce the concepts of group B CIDIs and the distinct submissions that would be required of them. The proposed rule would create this term to mean the resolution submission that a group B CIDI would submit under the proposed rule.

Insured depository institution. The proposed definition would be substantively unchanged from the current rule. The proposed rule would make a non-substantive wording change.

Key depositors. The proposed rule would add this new defined term, which is discussed in section III.A.3.d below.

Key personnel. The proposed rule would add this new defined term, which is discussed in section III.A.3.d below. The definition of key personnel, which incorporates prior guidance [31] would clarify that key personnel includes personnel with an essential role or having a function, responsibility, or knowledge that is important to the resolution of the CIDI. Thus, while management are likely to be key personnel, the definition is not limited to responsible managers, but includes staff with specialized knowledge and responsibilities that are essential to continuity of operations. The definition makes clear that key personnel can be employed by any entity, or through contractors.

Least-cost test. The proposed rule would add this new defined term to mean the process for meeting the requirements regarding least-cost resolution under the FDI Act at 12 U.S.C. 1823(c).

Material asset portfolio. The proposed rule would add this defined term, which means a pool or portfolio of assets, including loans, securities or other assets, that is significant in terms of income or value to a core business line, and that could be sold in resolution.

Material change. The proposed rule would change the current rule's term ''material event'' to ''material change.'' In lieu of the current rule's focus on the occurrence of an event or a change in condition that could have an effect on the CIDI's resolution plan, the proposed rule's definition of material change would focus on changes to the CIDI, including the identification of material entities, or changes to the CIDI's capabilities described in the resolution submission. In administering the current rule, the FDIC has observed that not all CIDIs have interpreted the material change concept similarly. Accordingly, the intent of revising the defined term is to provide greater clarity and achieve improved consistency.

Material entity. The proposed rule would retain the current rule concept that a material entity is a company that is significant to the activities of critical services or core business lines, and would add that it also means a company that is significant to a franchise component. This proposed change reflects the introduction of the franchise component concept into the proposed rule. The proposed definition specifies that all IDIs in the firm, regardless of size or other characteristics are material entities, reflecting that all affiliated IDIs would be significant to the resolution of the CIDI under the FDI Act.

Multiple acquirer exit. This proposed new defined term is related to the identified strategy described above. The multiple acquirer exit is an option for

[31] Statement, p. 7–8.

exit from the BDI as part of a group A CIDI's default resolution strategy by divesting the operations and assets of the group A CIDI to multiple acquirers. This definition would clarify that this exit strategy is focused on the sale of going concern elements of the group A CIDI's businesses, *e.g.,* through a regional breakup of the CIDI's deposit franchise or a sale of business segments to multiple acquirers. It is not intended to describe a liquidation of the group A CIDI's assets, although asset sales that are incidental to these divestitures may be included in a multiple acquirer exit. The business segments or regional or other components identified for divestiture in the multiple acquirer exit should be appropriate to the business of the CIDI and its regional footprint and other characteristics.

Parent company affiliate. The proposed definition would be substantively unchanged from the current rule. The proposed rule would make a non-substantive wording change.

Qualified financial contract. This defined term would have the same meaning as set forth in the FDI Act to define qualified financial contract.

Regulated subsidiary. The proposed rule would add this defined term that encompasses a variety of domestic and foreign entities that are subsidiaries of the CIDI, including those that are subject to supervision or regulation by, or registration with, various domestic and foreign governmental entities. This definition is based upon the definition of ''functionally regulated subsidiary'' contained in 12 U.S.C. 1844(c)(5)(B), but has been expanded to include comparable subsidiaries formed and regulated under foreign law, as well as corporations organized under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*) or corporations having an agreement or undertaking with the Federal Reserve Board under section 25 of the Federal Reserve Act (12 U.S.C. 601 *et seq.*), commonly known as Edge Act corporations.

Resolution plan. The proposed rule would change this definition so that it only includes a resolution submission submitted by a group A CIDI instead of all submissions by CIDIs. This change would reflect the proposed rule's differing proposed requirements of group A CIDIs and group B CIDIs, as opposed to the uniform requirements of the current rule for all CIDIs.

Resolution submission. The proposed rule would require each group A CIDI to submit a resolution plan and each group B CIDI to submit an informational filing, with each type of submission having its own informational requirements. However, certain aspects of the proposed rule would apply to both types of submission; accordingly, the proposed rule would create this defined term to capture both types of submission.

Subsidiary. The proposed definition would be substantively unchanged from the current rule. The proposed rule would make a non-substantive wording change.

Total assets. The proposed rule would make non-substantive changes to improve wording, to reflect the current name of the Report of Condition and Income, and to clarify that the instructions to the Report of Condition and Income relate to the determination of total assets and not identification of CIDIs, which is addressed in the proposed rule.

United States. The proposed definition would be substantively unchanged from the current rule. The proposed rule would make a non-substantive wording change.

Virtual data room. The proposed rule would require a resolution submission to provide specified information concerning a virtual data room. Accordingly, the proposed rule would create a defined term to describe the concept and its parameters.

The FDIC invites comment on all aspects of the definitions in the proposed rule. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(22) Are all definitions clear and useful?

(23) Should additional changes be made?

d. All Other Content Requirements

In an effort to collect information that would better help the FDIC prepare to resolve a CIDI and to ensure that all CIDIs have key resolvability capabilities, the proposed rule would make a number of changes to the information a CIDI must submit to the FDIC in its resolution submission. Many of these proposed changes would incorporate and codify guidance the FDIC previously provided to CIDIs. The proposed changes would delete certain submission requirements, and modify others, in ways that may increase or lessen the type and amount of information required with respect to those content elements. The rule, as proposed, would supersede all prior guidance.

Except where otherwise noted, the following discusses the content requirements for both group A CIDIs' resolution plans and group B CIDIs' informational filings.

Executive summary, located at proposed § 360.10(d)(3), applicable only to group A CIDIs. Like the current rule, whose executive summary requirement is located at subpart 12 CFR 360.10(c)(2)(i), the proposed rule would require a group A CIDI to include an executive summary describing the key elements of its resolution plan. However, this revised subpart would reflect concepts that would be introduced by the proposed rule or incorporated from prior guidance, including asking for a description of the group A CIDI's identified strategy, an overview of the CIDI's franchise components, and a description of material changes. The proposed rule would also require a discussion of changes to the group A CIDI's previously submitted resolution plan resulting from any change in law or regulation, guidance or feedback from the FDIC, or any material change. Finally, the proposed rule would require a discussion of any actions the group A CIDI had taken since submitting its most recent resolution plan to improve the resolution plan's information and analysis, or to improve its capabilities to develop and timely deliver that information and analysis. The FDIC believes these changes would better reflect the key elements of a group A CIDI's resolution plan.

Organizational structure: legal entities; core business lines; and branches, located at proposed § 360.10(d)(4). The proposed rule would retain and modify the corresponding subpart in the current rule, 12 CFR 360.10(c)(2)(ii). The proposed rule would retain the current rule's requirement to describe the CIDI's domestic and foreign branch organization and would add the requirement to provide addresses and asset size. An organizational chart showing all relevant entities and their place in the CIDI's organizational structure may be helpful. The proposed rule would also retain the current rule's requirement to identify and describe the core business lines of the CIDI, the parent company, and parent company affiliates.

The proposed rule would introduce the requirement to identify all regulated subsidiaries, a new defined term discussed above in section III.A.3.c. The FDIC is seeking this information because it would assist the FDIC in identifying entities with capital, liquidity, and other requirements, and in assessing these entities' capital and liquidity needs when it is resolving a CIDI using a BDI. The proposed rule would modify the requirement in the current rule that core business lines be

mapped to material entities, by eliminating the mapping to assets and liabilities and instead require mapping to franchise components and to regulated subsidiaries. This would improve the utility of mapping and support the analysis of franchise components and, for group A CIDIs, multiple acquirer exit considerations.

The proposed rule would also revise the current rule by requiring that the resolution submission describe whether any core business line draws additional value from, or relies on, the operations of the parent company or a parent company affiliate, and identify whether any such operations are cross-border. This information would support and inform the FDIC's analysis of the impact of breakup of the CIDI from its parent company and parent company affiliates.

As noted below, elements of the current rule's organizational structure; legal entities; core business lines and branches subpart would be incorporated into other provisions of the proposed rule, including the discussion of the deposit base and key personnel, in order to improve the organizational structure of the rule as proposed.

The FDIC invites comments on all aspects of the proposed organizational structure; legal entities; core business lines and branches requirements. In particular, the FDIC asks the following question on specific aspects of the proposal:

(24) The proposed rule would require a CIDI to identify each of its subsidiaries that is a ''regulated subsidiary'', a new proposed defined term. Is the defined term clear and understandable? Does it include all of the types of entities that are subject to capital, liquidity or other material requirements or are there others that should be included?

(25) The FDIC considered other approaches for collecting this type of information concerning regulated entities, including limiting this requirement to a CIDI's subsidiaries that are material entities, or requiring that all regulated subsidiaries be deemed material entities. Does the proposed rule's approach seek an appropriate amount and type of information? If not, how can this aspect of the proposed rule be improved for utility in resolution planning?

Methodology for material entity designation, located at proposed § 360.10(d)(5). This would be a new component to the proposed rule. The proposed rule would require each CIDI to describe its methodology for identifying material entities. The proposed rule would not be prescriptive regarding such methodology, but rather would afford each CIDI the flexibility to develop a methodology that is appropriate to the nature, size, complexity, and scope of its operations. This would assist the FDIC in understanding the application of the material entity concept throughout the resolution submission, which is significant to the scope of other informational requirements. As noted in section III.A.3.c above, the proposed rule's definition of material entity would largely be the same as the definition in the current rule.

Separation from parent; potential barriers or material obstacles to orderly resolution, located at proposed § 360.10(d)(6). The proposed rule would retain the current rule's requirement to describe the actions needed to separate a CIDI from the organizational structure of its parent company and parent company affiliates, as well as how to separate the CIDI's subsidiaries from this structure, as described in current subparts 12 CFR 360.10(c)(2)(iv), (v).[32] The proposed rule would also retain the current rule's requirement to identify potential barriers or other material obstacles to an orderly resolution,[33] and would add the requirement to identify how such barriers or obstacles could pose risks to a group A CIDI's identified strategy. The proposed rule would also require that a resolution submission address the CIDI's ability to operate separately from the parent company's organization, and that the CIDI assume that its parent company organization and the parent company affiliates have filed for bankruptcy or are in resolution under another insolvency regime. It would also require addressing the impact on the BDI's value if the CIDI were separated from the parent company's organization.

While some CIDIs' operational structures are relatively simple, with the majority of assets and operations within the CIDI, others are significantly more complex. Even where the structure is relatively simple, there may be significant services, licenses, contracts, or operations—even those whose asset value is relatively small, that the CIDI uses that would impact the ability to establish and operate a BDI while the parent company and parent company affiliate are in bankruptcy or other resolution. These complexities include not only the challenge of continuity of critical services, but also the economic viability of the BDI as a going concern upon separation from the parent company, and the impact on BDI's franchise value. In the proposed revisions to the rule, this section has been revised to focus on whether the IDI, and therefore the BDI, can be a viable stand-alone entity from the point of view of economic value and viability of business lines. The issues related to continuity of critical services provided by or through the parent company and parent company affiliates would be discussed and addressed in the critical services discussion below.

The FDIC invites comments on all aspects of the proposed separation from parent; potential barriers or material obstacles to orderly resolution requirements. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(26) Would it be helpful to resolution analysis to require certain assumptions with respect to the possible risk of multiple competing insolvencies when the parent company and parent company affiliates are being resolved in bankruptcy or other insolvency regime?

(27) Would it be useful in developing resolution analysis to have challenging fact patterns for a wide range of contingencies, for example, if the resolution submission were required to address the possible outcome of adverse interests between the insolvency regimes and no support or services being provided by the parent company and parent company affiliates?

(28) Are there other assumptions or contingencies that should be explored?

Overall deposit activities, located at proposed § 360.10(d)(7). While the current rule's organizational structure subpart asks for some information about a CIDI's deposit base and systems, the proposed rule would expand and build upon the information related to deposit activities required by the current rule.[34] Understanding the deposit structure of the CIDI is important to understanding entry into a BDI and stabilization of its operations, and is useful in supporting valuation analysis as well. To improve the organizational structure of the current rule, the proposed rule would create a separate subpart for this information.

The proposed rule would require a discussion of foreign deposits, and identification of deposits dually payable in the U.S., which is relevant to the determination of priority of payments in resolution.[35] The proposed rule would also require information about insured

[32] 12 CFR 360.10(c)(2)(iv), (v).

[33] 12 CFR 360.10(c)(2)(iv).

[34] ''Discuss the CIDI's overall deposit activities including, among other things, unique aspects of the deposit base or underlying systems that may create operational complexity for the FDIC, result in extraordinary resolution expenses in the event of failure and a description of the branch organization, both domestic and foreign.'' 12 CFR 360.10(c)(2)(ii).

[35] 12 CFR 330.3(e).

and uninsured deposits, and commercial deposits by business line.

The proposed rule would also require information about deposit sweep arrangements with affiliates and unaffiliated parties, which would inform the FDIC about interconnections and assist in assessing depositor behavior; a CIDI would also have to identify the contracts governing those arrangements. The proposed rule would also require information about reporting capabilities for omnibus, sweep and pass-through accounts. Understanding those capabilities and the accuracy and timeliness of deposit reporting by accountholder is important for these deposits where the information for deposit insurance determinations is not maintained on the CIDI's systems.

In addition to requiring information about the deposit structure, the proposed rule would require information regarding key depositors, which would be defined in the proposed rule as depositors that hold or control the largest deposits (whether in one account or in multiple accounts) that collectively are material to one or more core business lines. Identification of key depositors is important to evaluation of strategic options in resolution, and to understanding the relationships between key depositors and other services provided by the CIDI or its parent company or parent company affiliates. Each key depositor must be identified by name, line of business and geographic location, where that information is known.

Finally, the proposed rule would require information about the relationship of deposit segments to core business lines and franchise components. In a multiple acquirer sale, the deposits related to a particular franchise component must be readily identified to facilitate the separation and sale of the franchise component along with the associated liabilities.

The FDIC invites comments on all aspects of the proposed overall deposit activities requirements. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(29) Is the information proposed to be required concerning the overall deposit structure available to CIDIs and would it be useful to understanding the impact of different resolution strategies?

(30) The FDIC considered different approaches to defining ''key depositors,'' including by defining it as the top 100 depositors by size, or as those depositors that collectively represent the largest deposits making up 25 percent of the CIDI's deposits. Because the appropriate range of metrics varies from CIDI to CIDI based on its size and business model, the proposed rule would provide flexibility to the CIDIs in describing key depositors. Is this definition sufficiently clear and useful? Is there a way to define a CIDI's key depositors that would provide more useful information to support the FDIC's understanding of the profile of significant depositors and the impact of different resolution strategies on those depositors? What metrics or descriptions would be most useful to identify these significant depositors?

Critical services, located at proposed § 360.10(d)(8). Because the ability to continue critical services in resolution is essential to the ability to establish and stabilize a BDI, the continuity of critical services is an area of focus for the FDIC in assessing options for resolving a CIDI. Accordingly, the proposed rule would make express the implicit expectation of the current rule that a CIDI must be able to demonstrate capabilities necessary to ensure continuity of critical services while it is in resolution.

The proposed rule would expand on the information required by the current rule at 12 CFR 360.10(c)(2)(iii), and would incorporate and clarify guidance the FDIC previously provided on this topic. As explained in section III.A.3.c, the definition of ''critical services'' would remain largely the same as in the current rule, but the proposed rule would require a resolution submission to explain the criteria by which critical services are identified in order to provide to the FDIC additional context and understanding to the CIDI's approach to this content element.

The proposed rule would also introduce the defined term ''critical services support,'' which are the resources necessary to support the provision of critical services, including systems, technology infrastructure, data, key personnel, intellectual property, and facilities. CIDIs' past resolution plans did not consistently address these elements, which are mentioned in various places throughout the current rule. Bringing together this information in a defined term and expressly stating the relationship to critical services is expected to provide additional clarity and promote consistency in the approach to these elements. For this reason, the proposed rule would consolidate informational elements relevant to critical services that are separated in various parts of the current rule, and incorporate and codify prior guidance,[36] such as breakup from parent and cross-border considerations, to the extent that they relate to critical services.

The proposed rule would also require that a CIDI identify critical services provided by the parent company or a parent company affiliate as well as the physical locations and jurisdictions of critical service providers and critical services support that are located outside of the United States. The proposed rule would also require that a CIDI map critical services to material entities that provide those services directly or indirectly through third parties, and to the material entities, core business lines, and franchise components supported by those critical services. Further, the proposed rule would make express the requirement for information about the critical services and critical services support that may be at risk of interruption if the CIDI fails, as well as the CIDI's approach for continuing critical services in the event of its failure, and information about the contracts governing the provision of such services.

The proposed rule would also require a CIDI to provide information about its process for collecting and monitoring the contracts governing critical services and critical services support. Providing information about the systems that store these contracts and how this information is stored (*e.g.,* centrally, by business line or material entity, by business function, etc.) would provide the FDIC valuable information when seeking to understand a CIDI's operations and business relationships.

The FDIC invites comments on all aspects of the proposed critical services content element requirements. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(31) Are the proposed requirements with respect to mapping critical services clear? Are they appropriate to the FDIC's goal of understanding the risks and mitigants to continuity of critical services in a BDI strategy, and in the course of disposition of franchise components? Is the concept of ''critical services support'' clear and useful? If not, how could it be improved?

(32) Would it be helpful to provide more explicit expectations with respect to mitigants to the risk of discontinuity of critical services, such as resolution-friendly contractual provisions, arms-length terms for services provision, or the establishment of critical services and critical services support within the bank chain?

Key personnel, located at proposed § 360.10(d)(9). As mentioned above, rather than retaining the current rule's approach of requiring information about

[36] Statement, p. 6.

key personnel in the discussion of organizational structure; legal entities; core business lines and branches,[37] the proposed rule would create a new, separate subpart for this information. The proposed rule would also create ''key personnel'' as a defined term: personnel tasked with an essential role in support of a core business line, franchise component, or critical service, or having a function, responsibility, or knowledge that may be important for the FDIC's resolution of the CIDI. The proposed rule would note that key personnel can be employed by the CIDI, a CIDI subsidiary, the parent company, a parent company affiliate, or a third party entity.

The FDIC invites comments on all aspects of the proposed key personnel definition and use requirements. In particular, the FDIC asks the following questions on a specific aspect of the proposal:

(33) Is the definition of ''key personnel'' appropriate and clear? Does it clearly include the personnel most important to continuing operations in a BDI, in a way that is usefully limited and focused?

The information that would be provided in response to this subpart, which would incorporate guidance previously provided by the FDIC,[38] is important because, among other things, it is relevant to helping enable continuity of a BDI's operations. The proposed rule would require a CIDI to describe its methodology for identifying key personnel to provide to the FDIC additional context and understanding of the CIDI's approach to this content element. The proposed rule would also require information including identification of employee benefit programs provided to key personnel, as well as identifying any applicable collective bargaining agreements or similar arrangements. This information would assist the FDIC in planning for the retention of key employees by the BIDI, or assist with necessary receivership functions.

Further, the proposed rule would require a CIDI to provide a recommended approach for retaining key personnel during its resolution. A framework for, for example, specifying retention bonuses and other incentives to help retain key personnel could help the FDIC facilitate a program that could help minimize disruptions when a CIDI is in resolution.

Franchise components, located at proposed § 360.10(d)(10), would build upon the current rule [39] and would incorporate and codify certain elements of past guidance, with some modifications. Under the proposed rule, the term ''franchise component'' would be defined as a business segment, regional branch network, major asset or asset pool, or other key component of the IDI franchise that currently can be separated and marketed in a timely manner. By specifying that the CIDI should identify franchise components that ''currently'' can be separated, the proposed rule would emphasize that identified franchise components should be those that can be separated based upon the organizational structure and capabilities of the firm, and the regulatory requirements in effect, at the time of the resolution submission.

This proposed subpart would provide information that the FDIC believes will be critical in developing strategic options and meaningful optionality for resolution of a group A CIDI. The FDIC has previously described franchise components as the ''building blocks'' of resolution options.[40] Under the proposed rule, the identification of actionable, marketable franchise components is a required element of all resolution submissions. A franchise component must be identifiable and separable such that it can be marketed and sold in its current state in a timely manner. While this requirement applies to all CIDIs, the number of franchise components and the level of complexity of the approach to the sale and marketing of the franchise components would vary based on the size and complexity of the CIDI. The number of franchise components necessary to have an actionable plan and meaningful optionality in the resolution of a $50 billion group B CIDI would likely be considerably less than the expectation for a $500 billion group A CIDI.

For some CIDIs, particularly the largest and most complex CIDIs, the pool of possible acquirers is limited and the challenges associated with a sale of the IDI franchise to a single acquirer are the greatest. The multiple acquirer exit is more likely to be the most appropriate approach for such a CIDI. The multiple acquirer exit, a newly defined term in the proposed rule, would be a strategy for disposition of going concern elements of the group A CIDI where a single acquirer transaction is not available, thereby avoiding a potentially disruptive and value-destroying liquidation of the failed CIDI. The time required for a multiple acquirer exit or another exit option that requires significant restructuring may require restructuring and divestiture options that present greater obstacles than those presented in addressing separability of the franchise components. For group A CIDIs, restructuring and divestiture options should include those necessary to the identified strategy, as well as currently separable and marketable franchise components that provide additional optionality. For example, if the identified strategy includes a multiple acquirer exit from the BDI, the restructuring and divestiture options should include the parts of the CIDI to be divested as part of a regional breakup of the CIDI's IDI franchise or sale of business segments, in addition to identifying currently separable and marketable franchise components that would provide additional optionality.

The proposed rule would require a description of the extent to which franchise components are currently separable, which would be supported by a description of all significant impediments and obstacles to execution of a divestiture of a franchise component, including legal, regulatory, or cross-border challenges, as well as operational challenges. It would also require that a CIDI be able to demonstrate capabilities necessary to ensure that franchise components are separable and marketable in resolution. While the proposed rule would not set an express standard for separability of a franchise component, identification of franchise components that are readily and quickly separable promptly after failure and stabilization of the BDI will provide useful optionality and may facilitate a brief bridge period.

While the goal is to provide optionality to the FDIC in marketing the failed CIDI, the number and nature of separable, marketable franchise components will vary based upon the size and complexity of the CIDI. The proposed rule would also require that resolution submissions provide information relating to, among other things, key assumptions underpinning each franchise component divestiture.

The proposed rule would set forth basic informational elements required for each franchise component, including identification of responsible senior management and metrics depicting each franchise component's size and significance. The metrics the FDIC would expect a CIDI to provide may include total revenue, net income, percentage market share and, if applicable and available, total assets and liabilities.

[37] ''Identify key personnel tasked with managing core business lines and deposit activities and the CIDI's branch organization.'' 12 CFR 360.10(c)(2)(ii).

[38] Statement, p. 7–8.

[39] 12 CFR 360.10(c)(2)(vi).

[40] Statement, p. 5.

The proposed rule also would require a description of the CIDI's capabilities and processes to initiate marketing of the franchise component, and to provide a description of necessary actions and a timeline for the divestiture, which would be supported by a description of the key underlying assumptions. The proposed rule would require the CIDI to identify the process it would use to identify prospective bidders for such franchise components. The FDIC makes every effort to market failed banks—and their assets and business segments—as widely as possible. A requirement that CIDIs provide analysis on identification of prospective bidders of franchise components would support that effort. In addition to describing the process for identification of prospective bidders, identification of prospective bidders would also be helpful.

The proposed rule would incorporate and clarify the informational requirements with respect to capabilities to establish a virtual data room promptly in the run-up to or upon failure of the bank, which must include the data elements sufficient to permit a bidder to provide an initial bid on the IDI franchise or the CIDI's franchise components. While the proposed rule is not prescriptive in length of time within which a data room must be able to be populated, the capabilities should support a very short time frame and not rely upon a stabilized BDI to extend the time necessary. The proposed rule would require a description of the length of time and any challenges or obstacles to providing complete and accurate information necessary to support a competitive bid, with an expectation that this time frame will be brief and measured in days.

The proposed list of content elements is indicative and not comprehensive; the specific information and data that would be appropriate and sufficiently detailed to support prompt and competitive bids would vary among CIDIs. For instance, deposit data and information elements might include a complete, current deposit trial balance reconciled to the general ledger, a description of the largest depositor relationships, information regarding sweeps and brokered deposits and other data useful to inform a bid. Loan and lending operations information might include a loan tape or loan trial balance reconciled to the general ledger, loan portfolio file samplings, underwriting policies, information regarding real estate owned, and key lending relationships. Where the CIDI has non-traditional business lines, the information provided should be appropriate to the sale of those elements as franchise components or as part of the IDI franchise. The data and information as a whole should support a sale of the IDI franchise as a whole, while providing optionality for the sale of separable franchise components.

Finally, to effectuate a timely sale of a failed IDI, the FDIC must have access and control of data in a virtual data room. Historically, the FDIC has established a virtual data room controlled by the FDIC and migrated the information into that virtual data room. The proposal seeks information as to how the CIDI could support that process, either through providing sufficient access and controls to the CIDI's virtual data room to the FDIC as receiver for the failed IDI, or by establishing a process to timely and securely migrate all data to an FDIC-controlled virtual data room.

Because many of the CIDIs have a broker-dealer subsidiary or parent company affiliate, the proposed rule would also contain a provision specifically addressing content related to a broker-dealer. That is not intended to exclude or limit information related to other non-banking activities such as insurance or asset management.

The FDIC invites comments on all aspects of the proposed franchise components requirements. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(34) Are the proposed definitions and required informational content clear and appropriate to the identification of franchise components? Is the information and analysis proposed to be required useful to support the FDIC's understanding of the challenges to separation of franchise components, useful mitigants to those challenges, and the timeline for execution of a multiple acquirer exit?

(35) Is the proposed language clear with respect to the expectation for franchise components that can be timely divested, both for the purpose of identifying franchise components that are ''currently'' and ''quickly'' separable and for separation of franchise components where more restructuring or other actions would be necessary to implement an identified strategy, such as in a multiple acquirer exit? Would establishing prescribed time requirements, such as 60 or 90 days for divestiture of most franchise components, be appropriate or useful? If so, what time range would be appropriate for the most currently actionable franchise components, and what time range would be appropriate for execution of a more complex exit strategy, such as a multiple acquirer exit?

(36) Are the proposed definitions and required informational content clear and appropriate with respect to the multiple acquirer exit strategy? Is there additional or different information that would be useful to the FDIC in undertaking such a strategy, or to support strategic alternatives that may involve such a separation and disposition of franchise components to multiple acquirers in an existing BDI?

The FDIC is interested in all aspects of the proposed rule regarding the establishment of a virtual data room, including the timing, content, processes for integration with the FDIC's marketing efforts and capabilities described. In particular:

(37) Are the information and data elements required for the establishment of a virtual data room clear and appropriate for the timely sale of the IDI franchise or CIDI's franchise components? Are there additional useful elements that a bidder would need to timely submit a competitive bid for the IDI franchise or the CIDI's franchise components?

(38) Would a more prescriptive and detailed list of items to set a minimum standard of informational elements necessary for a virtual data room be useful to filers in preparing their resolution submissions, or helpful to assure readiness to facilitate timely sale of the IDI franchise or the CIDI's franchise components in the event of its material distress and failure?

(39) Would it be helpful or appropriate to establish a specific or prescriptive time frame for establishment and population of a virtual data room, and, if so, what would be the appropriate length of time to complete that process?

Asset portfolios, located at proposed § 360.10(d)(11). The proposed rule would require CIDIs to include information about material asset portfolios, a new defined term discussed above in section III.A.3.c, including how the assets within the portfolio are valued and recorded in the CIDI's records. The proposed rule would also require a CIDI to identify and discuss impediments to the sale of each material asset portfolio and to provide a timeline for each portfolio's disposition. This information will support resolution planning and development for options in marketing the CIDI, including identification of assets portfolios that can be sold separately from the franchise components with going concern value. Recent experience has demonstrated the importance of clear and timely identification of foreign assets, which is specifically requested in the proposed rule.

Valuation to facilitate FDIC's assessment of least-costly resolution method, located at proposed § 360.10(d)(12), applicable only to group A CIDIs. The current rule requires CIDIs to describe how their chosen resolution strategies ''can be demonstrated to be the least costly to the Deposit Insurance Fund.'' [41] Additionally, the current rule provides that the CIDI must provide a detailed description of its asset valuation process, and ''the impact of any sales, divestitures, restructurings, recapitalizations, or other similar actions'' on the CIDI and its core business lines.[42]

For all resolution plans submitted in 2022 or to be submitted in 2023, the FDIC has exempted the CIDIs from addressing how the strategies described in the resolution plan could be demonstrated to be the least costly to the DIF of all possible methods for resolving the CIDI. The FDIC granted these exemptions after having concluded that the current rule's requirement resulted in submissions that provided limited utility to the FDIC relative to the burden of producing the relevant information and analysis. However, the FDIC is required under the FDI Act to determine in all cases whether the proposed resolution strategy is least costly to the DIF as compared to other available strategic options, including liquidation. While the FDIC has experience in this analysis, the determination of costs for a BDI strategy, absent a bid price to establish value, is an element that varies by an IDI's businesses and by the failure scenario. Thus, rather than requiring CIDIs to demonstrate, on an *ex ante* basis, that the least-cost test can be met under a hypothetical scenario for an identified strategy, the FDIC proposes to require each group A CIDI to provide analysis that can serve as building blocks for conducting valuations that will result in a usable valuation roadmap that the FDIC may apply in an actual failure scenario.

Under the proposed rule, group A CIDIs would be required to demonstrate the capabilities necessary to produce valuations that the FDIC can use to conduct the statutorily required least-cost analysis on its own at the time of an actual failure. To demonstrate valuation capabilities, a group A CIDI would be required to describe its valuation process in its resolution plan and include a valuation analysis that includes a range of quantitative estimates of value as an appendix to its resolution plan. While both of these components would be required under the proposed rule, the FDIC would not make a credibility determination as to the identified strategy based on the valuation information provided in response to this requirement. There would be no requirement to compare that valuation estimate to liquidation or other possible resolution strategies.

The proposed valuation analysis included in the resolution plan would require that a group A CIDI provide a narrative description of how it values its franchise components, and the IDI as a whole, including its approach to gathering information needed to support its analysis and its ability to produce updated and timely valuation information. An appendix to the resolution plan would also be required to include a valuation analysis, including a range of quantitative estimates of value, based upon its assumed failure scenario and identified strategy. Where a multiple acquirer exit is chosen as the preferred BDI exit, the analysis would be required to provide valuation estimates based on the net present value of proceeds that may be received under an enterprise valuation based on the disposition of the group A IDI franchise and a sum-of-the-parts analysis that values each IDI franchise component separately. In preparing estimates of value, the group A CIDI would need to consider appropriate valuation approaches and assess whether the valuation should reflect the results of one valuation method or a combination of methods, and provide support for the methods chosen and why other valuation methods were deemed inappropriate. In determining whether one or more valuation approach is appropriate, the CIDI should consider the nature of the business lines of the CIDI as a whole as well as of the particular franchise components that are part of the identified strategy. The valuation approaches should be appropriate to the complexity and size of the CIDI, and the identified strategy. As appropriate, the group A CIDI would be required to discuss the relevance and weight given to the different valuation approaches and methods used.

Under the proposed rule, the valuation analysis also would need to include a qualitative and quantitative analysis of the destruction of franchise value that may result from not transferring any uninsured deposits to a BDI, including a narrative describing any options to mitigate franchise value destruction at different levels of loss to uninsured depositors. To the extent necessary to provide a meaningful quantitative analysis, the group A CIDI would be instructed to make such adjustments to the failure scenario used in the identified strategy to demonstrate the impact on value where losses invade the depositor class in the loss waterfall. The group A CIDI would need to provide a discussion of the assumptions that underlie the analysis, including a brief narrative explanation of factors such as assumptions with respect to depositor behavior. Useful analysis may also consider potential depositor loss levels of 5 percent, 10 percent, and 15 percent. One option that would be permissible under the proposed rule as a possible mitigant to reduce the impact of losses to uninsured depositors is the payment of an advance dividend to uninsured depositors, in an amount reasonably expected to be fully repaid to the FDIC from the disposition of assets during the resolution process.

Section 13(c)(4) of the FDI Act requires any resolution action to be the least-costly to the DIF of all possible resolution options (including payout and liquidation) and directs the FDIC to conduct the least-cost analysis.[43] The proposed rule would ensure that the burden of performing the least-cost analysis remains with the FDIC. Nevertheless, understanding how a group A CIDI values its assets and business lines provides valuable insight the FDIC can use to conduct an accurate least-cost analysis. A requirement for a group A CIDI to describe its valuation process and provide an actual valuation analysis using the assumed scenario would provide the FDIC with a better understanding of the assumptions and methodologies that can be applied in an actual resolution.

The FDIC invites comments on all aspects of the proposed valuation requirements. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(40) Do commenters believe that the information proposed to be required will be useful to the FDIC in determining cost to the DIF of a bridge strategy for comparison to other available options in the event of a failure? If not, please describe in detail what the commenter believes would be the more useful information and analysis to support the determination of value in the BDI under a range of scenarios.

(41) Do the insured depository institutions that would be group A CIDIs currently have processes to develop the information and analysis that would be required under this provision of the proposal? If not, what additional information or analysis or capabilities would such insured depository

[41] 12 CFR 360.10(c)(2)(vii).

[42] 12 CFR 360.10(c)(2)(viii).

[43] 12 U.S.C. 1823(c)(4).

institutions be required to obtain or develop in order to satisfy the proposed requirements concerning valuation to facilitate the FDIC's assessment of least-costly resolution method?

Off-balance-sheet exposures, located at proposed § 360.10(d)(13). The proposed rule would retain the current rule's requirement, located at 12 CFR 360.10(c)(2)(x), that a CIDI describe any of its material off-balance sheet exposures, including unfunded commitments, guarantees, and contractual obligations; it would specify that a CIDI describe the amount and nature of unfunded commitments. In addition to a non-substantive wording change, the proposed rule would add to the current rule's mapping requirement that CIDIs map material off-balance-sheet exposures to franchise components as well as core business lines and material asset portfolios. This information would support the FDIC's understanding of the franchise components identified in the resolution submission.

Qualified financial contracts, located at proposed § 360.10(d)(14). Since the adoption of the current rule, the FDIC has continued to develop its capabilities and understandings with respect to derivatives contracts and, more generally, qualified financial contracts, including through information received following the 2017 revisions to the QFC recordkeeping rule, 12 CFR part 371.[44] In lieu of the current rule's *Trading, derivatives and hedges* subpart,[45] the proposed rule would seek information about qualified financial contracts (QFCs), which would support and enhance the information provided under the FDIC's QFC recordkeeping rule,[46] which was adopted after the current rule went into effect. The FDIC is seeking to change the name of this subpart and to require information about QFCs to better align with the FDI Act, which has provisions specific to the treatment of QFCs, and in recognition that the definition of QFCs is somewhat broader than the more limited ''derivatives transactions'' term that is used in the current rule.

In particular, the focus of this element of the proposed rule would be on the relationship of QFCs to the CIDI's core business lines and franchise components, and how these transactions are integrated with other services provided to customers. The proposed rule would require CIDIs to provide information about their booking models for risk, and how QFCs are used to manage hedging or liquidity needs. This information would help the FDIC to make decisions with respect to transferring QFCs to a BDI, and to better understand the impact of any decision not to transfer certain QFCs. The FDIC has, in the past, exempted this content element for certain CIDIs, with the view that for certain firms, understanding the CIDI's use of QFCs is not a significant element in resolution planning. However, the importance of QFC activities to a line of business is not determined solely on the basis of notional values and varies with the business of the firm. Accordingly, the proposed rule would require this information for all CIDI resolution submissions, with the expectation that where the activity is limited the burden of providing the information will consequently be limited as well.

Unconsolidated balance sheet; entity financial statements, located at proposed § 360.10(d)(15). The proposed rule would retain the current rule's requirement to provide an unconsolidated balance sheet and consolidating schedules for all material entities that are subject to consolidation with the group A CIDI,[47] and would add that amounts attributed to entities that are not material entities can be aggregated on the consolidating schedule.

The proposed rule would maintain the requirement that a CIDI provide financial statements for each material entity, and add this requirement with regard to regulated subsidiaries. The proposed rule would also maintain that audited financial statements should be provided where they are available. The FDIC has found that this information is helpful in developing options for sale of franchise components and understanding the financial structure of the organization, and that this information is complementary to the unconsolidated balance sheet and consolidating schedules.

Payment, clearing, and settlement systems, located at proposed § 360.10(d)(16). The continuity of payment, clearing, and settlement systems is important to stabilizing and continuing operations of a failed CIDI in a BDI, and identification and mapping of these systems would assist the FDIC in identifying whether the entity accessing these systems is part of the CIDI or one of its subsidiaries and thus would be under the control of the BDI, and where there may be a potential for interruption of access or services and a resolution of the CIDI.

Accordingly, the proposed rule would build on the current rule's requirement, located at 12 CFR 360.10(c)(2)(xiv), that a CIDI identify each payment, clearing, and settlement system of which the CIDI is a member or that it indirectly accesses by limiting such identification to each system (including financial market utilities) that is a critical service or a critical service support. The proposed rule would also require CIDIs to map payment, clearing, and settlement system memberships and access (including through correspondent and agent banks or intermediaries) to legal entities, core business lines, and franchise components. CIDIs would also be required to describe the services provided by these systems, including the value and volume of activities on a per-provider basis.

The proposed rule would also require CIDIs to describe payment, clearing, and settlement services they provide as an intermediary, agent, or correspondent bank that are material in terms of revenue to or value of any franchise component or core business line. The information that the proposed rule would require would help the FDIC be aware of these important relationships in resolution and to better understand any impact of interruption of those systems or services.

Capital structure; funding sources, located at proposed § 360.10(d)(17). Even though information regarding the capital resources available to a CIDI prior to failure is available through supervisory procedures, such resources are likely to be different once the CIDI is placed into receivership. It is generally the case that as a result of receivership appointment, capital is significantly depleted. This is likely the case whether the failure is the result of capital or liquidity issues in light of the temporal constraints of historical cost accounting. Therefore, the proposed rule would require identification of resources that would be available in resolution, including unsecured, non-deposit liabilities of the CIDI at the time of failure. These liabilities are subordinate to deposits and are unlikely to be transferred to a BDI. By causing these liabilities to remain in the receivership as claims against the estate, the BDI's capital resources would be significantly enhanced, which would assist in stabilizing the BDI and increasing optionality for BDI exit. The FDIC believes that such transactions would be more effective in preserving the franchise value of the failed CIDI. As a result, a CIDI with a material amount of the unsecured, non-deposit liabilities would be more likely to be able to devise a credible strategy involving an

[44] *See* 82 FR 35599 (July 31, 2017).

[45] 12 CFR 360.10(c)(2)(xii).

[46] *See generally* 12 CFR part 371.

[47] 12 CFR 360.10(c)(2)(xiii).

all-deposit transaction, potentially both to establish a viable BDI and ultimately in a sale to a third-party acquirer.

Accordingly, the proposed rule would require all CIDIs to provide more detail than is required by the current rule under 12 CFR 360.10(c)(2)(xv). Information regarding the composition of the liabilities of the CIDI and its material entities, including whether the liabilities are publicly issued, and information about maturity and call rights and, where applicable, indenture trustees would be required.

The proposed rule would also build upon the current rule and prior guidance regarding required information about funding. Specifically, the proposed rule would require that a resolution submission describe the current processes used to identify the liquidity and capital needs and resources available to each CIDI subsidiary that is a material entity,[48] and to describe the CIDI's capabilities to project and report its near-term funding and liquidity needs. It would also require a CIDI to describe material funding relationships and inter-affiliate exposures between the CIDI and its subsidiaries that are material entities. This information would support the FDIC's understanding of the impact of liquidity on divestiture of franchise components, and would inform considerations related to stabilizing the BDI and continuity of operations.

The FDIC invites comments on all aspects of the proposed capital structure; funding sources requirements. In particular, the FDIC asks the following question on a specific aspect of the proposal:

(42) The proposed rule would require information about liquidity and capital needs and resources available to each CIDI subsidiary that is a material entity. Should the final rule require this type of information about all entities—regardless of whether they are material entities—that have a regulatory capital and/or liquidity requirement?

Parent and parent company affiliate funding, transactions, accounts, exposures, and concentrations, located at proposed § 360.10(d)(18). The proposed rule generally would retain the content requirement of the current rule, whose corresponding subpart is located at 12 CFR 360.10(c)(2)(xvi). The proposed rule would make minor technical changes designed to improve and clarify wording and formatting of this subpart and its title, as well as delete the reference to ''asset accounts,'' which has not proved to be useful information in prior resolution plan submissions.

Effects on U.S. economic conditions, located at proposed § 360.10(d)(19). The proposed rule would revise the *Systemically Important Functions*[49] informational element required in the current rule. Though the Statement indicated that all CIDIs with $100 billion or more in assets would be exempted from discussing this information in future resolution plan submissions, the FDIC has concluded that such a requirement may provide information that would contribute to the FDIC's resolution planning efforts. Under the proposed rule, CIDIs would be required to identify their activities or business lines that are material (a) to a particular geographic area or regions of the United States, (b) to a particular business sector or product line, or (c) to other financial institutions. The FDIC always seeks to minimize disruptions to customers when it resolves a failed IDI. Better understanding how the interruption of certain services could negatively affect certain geographic regions, industries or other financial institutions should help the FDIC better prepare to avoid disruptions that could have a severe impact on those regions, industries, and institutions. For example, a CIDI may note that it provides a number of transaction account functions like payroll accounts to a large number of customers, serves as a significant lender to a particular industry, or provides PCS services to a number of financial institutions. The more information the FDIC has in advance about these important functions, the better the FDIC can prepare to resolve the CIDI in a way that minimizes disruption. Although the systemic risk exception to the least-cost test was approved in connection with the recent resolutions of SVB and Signature Bank, the FDIC continues to expect to resolve banks under the FDIC without the expectation of that extraordinary action. First Republic was resolved without invoking the exception to the least-cost test requirement. Although particular facts and circumstances, such as macro-economic conditions, risk of contagion, and other factors may support a systemic risk exception for a particular institution or in particular circumstances, those circumstances are not the subject of this requirement. Rather, this content element seeks to understand information specific to the services that the CIDI provides, and whether those services are significant to a particular geographic area, business sector or product line, or other financial institutions.

While this information should be provided by all CIDIs, the level of information provided would be expected to vary based on the size and complexity of the CIDI. For the smaller group B CIDIs, this information may be fairly limited, perhaps only a particular market or sector where the CIDI has a significant presence. Conversely, for the largest group A CIDIs, systemic impact is a significant focus of DFA resolution plans. As discussed below with respect to the credibility assessment of an identified strategy, where the DFA resolution plan of the CIDI's parent company contains relevant analysis and information with respect to the risk of potential adverse effects on U.S. financial stability arising from the failure of a subsidiary group A CIDI, the inclusion of that information by cross-reference is permitted under proposed paragraph (c)(6).

Non-deposit claims, located at proposed § 360.10(d)(20). The proposed rule would codify and build upon past guidance[50] regarding non-deposit liabilities to support the FDIC's effective and efficient management of non-deposit claims in resolution, including identifying claims and notifying claimants. Related to the requirement in proposed § 360.10(d)(17) (*Capital structure; funding sources*) to describe material components of the CIDI's and material entities' short-term and long-term liabilities, including unsecured debt, the proposed rule would also require a CIDI to identify and describe its capabilities to identify the non-depositor unsecured creditors of the CIDI and its subsidiaries that are material entities. The proposed rule would also require a description of how the CIDI would identify all non-depositor unsecured liabilities, including contingent liabilities like guarantees and letters of credit, as well as the location of the CIDI's related records and its recordkeeping practices.

Cross-border elements, located at proposed § 360.10(d)(21). The proposed rule would maintain and build on the information required in the current rule, but proposes organizational improvements and to require certain information that would provide additional context about the required content.

In general, in the proposed rule, cross-border elements are addressed in connection with the relevant content areas in various subparts. Specifically,

[48] The Statement provided that ''the FDIC expects a resolution plan to describe the CIDI's current processes for determining the drivers of liquidity needs.'' Statement, p. 8.

[49] 12 CFR 360.10(c)(2)(xvii).

[50] Statement, p. 8.

cross-border elements are addressed in the discussion of *Organizational structure; legal entities; core business lines and branches;* foreign deposits are referenced in connection with *Overall deposit activities;* and critical services located outside the United States are referenced in *Critical services,* among other references. Proposed § 360.10(d)(21) would be retained to provide context to that other information by requiring that a resolution submission describe components of cross-border activities of the parent company or parent company affiliates that contribute to value, revenues, or operations of the CIDI. Where the CIDI has a significant interest (*e.g.,* a controlling interest or a significant economic interest) in a foreign joint venture that contributes value to revenue or operations of the CIDI, that should be included. Entities with no meaningful function or contribution to the CIDI's operations, such as single purpose real estate holding companies, should be excluded.

The proposed rule would also require that a resolution submission identify regulatory or other impediments to divestiture, transfer, or continuation of foreign branches, subsidiaries or offices while the CIDI is in resolution, including regarding retention or termination of personnel, or impediments or necessary actions to transfer the CIDI's interest in the entity, such as approvals or restrictions on transfer of a license or other authorization.

The FDIC invites comments on all aspects of the proposed revised cross-border elements requirements. In particular, the FDIC asks the following question on a specific aspect of the proposal:

(43) Does it capture the information that would be most useful to the FDIC in its resolution planning? If there is different or additional information that would be useful, please describe it and explain how it would be helpful in resolution readiness.

Management information systems; software licenses; intellectual property, located at proposed § 360.10(d)(22). The proposed rule would retain the current rule's requirement, located at 12 CFR 360.10(c)(2)(xix), to identify and describe each key management information system and application, and would add the requirement that a CIDI identify both any core business line that uses it, and the personnel needed to operate it. Each group A CIDI would also be required to identify each system's and application's use and function, which core business lines use it, and its physical location, if any. The proposed rule would also require a resolution submission to specifically identify key systems or applications the CIDI or its subsidiary does not own or license directly from the provider, and to discuss how access to the system or application can be maintained when the CIDI is in resolution. These changes would enhance the content required with respect to management information systems, software licenses, and intellectual property, with a focus on how to assure that these systems can be maintained in a BDI or receivership if necessary. Finally, the proposed rule would require describing the capabilities of the CIDI's processes and systems to collect, maintain, and produce the information and other data underlying the resolution submission. A CIDI would be required to identify all relevant systems and applications, and to describe how the information is managed and maintained. For example, the resolution submission must describe if the information is centralized or organized by region or business line, whether it is automated or manual, and whether the applicable system or application is integrated with other of the CIDI's systems or applications.

The proposed rule would delete the current rule's requirement to identify and discuss any disaster recovery or other backup plans;[51] this information is addressed through supervisory processes.

Digital services and electronic platforms, located at § 360.10 (d)(23), would be a new content element. The role of digital services and electronic platforms and related services provided to retail and commercial customers has increased dramatically since the current rule was adopted. A better understanding of the value of these services, their impact on customer relationships, and the potential challenges to continuing those services in resolution will be helpful to the FDIC in its resolution planning.

The FDIC invites comments on all aspects of the proposed digital services and electronic platforms requirements. In particular, the FDIC asks the following question on a specific aspect of the proposal:

(44) Does it capture the information that would be most useful to the FDIC in its resolution planning? If there is different or additional information that would be useful, please describe it and explain how it would be helpful in resolution readiness.

Communications playbook, located at proposed § 360.10(d)(24), would codify and build upon previous guidance. As explained in the Statement,[52] the FDIC has found that, during a resolution, the timely provision of accurate information can reduce adverse market reaction and address employee and other stakeholder concerns about a CIDI's failure and resolution that could impede an orderly resolution. Therefore, it is important that the FDIC understand a CIDI's communications capabilities, and that a CIDI have a communications strategy that the FDIC could employ as part of the FDIC's communications plan to help mitigate obstacles to the orderly resolution of a CIDI. Accordingly, the proposed rule would require a resolution plan to include a communications playbook describing the CIDI's current communications capabilities and how those capabilities could be used from the point of the CIDI's failure through its resolution.

The FDIC invites comment on all aspect of the proposed communications playbook requirements. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(45) Is the request clear and would the information be appropriate to the FDIC's goal of establishing a comprehensive communications plan for important stakeholders over closing weekend and throughout the resolution?

(46) Is there additional or different content that is specific to the communication challenges in resolution that CIDIs have or may develop that would be helpful and important to include in resolution submissions?

Corporate governance, located at proposed § 360.10(d)(25). Other than technical edits, this subpart of the proposed rule would largely be identical to the corresponding subpart of the current rule, located at 12 CFR 360.10(c)(2)(xx). However, the proposed rule would eliminate the current rule's requirement to identify and list the position of the senior management official of the CIDI who is primarily responsible and accountable for the implementation of the resolution submission. In practice, the benefits to the FDIC from this information were minimal and did not warrant the burden on CIDIs of preparing and providing this information.

CIDI's assessment of the resolution submission, located at proposed § 360.10(d)(26). The proposed rule would retain the current rule's requirement, located at § 360.10(c)(2)(xxi), that a CIDI provide a description of any contingency planning or similar exercise it had conducted since its most recently filed resolution submission that assesses the viability of

[51] 12 CFR 360.10(c)(2)(xix).

[52] Statement, p. 5.

or improves the resolution submission. While neither the current nor the proposed rule would require any such assessment or contingency planning or similar exercise, such assessments are useful practice and the FDIC benefits from a description of the nature, extent, and results of any such activities.

The Statement exempted all CIDIs from including information required by this subpart, but in reflecting on resolution plan submissions received, the FDIC has found that information regarding exercises, such as simulations, tabletops, or other tools for self-assessment of resolution plans, processes, and capabilities is helpful to the FDIC. The assessment would be limited to requiring CIDIs to describe contingency planning or exercises they have done or plan to do; it would not require CIDIs to conduct these types of activities, so the associated burden would be limited.

Any other material factor, located at proposed § 360.10(d)(27). The proposed rule would make a non-substantive wording change for clarity and readability. Otherwise, this requirement is the same as the corresponding subpart in the current rule, which is located at 12 CFR 360.10(c)(2)(xxii).

In addition to the changes already noted, the proposed rule would delete the following subparts in the current rule:

Strategy for the Sale or Disposition of Deposit Franchise, Business Lines and Assets, located at 12 CFR 360.10(c)(2)(vi). As noted above, this content element is superseded by the proposed franchise components subpart at proposed § 360.10(d)(10).

Least Costly Resolution Method, located at 12 CFR 360.10(c)(2)(vii). As discussed above, the proposed rule would replace this subpart with proposed § 360.10(d)(11).

Asset Valuation and Sales, located at 12 CFR 360.10(c)(2)(viii). The proposed rule would delete the entire subpart, codifying the exemption provided to all CIDIs as described in the Statement. The most useful concepts related to valuation have been included in the discussion of valuation to support the least-cost test analysis, as discussed above. Also as discussed above, the rule as proposed would not require analysis under baseline and adverse scenarios. Accordingly, this section is omitted as being duplicative in part, and in part because the burden on CIDIs exceeds the benefit of the information to the FDIC's resolution planning.

Major Counterparties, located at 12 CFR 360.10(c)(2)(ix). The proposed rule would delete this subpart, codifying the exemption provided to all CIDIs as described in the Statement. The FDIC believes that the burden of this subpart's requirements generally outweighs their utility for the FDIC planning for the resolution of CIDIs. In some cases, relevant information is provided in connection with other content areas, such as payment clearing and settlement systems; in other cases it can be obtained through supervisory or other information channels.

Collateral Pledged, located at 12 CFR 360.10(c)(2)(xi). The proposed rule would delete this subpart, codifying for all CIDIs the exemption provided to many CIDIs as described in the Statement. The FDIC believes that the burden of this subpart's requirements generally outweighs their utility for the FDIC planning for the resolution of CIDIs because it can be obtained through supervisory or other information channels.

The FDIC invites comment on all aspects of the proposed submission requirements. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(47) Are the proposed submission requirements clear and appropriate to the goals of the proposed rule? Do they seek information that CIDIs can provide or, with reasonable effort, could develop the capabilities to provide?

(48) Would additional or different requirements in any of these or other topical areas better facilitate the FDIC's efforts to plan for and execute an orderly resolution of a failed CIDI?

(49) Should the FDIC retain any of the requirements proposed to be eliminated, potentially with modifications?

As noted above in section II, the current rule was adopted in 2011 through an interim final rule and finalized the following year.[53] At that time, all IDIs with total assets of $50 billion or more were subject to the submission of a resolution plan under the current rule. This scope of the rule has not changed to the present day, although no resolution plan submission has been made by a CIDI with total assets of at least $50 and less than $100 billion since 2018, and a moratorium on filings by those firms remains in effect. The FDIC has considered whether to require resolution plans from group B CIDIs, whether they should be permanently exempted from any resolution submission requirement, or whether a reduced filing requirement is appropriate for these CIDIs. For the reasons discussed below, the FDIC would not require group B CIDIs to submit a resolution plan under the proposed rule, but would have a requirement for an informational filing by the group B CIDIs.

The size of an institution significantly impacts the FDIC's options for resolution. A significant constraint on the FDIC's ability to resolve large institutions is the limited set of institutions that could acquire an entire large institution. In the FDIC's experience, generally an institution of significantly greater size is the most likely potential acquirer of a failed IDI. In light of the fact that the group B CIDIs are smaller than the group A CIDIs, there are more potential acquirers. The FDIC is obligated by statute to find the least-costly resolution, which may well be a whole-bank sale immediately at failure. However, despite group B CIDIs' smaller size, that option may not be available. Where there is no acquirer for a transaction that meets the least-cost requirement, the establishment of a BDI may be necessary, either to facilitate a whole-bank sale or a range of other exit options.

A group B CIDI is a very large institution, and resolving such an institution will pose significant challenges. In order to be able to complete a sale at closing, the FDIC would need much of the same information regarding the group B CIDI and its operations as the FDIC is seeking regarding group A CIDIs. However, the FDIC wishes to better balance the burden on group B CIDIs and proposes exempting informational filings from including the following informational elements: Identified strategy (proposed § 360.10(d)(1)), Failure scenario (proposed § 360.10(d)(2)), Executive summary (proposed § 360.10(d)(3)), and Valuation to facilitate FDIC's assessment of least-costly resolution method (proposed § 360.10(d)(12)). The FDIC believes exempting these informational elements from group B CIDIs' informational filings strikes the right balance between providing the FDIC with information needed to facilitate resolution planning efforts and calibrating the compliance burden. Furthermore, the engagement provision of the proposed rule would provide the FDIC with an avenue to establish ongoing dialogue with institutions regarding the informational filing's content, including how the information may be considered when vetting potential resolution strategies.

The FDIC invites comments on all aspects of the proposed informational filing requirements for group B CIDIs. In particular, the FDIC asks the following questions on specific aspects of the proposal:

[53] *See generally* Resolution Plans Required for Insured Depository Institutions with $50 Billion or More in Total Assets, 77 FR 3075 (Jan. 23, 2012).

(50) Do commenters believe there are any proposed information requirements for group B CIDIs that should not be included in the proposed requirements for informational filings? If so, please explain which proposed information requirements should not be included for group B CIDIs and why the information requirements should not be included for group B CIDIs.

(51) Do commenters believe that any information requirements that are not proposed for group B CIDIs should be included in the proposed information requirements? If so, please explain what those information requirements are and why the information requirements should be included for group B CIDIs.

(52) Do commenters believe that the informational requirements relevant to group B CIDIs constitute information that those CIDIs regularly use as part of business-as-usual operations? If not, what specific informational requirements would be burdensome to group B CIDIs to produce?

(53) Do commenters believe that there are any barriers that would prevent group B CIDIs from complying with one or more of the proposed information requirements? If so, please explain why the barriers would prevent group B CIDIs from complying with one or more proposed information requirements and suggest any alternative approaches that would facilitate compliance.

e. Interim Supplement

The FDIC is proposing a new requirement for CIDIs to submit limited interim supplements in the years that a CIDI is not required to provide a resolution submission. This interim supplement is intended to provide current and accurate information regarding a limited subset of the resolution submission content items, focusing on those informational elements where more current information is especially useful, and where updating and producing that information can be accomplished with limited burden year over year. While the purpose of the interim supplement is to update and supplement information, the FDIC is proposing to require complete information for each content item in each interim supplement regardless of whether the information has changed from the CIDI's previous resolution submission for ease of access in the event of a CIDI failure. This interim supplement requirement is separate and distinct from the proposed requirements related to notice of material change under proposed paragraph (c)(4) or engagement and capabilities testing under proposed paragraph (g) and would not in any way limit those requirements.

Under proposed paragraph (e)(1), each CIDI would be required to submit an interim supplement to the FDIC on the one-year anniversary (or the first business day after the one-year anniversary if the anniversary falls on a non-business day) of the CIDI's most recent resolution submission, as determined by the proposed resolution submission timing requirements under proposed paragraph (c), unless the CIDI receives written notice from the FDIC establishing a different interim supplement submission date. No interim supplement would be required in a year in which a CIDI makes a timely resolution submission. The FDIC notes that the discussion of transition below in section III.E.8 describes the expectation that CIDIs that are not in the first cohort of CIDIs to file a resolution submission under amended § 360.10 would be required to supplement and update their most recent resolution submission under the current regulation—until they are required to file a resolution submission under amended § 360.10.

Under proposed paragraph (e)(2), each CIDI would be required to file interim supplements that address each of the content items required under proposed paragraph (e)(3), as discussed below. The information that is submitted for each content item would need to be current as of the date of the end of the most recent fiscal quarter prior to the submission date for the interim supplement. Any material changes from information provided for any particular content item in the CIDI's most recent resolution submission would need to be identified and explained. The FDIC may also ask a CIDI to include additional content items in the interim supplement that would be required for the CIDI's resolution submissions under proposed paragraph (d).

Proposed paragraph (e)(3) lists the content items that would be required to be addressed in each interim supplement. Proposed paragraph (e)(3) cross-references proposed paragraph (d) in order to emphasize that the listed information to be provided is intended to be exactly the same as the cross-referenced content required under proposed paragraph (d). In many cases, the interim supplements need to include only a portion of information required to be included in a resolution submission for a particular content items. In identifying content for the interim supplement, the FDIC focused on information that is most essential to the FDIC's resolution planning, that can be more readily produced, and/or that is relatively likely to change year over year. For those reasons, the FDIC generally did not include detailed analysis, mapping, or rationale and explanation identifying the content elements—and the portions of those content elements—to be included in the interim supplements. The FDIC retains the discretion to add or eliminate elements from the interim supplement. That is to ensure that the interim supplements remain useful and include the most important information, and can evolve based on lessons learned. The FDIC expects to provide timely notice of any changes to the content expectations for the next interim supplement of at least six months.

As with the proposed resolution submission requirements, the FDIC is proposing to include the interim supplement requirement in order to help ensure that the FDIC has timely information for key content items that will assist the FDIC with planning for potential CIDI resolutions with the expectation that improved planning will lead to more efficient and potentially less costly resolutions for failed CIDIs. In the event of a CIDI's failure more than a year after a CIDI's resolution submission, it would be beneficial for the FDIC to have updated information regarding the subset of content items that are included in the proposed interim supplement requirement. This updated information would be beneficial to the resolution process whether it indicates a change in the information for the content item from the previous resolution submission or confirms that the information in the resolution submission remains accurate.

The FDIC is also cognizant of the burden on CIDIs that may result from providing the proposed interim supplements and, in order to minimize that burden, is proposing to require the interim supplements to include only a subset of the resolution submission content requirements. This subset comprises fewer than half of the content items that would be included for resolution submissions under the proposed resolution submission requirements and, for many of the interim submission content items, only a portion of the content required for those elements. The FDIC has limited the proposed required content items and believes the proposed interim submission requirement strikes the right balance to provide the FDIC with valuable updated information to assist with resolution planning and CIDI resolution while limiting burden on the CIDIs in providing the updated information.

(54) The FDIC invites comments on all aspects of the proposed interim supplement requirement, including if the utility of the information provided outweighs the burden of providing the information. Do the interim supplements appropriately balance the need for up-to-date information with the burden of filing submissions annually? Should the FDIC consider a different schedule for submissions of the interim supplements or require more or less information to be included in the supplements? Is the information requested readily available and repeatable year over year? Are there content elements including in the interim supplement that are not likely to materially change year over year? Are there important content elements identified in the NPR but not included in the enumerated items for the interim supplement that are likely to materially change and should be included in the interim update? Should interim supplements be subject to the second prong of the proposed credibility standard (which is discussed below) as provided for in the proposal, or is there a more appropriate standard that the FDIC should use?

B. Credibility; Review of Resolution Submissions

1. Credibility Criteria

The FDIC anticipates there would be benefit from clarifying the standard for credibility associated with resolution plan submissions and CIDI participation in engagement and capabilities testing. The express definition of credibility in the current rule is primarily focused on the quality of the information in the plan, *i.e.,* whether it is ''well-founded and based on information and data related to the CIDI that are observable or otherwise verifiable and employ reasonable projections from current and historical conditions within the broader financial markets.'' [54] The current rule also requires, separately, that the resolution plan should enable the FDIC, as receiver, to resolve the institution under the FDI Act ''in a manner that ensures that depositors receive access to their insured deposits within one business day of the institution's failure (two business days if the failure occurs on a day other than Friday), maximizes the net present value return from the sale or disposition of its assets and minimizes the amount of any loss realized by the creditors in the resolution.'' [55] In specifying implementation matters, the current rule specifies that, ''each CIDI must provide the FDIC such information and access to such personnel of the CIDI as the FDIC determines is necessary to assess the credibility of the resolution plan and the ability of the CIDI to implement the resolution plan.'' [56] The proposed rule would expressly incorporate both of these concepts in the credibility standard and would update and clarify the goals and standards for review from the current rule, in a manner intended to establish clearer guidelines for the CIDIs with respect to their resolution submissions, and to facilitate review by the FDIC.

As proposed, the credibility standard would have two prongs. The identified strategy would be assessed against the first prong set forth in proposed § 360.10(f)(1)(i), *i.e.,* that a resolution plan is not credible if it would not provide timely access to insured deposits, maximize value from the sale or disposition of assets, minimize any losses realized by creditors of the CIDI in resolution, and address potential risks of adverse effects on U.S. economic conditions or financial stability. This prong is based upon the expectation set forth in the current rule, with clarifying changes to language and the transparency of making the expectation an express part of the credibility assessment. The second prong of the standard, set forth in proposed § 360.10(f)(1)(ii), aligns with the express standard under the current rule. It applies to all of the content in a resolution plan—including the identified strategy and all other elements in proposed § 360.10(d). To meet this proposed standard, all of the information and analysis in the resolution submissions must be supported with observable and verifiable capabilities and data and reasonable projections and the CIDI must comply in all material respects with the requirements of the rule. This second prong would go to the accuracy of information provided, the reasonableness of assumptions and projections on which information and analysis are based, and the capabilities of the CIDI to provide the required information and analysis and thereby meet the proposed rule's requirements. Several additional aspects of the proposed credibility standard are discussed in more detail below.

The first prong of the proposed credibility standard expressly includes the requirement that the identified strategy must address potential risks of adverse effects on U.S. economic conditions or financial stability. The history of the past several decades, including as demonstrated in the spring of 2023, makes clear that failure in the banking system can be contagious. The effects of failure of one large financial institution can propagate quickly and strongly to others through the vast array of interconnections that presently exist amongst various types of financial entities. To the extent that failure is disorderly those effects are magnified; to the extent it can be managed and controlled those risks are mitigated. This is especially true for a large, complex IDI, and the failure of such an institution, unless properly managed, is more likely to pose a serious risk to the financial stability of the domestic banking system (and, increasingly, the global financial system). This risk is likely to increase with size. For such institutions, Congress has provided the FDIC the flexibility, under certain important conditions, to depart from the restrictions of the least-cost-test in the interests of reducing adverse effects on financial stability. However, Congress made clear that use of the systemic risk exception is intended to be an extraordinary event. The FDIC seeks to avoid the use of the systemic risk exception.

Accordingly, understanding and mitigating the impact on U.S. economic conditions and financial stability in resolution is an important consideration in resolution planning for large, complex IDIs. While the credibility standard does not include a requirement that the identified strategy demonstrate that it is the least-costly to the DIF, the FDIC cannot assume the availability of the systemic risk exception to the least-cost test in the event of a failure of a large, complex IDI requiring resolution under the FDI Act. Ensuring that the CIDI can be resolved without the need for extraordinary support from the DIF is a resolution planning objective. At the same time, the FDIC is cognizant that some CIDIs have critical operations identified in their affiliates' DFA resolution plans, are highly interconnected with other financial institutions, or have dominant market share in certain geographic regions or market segments, or their resolution could be disruptive to the U.S. economy or financial stability in other ways. The proposed rule would require the resolution submission to identify those effects. Addressing the impact of the identified strategy on U.S. economic conditions and financial stability by identifying those impacts and identifying mitigants to them is an important component of the credibility assessment of an identified strategy

[54] 12 CFR 360.10(c)(4)(i).

[55] 12 CFR 360.10(a).

[56] 12 CFR 360.10(d)(1).

presented in a group A CIDI's resolution plan.

The requirement that the CIDI plan ''address'' the potential risk of adverse effects on U.S. economic conditions or financial stability is intended to require that the identified strategy take into account the potential for risks to U.S. economic conditions or financial stability arising from the execution of the strategy. Those risks should be described in the resolution submission, and the identified strategy should include specified actions that would mitigate those risks so that reliance on a systemic risk exception would not be a necessary element of planning.

The FDIC has considered the particular challenges with respect to the requirement that the identified strategy address the potential for risks to U.S. economic conditions or financial stability for the largest and most systemic group A CIDIs, specifically the group A CIDIs that are subsidiaries of U.S. global systemically important banking organizations (U.S. GSIBs) as defined by rules promulgated by the FRB.[57] This category of firms comprise the U.S. banking organizations that pose the greatest risk to U.S. financial stability. The FDIC is aware of progress made by the U.S. GSIBs in the development of DFA resolution plans, including their adoption as their preferred resolution strategy a single point of entry strategy for the resolution of the firm pursuant to which any subsidiary U.S. IDI that is a material entity remains open and operating. Each of these firms has made progress in increasing the range of scenarios in which that strategy may be actionable and effective through structural and operational changes. Moreover, certain enhanced prudential standards that support resolvability apply only to the U.S. GSIBs.[58]

Despite this progress, the availability or success of a single point of entry strategy cannot be assured in all circumstances, and the possibility of a resolution of a CIDI that is part of a U.S. GSIB cannot be eliminated. Thus, the FDIC believes that it is appropriate to require group A CIDIs within these banking organizations to develop comprehensive resolution plans that include an identified strategy that meets the requirements of the prong (i) standard, as described in the proposed rule, to support the FDIC's resolution readiness in the event that a CIDI within such a banking organization should fail. While these CIDIs may have a particular challenge in addressing the risks their identified strategy may present to the U.S. economy and financial stability, where the DFA resolution plan of the CIDI's parent company contains relevant analysis and information with respect to the risk of potential adverse effects on U.S. financial stability arising from the failure of a subsidiary group A CIDI, the inclusion of that information by cross-reference is permitted under proposed (c)(6). In addition, where the strategy for the rapid and orderly resolution[59] of a U.S. GSIB in its DFA resolution plan does not include the resolution of the CIDI under the FDIA, that strategy may reasonably be identified as a mitigant to the systemic risk, if any, posed by the failure of the CIDI under the FDIA.

The second prong of the credibility standard requires that the resolution submission be supported with observable and verifiable capabilities. Capabilities may be supported by analysis and information provided in the resolution submission, and assessed through capabilities testing as well as through assessments conducted by the IDIs and described in the submission. While the proposed rule would not be prescriptive with respect to capabilities, it would contain the express requirement that a CIDIs' capabilities are sufficient to support key elements, namely, capabilities necessary to ensure continuity of critical services in resolution, capabilities necessary to ensure that franchise components are separable and marketable, and, with respect to group A CIDIs, capabilities necessary to produce valuations needed in assessing the least-cost test. The purpose of not describing or prescribing specific capabilities is to have each group A CIDI consider its own business, operations, and identified strategy as the foundation for identifying the needed capabilities and how they are demonstrated for the CIDI's particular businesses and its resolution plan.

There are, however, certain capability expectations for some or all CIDIs that can reasonably be inferred from the content requirements of the resolution submission as described in the proposed rule, *e.g.,* a requirement to map information clearly implies expectation of a mapping capability; and requirements to identify key depositors, critical services support, or key personnel requires the capabilities to support that identification.

Even though the language in the credibility standard regarding access to insured deposits is proposed to be changed to ''timely access to insured deposits,'' this does not represent a change in the FDIC's long-standing goal of providing access to insured deposits within one business day of the institution's failure (two business days if the failure occurs on a day other than Friday). For some categories of deposit accounts, however, such as trust accounts or other accounts with many beneficial owners, additional due diligence is needed for an insurance determination, which can require additional time. While the recordkeeping and information technology capabilities required by 12 CFR part 370 should significantly expedite an insurance determination for a CIDI with more than two million deposit accounts, and the FDIC has improved its systems and processes with respect to all institutions, there will remain some portion of accounts for which additional due diligence is required. Accordingly, the language has been revised to align more closely to the statutory requirement that payment of insured deposits shall be made ''as soon as possible.''[60]

The FDIC invites comments on all aspects of the proposed credibility standard. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(55) Is prong (i) of the credibility standard sufficiently clear? In particular, is the requirement that the identified strategy address potential risk of adverse effects on U.S. economic conditions or financial stability clear? Will addressing potential risks to the U.S. financial system through identifying risks in resolution as well as actions that the FDIC could take to mitigate those risks be helpful to the FDIC in planning for resolution in a manner that does not necessitate reliance on the systemic risk exception to the least-cost requirement?

(56) Is there a different standard that the FDIC should use to assess credibility of a resolution plan or an informational filing?

(57) Is the distinction between the credibility standard for group A and group B CIDIs sufficiently clear?

[57] *See* 12 CFR 217.402 (Identification as a global systemically important BHC).

[58] *See* 12 CFR part 252 subpart G (External Long-term Debt Requirement, External Total Loss-absorbing Capacity Requirement and Buffer, and Restrictions on Corporate Practices for U.S. Global Systemically Important Banking Organizations).

[59] A ''rapid and orderly resolution'' for purposes of a DFA resolution plan is a reorganization or liquidation of the covered company (or, in the case of a covered company that is incorporated or organized in a jurisdiction other than the United States, the subsidiaries and operations of such foreign company that are domiciled in the United States) under the U.S. Bankruptcy Code that can be accomplished within a reasonable period of time and in a manner that substantially mitigates the risk that the failure of the covered company would have serious adverse effects on financial stability in the United States. 12 CFR 381.2.

[60] 12 U.S.C. 1821(f)(1).

(58) Do commenters believe that the proposed approach with respect to prong (i) of the credibility standard, as applied to CIDIs within U.S. GSIB is appropriate and would support the FDIC's planning for resolution of such a CIDI under the FDI Act in the event it becomes necessary?

(59) Should a U.S. GSIB's single point of entry strategy as presented in its DFA resolution plan be considered with respect to content requirements in a related CIDI's resolution plan under the proposed rule? If so, which ones?

(60) Are there other resolution plan content elements in the proposed rule that should be modified when applied to CIDIs that are part of U.S. GSIBs?

(61) Are there additional or enhanced content elements that should be required of such CIDIs?

2. Resolution Submission Review and Credibility Determination; Resubmission; Notice of Feedback

Similar to the current rule, proposed § 360.10(f)(2) would maintain a process for resolution submission review and credibility assessment. The proposed rule makes no change to the current rule with respect to coordination with supervisors in connection with this review process: the FDIC would review a resolution submission in consultation with the appropriate Federal banking agency for the CIDI and for its parent company. If, after consultation with any such appropriate Federal banking agency (or agencies), the FDIC were to determine that a CIDI's resolution submission is not credible, the FDIC would notify the CIDI in writing of such determination. The writing would include a description of the weaknesses in the resolution submission that resulted in the determination.

The current rule includes, as part of the review process, provision for a brief 30-day review to determine whether the plan satisfies minimum informational requirements. The FDIC then would either acknowledge acceptance of the plan for review or return the plan if the FDIC determines that it is incomplete or that substantial additional information is required to facilitate the plan's review.[61] The current rule also includes a process for resubmission of an informationally complete plan or the provision of additional information requested by the FDIC.[62] The FDIC has not found these provisions to be useful, or to meaningfully add to the plan review process. Accordingly, the proposed rule would eliminate these provisions.

Proposed § 360.10(f)(3) also provides, similar to the current rule, that within 90 days of being notified by the FDIC that a resolution submission is not credible, or such shorter or longer period as the FDIC may determine, a CIDI must submit to the FDIC a revised resolution submission that addresses any weaknesses identified by the FDIC and discusses in detail the revisions made to address such weaknesses.

In the current rule, if the resolution plan of a CIDI is found by the FDIC to be not credible, the FDIC provides a notice to the CIDI identifying the aspects of the resolution plan that the FDIC has determined to be deficient and the CIDI's revised resolution plan must address those deficiencies. In the proposal, the FDIC must provide a notice including a description of the weaknesses in the resolution submission that resulted in the determination that the resolution submission is not credible, and the revised resolution submission by the CIDI must address those weaknesses. Here, the term weakness is used in the proposal rather than deficiency to distinguish the proposal from the language utilized in the section 165(d) rule regarding the FDIC's findings in a submission and to clarify that the review process and criteria between the proposed rule and the section 165(d) rule are different and separate from each other.

Even though it is not directly addressed in the current rule, the FDIC has historically provided written feedback to CIDIs concerning their resolution plans. The proposed § 360.10 (f)(5) explicitly provides that, following its review of a resolution submission—either a resolution plan or an informational filing—the FDIC may provide feedback on a resolution submission, and the FDIC expects that it generally will provide initial feedback within a year of a resolution submission. Under the proposed rule, this initial feedback notice could identify areas of engagement and, in the case of group A CIDIs, capabilities testing between the FDIC and the CIDI. The FDIC may include a written notice with respect to the credibility of the resolution plan submission within this initial feedback, or can defer that determination until after any engagement and, if applicable, capabilities testing.

In certain cases, it may be apparent based solely on a review of the resolution plan that the identified strategy is not credible as required by proposed paragraph (f)(1)(i) of the proposed rule. A resolution submission may, for example, fail to include required information, which may result in a finding following the FDIC's review that the resolution submission is not credible based on proposed paragraph (f)(1)(ii).

In other cases, a credibility finding may not be possible until the conclusion of engagement and capabilities testing with a CIDI. For example, a review of a resolution submission may indicate that the CIDI has certain required capabilities. It may only become apparent following the conclusion of engagement and capabilities testing exercises that the CIDI was unable to demonstrate those capabilities. Such a case could lead to the FDIC making a determination that the resolution submission is not credible based upon information provided by the engagement and capabilities exercises. As noted above in section III.B.2 in the discussion of resolution submission review and credibility determination, the FDIC may make a credibility finding at any time throughout the review and engagement and capabilities testing process and may include such findings together with an initial feedback letter following resolution submission review, together with a conclusion letter following engagement or capabilities testing, or as an independent communication to the CIDI.

The FDIC invites comments on all aspects of the proposed resolution submission review and credibility determination; resubmission; notice of feedback requirements. In particular, the FDIC asks the following question on specific aspects of the proposal:

(62) Is the proposed review and feedback process clear?

(63) The FDIC proposes a flexible approach to timing of credibility determinations, which can be made following plan review and/or following engagement and capabilities testing. Are multiple opportunities for feedback helpful?

(64) Is the timing for the various steps over the resolution submission cycle clear, and is the timing appropriate?

C. Engagement and Capabilities Testing

The FDIC proposes to modify the current rule to provide more clarity concerning the FDIC's expectations for engagement between CIDIs and the FDIC. The FDIC has found that direct engagement with the knowledgeable staff at a CIDI has significant value in promoting FDIC understanding of the content of a resolution submission and the application of the information to both the identified strategy and other strategic options that will be useful to

[61] 12 CFR 360.10(c)(4)(ii).

[62] 12 CFR 360.10(c)(4)(iii), (iv).

the FDIC in implementing a resolution strategy. In addition, engagement with a CIDI will allow the CIDI and the FDIC to focus on the areas most important to the business and organization of the particular CIDI and the particular challenges the FDIC may face in the potential resolution of that CIDI. Engagement is important with respect to informational filings as well, as it would provide an opportunity to identify gaps in the FDIC's understanding of the particular institution and its potential challenges in resolution. The FDIC could use this opportunity to explore how identified gaps could be mitigated through additional data and analysis or future resolution submissions.

Capabilities testing also has proven useful to validate the information and capabilities described in a CIDI's resolution plan and to understand how those capabilities may apply across a range of scenarios and strategic options that the FDIC may be called upon to implement. The proposed rule contains express language that in both engagement and capabilities testing, the FDIC may seek to understand how information or assumptions may change based on possible changes to a scenario, or to test capabilities under a different set of assumptions than used in the identified strategy in a group A CIDI's resolution plan submission. The FDIC believes that the proposed amendments would clarify the FDIC's expectations with respect to engagement and capabilities testing.

In general, the FDIC expects to conduct engagement and capabilities testing in a manner consistent with the FDIC's examination practices, to the extent appropriate to the nature of the engagement and capabilities testing. For example, the FDIC would, as appropriate, provide the particular scope for an engagement exercise, establish a schedule, and provide a conclusion letter at the end of the engagement exercise.

In a biennial submission cycle the FDIC expects that engagement with group A CIDIs will occur on a selective basis but does not expect to engage with any group A CIDI more than once in each two-year cycle. Because informational filings by group B CIDIs do not include the development of an identified strategy and other elements of a group A resolution plan submission, the FDIC expects the engagement with group B CIDIs to be a key component of its resolution planning for such firms, and will expect to engage with every group B CIDI in each cycle. In addition, the FDIC expects that capabilities testing for each group A and group B CIDI will occur no more than once per two-year cycle.

While the FDIC generally expects that engagement or capabilities testing with a particular CIDI would occur no more than once during a two-year submission cycle, the FDIC also believes that it is important to preserve the flexibility to undertake engagement and capabilities testing with a CIDI as frequently as needed and whenever prudent, based on the circumstances of the particular CIDI. In some instances no engagement or capabilities testing may be necessary during a two-year cycle, while in other cases, such as after changes at the CIDI or as the result of varying economic conditions, more frequent engagement and capabilities testing may be warranted. In addition to formal engagement and capabilities testing, the FDIC could also have other interactions with the CIDI, such as questions during the submission review process, or conversations regarding changes or updates to information or resolvability. This proposed provision is generally consistent with the current rule, although prior guidance had limited the FDIC's engagement and capabilities testing to once per firm per submission cycle.[63]

1. Engagement

Paragraph (d)(1) of the current rule[64] requires each CIDI to provide the FDIC with information and access to the CIDI's personnel as the FDIC determines is necessary to assess the credibility of the resolution plan, and the ability of the CIDI to implement, the resolution plan.[65] The current rule also states that the FDIC will rely on examinations conducted by or on behalf of a CIDI's appropriate Federal banking agency to the fullest extent possible.[66]

Proposed paragraph (g)(1) would require each CIDI to provide the FDIC such information and access to such personnel of the CIDI as the FDIC in its discretion determines is relevant to any of the provisions of proposed § 360.10 (defined as ''engagement''). This will allow the FDIC to focus engagement on the information and capabilities most relevant to a CIDI's resolution submission and the nature of the business and particular resolution challenges applicable to that CIDI. This engagement requirement is similar to the requirement in current § 360.10(d)(1)[67] but establishes more clearly that such information and personnel access is at the discretion of the FDIC and is not limited to assessments of credibility for a resolution plan or the ability of the CIDI to implement a resolution plan, but instead includes any information or personnel relevant to any provision of the proposed rule. Engagement will also allow the FDIC to obtain more in-depth information, such as copies of critical services agreements or deposit agreements, or to gain insight on the relationships between different elements of information provided, such as asset portfolios and key depositors.

The proposed removal of the provision in the current rule that focuses engagement on the ''ability of the CIDI to implement the resolution plan''[68] is intended to reflect that it is the FDIC in its capacity as receiver that implements a resolution plan, not the CIDI.[69]

Proposed paragraph (g)(1) would also require that the personnel a CIDI makes available for engagement purposes have sufficient expertise and responsibility to address the informational and data requirements of the engagement. The FDIC proposes to include this requirement to ensure that the CIDI personnel can effectively and efficiently participate in the engagement to achieve the goals of the engagement.

The FDIC invites comments on all aspects of the proposed engagement requirements. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(65) Do commenters believe the definition of ''engagement'' is clear? If not, please discuss any ambiguity or uncertainty regarding the proposed definition.

(66) Do commenters believe the proposed requirements related to personnel are sufficiently clear? If not, please discuss any ambiguity or uncertainty regarding the proposed requirements.

(67) Do commenters believe that the proposed engagement examples should include additional examples or that any proposed examples should be removed? If so, please be specific as to what examples should be added or removed.

(68) Do commenters believe there are any barriers that would generally prevent CIDIs from complying with the proposed engagement requirements? If

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[63] Statement, p. 3.

[64] 12 CFR 360.10(d)(1).

[65] *See id.*

[66] *See id.*

[67] *See id.* (''In order to allow evaluation of the resolution plan, each CIDI must provide the FDIC such information and access to such personnel of the CIDI as the FDIC determines is necessary to assess the credibility of the resolution plan and the ability of the CIDI to implement the resolution plan.'').

[68] *Id.*

[69] *See* 12 U.S.C. 1821(d) (detailing the powers and duties of the FDIC as conservator or receiver).

so, please describe any barriers and describe any alternative approaches that could overcome the barriers.

2. Capabilities Testing

Current § 360.10(d)(2) requires each CIDI, within a reasonable period of time as determined by the FDIC, to demonstrate its capability to produce promptly, in a time frame and format acceptable to the FDIC, the information and data underlying the CIDI's resolution plan.[70] Current § 360.10(d)(2) also requires the FDIC to consult with a CIDI's appropriate Federal banking agency before finding that the CIDI's capability to produce the information and data underlying its resolution plan is unacceptable.[71]

The FDIC proposes to amend current § 360.10(d)(2) to provide more clarity as to the FDIC's expectations for CIDI capabilities testing. Proposed paragraph (g)(2) would require each CIDI, at the discretion of the FDIC, to demonstrate that it can actually perform the capabilities described, or required to be described, in a resolution submission, including the ability to provide the information, data, and analysis underlying the resolution submission and that these capabilities are adaptable to a range of scenarios. Proposed paragraph (g)(2) would also require that a CIDI perform capabilities testing promptly and provide the results in a time frame and format acceptable to the FDIC. This capabilities testing requirement is similar to the requirement in current § 360.10(d)(2),[72] but proposed paragraph (g)(2) would clarify that capabilities testing may require a CIDI to demonstrate any of the capabilities the proposed rule would require a CIDI to have, rather than the potentially more limited requirement in the current rule regarding capabilities to produce the information and data underlying the resolution plan. In addition, for the purpose of clarity, the proposed rule would expressly provide that capabilities testing of CIDIs would be at the discretion of the FDIC.

Examples of the capabilities that a CIDI could be required to demonstrate might include identification of key employees and key critical services, as well as capabilities to meet the requirements of the proposed rule with respect to mapping, such as mapping critical services to material entities. The FDIC might also test capabilities that are necessary to key elements of the resolution submission content, such as continuity of operations, franchise component separation and marketing. An example of such a capabilities test might be the establishment of a virtual due diligence room for one or more franchise components or for the IDI franchise as a whole, which is a capability that is critical to the marketing efforts that are essential in resolution. For group A CIDIs, a capabilities test might require the development of valuation analysis required under the proposed rule under the identified scenario or an alternative scenario. These examples are only provided for illustrative purposes and do not in any way restrict the general proposed paragraph (g)(2) requirement that capabilities testing can involve any capability described or required to be described in a resolution submission.

The FDIC is proposing the revised capabilities testing requirements in order to help ensure that the capabilities that a CIDI identifies as part of a resolution submission, or that are required to be in the resolution submission under proposed § 360.10(d), are actually in place in the event of the CIDI's failure. Resolution submissions are intended to assist the FDIC with efficiently and effectively resolving a CIDI in a way that preserves value and minimizes disruption, and it would impede this goal if the capabilities underlying a resolution submission were not actually available when needed. Requiring a CIDI to be able to demonstrate any identified or required capabilities helps the FDIC ensure that the capabilities would be available in the event of a resolution, which would in turn help with the resolution process.

The FDIC invites comments on all aspects of the proposed capabilities testing requirements. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(69) Do commenters believe that the proposed capabilities testing requirements are clear? If not, please discuss any ambiguity or uncertainty regarding the proposed requirements.

(70) Do commenters believe that the proposed capabilities testing examples should include additional examples or any proposed examples should be removed? If so, please be specific as to what examples should be added or removed.

(71) Do commenters believe there are any barriers that would generally prevent group A CIDIs from complying with the proposed capabilities testing requirements? If so, please describe any barriers and describe any alternative approaches that could overcome the barriers.

3. Conclusion Letter

The FDIC proposes to add a new paragraph (g)(3) to address a conclusion letter that the FDIC may at its discretion provide at the conclusion of any engagement or capabilities testing exercise. This letter may identify areas for further attention by the CIDI or other feedback. The FDIC intends for any identified areas to help guide a CIDI's improvements to its resolution planning and submissions. As noted above in section III.B.2 in the discussion of resolution submission review and credibility determination, the FDIC may make a credibility finding at any time throughout the review or engagement and capabilities testing processes and may include such findings together with an initial feedback letter following submission review, together with a conclusion letter following engagement or capabilities testing, or as an independent communication to the CIDI.

The FDIC notes that providing a conclusion letter for an engagement or capabilities testing exercise does not in any way limit the FDIC's ability to commence further engagement or capabilities testing with the same CIDI.

The FDIC invites comments on all aspects of the proposed conclusion letter requirements. In addition, the FDIC asks the following question on a specific aspect of the proposal:

(72) Do commenters believe that the proposed conclusion letter provisions are clear? If not, please discuss any ambiguity or uncertainty regarding the proposed provisions.

D. Enforcement

The proposed rule would add a new paragraph (k) to proposed § 360.10 regarding enforcement authorities for any potential violation of the requirements of proposed § 360.10. While proposed paragraph (k) would be a new addition to proposed § 360.10, the FDIC emphasizes that the new paragraph would not constitute a substantive change to existing § 360.10 and that proposed § 360.10(k) would not add any new enforcement authority or power to the FDIC's or any other Federal banking agency's current enforcement capabilities.

Under proposed paragraph (f)(4), if a CIDI's resolution submission were found to be not credible and the CIDI were to fail to submit the revised resolution submission within the required time-period or the FDIC were to determine that the revised resolution

[70] *See* 12 CFR 360.10(d)(2).

[71] *See id.*

[72] *See* 12 CFR 360.10(d)(2) (''Within a reasonable period of time, as determined by the FDIC, following its Initial Submission Date, the CIDI shall demonstrate its capability to produce promptly, in a time frame and format acceptable to the FDIC, the information and data underlying its resolution plan.'').

submission failed to adequately address the identified weaknesses, the FDIC could take enforcement action against the CIDI in accordance with proposed paragraph (k). Similarly, proposed paragraph (g)(4) states that a CIDI's failure to comply with the requirements of engagement and capabilities testing under proposed paragraph (g) may result in the FDIC taking enforcement action against the CIDI in accordance with proposed paragraph (k). The FDIC is proposing this provision in order to emphasize that the FDIC expects each CIDI to fully participate in every engagement and capabilities testing exercise and to inform CIDIs of potential consequences for failure to comply with these requirements.

Proposed § 360.10(k) would reiterate the existing enforcement authorities and powers in order to clearly notify CIDIs that any violation of a requirement of proposed § 360.10 would constitute a violation of a regulation that may subject the offending CIDI to enforcement remedies available to the appropriate Federal banking agency under section 8 of the FDI Act and, where applicable, the FDIC under paragraph (t) of that section.[73] Where the FDIC is the appropriate Federal banking agency of the CIDI, those powers would include the ability to impose civil money penalties or cease and desist orders. Where the FDIC is not the appropriate Federal banking agency of the CIDI, enforcement action may be taken directly by the appropriate Federal banking agency.[74] Where enforcement action is not taken by the appropriate Federal banking agency, the FDIC may, where applicable, utilize its backup enforcement authority in accordance with the requirements in section 8(t).

These enforcement authorities and powers would not be modified by this proposal. Nothing in proposed paragraph (k) is intended to limit in any way the powers or authorities of any Federal banking agency.

The FDIC invites comments on all aspects of the proposed enforcement provision.

E. Additional Provisions

1. Approval by the CIDI Board of Directors

The proposed § 360.10(c)(5) retains the current rule's requirement that a CIDI's board of directors approve the submission, and that this approval be noted in the board's minutes. For an insured branch, the proposed rule would allow a submission to be approved by a delegee acting under the express authority of the board, and would require such delegation of authority to be noted in the board's minutes. This proposed change would better facilitate insured branch approval at a level commensurate with the requirement applicable to IDIs and still ensure senior officials remain responsible for the quality and timeliness of the submission.

The FDIC invites comments on all aspects of the proposed approval by the CIDI board of directors requirements. In particular, the FDIC asks the following question on a specific aspect of the proposal:

(73) Does the proposed approach to approval of submissions by CIDIs and insured branches ensure responsibility for submission integrity rests at an appropriate level?

2. Incorporation From Other Sources

The current rule provides that in its resolution plan, a CIDI may incorporate data and other information from a DFA resolution plan filed by its parent company.[75]

The proposed § 360.10(c)(6)(i) would expand the sources from which incorporation in a resolution submission is permitted, adding the most recently submitted resolution submission by the CIDI or an affiliate of the CIDI; a regulatory filing by the CIDI with the FDIC; and a publicly-available regulatory filing by the CIDI or any of its affiliates with any Federal or State regulator. The CIDI would be able to incorporate this information or analysis without seeking the authorization for disclosure of FDIC confidential information required under 12 CFR part 309. These changes would potentially reduce the costs to CIDIs of preparing resolution submissions without reducing the quality of information provided to the FDIC. Moreover, the proposed change would not increase the administrative burden of the FDIC or CIDIs because the proposed additional sources are limited to information already available to the FDIC. As proposed, the rule would allow incorporation of material from other sources—but not incorporation by reference. The FDIC has found that it is beneficial to have all of the relevant information in one place, so information can be incorporated—via appendices or inclusion in a resolution submission through well-identified excerpts—but not simply a reference to another source. The proposed rule includes certain proposed requirements about the format and process for incorporation of information from other sources and would require certification that the information or analysis remains accurate in all respects that are material to the CIDI's resolution submission. The information required by the section 165(d) rule pertaining to the specified CIDI must be readily distinguishable from any extraneous parent company (or parent company affiliate) information and the CIDI resolution plan should describe any material differences. The information or analysis must also clearly indicate the source and as-of date. As an example, incorporated financial information with dates differing from the prescribed CIDI resolution plan financial date would be acceptable if the dates are clearly reflected and the differences are not material.

These proposed changes would incorporate into the revised rule certain elements of the guidance provided by the FDIC in 2021.[76]

The FDIC invites comments on all aspects of the proposed incorporation from other sources requirements. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(74) Are the proposed changes to the incorporation from other sources requirements clear?

(75) Would the proposed incorporation from other sources requirements streamline the process for CIDIs of preparing resolution submissions?

(76) Should the FDIC consider allowing incorporation from other sources of additional or different sources of information?

3. Financial Information

The proposed § 360.10(h)(1) would require that a CIDI's resolution submission use, to the greatest extent possible, financial information as of the most recent fiscal year-end for which the CIDI has financial statements or, if financial information from more recent financial statements would more accurately reflect the CIDI's operations as of the date of the submission, financial information as of that more recent date. The current rule does not detail the required timeliness of financial information to be used in a submission. During the time in which the FDIC has been administering the current rule, a number of questions have

[73] 12 U.S.C. 1818(t).

[74] The FDIC is the appropriate Federal banking agency for any state-chartered IDI that is not a member of the Federal Reserve System. The FRB is the appropriate Federal banking agency for any state-chartered IDI that is a member of the Federal Reserve System. The OCC is the appropriate Federal banking agency for any nationally-chartered IDI.

[75] 12 CFR 360.10(c)(1)(vi).

[76] *See* Statement, p. 3–4.

arisen as to whether year-end financial statements or information as of another period or on another date should be used. Clarifying this aspect should assist CIDIs in preparing resolution submissions and would incorporate into the revised rule guidance provided by the FDIC in 2021.[77]

The FDIC invites comments on all aspects of the proposed financial information requirements. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(77) Are the proposed requirements concerning the timeliness of financial information used in a resolution submission clear?

(78) Would modified or different requirements provide helpful flexibility to CIDIs while still ensuring that the FDIC receives information of sufficient timeliness and accuracy?

4. Indexing of Information and Analysis to Resolution Submission and Interim Supplement Content Requirements

Proposed § 360.10(h)(2) provides that a CIDI's resolution submission and interim supplement must include an index of each content requirement required to be included in that resolution submission or interim supplement to every instance of its location in the submission or supplement. This would be a new requirement. Indexing would facilitate the FDIC's review of these materials and help ensure clear understanding by both a CIDI and the FDIC of where particular content may be found. Doing so may reduce the need for follow-up questions by FDIC staff during review of resolution submissions and interim supplements.

The FDIC invites comments on all aspects of the proposed indexing of information and analysis to resolution submission and interim supplement content requirements. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(79) Are the proposed indexing requirements clear?

(80) Would another approach better serve the FDIC's objective of obtaining clear indication of where a resolution submission and interim supplement addressed each applicable content requirement?

5. Combined Resolution Submission and Interim Supplement by Affiliated CIDIs

Proposed § 360.10(h)(3) adds to the current rule a provision that would allow CIDIs that are affiliates to submit a single, combined resolution submission or interim supplement, so long as all affiliated CIDIs submitting the combined submission or supplement are within the same CIDI group, whether group A or group B. The combined submission or supplement would be required to satisfy the content requirements for each CIDI's separate submission or supplement, as applicable, and the CIDIs would need to ensure that the FDIC would be able to readily identify the portions of a combined submission or supplement that comprise each CIDI's separate submission or supplement. The proposed change would incorporate into the rule guidance provided by the FDIC in 2021 for CIDIs with $100 billion or more in total assets.[78] The intent is to enable affiliated CIDIs that are within the same group, either group A or group B, to provide more streamlined information that would be more useful to the FDIC, with appropriate safeguards to ensure that a combined resolution submission and interim supplement clearly delineates content applicable to each CIDI.

The FDIC invites comments on all aspects of the proposed combined resolution submission and interim supplement requirements. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(81) Is the proposed approach to permitting combined resolution submissions and interim supplements by affiliated CIDIs in the same CIDI group clear?

(82) Would a modified approach result in a more useful product for the FDIC while increasing the efficiency to CIDIs?

6. Form of Resolution Submissions; Confidential Treatment of Resolution Submissions

The proposed rule, like the current rule, would require that each CIDI divide its resolution submission into a public section and a confidential section. The only notable difference in the proposed rule from the current rule with respect to resolution plans is that the proposed rule would require a description in the public section, at a high level, of the group A CIDI's identified strategy. The purpose of this proposed change is to align the public section with proposed changes to the substantive contents of the confidential section of a resolution plan. For all resolution plans submitted in 2022 or to be submitted in 2023, the FDIC has exempted the CIDIs from including this information, but the proposed rule would include a comparable requirement aligned with the requirement for the development of an identified strategy in the current rule.

The requirement to include a public section would not apply to interim supplements required under proposed paragraph (e), as the interim supplements are updates of information included in the confidential section of a resolution submission.

The FDIC invites comments on all aspects of the proposed form and confidentiality of resolution submission and interim supplement requirements for CIDIs. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(83) Do commenters believe there are any proposed public section requirements for group A or group B CIDIs that should not be included in the proposed requirement? If so, please explain which proposed public section requirements should not be included for group A or group B CIDIs and why the proposed requirements should not be included for those CIDIs.

(84) Do commenters believe that any public section requirements that are not proposed for group A or group B CIDIs should be included in the proposed requirements? If so, please explain what those public section requirements are and why the public section requirements should be included for group A or group B CIDIs.

(85) Do commenters believe that there are any barriers that would prevent group A or group B CIDIs from complying with one or more of the proposed public section requirements? If so, please explain why the barriers would prevent group A or group B CIDIs from complying with one or more proposed public requirements and suggest any alternative approaches that would facilitate compliance.

(86) Do commentators believe that the public interest or other interests would be served by requiring interim supplements to include an updated public section?

7. Extensions and Exemptions

The FDIC is proposing a new paragraph (j) titled ''Extensions and exemptions,'' which would include the requirements of current § 360.10(d)(3) and (4)[79] as new paragraphs (j)(1) and (j)(2), with some modifications. The FDIC believes it is more logical to separate these requirements into a new paragraph because the current and the proposed versions of these paragraphs apply to all of § 360.10, not only current

[77] *See* Statement, p. 3.

[78] *See* Statement, p. 4.

[79] *See* 12 CFR 360.10(d)(3) and (4).

paragraph (d) and proposed paragraph (g).[80]

Proposed new paragraph (j)(1) would be titled ''Extension'' and would allow the FDIC, on its own initiative or upon written request, to extend, on a case-by-case basis, any of the time frames or deadlines in proposed § 360.10. This is largely the same provision as current § 360.10(d)(3), but would not be limited to ''the implementation and updating time frames'' [81] of § 360.10 and would instead allow broader extension of any time frame or deadline in proposed § 360.10. The FDIC believes this would allow the FDIC and the CIDIs more flexibility to extend a time requirement in any particular individualized circumstances where the FDIC believes an extension is warranted.

Proposed new paragraph (j)(2) would be titled ''Waiver'' and would allow the FDIC, on its own initiative or upon written request, to exempt a CIDI from one or more of the requirements of proposed § 360.10. This proposed provision is identical to current § 360.10(d)(4).[82]

The FDIC invites comments on all aspects of the proposed extensions and exemptions requirements.

8. Transition

Group A CIDIs: Entities that are CIDIs would be required to comply with the amended rule beginning on the effective date.[83] However, pursuant to letters issued in 2021 and 2022, the FDIC has directed certain CIDIs to submit resolution plans pursuant to the current rule, and the FDIC proposes that those CIDIs submit resolution plans as previously directed unless they receive written notice of an extension as provided in the current rule.

Subsequent submissions by these CIDIs would be subject to the requirements of the amended rule following its effective date.

Because resolution plans submitted in 2023 will be prepared and submitted under the current rule, they will be evaluated under the current rule. However, recognizing that the amended rule may go into effect soon after these resolution plans are submitted, the FDIC anticipates that feedback given upon review of those resolution plans would focus on current rule elements that would remain relevant under the amended rule. Further, following the effective date of the final rule, the FDIC does not anticipate conducting engagement and capabilities testing on these resolution plans as contemplated in the Statement. Instead, FDIC staff would expect to offer to hold meetings with CIDIs to discuss the FDIC's expectations for future submissions under the amended rule and to respond to questions from the CIDIs.

The next resolution plan submission date for group A CIDIs would be set pursuant to the amended rule. The FDIC expects that about half of the group A CIDIs would file their first resolution plans under the amended rule on or before a date approximately not less than 270 days from the effective date of the final rule or as otherwise established pursuant to the amended rule. The other half of the group A CIDIs would file their first resolution plans under the amended rule on or before a date within two years of the effective date of the final rule or as otherwise established pursuant to the amended rule. Under this approach, some group A CIDIs would have more and some would have less than two years between their last filing under the current rule and their first filing under the amended rule. The FDIC would endeavor to provide group A CIDIs at least 270 days' notice of their first filing date under the amended rule.

Group B CIDIs: The FDIC anticipates that group B CIDIs would be expected to submit their informational filings on or before a date that is at least 270 days from the effective date of the final rule or as otherwise established pursuant to the amended rule. The FDIC would endeavor to provide group B CIDIs at least 270 days' notice of their first filing date under the amended rule. Recognizing that none of the group B CIDIs have submitted a resolution plan under the current rule since implementation of the moratorium, the FDIC expects to offer meetings with the group B CIDIs to discuss the FDIC's expectations for their first submissions and future submissions under the amended rule. The FDIC also expects to respond to questions from the group B CIDIs.

In any calendar year that a CIDI does not provide a resolution submission, it would be required to provide an interim supplement as described in the proposed rule. Any CIDI that is not in the first cohort of CIDIs filing a resolution submission following the effective date of the final rule would be expected to provide an interim supplement on or before the first resolution submission filing date under the amended rule.

The FDIC invites comment on all aspects of the proposed transition period. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(87) Is the proposed process for evaluating resolution plans submitted in 2023 under the current rule appropriate in light of the proposed rule? Are there other alternatives to consider?

(88) Certain CIDI's have not submitted a plan since prior to the date that the moratorium was put in place; others have not filed a plan at all. Does the proposed transition time frame balance the goals of receiving resolution plan submissions as early as possible while providing sufficient time to CIDIs to prepare their first resolution submissions or interim supplements under the amended rule? What longer period or shorter period would be appropriate, and why?

(89) Is there a preferred date for filing of resolution submissions and interim supplements (e.g., January 15, June 30, or December 1)? If so, why?

IV. Expected Effects

As previously discussed, the proposed rule would amend resolution plan submission requirements for all CIDIs and would establish two tiers of submission requirements to reflect the size and complexity of CIDIs. Group A CIDIs, which are IDIs with $100 billion or more in total assets, would be required to submit resolution plans that comply with all of the content requirements of the revised rule, including the development of an identified strategy for the resolution of the CIDI, and to participate in engagement and capabilities testing. Group B CIDIs, which are IDIs with total assets of at least $50 billion but less than $100 billion, would be required to submit an informational filing containing information on resolution planning and readiness, and to participate in engagement and capabilities testing. The following describes the expected costs and benefits of the proposed rule, as they would apply to the groups of affected IDIs, and other economic impacts.

A. Proposed Changes to Current Rule, as Implemented

Since the adoption of the current rule in 2012, the FDIC has provided guidance and feedback to CIDIs about the FDIC's expectations regarding various elements of resolution plan content under the rule. In 2018, the

[80] *See* 12 CFR 360.10(d)(3)(''Notwithstanding the general requirements of paragraph (c)(1) of this section, on a case-by-case basis, the FDIC may extend, on its own initiative or upon written request, the implementation and updating time frames for all or part of the requirements of this section.'') and 12 CFR 360.10(d)(4)(''FDIC may, on its own initiative or upon written request, exempt a CIDI from one or more of the requirements of this section.'').

[81] 12 CFR 360.10(d)(3).

[82] *See* 12 CFR 360.10(d)(4).

[83] The effective date of the amended rule would not be earlier than the first day of the first calendar quarter after the issuance of the final rule.

FDIC announced a moratorium on resolution plan submissions.[84] In January 2021, the FDIC announced that it would lift the moratorium for CIDIs with $100 billion or more in total assets (which corresponds with the group of CIDIs the proposed rule would categorize as group A CIDIs),[85] and in the Statement, the agency described modified expectations for resolution plans from this group. Rule requirements continued to remain subject to the moratorium for CIDIs with total assets of less than $100 billion (which includes the group of CIDIs the proposed rule would categorize as group B CIDIs).

Under the approach outlined in the Statement, CIDIs with $100 billion or more in total assets are expected to submit a resolution plan once during the succeeding three-year period. In addition, pursuant to the Statement, the FDIC communicated that it would provide exemptions to all CIDIs that are required to file resolution plans (the group A CIDIs) from the obligation to include certain categories of content in their future resolution plan submissions. The exemptions that the Statement indicated would be provided to all group A CIDIs are: least-costly resolution method,[86] asset valuation and sales,[87] major counterparties,[88] material entity financial statements,[89] systemically important functions,[90] disaster recovery or other backup plans,[91] assessment of the resolution plan,[92] and high-level description of resolution strategy in the public section.[93]

As explained in the Statement, on a case-by-case basis, the FDIC also provided exemptions to certain CIDIs for their next resolution plan submissions for certain additional categories of content required by the current rule: off-balance sheet exposures; collateral pledged; trading, derivatives, and hedges; unconsolidated balance sheet and consolidated schedules; payment, clearing, and settlement systems; capital structure and funding sources; affiliate funding, transactions, accounts, exposures, and concentrations; and cross-border elements.[94]

The Statement also:

(1) Established a process for a CIDI to request additional exemptions;

(2) Maintained the requirement that a resolution plan take into account that the CIDI's failure may occur under the severely adverse economic conditions developed by the Board of Governors of the Federal Reserve System pursuant to 12 U.S.C. 5365(i)(1)(B), but communicated that CIDIs would be exempted from the requirement to take into account baseline and adverse economic conditions for their resolution plan submissions;

(3) Explained the FDIC's intention to conduct regular engagement and capabilities testing; and

(4) Permitted CIDIs to incorporate by reference into their resolution plans information from other sources, including the DFA resolution plans of a CIDI's parent company, a resolution plan submitted previously by the CIDI or its affiliate, a regulatory filing with the FDIC by the CIDI, and a publicly-available regulatory filing by the CIDI or any of its affiliates with any Federal or State regulator.

These changes were taken into account in the FDIC's most recent estimates of total annual labor hours and costs associated with recordkeeping, reporting, and disclosure compliance requirements for the current rule as implemented following the Statement.[95] These estimates will be used as a baseline from which the estimates of total annual labor hours and costs associated with recordkeeping, reporting, and disclosure compliance requirements of the proposed rule on CIDIs are derived.

1. Effects on Group A CIDIs

If adopted, the proposed rule will increase regulatory compliance costs for group A CIDIs due to a variety of proposed changes to resolution plan content and proposed changes with respect to engagement and capabilities testing, as well as the expected increased frequency of submissions and the proposed new requirement of interim supplements between submissions. The proposed rule will increase such costs by requiring certain content that was expected to be exempted for all or some of these CIDIs as explained in the Statement, by modifying certain other content requirements, and by modifying the expectations for engagement and capabilities testing. Group A CIDIs would be defined in the proposed rule as IDIs with $100 billion or more in total assets based upon the average of the institution's four most recent Reports of Condition and Income. As of the quarter ending December 31, 2022, the FDIC insured 4,715 depository institutions, of which 31 reported total average assets of $100 billion or more over their four most recent Reports of Condition and Income. Therefore, for the purposes of this analysis the FDIC estimates that 31 FDIC-insured depository institutions would be classified as group A CIDIs and directly affected by the proposed rule, if adopted.[96] In aggregate, these 31 group A CIDIs held a combined $16.47 trillion in total assets, accounting for about 69 percent of total U.S. banking industry assets.[97]

a. Previously-Exempted Content Reinstated

The following content elements, which the Statement indicated would be exempted for all CIDIs, are included in the proposed rule or replaced by requirements of similar purpose.

Failure scenario/identified strategy. While the Statement indicated that IDIs would be exempted from developing a failure scenario and one or more resolution strategies for their resolution plans, the proposed rule would reinstate that requirement in a somewhat narrower fashion than described in the current rule. The proposed rule would require group A CIDIs to provide an identified strategy covering the period from point of failure to liquidation or return of the business to the private sector that would be developed according to a failure scenario determined by either the CIDI or (in whole or in part) the FDIC. Consistent with the Statement, a severely adverse economic scenario will be considered

[84] See *https://www.fdic.gov/news/speeches/2018/spnov2818.html.*

[85] See *https://www.fdic.gov/resources/resolutions/resolution-authority/idi-statement-01-19-2021.pdf.*

[86] 12 CFR 360.10(c)(2)(vii).

[87] 12 CFR 360.10(c)(2)(viii)(B) through (C).

[88] 12 CFR 360.10(c)(2)(ix).

[89] 12 CFR 360.10(c)(2)(xiii).

[90] 12 CFR 360.10(c)(2)(xvii).

[91] 12 CFR 360.10(c)(2)(xix).

[92] 12 CFR 360.10(c)(2)(xxi).

[93] 12 CFR 360.10(f)(1)(xi).

[94] 12 CFR 360.10(c)(2)(x) through (xvi) & (xvii).

[95] *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202111-3064-003.*

[96] FDIC PR–16–2023. ''FDIC Creates a Deposit Insurance National Bank of Santa Clara to Protect Insured Depositors of Silicon Valley Bank, Santa Clara, California.'' March 10, 2023. *https://www.fdic.gov/news/press-releases/2023/pr23016.html.* FDIC PR–18–2023. ''FDIC Establishes Signature Bridge Bank, N.A., as Successor to Signature Bank, New York, NY.'' March 12, 2023. *https://www.fdic.gov/news/press-releases/2023/pr23018.html.* FDIC PR–34–2023, ''JPMorgan Chase Bank, National Association, Columbus, Ohio Assumes All the Deposits of First Republic Bank, San Francisco, California'' May 1, 2023. *https://www.fdic.gov/news/press-releases/2023/pr23034.html.* This estimate has been adjusted for the recent failures of Silicon Valley Bank, Signature Bank, and First Republic Bank, as well as merger transactions that occurred in the first quarter of 2023 that would affect the number of institutions categorized as group A CIDIs.

[97] FDIC Call Report Data as of December 31, 2022. Two of these institutions have not yet filed a resolution plan. For the purposes of this analysis, their first plans are expected to be filed after the proposed rule is finalized.

and alternatives under baseline or adverse conditions would not be required.

Least-costly resolution method. The Statement communicated that all CIDIs would be exempted from demonstrating that any resolution strategy was the least costly to the DIF of all available options. Under the proposed rule, this content element from the current rule would be replaced by a requirement that a resolution plan include information and analysis regarding processes to develop valuations under different resolution assumptions that would be helpful to the FDIC in developing its least-cost analysis at the time of a CIDI's failure.

Assessment of resolution plan: Finally, the proposed rule would not provide an exemption from the requirements with respect to information regarding any assessments made by the CIDI of its resolution plan.[98] The Statement explained that the FDIC would exempt all CIDIs from this content requirement.

b. No Routine FDIC-Issued Case-by-Case Exemptions

Unlike the intention expressed in the Statement, the proposed rule would not include the expectation of routine exemption of certain content on a case-by-case basis. Rather, all group A CIDIs would be required to include all content required by the revised rule if and to the extent those elements are relevant to their organization and businesses. For example, the Statement of provided an exemption for content relating to the parent company and parent company affiliates for a CIDI without a holding company. However, under the proposed rule, the resolution plan would simply provide the relevant information (*e.g.,* that the CIDI does not have a holding company and therefore there are no challenges associated with separation from the parent company and parent company affiliates). Similarly, for example, rather than exempting CIDIs that do not have significant cross-border operations or activities from the *Cross-border elements* subpart,[99] the proposed rule will require the resolution plans discuss this information if and to the extent of such operations and activities. Thus, the burden on each group A CIDI would be commensurate with the applicability of the requirement in view of the complexity of each CIDI's organization and business.

c. Codifying Guidance, New and Modified Plan Content Requirements, and Deleting Plan Content Requirements

The proposed rule would codify and build upon certain elements of the Statement. The content items which were exempted pursuant to the Statement for all or some CIDIs are included in the proposed rule, with only limited exceptions. The proposed rule would eliminate the following content requirements that were exempted for all CIDIs, including the group A CIDIs, pursuant to the Statement: *Major Counterparties* [100] and disaster recovery and backup plans.[101] In addition, while the proposed rule does not require the content in the current rule with respect to ''least costly resolution method,'' which was an exemption for all CIDIs as described in the Statement, the proposed rule adds a new content element, titled ''*Valuation to Facilitate Assessment of Least-cost Test,*'' with a related purpose and similar level of burden. The proposed rule would add one new category of required content: the *Digital services and electronic platforms* subpart.[102] Other content areas have been modified and reorganized to clarify and further develop the content requirements under the current rule as implemented.

In addition, while the Statement expressly permitted incorporation by reference of relevant information provided in the DFA resolution plans and various other regulatory filings, the proposed rule would allow incorporation of that information, but would require that it be replicated in the resolution submission.

The proposed rule would address the instances in which a CIDI would be required to notify the FDIC about a significant change. Specifically, under the proposed rule, CIDIs would be required to provide the FDIC with a notice of ''material change'' to its organizational structure, core business lines, size, or complexity (such as via a merger), acquisition or divestiture of assets or similar transaction that may have significant impact on the identified strategy. There would be no change to burden as a result of this requirement, which is consistent with prior practice and burden estimates.

Taken overall, the proposed changes to required plan content are likely to result in cost increases for group A CIDIs associated with the preparation of their resolution plans, but would improve the utility of resolution plans for the FDIC's planning and readiness for the resolution of group A CIDIs.

d. Updated Reporting Compliance Estimates

In August of 2021, the FDIC updated its estimates of the total annual labor hours and costs associated with reporting compliance requirements of the current rule in light of the resolution planning expectations expressed in the Statement. The updated applicable reporting burden estimates as of August 2021 are: (1) reporting burden of 57.6 hours per billion dollars in assets for each resolution plan submission by a CIDI that had previously submitted a plan with over $100 billion in total assets that is affiliated with a U.S. GSIB; (2) reporting burden of 48 hours per billion dollars in total assets for each resolution plan submission by a CIDI that had previously submitted a plan with over $100 billion in total assets that is not affiliated with a U.S. GSIB; and (3) reporting burden of 14,400 total hours for each resolution plan submission by a CIDI with over $100 billion in total assets (irrespective of U.S. GSIB affiliation) that has never submitted a resolution plan previously.[103] These estimates will be the baseline from which the estimated labor hours and costs associated with reporting compliance requirements of the proposed rule on group A CIDIs are derived.

Based on the FDIC's experience with the current requirements and expectations relative to those in the proposed rule, the FDIC estimates that the proposed changes would increase the reporting requirements for CIDIs. The FDIC estimates that the labor hours needed by group A CIDIs to comply with the reporting requirements of each resolution plan submission following their initial submission under the proposed rule will be 72 hours per billion dollars in assets, an approximately 25 percent increase from the 57.6 hours per billion dollars in assets estimated following the Statement for group A CIDIs affiliated with U.S. GSIBs; and an approximately 50 percent increase from the 48 hours per billion dollars in assets estimated following the Statement for group A CIDIs that are not affiliated with U.S. GSIBs.

Additionally, the FDIC estimates that group A CIDIs that are first-time filers will incur approximately 16,000 labor hours to comply with the reporting requirements of their first resolution plan submission based on the proposed

[98] *See* proposed rule § 360.10(d)(24).

[99] Proposed rule § 360.10(d)(19).

[100] 12 CFR 360.10(c)(2)(ix).

[101] This information is part of *Management Information Systems; Software Licenses; Intellectual Property,* located at 12 CFR 360.10(c)(2)(xix).

[102] Proposed rule § 360.10(d)(23).

[103] See *https://public-inspection.federalregister.gov/2021-24648.pdf.*

rule. This estimate was calculated by taking the estimate for first-time filers in the Statement—13,292 hours.[104] This estimate assumes that none of the exemptions addressed in the Statement are in effect, which returns to the base estimate of 14,400 hours, and then increasing that estimate by an additional 10.77 percent [105] to reflect additional content requirements and changes in the proposed rule. This results in an estimated first-time filing burden for group A CIDIs of approximately 16,000 hours. These estimations—for both subsequent plan submissions and new filings—also include compliance cost estimates for both engagements and capabilities testing (discussed below).

Finally, the proposed rule introduces a new requirement for group A and group B CIDIs to submit interim supplements in years where a resolution submission is not required. These submissions consist of a limited set of critical information that can be effectively updated year over year to help maximize the utility of resolution-related information to the FDIC. Specifically, these supplements would require a CIDI to provide the most up-to-date information, in whole or in part, for the following content elements: (1) organizational structure; (2) overall deposit activities (partial); (3) critical cervices (partial); (4) key personnel (partial); (5) franchise components (partial); (6) asset portfolios (partial); (7) off-balance-sheet exposures; (8) unconsolidated balance sheet; (9) payment, clearing, and settlement systems (partial); (10) capital structure and finding sources (partial); (11) cross-border elements; and (12) management information systems (partial). After a review of the content requirements for these supplementary filings, the FDIC estimates that group A and group B CIDIs will incur approximately 24 hours per billion dollars in assets associated with the submission of an interim supplement to the FDIC. The FDIC expects that this submission would be biennial, *i.e.,* on the years in which a resolution submission is not required.

2. Effects on Group B CIDIs

As previously discussed, group B CIDIs are defined in the proposed rule as IDIs with at least $50 billion but less than $100 billion, in total assets based on the average of the institution's most recent Reports of Condition and Income. As of the quarter ending December 31, 2022, the FDIC insured 4,715 depository institutions, of which 14 reported total assets of $50 billion or more, but less than $100 billion, over their four most recent Reports of Condition and Income. Therefore, for the purposes of this analysis, the FDIC estimates that 14 FDIC-insured depository institutions would be classified as group B CIDIs and directly affected by the proposed rule.[106] In aggregate, as of December 31, 2022, these 14 group B CIDIs held a combined $1.03 trillion in total assets, accounting for about 4.31 percent of total U.S. banking industry assets.

While group B CIDIs are required to provide resolution plans to the FDIC under the current rule, they are currently still subject to the FDIC's moratorium on resolution plan submissions and have not had to provide such submissions since 2018.[107] The baseline for this analysis of the estimated reporting compliance costs of the proposed rule for group B CIDIs includes the existing moratorium and, therefore entails no existing compliance costs for IDIs with total average assets of $50 billion or more, but less than $100 billion. Because the FDIC is using the estimates commensurate with the Statement and the moratorium as the baseline for its analysis, the FDIC estimates that the proposed rule's resolution submission requirements, which would be applied to group B CIDIs, would result in new reporting requirements for group B CIDIs. Concurrent with the implementation of the proposed rule, the FDIC expects there to be a separate action by the FDIC Board of Directors that would lift the moratorium for group B CIDIs, subjecting them to resolution-related filing requirements—under the amended rule—for the first time since 2018.

This analysis of the estimated compliance costs of the proposed rule (in conjunction with the lifting of the moratorium) for group B CIDIs is predicated on the assumption that all of the proposed filing requirements are new filing requirements for group B CIDIs, resulting in relatively high initial compliance efforts associated with implementation. Most CIDIs that would be categorized as group B CIDIs under the proposed rule have not provided resolution plans of any kind to the FDIC. For those CIDIs that have filed previously, the significant passage of time since that filing, taken together with the significant changes to the applicable informational filing requirements for group B CIDIs under the proposed rule, suggest that it is appropriate to consider them to be first-time filers for the purposes of assessing compliance costs.[108]

Under the proposed rule, each group B CIDI would submit an informational filing to the FDIC, and the FDIC could then engage with each group B CIDI to obtain additional information relevant to the FDIC's own resolution planning or to clarify data and analysis in the informational filing. Under the proposed rule, an informational filing for a group B CIDI would differ from a resolution plan for group A CIDIs in that group B CIDIs submitting an informational filing would not be required to include an identified strategy and apply that strategy to a failure scenario, or be subject to review of the credibility of the identified strategy. In addition, an informational filing would not be required to include *valuation to facilitate FDIC's assessment of least-costly resolution method.*

The FDIC estimates that the proposed rule, if adopted, would pose reporting requirements of 7,200 labor hours for the initial informational filing of a group B CIDI. For informational filings in subsequent cycles, the FDIC estimates that the proposed rule would pose reporting requirements of approximately 67 hours per billion dollars in assets.

The FDIC arrived at these estimates by analyzing the content requirements for informational filings required to be submitted by group B CIDIs compared to those for full resolution plans required of group A CIDIs. Specifically, the proposed rule excludes elements pertaining to the creation, application, and review of an identified strategy, and to valuation to support least-cost test analysis for informational filings for group B CIDIs compared to resolution planning requirements for group A CIDIs. FDIC staff does not believe that this reduction in content elements results will have an effect on the estimated reporting burden for initial plan filings for a group B CIDI, but will

[104] The FDIC estimated 13,292 burden hours for first-time filers following the Statement. This estimate was obtained by reducing the base estimate of 14,400 burden hours by 7.7 percent to reflect ''non-individual streamlined content exemptions and engagement changes''. The reduction will not apply to first-time filers under the proposed rule.

[105] For reference, the Statement excluded some content elements and introduced a number of exemptions. However, the estimated labor hours necessary to comply with resolution plan submissions for CIDIs that had previously submitted a plan under the current rule prior to the Statement, was 65 hours per billion dollars in assets. The content requirements associated with the proposed rule is estimated to require 72 hours per billion dollars in assets in order to comply, which is an approximately 10.77 percent increase.

[106] FDIC Call Report data, December 31, 2022.

[107] See *https://www.fdic.gov/resources/resolutions/resolution-authority/idi-plan-statement-052220.pdf.*

[108] Of the 14 group B CIDIs identified, only three have submitted resolution plans under the current rule (in either 2015 or 2018).

result in a net reduction in burden of approximately 5 hours per billion dollars in assets for subsequent plan filings for group B CIDIs. These estimations also include compliance cost estimates for engagement testing (discussed below). As discussed above in section III.A.3.e, the proposed rule introduces a requirement for group A and group B CIDIs to submit interim supplements to the FDIC in years where no resolution submission is required. The submission requirements for these interim supplements are identical for group A and group B CIDIs. Therefore, the FDIC has estimated that group B CIDIs will incur approximately 24 hours per billion dollars in assets associated with the submission of an annual interim supplement to the FDIC.

3. Marginal Effect of Proposed Changes

As discussed above, this analysis of the estimated compliance costs of the proposed rule is relative to a baseline scenario which includes burden estimates under the Statement, the existing moratorium on filing requirements for group B CIDIs, and the use of a triennial, rather than a biennial, filing cycle. If adopted, the proposed rule would have four primary effects: change in filing cadence, change in content requirements for group A CIDIs, change in content requirements for group B CIDIs, and the establishment of an interim supplement. The realized effects of the proposed rule are a function of filing dates, filing types, as well as the changes in filing content requirements for group A and B CIDIs discussed in detail above. To control for such changes and assess the marginal effect of the primary aspects of the proposed rule relative to the current baseline, the FDIC analyzed projected filings by CIDIs over a six-year period beginning in 2025. The following discussion addresses each of these primary effects so as to illustrate their marginal contribution to the aggregate effect.

Future changes in assets for existing individual CIDIs is difficult to accurately estimate. Therefore, for the purposes of this analysis, the FDIC assumes that the total assets reported by existing individual CIDIs for the quarter ending December 31, 2022, will remain constant throughout the period of analysis, notwithstanding assumptions made by the FDIC on the number of new group A and group B CIDIs in each filing cycle (discussed below).

a. Marginal Effect of Proposed Change to Biennial Filing Cycle

As discussed above in section III.A.2.a, the proposed rule would change the filing cycle from triennial to biennial. To isolate the effect of the potential change from a triennial to a biennial filing cycle, the FDIC compared projected compliance costs of the current triennial filing cycle, as outlined in the Statement, to the costs of those same compliance requirements on a biennial basis. Over the six-year period of analysis, the FDIC estimates that the labor hours expended by CIDIs to comply with a biennial filing cycle would increase by an average of 150 thousand hours (28 percent) annually. Assuming a wage estimate of $109.32 an hour,[109] the FDIC estimates that the change from a triennial to a biennial filing cycle would result in average additional costs of about $16.4 million annually.

b. Marginal Effect of Proposed Changes in Content

Group A CIDIs

As previously discussed, the FDIC estimates that the labor hours needed by group A CIDIs to comply with the reporting requirements of the proposed rule for first-time resolution plan submissions will be 16,000 hours, and each subsequent resolution plan submission will be 72 hours per billion dollars in assets. Over the six-year period of analysis beginning in 2025 the FDIC assumes there to be 6 first-time group A plan submission filers—or 2 first-time filers per biennial filing cycle—based on a review of bank asset data from 2017 to 2022.[110] Of the 31 group A CIDIs described above, 29 have previously submitted resolution plans, and two have not. Therefore, the FDIC expects that these two group A CIDIs will file for the first time in the upcoming submission cycle. To isolate the effect of the potential changes in filing content for group A CIDIs from the changes in filing cadence associated with the proposed rule, the FDIC compared projected compliance costs, as outlined in the Statement, on a biennial basis to the projected reporting compliance costs, as outlined in the proposed rule, on a biennial basis.

For group A CIDIs submitting resolution plans in the upcoming and subsequent biennial filing cycles, the FDIC estimates that, over the six-year period of analysis, the changes within the proposed rule solely related to the group A content requirements will result in an average increase in reporting burden hours of approximately 141 thousand hours annually (26 percent). Assuming a wage estimate of $109.32 an hour,[111] the FDIC estimates that the increase in reporting burden hours for group A CIDIs solely due to changes within the proposed rule for group A content requirements will result in average additional costs of approximately $15.4 million annually. Over half of this increase in estimated annual compliance costs can be attributed to resolution plan submissions from the nine IDIs affiliated with U.S. GSIBs.

Group B CIDIs

As previously discussed, the FDIC estimates that the labor hours needed by group B CIDIs to comply with the reporting requirements of the proposed rule for first-time informational filings will be 7,200 hours and each subsequent informational filing will be 67 hours per billion dollars in assets. Over the six-year period of analysis beginning in 2025, the FDIC estimates there to be 20 first-time group B plan submission filers. As discussed above, the FDIC considers all existing group B CIDIs to be ''new filers'' in the upcoming filing cycle and assumes two new group B CIDIs to file for the first time in each subsequent filing cycle, based on a review of bank asset data from 2017 to 2022.

Therefore, to illustrate the effect of the proposed rule solely related to changes in filing requirements for group B CIDIs this analysis compares current compliance requirements, as outlined in the Statement, to the projected reporting compliance costs for group B CIDIs, as outlined in the proposed rule, on a biennial basis.

The FDIC estimates that, over the six-year period of analysis, the proposed rule would result in an average increase in reporting burden hours of approximately 44,000 hours annually (eight percent). Using a wage rate of $109.32 an hour,[112] the FDIC estimates that the increase in reporting burden hours for group B CIDIs submitting

[109] The reporting compliance burden for resolution submissions (for group A and group B CIDIs) is expected to be distributed between executives and financial analysts at a ratio of 1-to-3 for the two occupations, respectively. The estimated weighted average hourly compensation cost of these employees are found by using the 75th percentile hourly wages reported by the Bureau of Labor Statistics (BLS) National Industry-Specific Occupational Employment and Wage Estimates for the relevant occupations in the Depository Credit Intermediation sector, as of December 2022. These wages are adjusted to account for inflation and non-monetary compensation rates for health and other benefits, as of December 2022, to provide a comprehensive estimate of overall compensation.

[110] CIDIs that become group A CIDIs in subsequent filing cycles will have already submitted resolution plans as group B CIDIs, and are thus not considered ''first-time'' filers for the purposes of estimating burden.

[111] See footnote #110.

[112] See footnote #110.

informational filings will result in average additional costs of approximately $4.8 million annually.

Interim Supplements

As discussed above in section III.A.3.e, the proposed rule introduces a new requirement for group A and group B CIDIs to submit an interim supplement for the years that they do not submit resolution plans or informational filings. The FDIC estimates that group A and group B CIDIs submitting an interim supplement will incur an hourly burden of approximately 24 hours per billion dollars in assets. Using this estimate over the six-year period of analysis, the requirement for annual interim supplements would result in an estimated average annual increase of approximately 197,000 hours and 12,000 hours for group A and group B CIDIs, respectively. Using a wage estimate of $109.32 an hour,[113] the FDIC estimates that the increase in reporting burden hours for group A and group B CIDIs submitting annual interim supplements will result in average additional costs of approximately $21.5 million annually and $1.4 million annually, respectively. Thus, the FDIC estimates the total average impact of this specific proposed requirement to be approximately 209,000 hours annually, and about $22.9 million annually (38 percent). The FDIC estimates that over 60 percent of this burden will fall on the nine group CIDIs that are affiliated with the U.S. GSIBs.

Engagement and Capabilities Testing

As previously discussed, the FDIC proposes to modify the current rule to provide more clarity concerning the FDIC's expectations for engagement between CIDIs and the FDIC. It is the FDIC's current practice to seek greater understanding of a resolution submission and the application of the information to all strategic options that will be useful to the FDIC in implementing a resolution strategy, as explained in the Statement and in the NPR.[114] The proposed rule further clarifies understanding about the existence and practice of such exchanges of information.

The FDIC expects to engage with group A CIDIs on a selective basis, depending on the complexity of resolution issues and the completeness of resolution submissions, among other factors. Further, the FDIC assumes, based on supervisory experience, that it will engage with about half of the group A CIDIs in each plan submission cycle. For the purposes of this analysis, the FDIC expects capabilities testing to be generally undertaken once per two-year submission cycle. The FDIC estimates that group A and group B CIDIs will incur one labor hour per billion in total assets and two labor hours per billion in total assets, respectively, to comply with the engagement requirements of the proposed rule. The FDIC believes that the engagement requirements of the proposed rule, if adopted, would result in an estimated reduction of one labor hour per billion in total assets for group A CIDIs, relative to the Statement, due to more selective engagement practices driven by the change to a biennial filing cycle. Further, the FDIC estimates that group A and group B CIDIs will incur one labor hour per billion in total assets to comply with the capabilities testing requirements of the proposed rule. To maintain consistency with the estimation approach taken in the Statement, the estimate of labor hours for both engagement and capabilities testing was included in the prior estimates of 72 labor hours per billion in total assets for resolution plan content requirements of group A CIDIs and 67 hours per billion in total assets for group B CIDIs.

Taken together, the total estimated marginal effect of the proposed change to a biennial filing cycle, content changes for group A CIDIs, content changes for group B CIDIs, requirements for Interim Supplements, and consideration of engagement and capabilities testing, in the proposed rule on group A and B CIDIs, over the six-year analysis period, would result in an average increase in reporting burden hours of approximately 544 thousand annually. At an estimated wage rate of $109.32 [115] per hour, this would amount to total additional estimated reporting costs for all CIDIs of approximately $59.5 million annually.

This analysis illustrates that the estimated costs of the proposed rule are likely to be small. The FDIC compared the average annual estimated reporting compliance costs to the reported total annual noninterest expenses for all CIDIs and compliance costs did not exceed five percent as a percentage of noninterest expenses for any CIDI.[116] Further, total average annual estimated reporting compliance costs of $59.5 million are approximately 0.015 percent of total noninterest expenses across all CIDIs.

B. Effects on Insured Deposits and the Deposit Insurance Fund

As previously discussed, the proposed rule, if adopted, would increase the amount of information CIDIs produce and furnish to the FDIC for the purposes of resolution planning. In the years since the adoption of the current rule in 2012, the FDIC has learned which aspects of the resolution planning process are most valuable and gained a greater understanding of the resources that CIDIs expend in meeting the requirements and expectations to comply with the current rule. The FDIC does not have the information necessary to quantify the benefits to the DIF associated with the increase in the amount of resolution planning information for CIDIs, and consideration of that information. However, the FDIC believes that requiring CIDIs to regularly submit more information on their resolution readiness capabilities would be expected to reduce the costs to the DIF in the event of a failure of such an institution because this information would help the FDIC be more prepared to resolve these CIDIs.

C. Additional Economic Considerations and Effects

Because some of the methodologies used to estimate reporting costs—for subsequent plan filings and interim supplements—above are based on the number of labor hours per billions of dollars in total assets, it is possible for a CIDI's estimated compliance cost to change solely due to fluctuations in asset size. The FDIC acknowledges that economic trends resulting in, or contributing to, changes in banking industry assets generally would have an impact on the estimates described above, but believes that these potential changes in compliance costs are likely to be modest relative to the size of the IDIs affected by the proposed rule.

CIDIs would likely incur some regulatory costs, in addition to the reporting costs presented above, to transition their internal systems and processes in order to comply with the

[113] See footnote #110.

[114] 12 CFR 360.10(d)(1) through (2).

[115] The reporting compliance burden for resolution submissions (for group A and group B CIDIs) is expected to be distributed between executives and financial analysts at a ratio of 1-to-3 for the two occupations, respectively. The estimated weighted average hourly compensation cost of these employees are found by using the 75th percentile hourly wages reported by the Bureau of Labor Statistics (BLS) National Industry-Specific Occupational Employment and Wage Estimates for the relevant occupations in the Depository Credit Intermediation sector, as of December 2022. These wages are adjusted to account for inflation and compensation rates for health and other benefits, as of December 2022, to provide a comprehensive estimate of overall compensation.

[116] FDIC Call Report data, December 31, 2022. The 45 depository institutions that would be classified as group A and group B CIDIs under the proposed rule had total noninterest expenses of approximately $388 billion for the year 2022.

proposed rule. The FDIC does not have access to information that would enable it to estimate such costs. However, the FDIC believes that such costs are likely to be small relative to the size of the IDIs affected by the proposed rule.

Finally, the FDIC does not believe that any additional costs incurred as a result of the proposed rule would have significant adverse impact on the provision of banking services such as originating and servicing loans, processing payments, or various financial market activities that the CIDIs may be involved in. This analysis illustrates that estimated reporting costs in future years only comprise approximately 0.015 percent of current (*e.g.* year-end 2022) noninterest expenses for all CIDIs.

D. Overall Effects

In summary, the FDIC believes that the proposed rule would result in public benefits by improving the FDIC's ability to effect timely and cost-effective resolutions of large, complex insured institutions. The FDIC estimates the proposed rule would result in average annual compliance cost increases of approximately $59.5 million over the six-year analysis period—which spans three filing cycles under the proposed rule.

V. Alternatives Considered

The FDIC considered several alternatives while developing the proposed rule. The FDIC first considered leaving the current rule unchanged. The FDIC rejected this alternative because it believes the proposed rule would improve the value of resolution submissions and provide additional clarity to CIDIs as to the requirements of the rule by incorporating elements of prior guidance. The value of these resolution submissions would be greatly increased to both the FDIC and CIDIs given the proposed rule intends to reflect the lessons learned from resolution planning under the current rule, including the iterative approaches to refinement and clarification through guidance and feedback since the current rule's issuance, and provide a complete and clear set of requirements with respect to resolution planning submissions, review, feedback and credibility. The proposed rule also would bolster and clarify the FDIC's approach to engagement and capabilities testing in a manner useful both to the CIDIs and the FDIC. Additionally, the proposed rule would formalize the expectation of a three-year submission cycle, providing time for deeper engagement and capabilities testing and more opportunities for feedback to the CIDI from plan review and from engagement and capabilities testing to be more comprehensively integrated into both the submission and the day-to-day business of the CIDI.

The FDIC also considered the groupings of IDIs that would be covered under the proposed rule and how the requirements should differ for each, if at all. Possibilities included continuing the current rule's requirement to require resolution plans for all CIDIs over $50 billion in total assets; no longer requiring any resolution submission from the group of CIDIs with $50 to 100 billion in total assets; or tiering requirements based on size or other factors. One alternative considered was to group CIDIs with $100 billion or more in total assets into cohorts with different requirements, and reducing content expectations for CIDIs that have between $100 and $250 billion in total assets that do not have identified complexity factors such as significant cross-border operations or large off-balance sheet derivatives activities. As discussed in the introduction to this preamble, the limited pool of possible acquirers and the complexity of the transaction greatly diminishes the likelihood of a sale of any group A CIDI in a closing weekend or single transaction out of a BDI. Since this challenge applies to all CIDIs with $100 billion or more in total assets, the FDIC has determined that the information and analysis required under the proposed rule is appropriate for all group A CIDIs, with an emphasis on establishment and stabilization of a BDI and an exit in which the IDI is sold to one or more acquirers, to provide optionality to the FDIC in preparing for resolution. While the group A CIDIs vary in size and complexity, the CIDIs themselves are best suited to determine how to address content elements in a manner appropriate to their organization and business lines.

The FDIC considered various alternatives with respect to CIDIs that have between $50 and $100 billion in total assets, *i.e.,* the group B CIDIs. Alternatives considered included whether to exclude them from any submission requirement, whether to require full resolution plans, or to require more limited informational filings. The pool of possible acquirers is generally larger for group B CIDIs than for group A CIDIs, and where a BDI is a strategic element, the complexity of a multiple acquirer exit is generally less. Thus, while the size and complexity of CIDIs between $50 and $100 billion in total assets presents significant challenges in resolution, the FDIC believes that the amount of information and analysis necessary to support the FDIC's resolution readiness for these CIDIs can be appropriately less than for the group A CIDIs, and that the proposed informational filing requirement for firms in this tier is an appropriate balance between the requirement of a full resolution plan and the exclusion of these CIDIs from all resolution planning requirements under the proposed rule.

The FDIC then considered what type of content should be included in each resolution plan or informational filing. The FDIC reviewed past submissions as well as prior feedback and guidance to identify the most useful content to support the FDIC's ability to resolve a CIDI efficiently and effectively in the event that a CIDI experiences material financial distress and failure. The proposal would clarify the type of information the FDIC is seeking in order to help facilitate CIDIs' efficient development of resolution submissions. The inclusion of a more clearly defined expectation for an identified strategy for CIDIs with over $100 billion in total assets and a more clearly defined credibility standard should assist in assuring resolution plans are more finely tuned to the unique complexities of each group A CIDI. The reductions in resolution submission content requirements for CIDIs with $50 to $100 billion in total assets are designed to appropriately adjust the requirements to the challenges presented by group B CIDIs. For this reason, under the proposed rule they would submit only informational filings and not resolution plans.

The FDIC also considered a three-year submission cycle instead of the proposed two-year submission cycle. A three-year submission cycle, which is the current approach under the Statement, would allow additional time for engagement and capabilities testing; however, the FDIC believes that the enhanced timeliness of the resolution plans received on a two-year submission cycle outweighs the incremental benefit gained from additional engagement and capabilities testing over a longer submission cycle. The FDIC did not strongly consider maintaining the current rule's one-year submission cycle because through experience, the FDIC has found that a one-year submission cycle is not efficient for either the FDIC or the CIDIs because it does not allow sufficient time for review, feedback and incorporation of feedback into the next submission. The use of a two-year cycle should also allow adequate time for CIDIs to plan their resolution submission preparation cycles, and

would support robust submission review, engagement, and, where required, capabilities testing.

The FDIC then considered, however, whether some of the benefits of timely information annually could be retained in a manner less burdensome for the IDIs and more useful to the FDIC by requiring limited interim supplements to the biennial submissions. Based on experience from the bank failures of 2023, key information submitted in a two-year cycle may become dated. First, CIDIs continue to change, and in some cases that happens in a time frame shorter than two years. Second, in the case of rapid liquidity failures, the time frame to prepare for resolution is compressed, heightening the need for accurate and timely information. To keep resolution planning information accurate and timely, the FDIC is proposing that each CIDI would submit a limited interim supplement in years in which a complete submission is not required. The interim supplement is intended to provide critical up-to-date information for a limited number of the most essential data elements of the complete submission. In considering alternative data elements, the FDIC sought to maximize the utility of the information needed to resolve a CIDI efficiently and effectively, while limiting the burden to CIDIs of an interim supplement.

VI. Regulatory Analysis and Procedures

A. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act (PRA),[117] the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The proposed rule would modify the current filing cycle cadence from triennial to biennial, which will result in some CIDIs submitting multiple times across a given 3-year PRA renewal cycle. On content, the proposal would modify the current rule by establishing revised requirements regarding the content and timing of resolution submissions provided to the FDIC by IDIs with $50 billion or more in total assets to support the FDIC's resolution readiness in the event of material distress and failure of these large IDIs. IDIs with $100 billion or more in total assets will submit full resolution plans, while IDIs with total assets between $50 and $100 billion will submit informational filings with fewer requirements. Additionally, the proposed rule requires group A and group B CIDIs to submit interim supplements to the FDIC on years where they are not expected to file full plans or information filings. The proposed rule would also enhance how the credibility of resolution submissions will be assessed, expand expectations regarding engagement and capabilities testing, and explain expectations regarding the FDIC's review and enforcement of IDIs' compliance with the rule. The proposed revisions for the NPR represent an increase of 482,312 estimated annual burden hours from the PRA estimates in the 2021 collection, and an increase of 199,184 estimated annual burden hours from the PRA estimates in the 2018 collection. The FDIC proposes to revise this information collection as follows:

Title: Resolution Plans and Periodic Engagement and Capabilities Testing Required.

OMB Number: 3064–0185.

Affected Public: Large and Highly Complex Depository Institutions.

TABLE 1—SUMMARY OF ESTIMATED ANNUAL BURDEN

[OMB No. 3064–0185]

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
1. Resolution Plan update by previous filer (group A), NPR (Mandatory).	Reporting (Annual, 2-year filing cycle).	15	1	30,081:36	451,224
2. Resolution Plan by new filer (group A), NPR (Mandatory).	Reporting (Annual, 2-year filing cycle).	1	1	10,667:00	10,667
3. Informational Filing update by previous filer (group B), NPR (Mandatory).	Reporting (Annual, 2-year filing cycle).	4	1	4,059:05	16,236
4. Informational Filing by New Filers (group B), NPR (Mandatory).	Reporting (Annual, 2-year filing cycle).	6	1	7,200:00	43,200
5. Interim Supplement, NPR (Mandatory).	Reporting (Annual, 2-year filing cycle).	21	1	11,935:37	250,648
Total Annual Burden (Hours):	.....	.....	.....	.....	*771,975*

Source: FDIC.

Note: The annual burden estimate for a given collection is calculated in two steps. First, the total number of annual responses is calculated as the whole number closest to the product of the annual number of respondents and the annual number of responses per respondent. Then, the total number of annual responses is multiplied by the time per response and rounded to the nearest hour to obtain the estimated annual burden for that collection. This rounding ensures the annual burden hours in the table are consistent with the values recorded in the OMB's regulatory tracking system.

[117] 44 U.S.C. 3501 *et seq.*

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.[118] However, an initial regulatory flexibility analysis is not required if the agency certifies that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $850 million.[119] Generally, the FDIC considers a significant economic impact to be a quantified effect in excess of five percent of total annual salaries and benefits or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of one or more of these thresholds typically represent significant economic impacts for FDIC-supervised institutions. For the reasons described below and under section 605(b) of the RFA, the FDIC certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. As of December 31, 2022, the FDIC insured 4,715 depository institutions, of which 3,433 the FDIC identifies as a ''small entity'' for purposes of the RFA.[120]

The proposed rule amends resolution plan requirements for IDIs with over $50 billion in total average assets. Therefore, the proposed rule would apply only to institutions with $50 billion or more in total average assets. As of December 31, 2022, there are no small, FDIC-insured institutions with $50 billion or more in total average assets.[121] In light of the foregoing, the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities supervised.

[118] 5 U.S.C. 601 *et seq.*

[119] The SBA defines a small banking organization as having $850 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 87 FR 69118, effective Dec. 19, 2022). 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 an insured depository institution's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the insured depository institution is ''small'' for the purposes of RFA.

[120] FDIC Call Report data, December 31, 2022.

[121] Id.

The FDIC invites comments on all aspects of the supporting information provided in this RFA section.

(90) In particular, would this proposed rule have any significant effects on small entities that the FDIC has not identified?

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act [122] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the proposal in a simple and straightforward manner, and invites comment on the use of plain language. For example:

The FDIC invites comment on all aspects of the proposed transition period. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(91) Has the FDIC organized the material to suit your needs? If not, how could the FDIC present it more clearly?

(92) Are the requirements of the proposal clearly stated? If not, how could they be stated more clearly?

(93) Does the proposal contain unclear technical language or jargon? If so, which language requires clarification?

(94) Would a different format (such as a different grouping and ordering of sections, a different use of section headings, a different organization of paragraphs) make the proposal easier to understand? If so, what changes would make the proposal clearer?

(95) What else could the FDIC do to make the proposal clearer and easier to understand?

D. Riegle Community Development and Regulatory Improvements Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 [123] (RCDRIA), in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on IDIs, each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[124]

(96) The FDIC invites comment on this section, including any additional comments that will inform the FDIC's consideration of the requirements of RCDRIA.

E. Providing Accountability Through Transparency Act of 2023

The Providing Accountability Through Transparency Act of 2023 (12 U.S.C. 553(b)(4)) requires that a notice of proposed rulemaking include the internet address of a summary of not more than 100 words in length of a proposed rule, in plain language, that shall be posted on the internet website under section 206(d) of the E-Government Act of 2002 (44 U.S.C. 3501 note).

In summary, the FDIC is proposing to modify its current rule that requires the submission of resolution plans by insured depository institutions with $50 billion or more in total assets. The proposal would modify the current rule by revising the requirements regarding the content and timing of resolution submissions as well as interim supplements to those submissions provided to the FDIC by IDIs with $50 billion or more in total assets in order to support the FDIC's resolution readiness in the event of material distress and failure of these large IDIs.

The proposal and the required summary can be found at *https://www.fdic.gov/resources/regulations/federal-register-publications/.*

List of Subjects in 12 CFR Part 360

Bank deposit insurance, Banks, banking, Holding companies, National banks, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation proposes to amend 12 CFR part 360 as follows:

PART 360—RESOLUTIONS AND RECEIVERSHIPS RULES

■ 1. The authority citation for part 360 is revised to read as follows:

Authority: 12 U.S.C. 1811 *et seq.,* 1817(a)(2)(B), 1817(b), 1818(a)(2), 1818(t), 1819(a) Seventh, Ninth, and Tenth, 1820(b)(3) and (4), 1820(g), 1821(d)(1), (4),

[122] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999), 12 U.S.C. 4809.

[123] 12 U.S.C. 4802(a).

[124] 12 U.S.C. 4802(b).

(10)(C), and (11), 1821(e)(1) and (8)(D)(i), 1821(f)(1), 1823(c)(4), and 1823(e)(2).

■ 2. Revise § 360.10 to read as follows:

§ 360.10 Resolution plans required for insured depository institutions with $100 billion or more in total assets; informational filings required for insured depository institutions with at least $50 billion but less than $100 billion in total assets.

(a) *Scope and purpose.* This section applies to insured depository institutions with $50 billion or more in total assets. It requires a covered insured depository institution with $100 billion or more in total assets (a group A CIDI, as defined in paragraph (b) of this section) to submit a resolution plan that should enable the FDIC, as receiver, to resolve the institution under Sections 11 and 13 of the Federal Deposit Insurance Act (''FDI Act''), 12 U.S.C. 1821 and 1823, in a manner that provides depositors timely access to their insured deposits, maximizes the net present value return from the sale or disposition of assets and minimizes the amount of any loss realized by the creditors in the resolution, and addresses risks of adverse effects on U.S. economic conditions or economic stability. Other covered insured depository institutions (group B CIDIs, as defined in paragraph (b) of this section) are required under this section to submit to the FDIC an informational filing containing information relevant to the group B CIDI's resolution that will support the development of strategic options for resolution of the CIDI by the FDIC. This section also establishes the requirements regarding the submission of resolution plans and informational filings and their contents, as well as procedures for their review by the FDIC. This rule is intended to ensure that each group A CIDI develops a credible strategy to facilitate the FDIC's resolution of the institution across a range of possible scenarios and, with respect to each group A CIDI and each group B CIDI, the FDIC has access to all of the material information and analysis it needs to resolve efficiently any covered insured depository institution in the event of its failure.

(b) *Definitions.*

Affiliate has the same meaning as in 12 U.S.C. 1813(w)(6).

Appropriate Federal banking agency has the same meaning as in 12 U.S.C. 1813(q).

BDI means a bridge depository institution established pursuant to Section 11(n) of the FDI Act, 12 U.S.C. 1821(n).

Capabilities testing is defined in paragraph (g)(2) of this section.

CIDI or covered insured depository institution means a group A CIDI or a group B CIDI.

Company has the same meaning as in 12 CFR 362.2(d).

Control has the same meaning as in 12 U.S.C. 1813(w)(5).

Core business lines means those business lines of the CIDI, including associated operations, services, functions, and support, that, in the view of the CIDI, are significant to revenue, profit, or franchise value of the CIDI.

Critical services means services and operations, including shared and outsourced services, that are necessary to continue the day-to-day operations of the CIDI, and, in the case of a group A CIDI, to support the execution of the identified strategy, and includes all services and operations that are necessary to continue any critical operation conducted by the CIDI that has been identified in any DFA resolution plan of the CIDI's parent company.

Critical services support means resources, including shared and outsourced resources, that are necessary to support the provision of critical services, including systems, technology infrastructure, data, key personnel, intellectual property, and facilities.

DFA resolution plan means a resolution plan filed by a CIDI's parent company under Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5365(d).

Engagement is defined in paragraph (g)(1) of this section.

Failure scenario means a scenario as described in paragraph (d)(2) of this section.

FDI Act is defined in paragraph (a) of this section.

Foreign-based company means any company that is not incorporated or organized under the laws of the United States.

Franchise component means a business segment, regional branch network, major asset or asset pool, or other key component of a CIDI's franchise that can be separated and sold or divested.

Group A CIDI means an insured depository institution with $100 billion or more in total assets, as determined based upon the average of the institution's four most recent Consolidated Reports of Condition and Income. An insured depository institution will remain a group A CIDI until it has less than $100 billion in total assets, as determined based upon the average of the institution's four most recent Reports of Condition and Income. In the event of a merger, acquisition of assets, combination, or similar transaction by an insured depository institution that causes it to exceed $100 billion in total assets, such insured depository institution will become a group A CIDI effective as of the date of the consummation of such merger, acquisition, combination or other transaction.

Group B CIDI means an insured depository institution with at least $50 billion but less than $100 billion in total assets, as determined based upon the average of the institution's four most recent Consolidated Reports of Condition and Income. An insured depository institution will remain a group B CIDI until it has less than $50 billion in total assets or it has $100 billion or more in total assets, in either case as determined based upon the average of the institution's four most recent Consolidated Reports of Condition and Income. In the event of a merger, acquisition of assets, combination or similar transaction by an insured depository institution that causes it to have at least $50 billion but less than $100 billion in total assets, such insured depository institution will become a group B CIDI effective as of the date of the consummation of such merger, acquisition, combination or other transaction.

Identified strategy means the strategy chosen by a group A CIDI for its resolution plan as required pursuant to paragraph (d)(1) of this section, covering the time period from the point of failure to disposition of substantially all of the assets and operations of the group A CIDI through wind-down, liquidation, divestiture or other return to the private sector.

IDI franchise means all core business lines and all other business segments, branches, and major assets that constitute the IDI and its businesses as a whole.

Informational filing means the resolution submission submitted by a group B CIDI pursuant to this section.

Insured depository institution has the same meaning as in 12 U.S.C. 1813(c)(2).

Key depositors is defined in paragraph (d)(7)(v) of this section.

Key personnel means personnel tasked with an essential role in support of a core business line, franchise component, or critical service, or having a function, responsibility, or knowledge that may be significant to the FDIC's resolution of the CIDI. Key personnel can be employed by the CIDI, a CIDI subsidiary, the parent company, a parent company affiliate, or a third party entity.

Least-cost test means the process for determining the resolution strategy that is least costly to the Deposit Insurance Fund, as required under 12 U.S.C. 1823(c).

Material asset portfolio means a pool or portfolio of assets, including loans, securities or other assets that may be sold in resolution by the BDI or the receivership and is significant in terms of income or value to a core business line.

Material change is defined in paragraph (c)(4)(i) of this section.

Material entity means a company, or a domestic branch or foreign branch as defined in section 3(o) of the FDI Act, 12 U.S.C. 1813(o), that is significant to the activities of a critical service, core business line, or franchise component, and includes all IDIs that are subsidiaries or affiliates of the CIDI.

Multiple-acquirer exit means an exit from a BDI through the sale of franchise components comprising all or nearly all of the CIDI's IDI franchise to multiple acquirers, such as a regional breakup of the CIDI's IDI franchise or a sale of business segments to multiple acquirers, and may also include the wind-down or other disposition of franchise components, major assets or asset portfolios incidental to the divestitures of going concern elements, as applicable.

Parent company means the company that controls, directly or indirectly, an insured depository institution. In a multi-tiered holding company structure, parent company means the top-tier of the multi-tiered holding company only.

Parent company affiliate means any affiliate of the parent company other than the CIDI and the CIDI's subsidiaries.

Qualified financial contract has the same meaning as in Section 11(e)(8) of the FDI Act, 12 U.S.C. 1821(e)(8).

Regulated subsidiary is defined in paragraph (d)(4)(v) of this section.

Resolution plan means the resolution submission submitted by a group A CIDI pursuant to this section.

Resolution submission means a resolution plan for a group A CIDI, and an informational filing for a group B CIDI.

Subsidiary has the same meaning as in Section 3(w)(4) of the FDI Act, 12 U.S.C. 1813(w)(4).

Total assets has the meaning given in the instructions for the filing of Reports of Condition and Income.

United States means the United States and includes any state of the United States, the District of Columbia, and any territory of the United States.

Virtual data room means an online repository where information pertinent to a sale or disposition of a CIDI or its franchise components is maintained in a secure and confidential manner to facilitate, whether by the CIDI or the FDIC, such sale or disposition to one or more third party acquirers.

(c) *Resolution submissions required.*

(1) *Submission date.* Each CIDI must provide a resolution submission to the FDIC on the date that is two years from the date of its most recent resolution submission, unless it has received written notice of a different date from the FDIC.

(2) *Resolution submission by new CIDIs.* An insured depository institution that becomes a CIDI after [*effective date of revised rule*] must submit its initial resolution submission upon the date specified in writing by the FDIC. Such date will occur no earlier than 270 days after the date on which the insured depository institution became a CIDI.

(3) *Biennial submissions.* Submission dates generally will be on a two-year cycle, however, the FDIC may, at its discretion, provide for a shorter or longer time period between resolution submissions upon notice as described in paragraph (c)(1) of this section.

(4) *Notice of material change.*

(i) Each CIDI must provide the FDIC with a notice no later than 45 days after a change to the CIDI's organizational structure, core business, size, or complexity, for example by merger, acquisition or divestiture of assets, or similar transaction that may have significant impact on the identified strategy; a change in the CIDI's identification of material entities, critical services, or franchise components; or a change in the CIDI's capabilities described in the resolution submission (each, a ''material change''). Such notice must describe the change and explain how the change constitutes a material change. The CIDI must address any change with respect to which it has provided notice pursuant to this paragraph (c)(4)(i) in the subsequent resolution submission submitted by the CIDI.

(ii) *Exception.* A CIDI is not required to submit a notice under paragraph (c)(4)(i) of this section if the date by which the CIDI would be required to submit the notice under paragraph (c)(4)(i) of this section would be within 90 days before the date on which the CIDI is required to make a resolution submission under this section.

(5) *Approval by the CIDI board of directors.* The CIDI's board of directors or, in the case of an insured branch only, a delegee acting under the express authority of the CIDI's board of directors must approve the resolution submission. That approval or delegation of express authority must be noted in the minutes of the board of directors.

(6) *Incorporation from other sources.*

(i) *Sources.* A CIDI may incorporate information or analysis into its resolution submission from one or more of the following without seeking the authorization for disclosure of FDIC confidential information required under 12 CFR part 309:

(A) The most recent resolution submission submitted by the CIDI or an affiliate of the CIDI.

(B) The most recent DFA resolution plan of a company that is a CIDI affiliate.

(C) A regulatory filing by the CIDI with the FDIC.

(ii) *Requirements for incorporation from other sources.* A CIDI may incorporate information from other sources only if:

(A) The resolution submission seeking to incorporate information or analysis from other sources clearly indicates:

(*1*) the source and as-of date of the information or analysis the CIDI is incorporating; and

(*2*) the information or analysis required by this section is readily distinguishable from any extraneous parent company (or parent company affiliate) information or analysis, with a description of any material differences.

(B) The CIDI certifies that the information or analysis the CIDI is incorporating from other sources remains accurate in all respects that are material to the CIDI's resolution submission.

(d) *Content of the resolution submissions for CIDIs.* Each group A CIDI must submit a resolution plan that includes all content specified in this paragraph (d). Each group B CIDI must submit an informational filing that includes the content specified in paragraphs (d)(4) through (11) and (d)(13) through (27) of this section, inclusive.

(1) *Identified strategy.*

(i) Each resolution plan must include an identified strategy for the resolution of the CIDI in the event of its failure that meets the credibility criteria in paragraph (f)(1) of this section.

(ii) A CIDI must utilize as its identified strategy the formation and stabilization of a BDI that continues operation through the completion of the resolution and exit from the BDI unless the CIDI determines and demonstrates in its resolution plan why another strategy:

(A) would be more appropriate for the size, complexity, and risk profile of the CIDI;

(B) reasonably could be executed by the FDIC across a range of likely failure scenarios; and

(C) best addresses the credibility criteria described in paragraph (f)(1) of this section.

(iii) The identified strategy must include meaningful optionality for execution across a range of scenarios. The exit from the BDI may be through a multiple acquirer exit, or any other exit strategy following the stabilization of the operations of the BDI. The identified strategy may not be based upon a sale or other disposition to one or more acquirers over resolution weekend.

(2) *Failure scenario.* For the identified strategy, the CIDI must utilize a failure scenario that demonstrates that the CIDI is experiencing material financial distress, such that the quality of the CIDI's asset base has deteriorated and high-quality liquid assets have been depleted or pledged in the stress period prior to failure due to high, unexpected outflows of deposits and increased liquidity requirements from counterparties that would impact the CIDI's ability to pay its obligations in the normal course of business prior to the FDIC's appointment as receiver. Though the immediate failure event may be liquidity-related and associated with a lack of market confidence in the financial condition of the CIDI prior to the final recognition of losses, the identified strategy must also consider the depletion of capital at the time of the appointment of the FDIC as receiver. The CIDI may not assume any regulatory waivers in connection with the actions proposed to be taken prior to or in resolution. The resolution plan must support any assumptions that the CIDI will have access to the discount window or other borrowings during the period immediately prior to failure. To the extent that the CIDI assumes that DIF funding is used during the resolution by a BDI, it must demonstrate the capacity for such borrowing on a fully secured basis and the source of repayment; the CIDI may not assume the use of discount window funding by the BDI. The identified strategy must take into account that failure of the CIDI will occur under severely adverse economic conditions developed by the Board of Governors of the Federal Reserve System pursuant to 12 U.S.C. 5365(i)(1)(B), and must assume that the U.S. parent company is in resolution under 11 U.S.C. 101 *et seq.* or another applicable insolvency regime. The FDIC may provide additional or alternative parameters for the failure scenario detailed in this paragraph (d)(2). The FDIC will endeavor to provide a CIDI notice of such additional or alternative parameters for the failure scenario at least 12 months before the applicable resolution submission is due. Any such additional or alternative parameters:

(i) may be applicable to all CIDIs or only specific individual CIDIs; and

(ii) may include additional conditions, such as different macroeconomic stress scenario information or assumptions with respect to the cause of failure. If the FDIC provides such additional or alternative parameters, the CIDI must use the additional or alternative parameters rather than the conditions specified in the previous paragraph, to the extent inconsistent with the conditions specified in the previous paragraph.

(3) *Executive summary.* A resolution plan must include an executive summary providing:

(i) A description of the key elements of the identified strategy;

(ii) An overview of the CIDI's core business lines and franchise components;

(iii) A description of each material change since the submission of its prior resolution plan (or affirmation that no such material change has occurred);

(iv) A discussion of the changes to the CIDI's previously submitted resolution plan resulting from any change in law or regulation, guidance or feedback from the FDIC, or material change; and

(v) A discussion of any actions taken by the CIDI since the submission of its prior resolution plan to further develop the quality or comprehensiveness of the information and analysis included in the resolution plan, including the identified strategy, or to improve its capabilities to develop and timely deliver that information and analysis.

(4) *Organizational structure: legal entities; core business lines; and branches.* A resolution submission must:

(i) Identify and describe the CIDI's, the parent company's, and the parent company affiliates' legal and functional structures, including all material entities.

(ii) Identify and describe each of the CIDI's core business lines, including whether any core business line draws additional value from, or relies on the operations of, the parent company or a parent company affiliate, and identify any such operations that are cross-border. Provide information about the assets and annual revenue for each core business line, clearly identifying revenue to the CIDI.

(iii) Map franchise components to core business lines, and franchise components and core business lines to material entities and regulated subsidiaries.

(iv) Describe the CIDI's branch organization, both domestic and foreign, including the address and total domestic and foreign deposits of each branch.

(v) Identify each CIDI subsidiary that is one of the following entities (each a ''regulated subsidiary''), and provide the address and asset size of each regulated subsidiary:

(A) A broker or dealer that is registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*);

(B) A registered investment adviser, properly registered by or on behalf of either the Securities and Exchange Commission or any State, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities;

(C) An investment company that is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*);

(D) An insurance company, with respect to insurance activities of the insurance company and activities incidental to such insurance activities, that is subject to supervision by a State insurance regulator;

(E) An entity that is subject to regulation by, or registration with, the Commodity Futures Trading Commission, with respect to activities conducted as a futures commission merchant, commodity trading adviser, commodity pool, commodity pool operator, swap execution facility, swap data repository, swap dealer, major swap participant, and activities that are incidental to such commodities and swaps activities;

(F) A corporation organized under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*) or a corporation having an agreement or undertaking with the Federal Reserve Board under section 25 of the Federal Reserve Act (12 U.S.C. 601 *et seq.*); or

(G) Any legal entity that is organized under the law of any jurisdiction other than the United States and that is authorized or supervised by a regulatory authority of such jurisdiction in a manner generally comparable to the U.S. entities and authorities described in paragraph (d)(4)(v)(A) through(E) of this section, and shall include any subsidiary that takes deposits or conducts the business of banking under the laws of such jurisdiction.

(vi) Identify all of the CIDI's subsidiaries, offices, and agencies with cross-border operations associated with the operations of any core business line or franchise component. For each such subsidiary, office, or agency, provide metrics that appropriately depict its size and importance, and the location of

each such subsidiary, office, and agency.

(5) *Methodology for material entity designation.* A CIDI's resolution submission must describe the CIDI's methodology for identifying material entities. The methodology must be appropriate to the nature, size, complexity, and scope of the CIDI's operations.

(6) *Separation from parent; potential barriers or material obstacles to orderly resolution.* The resolution submission must address the CIDI's ability to operate separately from the parent company's organization, and any impact on maintaining economic viability and preservation of franchise value in a BDI, with the assumption that the parent company and parent company affiliates are in resolution under 11 U.S.C. 101 *et seq.* or another applicable insolvency regime. The resolution submission must describe the actions necessary to separate the CIDI and its subsidiaries from the organizational structure of its parent company in a cost-effective and timely fashion. The resolution submission must identify potential barriers or other material obstacles to an orderly resolution of the CIDI, risks to the identified strategy (if required), inter-connections and inter-dependencies that may hinder the timely and effective resolution of the CIDI, and include the remediation steps or mitigating responses necessary to eliminate or minimize such barriers or obstacles.

(7) *Overall deposit activities.* A resolution submission must:

(i) Describe the CIDI's overall deposit activities including, among other things, insured and uninsured deposits, commercial deposits by business line, and unique aspects of the deposit base or underlying systems that may create operational complexity for the FDIC. Describe whether any types or groups of deposits are related to particular core business lines and franchise components, and if so, how they are identified on the records or systems of the CIDI.

(ii) Identify the total amount(s) of foreign deposits by jurisdiction and what percentage of foreign deposits is dually payable in the United States. Describe any relationship between foreign deposits and core business lines and sweep arrangements with foreign branches, subsidiaries, and affiliates.

(iii) Identify and describe deposit sweep arrangements, if any, that the CIDI has with the parent company, parent company affiliates, and third party entities, and identify contracts governing such sweep arrangements. Describe the CIDI's reporting capabilities on sweep deposits, including whether such reporting is automated and any data lag that would affect the accuracy of such reports. If the CIDI receives significant amounts of deposits through such sweep arrangements with the parent company or parent company affiliates, include a detailed discussion of such relationships and the business objectives of such sweep arrangements.

(iv) Identify all omnibus, sweep, and pass-through accounts, identifying the accountholder, the location of relevant contracts, and the system on which they are maintained. Provide a detailed discussion of the capabilities and timeliness of deposit reporting systems and capabilities of accountholders with respect to any omnibus, sweep, or pass-through accounts.

(v) Provide a report regarding the CIDI's depositors that hold or control the largest deposits (whether in one account or multiple accounts) that collectively are material to one or more business lines (''key depositors''). The report must identify key depositors by name and line of business and the amount of deposit of each key depositor, and for each key depositor identify other services provided by the CIDI to that depositor, such as lending, wealth management, brokerage services, or custody services. The resolution submission must describe how long it would take for the CIDI to generate such a report and the timeliness of the information provided.

(8) *Critical services.* A CIDI must be able to demonstrate capabilities necessary to ensure continuity of critical services in resolution. In order to support these capabilities, a resolution submission must:

(i) Identify and describe the CIDI's critical services and critical services support, including whether they are:

(A) provided by or through the CIDI or a CIDI subsidiary or branch (and further indicate whether those critical services or critical services support are ultimately provided by a third party entity), or

(B) provided by or through the parent company or a parent company affiliate (and further indicate whether those critical services or critical services support are ultimately provided by a third party entity).

(ii) Describe the CIDI's process for identifying critical services and critical services support. Describe the CIDI's process for collecting and monitoring the terms of contracts governing critical services and critical services support, and whether services provided pursuant to such contracts and associated costs can be segmented by the material entity, core business line, or franchise component that receives the critical service or critical service support.

(iii) Map critical services support to the entities that own, contract for, or employ them, and map critical services to the material entities, core business lines, and franchise components that they support.

(iv) Identify the physical locations and jurisdictions of critical service providers and critical services support that are located outside of the United States.

(v) Identify the critical services and critical services support that may be at risk of interruption in the event of the CIDI's failure and describe the process used to make this determination. Discuss potential obstacles to maintaining critical services that could occur in the event of the CIDI's failure and steps that could be taken to remediate or otherwise mitigate the risk of interruption, and describe the CIDI's approach for continuing critical services in the event of the CIDI's failure. Identify contracts for critical services that contain provisions that, upon the insolvency of the CIDI or the FDIC being appointed receiver of the CIDI, permit the service provider to stop providing services, to alter pricing, or to alter other terms of service.

(vi) Address obstacles and mitigants to the continuation of all critical services and critical services support provided by the parent company or a parent company affiliate, including:

(A) whether the CIDI and the parent company or parent company affiliate have entered into a written agreement and whether it has established a cost plus or arms' length pricing rate, and the processes used by the CIDI to identify and project liquidity needs associated with those costs; and

(B) the impact on continuity of critical services or critical services support provided by the parent company or a parent company affiliate if the parent company or parent company affiliate is in resolution under 11 U.S.C. 101 *et seq.* or other applicable insolvency regime.

(9) *Key personnel.* A resolution submission must:

(i) Identify all key personnel by title, function, location, core business line, and employing entity.

(ii) Describe the CIDI's methodology for identifying key personnel.

(iii) Provide a recommended approach for retaining key personnel during the CIDI's resolution.

(iv) Identify all employee benefit programs provided to key personnel, including health insurance, defined contribution and defined benefit retirement programs, and any other

employee wellness programs, as well as any collective bargaining agreements or other similar arrangements. Identify the legal entity sponsor of each employee benefit program, and provide a description of and points of contact (by title) for such programs.

(10) *Franchise components.* A CIDI must be able to demonstrate the capabilities necessary to ensure that franchise components are separable and marketable in resolution. A resolution must:

(i) Identify franchise components that are currently separable and marketable in a timely manner in resolution. For a resolution plan submission by a group A CIDI, the franchise components identified must be sufficient to implement the identified strategy and to provide meaningful optionality across a range of scenarios if the preferred approach is not available.

(ii) Provide metrics that depict the size and significance of each franchise component.

(iii) Identify by position the senior management officials of the CIDI who are primarily responsible for overseeing the business activities underlying the franchise component.

(iv) Describe the CIDI's current capabilities and process to initiate marketing of franchise components to potential third party acquirers, and describe the process by which the CIDI would identify prospective bidders for such franchise components.

(v) Describe the key assumptions (such as market conditions, available time to market assets, and anticipated client behaviors) underpinning each franchise component divestiture.

(vi) Describe any significant impediments and obstacles to execution, including significant legal, regulatory, or cross-border challenges as well as operational challenges, to the divestiture of each franchise component. This description must also address impediments and obstacles to maintaining internal operations (for example, shared services, information technology requirements, and human resources) and to maintaining access to financial market utilities. Identify the material actions that would be needed to facilitate the sale or disposition of each franchise component and, based on the CIDI's current capabilities, describe the projected time frame for preparation for and disposition of each franchise component.

(vii) If a CIDI subsidiary or a parent company affiliate is a broker-dealer that provides services to the CIDI or customers of the CIDI, describe such services and the integration of the broker-dealer with the CIDI's business and operations. Provide an analysis discussing the challenges that could arise if the CIDI were separated from the broker-dealer and actions to mitigate such challenges.

(viii) A resolution submission must describe the CIDI's current capabilities and processes to establish a virtual data room promptly in the run-up to or upon failure of the IDI that could be used to carry out sale of the IDI franchise and the CIDI's franchise components, including a description of the organizational structure of information within the virtual data room. Information in the virtual data room must support the ability of the FDIC to market and execute a timely sale or disposition of the IDI franchise or the CIDI's franchise components, be appropriate for a buyer to conduct due diligence for a timely sale or disposition of the IDI franchise or the CIDI's franchise components, and be sufficient to permit a bidder to provide a competitive bid on the IDI franchise or the CIDI's franchise components. A resolution submission must also describe expected access protocols and requirements for the FDIC to use the virtual data room in order to carry out the sale of the IDI franchise or the CIDI's franchise components, including the FDIC's ability to facilitate bidder due diligence, and describe how information populated within the virtual data room could be transferred to a virtual data room hosted by the FDIC. The resolution submission should identify the time required to capture all elements of information in the virtual data room, indicating number of days it would take to populate each category of information described below, and the process for each, including any potential obstacles or impediments in producing accurate, timely, and complete information in a useful format. The content of the virtual data room must include, but is not limited to:

(A) Financial information, including annual and interim financial statements, including carve-out financial statements for franchise components, general ledger, and relevant financial information

(B) Deposit data and information

(C) Loan and lending operations information

(D) Securities information, including relevant information describing the CIDIs' securities and investment portfolio

(E) Corporate organization information, including current organizational chart

(F) Employee information, including organization charts, compensation and benefits

(G) Material contracts and critical services information, including bond indentures key critical services agreements

(H) Other information necessary to facilitate a rapid and effective due diligence process for the sale of the IDI franchise or the CIDI's franchise components

(11) *Asset portfolios.* A resolution submission must identify each material asset portfolio by size, and by category and classes of assets within such material asset portfolio, and include a breakdown of those assets within a material asset portfolio that are held by a foreign branch or regulated subsidiary. For each material asset portfolio, the resolution submission must describe how the assets within the portfolio are valued and how they are maintained on the books and records of the CIDI. Identify and discuss impediments to the sale of each material asset portfolio identified and provide a timeline for such disposition.

(12) *Valuation to facilitate FDIC's assessment of least-costly resolution method.* A CIDI must be able to demonstrate the capabilities necessary to produce valuations needed in assessing the least-cost test. A resolution plan must:

(i) Provide a detailed description of the approaches the CIDI would employ for determining the values of the franchise components and the IDI franchise as a whole, including the underlying assumptions and rationale. Describe the CIDI's approach to the development of the information needed to support valuation analysis, including a description of the CIDI's current ability to produce updated information, timely if necessary, to support the FDIC's analysis to determine whether a resolution strategy would be the least costly to the Deposit Insurance Fund in the event of failure.

(ii) Provide the following valuation analysis based upon the scenario used in the development of the identified strategy, with such adjustments to the scenario as may be necessary to demonstrate the analysis required under paragraph (d)(12)(ii)(B):

(A) Valuation estimates based on the net present value of proceeds that may be received under an enterprise valuation based on the disposition of the IDI franchise, and where a multiple acquirer exit strategy is incorporated in the identified strategy, a sum-of-the-parts analysis. In determining these valuation estimates, the CIDI must consider appropriate valuation approaches, such as the income-based approach, asset-based approach, and

market-based approach. In deriving a range of estimates of value, the CIDI must assess and provide a reasoned quantitative or qualitative analysis in support of whether the conclusion of value should reflect the results of one valuation approach and method, or a combination of the results of more than one valuation approach and method and, as appropriate, discuss the relevance and weight given to the different valuation approaches and methods used.

(B) A qualitative and quantitative analysis of the destruction of franchise value that may result from not transferring any uninsured deposits to the BDI, including a narrative describing any options to mitigate franchise value destruction where there is not a transfer of all deposits to a BDI, consideration of an advance dividend payment to depositors that takes into account the expected loss to depositors, and the impact of such an advance dividend on depositor behavior and preservation of franchise value at different levels of loss.

(iii) All content responding to paragraph (d)(12)(ii) of this section must be provided as an appendix to the resolution plan, including any analysis of liquidity and deposit runoff assumptions and factors underlying such runoff estimates.

(13) *Off-balance-sheet exposures.* A resolution submission must describe any material off-balance-sheet exposures (including the amount and nature of unfunded commitments, guarantees and contractual obligations) of the CIDI and map those exposures to core business lines, franchise components, and material asset portfolios.

(14) *Qualified financial contracts.* A resolution submission must:

(i) Describe the types of qualified financial contract transactions the CIDI is involved with in respect of its customers, which core business lines and franchise components with which such transactions are associated, and how the CIDI offsets position risk from such transactions. Identify customers of the CIDI that are counterparties to qualified financial contracts transactions with the CIDI that are significant in terms of gross notional amounts or volumes of transactions.

(ii) Describe the booking models for risk from derivative transactions, including whether customer-facing risk or other dealer-facing risk resides in the CIDI while the position risk hedging is performed by a parent company affiliate. Describe the CIDI's use of any ''global risk book,'' ''remote bookings,'' or ''back-to-backs'' booking model, identify the challenges these booking models present to the transfer or unwind of such related derivatives, and analyze approaches for addressing those challenges.

(iii) Describe how the CIDI uses qualified financial contracts to manage its hedging or liquidity needs, including specifying the hedged items (including underlying risk, cash flow, assets or liability being hedged) and the applicable core business line, as well as the approach used to mitigate such risks.

(iv) For each of paragraphs (d)(14)(i) through (iii) of this section, identify hedges that receive hedge accounting treatment, core business line-specific hedges, and reporting capabilities and practices for hedge accounting information and other end-user hedges.

(15) *Unconsolidated balance sheet; entity financial statements.* A resolution submission must provide an unconsolidated balance sheet for the CIDI and a consolidating schedule for all material entities that are subject to consolidation with the CIDI. Amounts attributed to entities that are not material entities may be aggregated on the consolidating schedule. Provide financial statements for each material entity and regulated subsidiary. When available, audited financial statements should be provided.

(16) *Payment, clearing, and settlement systems.* A resolution submission must:

(i) Identify each payment, clearing, and settlement system, including financial market utilities, of which the CIDI directly is a member or indirectly accesses that is a critical service or a critical service support. Map direct memberships in and indirect access to each such system, including through correspondent and agent banks or intermediaries, to the CIDI's legal entities, core business lines, and franchise components. Describe the services provided by such systems, including the value and volume of activities on a per-provider basis.

(ii) Describe services provided by the CIDI as an intermediary, agent, or correspondent bank with respect to payment, clearing, and settlement services that are material in terms of revenue to or value to any franchise component or core business line.

(17) *Capital structure; funding sources.* A resolution submission must:

(i) Provide descriptions of the current processes used by the CIDI to identify the funding, liquidity, and capital needs of and resources available to each material entity that is a CIDI subsidiary or foreign branch. Describe the current capabilities of the CIDI to project and report its funding and liquidity needs (*e.g.,* next day, cumulative next five days, cumulative next 30 days).

(ii) Describe the composition of the liabilities of the CIDI including the types and amounts of short-term and long-term liabilities by type and term to maturity, secured and unsecured liabilities, and subordinated liabilities. Such descriptions must include whether such liabilities are held by affiliates, whether they are publicly issued, maturity, call rights, and, where applicable, indenture trustees.

(iii) Describe the material funding relationships and material inter-affiliate exposures between the CIDI and any CIDI subsidiary or foreign branch that is a material entity, including material inter-affiliate financial exposures, claims or liens, lending or borrowing lines and relationships, guaranties, deposits, and derivatives transactions.

(18) *Parent and parent company affiliate funding, transactions, accounts, exposures, and concentrations.* A resolution submission must:

(i) Describe material affiliate funding relationships, and material inter-affiliate exposures, including terms, purpose, and duration, that the CIDI or any CIDI subsidiaries have with the parent company or any parent company affiliate. Include in such description material affiliate financial exposures, claims or liens, lending or borrowing lines and relationships, guaranties, deposits, and derivatives transactions.

(ii) Identify the nature and extent to which the parent company or any parent company affiliate serves as a source of funding to the CIDI and CIDI subsidiaries, the terms of any contractual arrangements, including any capital maintenance agreements, the location of related assets, funds or deposits, and the mechanisms by which funds are transferred from the parent company to the CIDI and CIDI subsidiaries.

(19) *Economic effects of resolution.* A resolution submission must identify any activities or business lines of the CIDI that provide a service or function that is material (i) to a geographic area or region of the United States; (ii) to a business sector or product line in that geographic area or region, or nationally; or (iii) to other financial institutions. A resolution submission must also describe the potential disruptive impact of the termination of such activities on the geographic area, region, or nationally or business sector, industry, or product line, or financial industry.

(20) *Non-deposit claims.* A resolution submission must identify and describe the CIDI's systems and processes used to identify the unsecured creditors of the CIDI that are not depositors, as well as

the unsecured creditors of each CIDI subsidiary that is a material entity. Such description must identify the location of the CIDI's records and recordkeeping practices regarding unsecured debt issued by the CIDI and any inter-creditor agreements for unsecured debt. The description must include a description of the CIDI's capabilities to identify each such unsecured creditor by name, address, nature of the liability, and amount owed by the CIDI and each CIDI subsidiary or, in the case of indentured securities, the identity of the indenture trustee.

(21) *Cross-border elements.* A resolution submission must describe all components of the parent company's and parent company affiliates' operations that contribute to the value, revenues, or operations of the CIDI that are based or located outside the United States, including regulated subsidiaries, and foreign branches and offices. A resolution submission must identify regulatory or other impediments to divestiture, transfer, or continuation of any foreign branches, subsidiaries and offices in resolution, including with respect to retention or termination of personnel.

(22) *Management information systems; software licenses; intellectual property.* A resolution submission must:

(i) Provide a detailed inventory and description of the key management information systems and applications, including systems and applications for risk management, accounting, and financial and regulatory reporting, as well as those used to provide the information required to be provided in the resolution submission, used by or for the benefit of the CIDI and CIDI subsidiaries. For each system or application the description must identify the legal owner or licensor, the personnel by title and legal entity employer needed to support and operate the system or application, the system or application's use and function, any core business line that uses the system or application, its physical location (if any), any related third-party contracts or service level agreements, any related software or systems licenses, and any other related intellectual property.

(ii) For any key management information system or application for which the CIDI or CIDI subsidiary is not the owner or licensor, describe both any obstacles to maintaining access to such system or application when the CIDI is in resolution, and approaches for maintaining access to such system or application when the CIDI is in resolution, including the projected costs of maintaining access when the CIDI is in resolution.

(iii) Describe the capabilities of the CIDI's processes and systems to collect, maintain, and produce the information and other data underlying the resolution submission. Identify all relevant management information systems and applications, and describe how the information is managed and maintained. Describe any deficiencies, gaps, or weaknesses in such capabilities and the actions the CIDI intends to take to address promptly any such deficiencies, gaps, or weaknesses, and the time frame for implementing such actions.

(23) *Digital services and electronic platforms.* A resolution submission must describe all digital services and electronic platforms offered to depositors to support banking transactions for retail or business customers. Identify whether such services and platforms are provided by the CIDI, a CIDI subsidiary, a parent company affiliate, or a third party entity, and which entity owns the related intellectual property or is the licensee. Discuss how these services or platforms are significant to the operations or customer relationships of the CIDI, and their impact on franchise value and depositor behavior.

(24) *Communications playbook.* A resolution submission must include a communications playbook that describes the CIDI's current communication capabilities, including capabilities to communicate with personnel, customers, and counterparties, and how those capabilities could be used from the point of the CIDI's failure through the CIDI's resolution. The description must:

(i) Identify categories of key stakeholders addressed in the CIDI's communications plans including, but not limited to, counterparties, regulatory authorities, customers, and personnel.

(ii) Identify communication channels for each key stakeholder category and describe the logistics and limitations of the use of each communication channel.

(iii) Describe the procedures to generate contact lists for each key stakeholder category and estimate the time required to generate each list.

(iv) Describe procedures for coordinating communications across key stakeholder categories and communications channels, including cross-border communications, if any.

(25) *Corporate governance.* A resolution submission must include a detailed description of: how resolution planning is integrated into the corporate governance structure and processes of the CIDI; the CIDI's policies, procedures, and internal controls governing preparation and approval of the resolution submission; and the identity and position of the senior management official of the CIDI who is primarily responsible and accountable for the development, maintenance, and filing of the resolution submission, and for the CIDI's compliance with this section.

(26) *CIDI's assessment of the resolution submission.* A resolution submission must describe the nature, extent, and results of any contingency planning or similar exercise conducted by the CIDI since the date of the most recently filed resolution submission to assess the viability of the identified strategy (if required) or improve any capabilities described in the resolution submission.

(27) *Any other material factor.* A resolution submission must identify and discuss any other material factor that may impede the resolution of the CIDI.

(e) *Interim supplement.* Each CIDI must submit interim supplements containing current and accurate information regarding the specified resolution submission content items in accordance with this paragraph (e).

(1) *Submission date.* Each CIDI must submit an interim supplement to the FDIC on the one-year anniversary (or first business day thereafter) of its most recent resolution submission, as determined by paragraph (c) of this section, unless the CIDI has received written notice of a different date from the FDIC. No interim supplement is required in a calendar year in which a resolution submission is made.

(2) *Information for interim supplement.*

(i) Each CIDI must submit an interim supplement that address each of the content items required under paragraph (e)(3) of this section.

(ii) The information submitted for each content item must be current as of the end of the most recent fiscal quarter prior to the interim supplement. Material changes from information provided in the previous resolution submission must be identified and explained.

(3) *Content items for interim supplement.* Each CIDI must submit interim supplements that address each of the following content items as required under this paragraph (e):

(i) the content required under paragraph (d)(4) of this section, ''Organizational structure: legal entities; core business lines; and branches'';

(ii) from paragraph (d)(7) of this section, ''Overall deposit activities,'' the content required under paragraph (d)(7)(i), the first sentence of paragraph (d)(7)(ii), the first sentence of paragraph (d)(7)(iii), the first sentence of paragraph (d)(7)(iv) and the first two sentences of paragraph (d)(7)(v) of this section;

(iii) from paragraph (d)(8) of this section, ''Critical services,'' the content required under paragraphs (d)(8)(i) and (iv) of this section;

(iv) from paragraph (d)(9) of this section, ''Key personnel,'' the content required under paragraph (d)(9)(i) of this section;

(v) from paragraph (d)(10) of this section, ''Franchise components,'' the content required under paragraphs (d)(10)(i) through (iii) of this section;

(vi) from paragraph (d)(11) of this section, ''Asset portfolios,'' the content required under the first sentence of paragraph (d)(11) of this section;

(vii) the content required under paragraph (d)(13) of this section, ''Off-balance-sheet exposures'', excluding the requirement to ''map those exposures to core business lines, franchise components and material asset portfolios'';

(viii) the content required under paragraph (d)(15) of this section, ''Unconsolidated balance sheet; entity financial statements'';

(ix) from paragraph (d)(16) of this section, ''Payment, clearing, and settlement systems,'' the content required under the first sentence of paragraph (d)(16)(i) of this section;

(x) from paragraph (d)(17) of this section, ''Capital structure; funding sources,'' the content required under the first sentence of paragraph (d)(17)(ii) of this section;

(xi) the content required under paragraph (d)(21) of this section, ''Cross-border elements'';

(xii) from paragraph (d)(22) of this section, ''Management information systems; software licenses; intellectual property,'' the content required under paragraph (d)(22)(i) of this section; and

(xiii) any other content element expressly identified for the next interim supplement by the FDIC.

(f) *Credibility; review of resolution submissions.*

(1) *Credibility criteria.* Each resolution submission must be credible. The FDIC may, at its sole discretion, determine that the resolution submission is not credible if:

(i) The identified strategy would not provide timely access to insured deposits, maximize value from the sale or disposition of assets, minimize any losses realized by creditors of the CIDI in resolution, and address potential risk of adverse effects on U.S. economic conditions or financial stability; or

(ii) The information and analysis in the resolution submission is not supported with observable and verifiable capabilities and data and reasonable projections or the CIDI fails to comply in any material respect with the requirements of paragraph (d) or (e) of this section.

(2) *Resolution submission review and credibility determination.* The FDIC will review the resolution submission in consultation with the appropriate Federal banking agency for the CIDI and its parent company. If, after consultation with the appropriate Federal banking agency for the CIDI, the FDIC determines that the resolution submission of a CIDI is not credible pursuant to paragraph (f)(1) of this section, the FDIC must notify the CIDI in writing of such determination. Any notice provided under this paragraph (f)(2) must include a description of the weaknesses in the resolution submission identified by the FDIC that resulted in the determination that the resolution submission is not credible.

(3) *Resubmission of a resolution submission.* Within 90 days of receiving a notice issued by the FDIC pursuant to paragraph (f)(2) of this section that the resolution submission is not credible, or such shorter or longer period as the FDIC may determine, a CIDI must submit a revised resolution submission to the FDIC that addresses any weaknesses identified by the FDIC and discusses in detail the revisions made to address such weaknesses.

(4) *Failure regarding resubmission.* If the CIDI fails to submit the revised resolution submission within the required time-period under paragraph (f)(3) of this section or the FDIC determines that the revised resolution submission fails to address adequately the weaknesses identified in the notice issued by the FDIC, the FDIC may take enforcement action against the CIDI in accordance with paragraph (k) of this section.

(5) *Post review notice of feedback and engagement and capabilities testing.* Following its review of a resolution submission, the FDIC will send a written notification to each CIDI providing feedback on the resolution submission. The written notification may be initial feedback that identifies areas of engagement and capabilities testing between the FDIC and the CIDI under paragraph (g) of this section.

(g) *Engagement and capabilities testing.*

(1) *Engagement.* Each CIDI must provide the FDIC such information and access to such personnel of the CIDI as the FDIC in its discretion determines is relevant to any of the provisions of this section (''engagement''). Personnel made available must have sufficient expertise and responsibility to address the informational and data requirements of the engagement. Engagement between the CIDI and the FDIC may be required at any time. This engagement may include the FDIC requiring the CIDI to provide information or data to support the content items required by paragraphs (d) or (e) of this section, other information related to a group A CIDI's identified strategy, or, for any CIDI, other resolution options being considered by the FDIC. Among other subjects, the FDIC may seek information from a group A CIDI on the impact to the identified strategy of a change in economic assumptions or CIDI-specific scenario assumptions.

(2) *Capabilities testing.* At the discretion of the FDIC, the FDIC may require any CIDI to demonstrate the CIDI's capabilities described, or required to be described, in the resolution submission, including the ability to provide the information, data and analysis underlying the resolution submission (''capabilities testing''). In connection with capabilities testing, the FDIC may seek information from a CIDI on the impact on identified capabilities of a change in economic assumptions or CIDI-specific scenario assumptions, if applicable. The CIDI must perform such capabilities testing promptly, and provide the results in a time frame and format acceptable to the FDIC. Capabilities testing may be included in connection with any engagement.

(3) *Conclusion letter.* At the conclusion of any engagement and capabilities testing between the FDIC and CIDI pursuant to this paragraph (g), the FDIC may send a written notification to the CIDI that such engagement and capabilities testing has concluded. The written notification may identify areas for further attention by the CIDI or other feedback.

(4) *Engagement and capabilities testing enforcement.* A CIDI's failure to comply with this paragraph (g) may result in the FDIC taking enforcement action against the CIDI in accordance with paragraph (k) of this section.

(h) *No limiting effect on FDIC.* No resolution submission provided pursuant to this section will be binding on the FDIC as supervisor, deposit insurer, or receiver for a CIDI or otherwise require the FDIC to act in conformance with such resolution submission.

(1) *Financial information.* The resolution submission must, to the greatest extent possible, use financial information as of the most recent fiscal year-end for which the CIDI has financial statements or, if the use of financial information as of a more recent date as of which the CIDI has financial statements would more accurately reflect the operations of the CIDI on the date the CIDI submits the resolution

submission, financial information as of that more recent date.

(2) *Indexing of information and analysis to resolution submission and interim supplement content requirements.* A resolution submission or interim supplement must include an index of each content requirement in paragraph (d) or (e) of this section, as applicable, required to be included in that resolution submission or interim supplement, as applicable, to every instance of its location in the resolution submission, or interim supplement, as applicable.

(3) *Combined resolution submission or interim supplements by affiliated CIDIs.* CIDIs that are affiliates may submit a single, combined resolution submission or interim supplement, but only if all affiliated CIDIs submitting the combined resolution submission or interim supplement are within the same CIDI group, whether group A or group B. The combined resolution submission or interim supplement must satisfy the content requirements for each CIDI's resolution submission or interim supplement, as applicable, and the FDIC must be able to readily identify the portions of a combined resolution submission or interim supplement that comprise each CIDI's resolution submission or interim supplement.

(i) *Form of resolution submissions; confidential treatment of resolution submissions and interim supplements.*

(1) Each resolution submission must be divided into a Public Section and a Confidential Section. Each CIDI must segregate and separately identify the Public Section from the Confidential Section. The Public Section must consist of an executive summary of the resolution plan that describes the business of the CIDI. For each CIDI, the Public Section must include, to the extent material to the CIDI's resolution submission:

(i) The names of material entities;

(ii) A description of core business lines;

(iii) Consolidated financial information regarding assets, liabilities, capital and major funding sources;

(iv) A description of derivative activities and hedging activities;

(v) A list of memberships in material payment, clearing, and settlement systems, including financial market utilities;

(vi) A description of foreign operations;

(vii) The identities of material supervisory authorities;

(viii) The identities of the principal officers;

(ix) A description of the corporate governance structure and processes related to resolution planning;

(x) A description of material management information systems; and

(xi) For group A CIDIs only, a description, at a high level, of the CIDI's identified strategy.

(2) The confidentiality of resolution submissions and interim supplements must be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552(b)) and the FDIC's Disclosure of Information Rules (12 CFR part 309).

(3) Any CIDI submitting a resolution submission, interim supplement, or related materials pursuant to this section that desires confidential treatment of the information submitted pursuant to 5 U.S.C. 552(b)(4) and the FDIC's Disclosure of Information Rules (12 CFR part 309) and related policies may file a request for confidential treatment in accordance with those rules.

(4) To the extent permitted by law, information comprising the Confidential Section of a resolution submission and the information comprising an interim supplement will be treated as confidential.

(5) To the extent permitted by law, the submission of any non-publicly available data or information under this section will not constitute a waiver of, or otherwise affect, any privilege arising under Federal or state law (including the rules of any Federal or state court) to which the data or information is otherwise subject. Privileges that apply to resolution submissions and related materials are protected pursuant to Section 18(x) of the FDI Act, 12 U.S.C. 1828(x).

(j) *Extensions and exemptions.*

(1) *Extension.* Notwithstanding the general requirements of paragraph (c) of this section, on a case-by-case basis, the FDIC may extend, on its own initiative or upon written request, any time frame or deadline of this section.

(2) *Waiver.* The FDIC may, on its own initiative or upon written request, exempt a CIDI from one or more of the requirements of this section.

(k) *Enforcement.* Violating any provision of this section constitutes a violation of a regulation and may subject the CIDI to enforcement actions under Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), including paragraph (t) thereunder.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on August 29, 2023.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–19266 Filed 9–18–23; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

[Docket No. OP–1816]

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064–ZA37

Guidance for Resolution Plan Submissions of Domestic Triennial Full Filers

AGENCY: Board of Governors of the Federal Reserve System (Board) and Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed guidance; request for comments.

SUMMARY: The Board and the FDIC (together, the agencies) are inviting comments on proposed guidance for the 2024 and subsequent resolution plan submissions by certain domestic banking organizations. The proposed guidance is meant to assist these firms in developing their resolution plans, which are required to be submitted pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended (the Dodd-Frank Act), and the jointly issued implementing regulation (the Rule). The scope of application of the proposed guidance would be domestic triennial full filers (specified firms or firms), which are domestic Category II and III banking organizations. The proposed guidance is based on the agencies' review of the specified firms' 2021 and prior resolution plan submissions, as well as the agencies' experiences resolving several large domestic banking organizations, and would describe the agencies' expectations regarding several aspects of the specified firms' plans for an orderly resolution under the U.S. Bankruptcy Code. The agencies invite public comment on all aspects of the proposed guidance.

DATES: Comments must be received by November 30, 2023.

ADDRESSES: Interested parties are encouraged to submit written comments jointly to both agencies. Comments should be directed to:

Board: You may submit comments, identified by Docket No. OP–1816, 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 number 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.

In general, all public comments will be made available on the Board's website at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, and will not be modified to remove confidential, contact or any identifiable information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. during federal business weekdays.

FDIC: You may submit comments, identified by RIN 3064–ZA37, by any of the following methods:

- *FDIC Website: https://www.fdic.gov/resources/regulations/federal-register-publications/*. Follow the instructions for submitting comments on the FDIC's website.
- *Email: comments@fdic.gov*. Include ''RIN 3064–ZA37'' on the subject line of the message.
- *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments-RIN 3064–ZA37, 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 a.m. and 5 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 document 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:

Board: Catherine Tilford, Deputy Associate Director, (202) 452–5240, Elizabeth MacDonald, Assistant Director, (202) 475–6316, Tudor Rus, Lead Financial Institution Analyst, (202) 475–6359, Division of Supervision and Regulation; or Jay Schwarz, Assistant General Counsel, (202) 452–2970; Andrew Hartlage, Special Counsel, (202) 452–6483; Sarah Podrygula, Senior Attorney, (202) 912–4658; or Brian Kesten, Senior Attorney, (202) 843–4079, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

FDIC: Robert C. Connors, Senior Advisor, (202) 898–3834, Division of Complex Financial Institution Supervision and Resolution; Celia Van Gorder, Senior Counsel, (202) 898–6749; Esther Rabin, Counsel, (202) 898–6860, *erabin@fdic.gov,* Legal Division.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Overview of the Proposed Guidance
III. Paperwork Reduction Act
Appendix: Text of the Proposed Guidance

I. Background

A. The Dodd-Frank Act and the Rule

Section 165(d) of the Dodd-Frank Act [1] and the Rule [2] require certain financial institutions to report periodically to the Board and the FDIC their plans for rapid and orderly resolution under the U.S. Bankruptcy Code (the Bankruptcy Code) in the event of material financial distress or failure. The Rule divides covered companies into three groups of filers: (a) biennial filers; (b) triennial full filers; and (c) triennial reduced filers.[3]

Triennial full filers under the Rule are required to file a resolution plan every three years, alternating between full and targeted resolution plans.[4] The Rule requires each covered company's full resolution plan to include, among other things, a strategic analysis of the plan's components, a description of the range of specific actions the covered company proposes to take in resolution, and a description of the covered company's organizational structure, material

[1] 12 U.S.C. 5365(d).

[2] 12 CFR parts 243 and 381.

[3] 12 CFR 243.4 and 12 CFR 381.4. The terms ''covered company'' and ''triennial full filer'' have the meanings given in the Rule, as do other, similar terms used throughout this proposal.

[4] 12 CFR 243.4(b) and 12 CFR 381.4(b).

entities, and interconnections and interdependencies.[5] Targeted resolution plans are required to include a subset of information contained in a full plan.[6] In addition, the Rule requires that all resolution plans consist of two parts: a confidential section that contains any confidential supervisory and proprietary information submitted to the agencies and a section that the agencies make available to the public.[7] Public sections of resolution plans can be found on the agencies' websites.[8]

B. Recent Developments

Implementation of the Rule has been an iterative process aimed at strengthening the resolution planning capabilities of financial institutions subject to the Rule. To assist the development of covered companies' resolution planning capabilities and plan submissions, the agencies have provided feedback on individual plan submissions, promulgated guidance to certain groups of covered companies, and issued answers to frequently asked questions. The agencies believe that guidance can help focus the efforts of similarly situated covered companies to improve their resolution capabilities and clarify the agencies' expectations for those filers' future progress. The agencies have issued guidance to: (a) U.S. global systemically important banks (GSIBs);[9] which constitute the biennial filer group; and (b) certain large foreign banking organizations (FBOs) that are triennial full filers.[10] The agencies have not, however, issued guidance to the domestic firms and additional FBOs that make up the remainder of the triennial full filers.

As the agencies previously indicated,[11] they believe that it is now appropriate to issue guidance to the specified firms. The agencies' review of the 2021 targeted resolution plans submitted by domestic triennial full filers revealed significant inconsistencies in the amount and nature of information they provided on critical informational elements required by the Rule. In addition, some resolution plans included optimistic assumptions regarding the availability of financial resources at the firm at the time of a bankruptcy filing as well as the ability of a firm to access financial assistance prior to and during resolution. The agencies believe that future resolution plans from these firms would benefit from guidance regarding critical informational elements required by the Rule as well as appropriate assumptions.

The proposed guidance also reflects the agencies' recent experience with Silicon Valley Bank (SVB), Signature Bank (SB), and First Republic Bank (First Republic). While SVB, SB, and First Republic were not required to file resolution plans under section 165(d) of the Dodd-Frank Act and the Rule, the effects of their failures illustrate that the failure of a large insured depository institution (IDI) may have serious adverse effects on financial stability in the United States.[12] This experience illustrates the importance of issuing guidance to domestic triennial full filers (many of which have large subsidiary IDIs) to assist their progress in developing plans for an orderly resolution in the event of material financial distress or failure.

C. Resolution Plan Strategy

The specified firms have adopted one of two resolution strategies: a single point of entry (SPOE) or multiple point of entry (MPOE) strategy. The SPOE and MPOE resolution plan strategies require firms to consider different risks and require different types of planning and development of capabilities for the execution of the respective strategies. The agencies do not prescribe a specific resolution strategy for any covered company, nor do the agencies identify a preferred strategy. The proposed guidance is not intended to favor one strategy or another. Specified filers may continue to submit resolution plans using the resolution strategies they believe would be most effective in achieving an orderly resolution of their firms, but a resolution plan must address the key vulnerabilities and support the underlying assumptions required to successfully execute the chosen resolution strategy.

Under an SPOE strategy for a U.S. firm, all material entity subsidiaries are recapitalized and provided with liquidity, if needed, so that only the top tier bank holding company (BHC) enters resolution. The MPOE approach entails multiple U.S. material entities entering separate resolution proceedings: any top-tier U.S. material entity holding company enters bankruptcy; any U.S. material entity IDI subsidiary is resolved separately under the Federal Deposit Insurance Act of 1950, as amended (the FDI Act); and other individual U.S. material entity subsidiaries separately enter bankruptcy (or another appropriate resolution regime) or are wound down. All of the specified firms presented an MPOE strategy in their 2021 targeted resolution plan submissions.

D. Long-Term Debt Rulemaking

The agencies, as well as the Office of the Comptroller of the Currency, are issuing a proposed rule for comment that would require certain large IDI holding companies, U.S. intermediate holding companies of FBOs, and certain IDIs, to issue and maintain outstanding a minimum amount of long-term debt (LTD), among other proposed requirements.[13] This proposed rule would improve the resolvability of these firms, and, in particular, their IDI subsidiaries, in case of failure, reducing costs to the Deposit Insurance Fund (DIF), and mitigating financial stability and contagion risks by reducing the risk of loss to uninsured depositors. LTD issued by the IDI could help support resolution strategies by, among other things, recapitalizing a bridge depository institution and facilitating its exit from resolution as a newly chartered IDI that would have new ownership. The agencies expect that a final long-term debt rule could interact with how the specified firms plan for resolution under the Rule, and the agencies anticipate ensuring that the final resolution plan guidance for domestic triennial full filers is consistent with any final long-term debt rule. Accordingly, the agencies welcome comments that take the proposed long-term debt rulemaking into consideration.[14]

II. Overview of the Proposed Guidance

The proposed guidance begins with the proposed scope and then is organized into several substantive

[5] 12 CFR 243.5 and 12 CFR 381.5.

[6] 12 CFR 243.6(b) and 12 CFR 381.6(b).

[7] 12 CFR 243.11(c) and 12 CFR 381.11(c).

[8] The public sections of resolution plans submitted to the agencies are available at *www.federalreserve.gov/supervisionreg/resolution-plans.htm* and *www.fdic.gov/regulations/reform/resplans/*.

[9] Guidance for § 165(d) Resolution Plan Submissions by Domestic Covered Companies applicable to the Eight Largest, Complex U.S. Banking Organizations, 84 FR 1438 (Feb. 4, 2019) (2019 GSIB Guidance).

[10] Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies, 85 FR 83557 (Dec. 22, 2020) (2020 FBO Guidance).

[11] *https://www.federalreserve.gov/newsevents/pressreleases/bcreg20220930a.htm.*

[12] For example, the FDIC—upon the recommendation of two-thirds of each of the board of directors of the FDIC and the Board, as well as a determination by the Secretary of the Treasury, in consultation with the President—resolved SVB and SB using the systemic risk exception to the statutory requirement to employ the least-costly method to resolve a failed IDI. *https://www.federalreserve.gov/newsevents/pressreleases/monetary20230312b.htm; https://www.fdic.gov/news/press-releases/2023/pr23017.html.*

[13] This proposed rulemaking is published elsewhere in this **Federal Register**.

[14] The public also may provide comments on the proposed guidance that assume that no long-term debt rule is finalized and that specified firms remain subject to current capital rules.

topical areas. Each substantive topic is bifurcated, with separate guidance for an SPOE resolution strategy and an MPOE resolution strategy. As discussed, each resolution strategy poses distinct risks and requires its own type of planning and capabilities development for executing the strategy. Accordingly, the proposed guidance would account for the different challenges posed by each approach.

The proposed guidance for firms that adopt an SPOE resolution strategy is generally based on the 2019 GSIB Guidance, with certain modifications that reflect the specific characteristics of and potential risks posed by the failure of the specified firms. Successful execution of an SPOE strategy relies on the ability to provide sufficient capital and liquidity to material entities, a governance structure that can identify the onset of financial stress events, and the ability to ensure the timely execution of the strategy and to maintain continuity of operations throughout resolution.

The proposed guidance for firms that utilize an MPOE resolution strategy incorporates certain aspects of the 2019 GSIB Guidance that the agencies believe are applicable to large banking organizations, with modifications appropriate to this strategy and institutions with the characteristics displayed by the specified firms. For MPOE firms, the proposed guidance also omits aspects of the 2019 GSIB Guidance that would not apply in an MPOE resolution. The agencies are, however, proposing to clarify their expectations for specified firms that utilize an MPOE strategy that includes the resolution of a material entity that is a U.S. IDI. As discussed elsewhere in this proposal, the resolution of a large U.S. IDI under the FDI Act likely would pose substantial operational and legal challenges and complexities. Accordingly, the agencies believe that the resolution plans of firms whose resolution plans contemplate the separate resolution of a material entity that is a U.S. IDI would benefit from developing capabilities specific to and considering legal requirements regarding U.S. IDI resolution.

The agencies believe that each substantive area of the proposed guidance would play a part in helping to ensure that the specified firms can be resolved in an orderly manner. The proposed guidance would describe the agencies' expectations for each of these areas. In addition, the proposed guidance would consolidate items of feedback provided to a number of the specified firms in the past, thereby providing the public with one source of applicable guidance for the specified firms. The proposed guidance is not, however, intended to override the obligation of an individual specified firm to respond, in its next resolution plan submission, to pending items of individual feedback or any shortcomings or deficiencies identified or determined by the agencies in that specified firm's prior resolution plan submission. The proposed guidance also is not meant to limit specified firms' consideration of additional vulnerabilities or obstacles that might arise based on a firm's particular structure, operations, or resolution strategy, and that should be factored into the specified firm's resolution plan submission.

The proposed guidance concludes with information about the format and structure of a plan that applies equally to plans contemplating either an SPOE strategy or an MPOE strategy.

A. Scope of Application

The agencies propose to apply the guidance to all domestic triennial full filers. The Board's tailoring framework provides clear, predictable scoping based on publicly reported quantitative data. As discussed above, the agencies believe that it is appropriate to provide resolution planning guidance to all domestic triennial full filers given issues identified in these firms' 2021 targeted resolution plans and considering lessons learned from recent events.

The agencies would like the specified firms to submit resolution plans that take into consideration the final version of the proposed guidance as soon as practicable. However, the agencies understand that the specified firms may need time to take into consideration the guidance when developing their resolution plans. In light of the timing of this proposal, the agencies are considering providing a short extension of the next resolution plan submission date for the specified firms, with the expectation that these plan submissions would be due sooner than one year after the proposed guidance is published in final form.

The agencies seek comment on all aspects of the proposed scope of application.

Question 1: Should the agencies provide more than 6 months for the specified firms to take into consideration the expectations in the proposed guidance, once finalized? If so, what time period should the agencies provide?

B. Capital

For specified firms with an SPOE resolution strategy, the agencies propose guidance substantially similar to the 2019 GSIB Guidance regarding capital. The ability to provide sufficient capital to material entities without disruption from creditors is important in order to ensure that material entities can continue to maintain operations as the firm is resolved. The proposal describes expectations concerning the appropriate positioning of capital and other loss-absorbing instruments (*e.g.,* debt that a parent holding company may choose to forgive or convert to equity) among the material entities within the firm (resolution capital adequacy and positioning, or RCAP). The positioning of capital resources within the firm should be consistent with any applicable rules requiring prepositioned resources in IDIs in the form of long-term debt. The proposal also describes expectations regarding a methodology for periodically estimating the amount of capital that may be needed to support each material entity after the bankruptcy filing (resolution capital execution need, or RCEN).

The agencies are not proposing further expectations concerning capital to firms whose plans contemplate an MPOE resolution strategy, as an MPOE strategy assumes most material entities do not continue as going concerns upon entry into resolution.

Question 2: In addition to the capital-related resolution plan requirements under the Rule, are there other capital-related expectations that would reasonably enhance the resolvability of a specified firm that utilizes an MPOE strategy in its resolution plan?

Question 3: Do the capital-related resolution expectations in the proposed guidance align with the provisions of the interagency long-term debt rulemaking proposal? Are there any aspects of the proposed guidance that should be revised, or additional expectations added, in light of the interagency long-term debt rulemaking proposal?

Question 4: Is it appropriate for a specified firm utilizing an SPOE resolution strategy to assume, during the transition period for any final long-term debt rulemaking, that the entire amount of debt required under the rule after the transition period has been issued?

C. Liquidity

For firms that adopt an SPOE resolution strategy, the agencies propose guidance substantially similar to the 2019 GSIB Guidance regarding liquidity. A firm's ability to reliably estimate and

meet its liquidity needs prior to, and in, resolution is important to the execution of a firm's resolution strategy because it enables the firm to respond quickly to demands from stakeholders and counterparties, including regulatory authorities in other jurisdictions and financial market utilities. Maintaining sufficient and appropriately positioned liquidity also allows the subsidiaries to continue to operate while the firm is being resolved in accordance with the firm's preferred resolution strategy.

For firms that adopt an MPOE resolution strategy, the agencies propose that a firm should have the liquidity capabilities necessary to execute its preferred resolution strategy, and its plan should include analysis and projections of a range of liquidity needs during resolution.

Question 5: In addition to the liquidity-related resolution plan requirements under the Rule and the liquidity-related expectations in the proposed guidance, are there other liquidity related expectations that would reasonably enhance the resolvability of a specified firm that utilizes an MPOE resolution strategy? Are there circumstances under which it would be appropriate for a resolution plan that utilizes an MPOE strategy to include the movement of liquidity among material entities that are in resolution?

D. Governance Mechanisms

For firms using an SPOE resolution strategy, the agencies propose guidance that is substantially similar to the 2019 GSIB Guidance regarding governance mechanisms. An adequate governance structure with triggers that identify the onset, continuation, and increase of financial stress is important to ensure that there is sufficient time to allow firms to prepare for resolution, and to ensure the timely execution of the resolution strategy. The governance mechanisms section proposes expectations that firms have playbooks that describe the board and senior management actions necessary to execute the firm's preferred strategy. In addition, the proposal describes expectations that these firms have triggers that are linked to specific actions outlined in these playbooks to ensure the timely escalation of information to senior management and the board, to address the successful recapitalization of subsidiaries prior to the parent's bankruptcy, and to address how the firm would ensure the timely execution of a bankruptcy filing. The proposal also describes the expectations that firms identify and analyze potential legal challenges to the provision of capital and liquidity to subsidiaries that would precede the parent's bankruptcy filing under an SPOE resolution strategy, and any defenses and mitigants to such challenges.

The agencies do not propose issuing guidance on this topic to firms whose resolution plans contemplate an MPOE resolution strategy, as entry of many types of material entities, including IDIs, into resolution would be determined by criteria prescribed in statute or dependent to some extent on actions taken by regulatory authorities in implementing a statute.

Question 6: Should the agencies consider applying aspects of the governance mechanisms guidance developed for an SPOE strategy to resolution plans utilizing an MPOE resolution strategy? If, so, what aspects should be extended to resolution plans utilizing an MPOE resolution strategy? Should the agencies consider developing new governance mechanisms guidance specific to resolution plans utilizing an MPOE resolution strategy?

Question 7: If a specified firm chooses to switch from utilizing an MPOE resolution strategy to an SPOE resolution strategy in its resolution plan, should the agencies provide a transition period for a firm to take into consideration the SPOE-specific guidance when developing its resolution planning capabilities and its next resolution plan? If so, are there aspects that should have a shorter transition period, and what period or periods would be appropriate?

E. Operational

The development and maintenance of operational capabilities is important to support and enable execution of a firm's preferred resolution strategy, including providing for the continuation of identified critical operations and preventing or mitigating adverse effects on U.S. financial stability. For firms that utilize an SPOE resolution strategy, the agencies propose adopting portions of the operational expectations of the 2019 GSIB Guidance and SR letter 14–1,[15] with modifications that reflect the specific characteristics and complexities of the specified firms. Like the 2019 GSIB Guidance, the proposal contains expectations on payment, clearing and settlement activities, managing, identifying and valuing collateral, management information systems, and shared and outsourced services. For firms that utilize an MPOE resolution strategy, the agencies propose adopting expectations based on SR letter 14–1 and the 2019 GSIB Guidance that are most relevant to an MPOE resolution strategy. For example, the proposed expectations regarding payment, clearing and settlement activities are those most likely to support resolution in the MPOE context.

F. Legal Entity Rationalization & Separability

For specified firms that utilize an SPOE resolution strategy, the agencies propose substantively adopting the 2019 GSIB Guidance regarding legal entity rationalization and separability. It is important that firms maintain a structure that facilitates orderly resolution. To achieve this, the proposal states that a firm should develop and describe in their plans criteria supporting its resolution strategy and integrate them into day-to-day decision-making processes. The criteria would be expected to consider the best alignment of legal entities and business lines and facilitate resolvability as a firm's activities, technology, business models, or geographic footprint change over time. In addition, the proposed guidance provides that the firm should identify discrete operations that could be sold or transferred in resolution to provide meaningful optionality for the resolution strategy under a range of potential failure scenarios and include this information in their plans.

For firms that utilize an MPOE resolution strategy, the proposed guidance would clarify that the firms should have legal entity structures that support their preferred resolution strategy and describe those structures in their plans. The proposal also provides that to the extent a material entity IDI relies upon other affiliates during resolution, the firm should discuss its rationale for the legal entity structure and associated resolution risks and potential mitigants. In addition, the agencies propose that the firms include options for the sale, transfer, or disposal of significant assets, portfolios, legal entities, or business lines in resolution.

Question 8: Are there other separability related expectations that would reasonably enhance resolution plans that utilize an MPOE resolution strategy?

[15] SR letter 14–1, ''Principles and Practices for Recovery and Resolution Preparedness'' (Jan. 24, 2014), *available at https://www.federalreserve.gov/supervisionreg/srletters/sr1401.htm.*

G. Insured Depository Institution (IDI) Resolution [16]

Background. When an IDI fails and the FDIC is appointed receiver, the FDIC generally must utilize the resolution option for the failed IDI that is least costly to the DIF of all possible methods (the least-cost requirement).[17] An exception to this requirement is provided where a determination is made by the Secretary of the Treasury, in consultation with the President and after a written recommendation from two-thirds of the FDIC's Board of Directors and two-thirds of the Board, that complying with the least-cost requirement would have serious adverse effects on economic conditions or financial stability and implementing another resolution option would avoid or mitigate such adverse effects.[18] A specified firm should not assume the use of this systemic risk exception to the least-cost requirement in its resolution plan.

Purchase and Assumption Transaction. The FDIC typically seeks to resolve a failed IDI by identifying, before the IDI's failure, one or more potential acquirers so that as many of the IDI's assets and deposit liabilities as possible can be sold to and assumed by the acquirer(s) instead of remaining in the receivership created on the failure date.[19] This transaction form, termed a ''purchase and assumption'' or ''P&A'' transaction, has historically been the resolution approach that is least costly to the DIF, easiest for the FDIC to execute, and least disruptive to the depositors of the failed IDI—particularly in the case of transactions involving the assumption of all the failed IDI's deposits by the assuming institution (an ''all-deposit transaction'')—and typically can be completed over the weekend following the IDI's closure by its primary regulator but before business ordinarily would commence the following Monday (closing weekend). The limited size and operational complexity present in most small-bank failures has allowed the FDIC to execute a P&A transaction with a single acquirer on numerous occasions. Resolving an IDI via a P&A transaction over the closing weekend, however, may not be available to the FDIC, particularly in failures involving large IDIs. P&A transactions require lead time to identify potential buyers and allow due diligence on, and an auction of, the failing IDI's assets and banking business, also termed its ''franchise.'' Additionally, larger banks can pose significant, and potentially systemic, challenges in resolutions. These challenges include: a more limited pool of potential acquirers as a failed IDI increases in size, which makes a transaction in which nearly all assets and liabilities are transferred to one or more acquirers increasingly less likely; operational complexities which require advance planning on the part of the IDI and the FDIC and the development of certain capabilities; potential market concentration and antitrust considerations; and potentially the need to maintain the continuity of activities conducted in whole or in part in the IDI that are critical to U.S. financial stability.

For example, the largest failed IDI in U.S. history, Washington Mutual Bank, had approximately $307 billion in assets. The DIF did not incur a loss associated with this failure in part because it benefitted from the FDIC's sale of the institution to an acquirer which had first engaged in exhaustive due diligence of the institution during a self-marketing effort conducted by the IDI prior to its failure. A more recent example, that of First Republic Bank, which was also acquired in an all-deposit transaction, illustrates that such a transaction can be difficult to effectuate. The FDIC invited 21 banks and 21 nonbanks to participate in the bidding process and received bids from only four bidders.[20] The least costly bid necessitated a loss-sharing agreement, and the transaction is expected to result in a significant loss to the DIF. In addition, the FDIC received only one viable bid for Silicon Valley Bank during the weekend following its failure, but this bid did not satisfy the least-cost test. The FDIC received no viable all-deposit bids for Signature Bank at the time it failed.[21]

If no P&A transaction that meets the least-cost requirement can be accomplished at the time an IDI fails, the FDIC must pursue an alternative resolution strategy. The primary alternative resolution strategies for a failed IDI are: (1) a payout liquidation; or (2) utilization of a BDI. The FDIC conducts payout liquidations by paying insured deposits in cash or transferring the insured deposits to an existing institution or a new institution organized by the FDIC to assume the insured deposits (generally, a Deposit Insurance National Bank or DINB). In payout liquidations, the FDIC as receiver retains substantially all of the failed IDI's assets for later sale, and the franchise value of the failed IDI is lost.

Bridge Depository Institution. If the FDIC determines that temporarily continuing the operations of the failed IDI is less costly than a payout liquidation, it may organize a BDI to purchase certain assets and assume certain liabilities of the failed IDI.[22] Generally, a BDI would continue the failed bank's operations according to business plans and budgets approved by the FDIC and carried out by FDIC-selected leadership of the BDI. In addition to providing depositors access to deposits and banking services, the BDI would conduct any necessary restructuring required to rationalize the failed IDI's operations and maximize value to be achieved in an eventual sale. Subject to the least-cost requirement, the initial structure of the BDI may be based upon an all-deposit transaction, a transaction in which the BDI assumes only the insured deposits, or a transaction in which the BDI assumes all insured deposits and a portion of the uninsured deposits. Once a BDI is established, the FDIC seeks to stabilize the institution while simultaneously planning for the eventual termination of

[16] The FDIC has a separate rule requiring resolution plans from certain IDIs, 12 CFR 360.10, ''Resolution Plans Required for Insured Depository Institutions With $50 Billion or More in Total Assets'' (the IDI Rule). The Rule and the IDI Rule each have different goals and the expected content of the respective resolution plans accordingly also is different. The Rule requires a covered company to submit a resolution plan that would allow rapid and orderly resolution of the covered company under the Bankruptcy Code in the event of material financial distress or failure. The purpose of the IDI Rule is to ensure that the FDIC has access to all of the material information it needs to efficiently resolve an IDI in the event of its failure.

[17] *See* 12 U.S.C. 1823(c)(4). A deposit payout and liquidation of the failed IDI's assets (payout liquidation) is the general baseline the FDIC uses in a least-cost requirement determination. *See* 12 U.S.C. 1823(c)(4)(D).

[18] *See* 12 U.S.C. 1823(c)(4)(G).

[19] *See generally https://www.fdic.gov/resources/resolutions/bank-failures/* for background about the resolution of IDIs by the FDIC.

[20] *See* Remarks by Chairman Martin J. Gruenberg on ''Oversight of Prudential Regulators'' before the Committee on Financial Services, United States House of Representatives available at *https://www.fdic.gov/news/speeches/2023/spmay1523.html*; *see also* Remarks by Chairman Martin J. Gruenberg on ''Recent Bank Failures and the Federal Regulatory Response'' before the Committee on Banking, Housing, and Urban Affairs, United States Senate available at *https://www.fdic.gov/news/speeches/2023/spmar2723.html*.

[21] To protect depositors and preserve the value of the assets and operations of each of SVB and SB following failure—which can improve recoveries for creditors and the DIF—the FDIC ultimately transferred all the deposits and substantially all of the assets of each failed bank to a full-service bridge depository institution (BDI) operated by the FDIC while the FDIC marketed the institutions to potential bidders.

[22] Before a BDI may be chartered, the chartering conditions set forth in 12 U.S.C. 1821(n)(2) must also be satisfied. For purposes of this guidance, if the Plan provides appropriate analysis concerning the feasibility of the BDI strategy, there is no expectation that the resolution plan also demonstrate separately that the conditions for chartering the BDI have been satisfied.

the BDI. In exiting and terminating a BDI, the FDIC may merge or consolidate the BDI with another depository institution, issue and sell a majority of the capital stock in the BDI, or effect the assumption of the deposits or acquisition of the assets of the BDI.[23] However, many of the same factors that challenge the feasibility of a traditional P&A transaction also complicate planning for the termination of a BDI through a sale of the whole entity or its constituent parts. The proposed guidance would clarify the expectations for a firm adopting an MPOE resolution strategy with a material entity IDI to demonstrate how the IDI can be resolved in a manner that is consistent with the overall objective of the Plan to substantially mitigate the risk that the failure of the specified firm would have serious adverse effects on financial stability in the United States, while also adhering to the requirements of the FDI Act regarding failed bank resolutions without relying on the assumption that a systemic risk exception will be available. These expectations would not be applicable to firms adopting an SPOE resolution strategy because U.S. IDI subsidiaries of such firms would not be expected to enter resolution.

Question 9: Should the guidance indicate that if a specified filer proposes a strategy using a BDI to resolve its subsidiary material entity IDI, the plan should include a detailed description of the balance sheet components that would transfer to the BDI and of the process the specified filer believes is most appropriate to value the transferred components, inclusive of pro forma balance sheet and income statements?

Question 10: Should the guidance indicate that if a specified filer proposes a strategy using a BDI to resolve its subsidiary material entity IDI, the plan should describe and quantify:

- *The amounts to be realized through liquidating the failed IDI's assets and any expected premiums associated with selling the institution's deposits;*
- *Any franchise value bid premiums expected to be realized through maintaining certain ongoing business operations in a BDI; and*
- *A comparison of the loss to the DIF realized from a payout liquidation and from utilizing a BDI so as to support the conclusion that a BDI would result in the least costly resolution?*

H. Derivatives and Trading Activities

The agencies request comment on whether to provide guidance on derivatives and trading activities for specified firms that utilize an SPOE resolution strategy. Although the specified firms have limited derivatives and trading operations compared to the U.S. GSIBs, it remains important that their derivatives and trading activities can be stabilized and de-risked during resolution without causing significant disruption to U.S. markets. If the agencies were to provide guidance on derivatives and trading activities, the agencies likely would adopt aspects of the 2019 GSIB Guidance. The agencies do not anticipate providing derivatives and trading activities guidance to specified firms that utilize an MPOE resolution strategy.

In the 2019 GSIB Guidance, the agencies specified the particular covered companies to which the derivatives and trading activities guidance was directed. The agencies recognize that covered companies may move in and out of the triennial full filer category and want to ensure that the proposal would remain applicable and relevant regardless of which covered companies are considered triennial full filers at any moment in time.

Question 11: Should the agencies provide resolution plan guidance on derivatives and trading activities for specified firms that utilize an SPOE resolution strategy? If so, what should be the content of that guidance, what methodology should the agencies use to determine the scope of specified firms to be subject to that guidance, and would it be appropriate to adopt all or some of the expectations contained in the 2019 GSIB Guidance? What other derivatives and trading activities-related expectations would reasonably enhance resolution plans that utilize an SPOE resolution strategy?

Question 12: Should the agencies provide resolution plan guidance on derivatives and trading activities for specified firms that utilize an MPOE resolution strategy? If so, what should be the content of that guidance and what methodology should the agencies use to determine the scope of specified firms to be subject to that guidance?

I. Format and Structure of Plans; Assumptions

This section states the agencies' preferred presentation regarding the format, assumptions, and structure of resolution plans. Plans should contain an executive summary, a narrative of the firm's resolution strategy, relevant technical appendices, and a public section as detailed in the Rule. The proposed format, structure, and assumptions are generally similar to those in the 2019 GSIB Guidance, except that the proposed guidance reflects the expectation that a firm should support any assumptions that it will have access to the Discount Window and/or other borrowings during the period immediately prior to entering bankruptcy and clarifies expectations around such assumptions and that firms should not assume the use of the systemic risk exception to the least-cost test in the event of a failure of an IDI requiring resolution under the FDI Act. In addition, for firms that adopt an MPOE resolution strategy, the proposal includes the expectation that a plan should demonstrate and describe how the failure event(s) results in material financial distress, including consideration of the likelihood of the diminution the firm's liquidity and capital levels prior to bankruptcy.

Question 13: Certain firms' plans rely on lending facilities, including the Discount Window or other government-sponsored facilities in the period immediately preceding a bankruptcy filing. Should the guidance include additional clarifications related to assumptions regarding these lending facilities? Should the guidance contain clarifications relating to other assumptions discussed in the guidance or additional appropriate assumptions?

Question 14: The agencies included in the 2019 GSIB Guidance and 2020 FBO Guidance answers that had been previously published to frequently asked questions (FAQs) the agencies received from the guidance recipients about the topics in resolution plan guidance (e.g., capital, liquidity, etc.); however, there was no FAQ process for the specified firms given the limited number of common questions received. Should the agencies include in resolution guidance for the specified firms answers to FAQs similar to those contained in the 2019 GSIB Guidance and 2020 FBO Guidance? If so, which answers to FAQs should the final guidance contain, and what changes, if any, should the agencies make to the answers to FAQs in the 2019 GSIB Guidance and 2020 FBO Guidance?

III. Paperwork Reduction Act

Certain provisions of the proposed guidance contain ''collections of information'' within the meaning of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The agencies reviewed the proposed guidance and determined that it would revise the

[23] 12 U.S.C. 1821(n)(10).

reporting revisions that have been previously approved by OMB under the Board's OMB control number 7100–0346 (Reporting Requirements Associated with Regulation QQ; FR QQ) and the FDIC's control number 3064–0210 (Reporting Requirements Associate with Resolution Planning). The Board has reviewed the proposed guidance under the authority delegated to the Board by OMB.

Comments are invited on the following:

(A) Whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(B) the accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(C) ways to enhance the quality, utility, and clarity of the information to be collected;

(D) ways to minimize the burden of the information collections 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.

Comments on aspects of this document that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section of the Supplementary Information. 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 or by facsimile to (202) 395–5806, Attention, Federal Banking Agency Desk Officer.

Proposed Revisions, With Extension, of the Following Information Collections

Board

Collection title: Reporting Requirements Associated with Regulation QQ.

Collection identifier: FR QQ.

OMB control number: 7100–0346.

Frequency: Triennial, Biennial, and on occasion.

Respondents: Bank holding companies (including any foreign bank or company that is, or is treated as, a bank holding company under section 8(a) of the International Banking Act of 1978 and meets the relevant total consolidated assets threshold) with total consolidated assets of $250 billion or more, bank holding companies with $100 billion or more in total consolidated assets with certain characteristics, and nonbank financial firms designated by the Financial Stability Oversight Council for supervision by the Board.

FDIC

Collection title: Reporting Requirements Associated with Resolution Planning.

OMB control number: 3064–0210.

Current Actions: The proposed guidance would apply to all triennial full filers, but expectations would differ based on whether a firm adopts an SPOE or an MPOE resolution strategy and whether it is foreign or domestic. The proposed guidance is intended to clarify the agencies' expectations concerning the resolution plans required pursuant to the Rule. The document does not have the force and effect of law. Rather, it describes the agencies' expectations and priorities regarding these the resolution plans of triennial full filers and the agencies' general views regarding specific areas where additional detail should be provided and where certain capabilities or optionality should be developed and maintained to demonstrate that each firm has considered fully, and is able to mitigate, obstacles to the successful implementation of its preferred resolution strategy.

The proposed guidance for triennial full filers using an SPOE strategy is based on the 2019 GSIB guidance (for domestic firms) and the 2020 FBO guidance (for foreign firms). It would clarify the agencies' expectations around capital, liquidity, governance mechanisms, and operations. The proposed guidance also would clarify expectations concerning management information systems capabilities and the identification of discrete separability options appropriate to the resolution strategy. Additionally, if finalized, the foreign banking organizations that adopt an SPOE resolution strategy should address how their U.S. resolution plan aligns with their group resolution plan.

The proposed guidance for triennial full filers using an MPOE resolution strategy addresses similar topics but reflects the risks of and capabilities needed for an MPOE resolution. The proposed guidance explains the agencies' expectations around liquidity and operational capabilities, and legal entity rationalization. The proposed guidance also provides clarified expectations related to the separate resolution of a U.S. IDI and to identification of discrete separability options. Foreign banking organizations that adopt an MPOE resolution strategy would have expectations related to governance mechanisms; the role of branches; and the group resolution plan.

The proposed guidance does not specify expectations around derivatives and trading activities.

Historically, the Board and the FDIC have split the respondents for purposes of PRA clearances. As such, the agencies will split the change in burden as well. As a result of this split and the proposed revisions, there is a proposed net increase in the overall estimated burden hours of 13,386 hours for the Board and 17,610 hours for the FDIC. Therefore, the total Board estimated burden for its entire information collection would be 216,853 hours and the total FDIC estimate burden for its entire information collection would be 211,300 hours.

The following table presents only the change in the estimated burden hours, as amended if the guidance were finalized, broken out by agency. The table does not include a discussion of the remaining estimated burden hours, which remain unchanged.[24] As shown in the table, the Triennial Full filing types would be estimated more granularly according to SPOE and MPOE resolution strategies.

[24] In addition to the proposed revisions to the estimations for Triennial Full filings, the agencies have revised the estimation for Biennial Full filings from 40,115 hours per response to 39,550 hours per response to align the burden estimation methodology with what was used for Triennial Full filings under the proposed guidance. Specifically, the agencies removed a component for a biennial full filer's analysis of its critical operations as part of its submission of targeted and full resolution plans, because this critical operations analysis is integrated in the preparation of such plans.

TABLE 1—BURDEN HOUR ESTIMATES UNDER CURRENT REGULATIONS AND UNDER THE PROPOSED GUIDANCE

FR QQ	Estimated number of respondents	Estimated annual frequency	Estimated average hours per response	Estimated annual burden hours
Board Burdens				
Current				
Triennial Full:				
Complex Foreign	1	1	9,777	9,777
Foreign and Domestic	7	1	4,667	32,669
Current Total				*42,446*
Proposed				
Triennial Full:				
FBO SPOE *	2	1	11,848	23,696
FBO MPOE	3	1	5,939	17,817
Domestic MPOE	3		5,513	16,539
Proposed Total				*58,052*
FDIC Burdens				
Current				
Triennial Full:				
Complex Foreign	0	1	9,777	0
Foreign and Domestic	7	1	4,667	32,669
Current Total				*32,669*
Proposed				
Triennial Full:				
FBO SPOE *	2	1	11,848	23,696
FBO MPOE	3	1	5,939	17,817
Domestic MPOE	2	1	5,513	11,026
Proposed Total				*52,539*

* There are currently no domestic triennial full filers utilizing a SPOE strategy. Estimated hours per response for a domestic SPOE triennial full filer would be 11,235 hours.

Appendix: Text of the Proposed Guidance

Guidance for Resolution Plan Submissions of Domestic Triennial Full Filers

I. Introduction

Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5365(d)) requires certain financial companies to report periodically to the Board of Governors of the Federal Reserve System (the Board) and the Federal Deposit Insurance Corporation (the FDIC) (together, the agencies) their plans for rapid and orderly resolution in the event of material financial distress or failure. On November 1, 2011, the agencies promulgated a joint rule implementing the provisions of Section 165(d).[1] Subsequently, in November 2019, the agencies finalized amendments to the joint rule addressing amendments to the Dodd-Frank Act made by the Economic Growth, Regulatory Relief, and Consumer Protection Act and improving certain aspects of the joint rule based on the agencies' experience implementing the joint rule since its adoption.[2] Financial companies meeting criteria set out in the Rule must file a resolution plan (Plan) according to the schedule specified in the Rule.

This document is intended to provide guidance to certain domestic financial companies required to submit Plans to assist their further development of a Plan for their 2024 and subsequent Plan submissions. Specifically, the guidance applies to any domestic covered company that is a triennial full filer under the Rule (specified firms).[3] The Plan for a specified firm would address the subsidiaries and operations that are domiciled in the United States as well as the foreign subsidiaries, offices, and operations of the covered company.

In general, this document is organized around a number of key challenges in resolution (capital; liquidity; governance mechanisms; operational; legal entity rationalization and separability; and insured depository institution resolution, if applicable) that apply across resolution plans, depending on their strategy. Additional challenges or obstacles may arise based on a firm's particular structure, operations, or resolution strategy. Each firm is expected to satisfactorily address these vulnerabilities in its Plan. In addition, each topic of this guidance is separated into expectations for a specified firm that utilizes a single point of entry (SPOE) resolution strategy for its Plan and expectations for a specified firm that utilizes a multiple point of entry (MPOE) resolution strategy for its Plan.

Under the Rule, the agencies will review a Plan to determine if it satisfactorily addresses key potential challenges, including those specified below. If the agencies jointly decide that an aspect of a Plan presents a weakness that individually or in conjunction with other aspects could undermine the feasibility of the Plan, the agencies may determine jointly that the Plan is not credible or would not facilitate an orderly resolution under the U.S. Bankruptcy Code.

II. Capital

SPOE

The firm should have the capital capabilities necessary to execute its resolution strategy, including the modeling and estimation process described below.

Resolution Capital Adequacy and Positioning (RCAP). In order to help ensure that a firm's material entities[4] could operate while the parent company is in bankruptcy, the firm should have an adequate amount of

[1] Resolution Plans Required, 76 FR 67323 (Nov. 1, 2011).

[2] Resolution Plans Required, 84 FR 59194 (Nov. 1, 2019). The amendments became effective December 31, 2019. ''Rule'' means the joint rule as amended in 2019. Terms not defined herein have the meanings set forth in the Rule.

[3] *See* 12 CFR 243.4(b)(1) and 12 CFR 381.4(b)(1).

[4] The terms ''material entities,'' ''identified critical operations,'' and ''core business lines'' have the same meaning as in the Rule.

loss-absorbing capacity to recapitalize those material entities. Thus, a firm should have outstanding a minimum amount of loss-absorbing capacity, including long-term debt, to help ensure that the firm has adequate capacity to meet that need at a consolidated level (external LAC).

A firm's external LAC should be complemented by appropriate positioning of loss-absorbing capacity within the firm (*i.e.,* internal LAC), consistent with any applicable rules requiring prepositioned resources at IDIs in the form of long-term debt. After adhering to any requirements related to prepositioning long-term debt at IDIs, the positioning of a firm's remaining resources should balance the certainty associated with pre-positioning resources directly at material entities with the flexibility provided by holding recapitalization resources at the parent (contributable resources) to meet unanticipated losses at material entities. That balance should take account of both pre-positioning at material entities and holding resources at the parent, and the obstacles associated with each. With respect to material entities that are not U.S. IDIs subject to pre-positioned long-term debt requirements, the firm should not rely exclusively on either full pre-positioning or parent contributable resources to recapitalize such entities. The Plan should describe the positioning of resources within the firm, along with analysis supporting such positioning.

Finally, to the extent that pre-positioned resources at a material entity are in the form of intercompany debt and there are one or more entities between that material entity and the parent, the firm should structure the instruments so as to ensure that the material entity can be recapitalized.

Resolution Capital Execution Need (RCEN). To support the execution of the firm's resolution strategy, material entities need to be recapitalized to a level that allows them to operate or be wound down in an orderly manner following the parent company's bankruptcy filing. The firm should have a methodology for periodically estimating the amount of capital that may be needed to support each material entity after the bankruptcy filing (RCEN). The firm's positioning of resources should be able to support the RCEN estimates. In addition, the RCEN estimates should be incorporated into the firm's governance framework to ensure that the parent company files for bankruptcy at a time that enables execution of the preferred strategy.

The firm's RCEN methodology should use conservative forecasts for losses and risk-weighted assets and incorporate estimates of potential additional capital needs through the resolution period,[5] consistent with the firm's resolution strategy. The RCEN methodology should be calibrated such that recapitalized material entities will have sufficient capital to maintain market confidence as required under the preferred resolution strategy. Capital levels should meet or exceed all applicable regulatory capital requirements for ''well-capitalized'' status and meet estimated additional capital needs throughout resolution. Material entities that are not subject to capital requirements may be considered sufficiently recapitalized when they have achieved capital levels typically required to obtain an investment-grade credit rating or, if the entity is not rated, an equivalent level of financial soundness. Finally, the methodology should be independently reviewed, consistent with the firm's corporate governance processes and controls for the use of models and methodologies.

MPOE

The agencies do not propose issuing guidance on this topic to firms whose Plans contemplate a MPOE resolution strategy.

III. Liquidity

SPOE

The firm should have the liquidity capabilities necessary to execute its preferred resolution strategy. For resolution purposes, these capabilities should include having an appropriate model and process for estimating and maintaining sufficient liquidity at or readily available to material entities and a methodology for estimating the liquidity needed to successfully execute the resolution strategy, as described below.

Resolution Liquidity Adequacy and Positioning (RLAP). With respect to RLAP, the firm should be able to measure the stand-alone liquidity position of each material entity (including material entities that are non-U.S. branches)—*i.e.,* the high-quality liquid assets (HQLA) at the material entity less net outflows to third parties and affiliates—and ensure that liquidity is readily available to meet any deficits. The RLAP model should cover a period of at least 30 days and reflect the idiosyncratic liquidity profile and risk of the firm. The model should balance the reduction in frictions associated with holding liquidity directly at material entities with the flexibility provided by holding HQLA at the parent available to meet unanticipated outflows at material entities. Thus, the firm should not rely exclusively on either full pre-positioning or an expected contribution of liquid resources from the parent. The model[6] should ensure that the parent holding company holds sufficient HQLA (inclusive of its deposits at the U.S. branch of the lead bank subsidiary) to cover the sum of all stand-alone material entity net liquidity deficits. The stand-alone net liquidity position of each material entity (HQLA less net outflows) should be measured using the firm's internal liquidity stress test assumptions and should treat inter-affiliate exposures in the same manner as third-party exposures. For example, an overnight unsecured exposure to an affiliate should be assumed to mature. Finally, the firm should not assume that a net liquidity surplus at one material entity could be moved to meet net liquidity deficits at other material entities or to augment parent resources.

Additionally, the RLAP methodology should take into account: (A) the daily contractual mismatches between inflows and outflows; (B) the daily flows from movement of cash and collateral for all inter-affiliate transactions; and (C) the daily stressed liquidity flows and trapped liquidity as a result of actions taken by clients, counterparties, key FMUs, and foreign supervisors, among others.

Resolution Liquidity Execution Need (RLEN). The firm should have a methodology for estimating the liquidity needed after the parent's bankruptcy filing to stabilize the surviving material entities and to allow those entities to operate post-filing. The RLEN estimate should be incorporated into the firm's governance framework to ensure that the firm files for bankruptcy in a timely way, *i.e.,* prior to the firm's HQLA falling below the RLEN estimate.

The firm's RLEN methodology should:

(A) Estimate the minimum operating liquidity (MOL) needed at each material entity to ensure those entities could continue to operate post-parent's bankruptcy filing and/or to support a wind-down strategy;

(B) Provide daily cash flow forecasts by material entity to support estimation of peak funding needs to stabilize each entity under resolution;

(C) Provide a comprehensive breakout of all inter-affiliate transactions and arrangements that could impact the MOL or peak funding needs estimates; and

(D) Estimate the minimum amount of liquidity required at each material entity to meet the MOL and peak needs noted above, which would inform the firm's board(s) of directors of when they need to take resolution-related actions.

The MOL estimates should capture material entities' intraday liquidity requirements, operating expenses, working capital needs, and inter-affiliate funding frictions to ensure that material entities could operate without disruption during the resolution. The peak funding needs estimates should be projected for each material entity and cover the length of time the firm expects it would take to stabilize that material entity. Inter-affiliate funding frictions should be taken into account in the estimation process.

The firm's forecasts of MOL and peak funding needs should ensure that material entities could operate post-filing consistent with regulatory requirements, market expectations, and the firm's post-failure strategy. These forecasts should inform the RLEN estimate, *i.e.,* the minimum amount of HQLA required to facilitate the execution of the firm's strategy. The RLEN estimate should be tied to the firm's governance mechanisms and be incorporated into the playbooks as discussed below to assist the board of directors in taking timely resolution-related actions.

MPOE

The firm should have the liquidity capabilities necessary to execute its preferred resolution strategy. A Plan with an MPOE

[5] The resolution period begins immediately after the parent company bankruptcy filing and extends through the completion of the preferred resolution strategy.

[6] ''Model'' refers to the set of calculations estimating the net liquidity surplus/deficit at each legal entity and for the firm in aggregate based on assumptions regarding available liquidity, *e.g.,* HQLA, and third-party and interaffiliate net outflows.

strategy should include analysis and projections of a range of liquidity needs during resolution, including intraday; reflect likely failure and resolution scenarios; and consider the guidance on assumptions provided in Section VIII, Format and Structure of Plans; Assumptions.

IV. Governance Mechanisms

SPOE

Playbooks and Triggers. A firm should identify the governance mechanisms that would ensure execution of required board actions at the appropriate time (as anticipated under the firm's preferred strategy) and include pre-action triggers and existing agreements for such actions. Governance playbooks should detail the board and senior management actions necessary to facilitate the firm's preferred strategy and to mitigate vulnerabilities, and should incorporate the triggers identified below. The governance playbooks should also include a discussion of: (A) the firm's proposed communications strategy, both internal and external; [7] (B) the boards of directors' fiduciary responsibilities and how planned actions would be consistent with such responsibilities applicable at the time actions are expected to be taken; (C) potential conflicts of interest, including interlocking boards of directors; and (D) any employee retention policy. All responsible parties and timeframes for action should be identified. Governance playbooks should be updated periodically for all entities whose boards of directors would need to act in advance of the commencement of resolution proceedings under the firm's preferred strategy.

The firm should demonstrate that key actions will be taken at the appropriate time in order to mitigate financial, operational, legal, and regulatory vulnerabilities. To ensure that these actions will occur, the firm should establish clearly identified triggers linked to specific actions for:

(A) The escalation of information to senior management and the board(s) to potentially take the corresponding actions at each stage of distress leading eventually to the decision to file for bankruptcy;

(B) Successful recapitalization of subsidiaries prior to the parent's filing for bankruptcy and funding of such entities during the parent company's bankruptcy to the extent the preferred strategy relies on such actions or support; and

(C) The timely execution of a bankruptcy filing and related pre-filing actions.[8]

These triggers should be based, at a minimum, on capital, liquidity, and market metrics, and should incorporate the firm's methodologies for forecasting the liquidity and capital needed to operate as required by the preferred strategy following a parent company's bankruptcy filing. Additionally, the triggers and related actions should be specific.

Triggers linked to firm actions as contemplated by the firm's preferred strategy should identify when and under what conditions the firm, including the parent company and its material entities, would transition from business-as-usual conditions to a stress period and from a stress period to the recapitalization/resolution periods. Corresponding escalation procedures, actions, and timeframes should be constructed so that breach of the triggers will allow prerequisite actions to be completed. For example, breach of the triggers needs to occur early enough to ensure that resources are available and can be downstreamed, if anticipated by the firm's strategy, and with adequate time for the preparation of the bankruptcy petition and first-day motions, necessary stakeholder communications, and requisite board actions. Triggers identifying the onset of stress and recapitalization/resolution periods, and the associated escalation procedures and actions, should be discussed directly in the governance playbooks.

Pre-Bankruptcy Parent Support. The Plan should include a detailed legal analysis of the potential state law and bankruptcy law challenges and mitigants to planned provision of capital and liquidity to the subsidiaries prior to the parent's bankruptcy filing (Support). Specifically, the analysis should identify potential legal obstacles and explain how the firm would seek to ensure that Support would be provided as planned. Legal obstacles include claims of fraudulent transfer, preference, breach of fiduciary duty, and any other applicable legal theory identified by the firm. The analysis also should include related claims that may prevent or delay an effective recapitalization, such as equitable claims to enjoin the transfer (*e.g.,* imposition of a constructive trust by the court). The analysis should apply the actions contemplated in the Plan regarding each element of the claim, the anticipated timing for commencement and resolution of the claims, and the extent to which adjudication of such claim could affect execution of the firm's preferred resolution strategy.

The analysis should include mitigants to the potential challenges to the planned Support. The Plan should identify the mitigant(s) to such challenges that the firm considers most effective. In identifying appropriate mitigants, the firm should consider the effectiveness of a contractually binding mechanism (CBM), pre-positioning of financial resources in material entities, and the creation of an intermediate holding company. Moreover, if the Plan includes a CBM, the firm should consider whether it is appropriate that the CBM should have the following:

(A) Clearly defined triggers;

(B) Triggers that are synchronized to the firm's liquidity and capital methodologies;

(C) Perfected security interests in specified collateral sufficient to fully secure all Support obligations on a continuous basis (including mechanisms for adjusting the amount of collateral as the value of obligations under the agreement or collateral assets fluctuates); and

(D) Liquidated damages provisions or other features designed to make the CBM more enforceable.

The firm also should consider related actions or agreements that may enhance the effectiveness of a CBM. A copy of any agreement and documents referenced therein (*e.g.,* evidence of security interest perfection) should be included in the Plan.

The governance playbooks included in the Plan should incorporate any developments from the firm's analysis of potential legal challenges regarding the Support, including any Support approach(es) the firm has implemented. If the firm analyzed and addressed an issue noted in this section in a prior plan submission, the Plan may reproduce that analysis and arguments and should build upon it to at least the extent described above. In preparing the analysis of these issues, firms may consult with law firms and other experts on these matters. The agencies do not object to appropriate collaboration between firms, including through trade organizations and with the academic community, to develop analysis of common legal challenges and available mitigants.

MPOE

The agencies do not propose issuing guidance on this topic to firms whose Plans utilize a MPOE resolution strategy.

V. Operational

SPOE

Payment, Clearing, and Settlement Activities Framework. Maintaining continuity of payment, clearing, and settlement (PCS) services is critical for the orderly resolution of firms that are either users or providers,[9] or both, of PCS services. A firm should demonstrate capabilities for continued access to PCS services essential to an orderly resolution through a framework to support such access by:

- Identifying clients,[10] FMUs, and agent banks as key from the firm's perspective, using both quantitative (volume and value) [11] and qualitative criteria;
- Mapping material entities, identified critical operations, core business lines, and key clients to both key FMUs and key agent banks; and

[7] External communications include those with U.S. and foreign authorities and other external stakeholders, such as large depositors and shareholders.

[8] Key pre-filing actions include the preparation of any emergency motion required to be decided on the first day of the firm's bankruptcy.

[9] A firm is a user of PCS services if it accesses PCS services through an agent bank or it uses the services of a financial market utility (FMU) through its membership in that FMU or through an agent bank. A firm is a provider of PCS services if it provides PCS services to clients as an agent bank or it provides clients with access to an FMU or agent bank through the firm's membership in or relationship with that service provider. A firm is also a provider if it provides clients with PCS services through the firm's own operations (*e.g.,* payment services or custody services).

[10] For purposes of this section, a client is an individual or entity, including affiliates of the firm, to whom the firm provides PCS services and any related credit or liquidity offered in connection with those services.

[11] In identifying entities as key, examples of quantitative criteria may include: for a client, transaction volume/value, market value of exposures, assets under custody, usage of PCS services, and any extension of related intraday credit or liquidity; for an FMU, the aggregate volumes and values of all transactions processed through such FMU; and for an agent bank, assets under custody, the value of cash and securities settled, and extensions of intraday credit.

• Developing a playbook for each key FMU and key agent bank reflecting the firm's role(s) as a user and/or provider of PCS services.

The framework should address direct relationships (*e.g.,* a firm's direct membership in an FMU, a firm's provision of clients with PCS services through its own operations, or a firm's contractual relationship with an agent bank) and indirect relationships (*e.g.,* a firm's provision of clients with access to the relevant FMU or agent bank through the firm's membership in or relationship with that FMU or agent bank).

Playbooks for Continued Access to PCS Services. The firm is expected to provide a playbook for each key FMU and key agent bank that addresses considerations that would assist the firm and its key clients in maintaining continued access to PCS services in the period leading up to and including the firm's resolution. Each playbook should provide analysis of the financial and operational impact to the firm's material entities and key clients due to adverse actions that may be taken by a key FMU or a key agent bank and contingency actions that may be taken by the firm. Each playbook also should discuss any possible alternative arrangements that would allow continued access to PCS services for the firm's material entities, identified critical operations and core business lines, and key clients, while the firm is in resolution. The firm is not expected to incorporate a scenario in which it loses key FMU or key agent bank access into its preferred resolution strategy or its RLEN and RCEN estimates. The firm should continue to engage with key FMUs, key agent banks, and key clients, and playbooks should reflect any feedback received during such ongoing outreach.

Content Related to Users of PCS Services. Individual key FMU and key agent bank playbooks should include:

• Description of the firm's relationship as a user with the key FMU or key agent bank and the identification and mapping of PCS services to material entities, identified critical operations, and core business lines that use those PCS services;

• Discussion of the potential range of adverse actions that may be taken by that key FMU or key agent bank when the firm is in resolution,[12] the operational and financial impact of such actions on each material entity, and contingency arrangements that may be initiated by the firm in response to potential adverse actions by the key FMU or key agent bank; and

• Discussion of PCS-related liquidity sources and uses in business-as-usual (BAU), in stress, and in the resolution period, presented by currency type (with U.S. dollar equivalent) and by material entity.

○ *PCS Liquidity Sources:* These may include the amounts of intraday extensions of credit, liquidity buffer, inflows from FMU participants, and key client prefunded amounts in BAU, in stress, and in the resolution period. The playbook also should describe intraday credit arrangements (*e.g.,* facilities of the key FMU, key agent bank, or a central bank) and any similar custodial arrangements that allow ready access to a firm's funds for PCS-related key FMU and key agent bank obligations (including margin requirements) in various currencies, including placements of firm liquidity at central banks, key FMUs, and key agent banks.

○ *PCS Liquidity Uses:* These may include firm and key client margin and prefunding and intraday extensions of credit, including incremental amounts required during resolution.

○ *Intraday Liquidity Inflows and Outflows:* The playbook should describe the firm's ability to control intraday liquidity inflows and outflows and to identify and prioritize time-specific payments. The playbook also should describe any account features that might restrict the firm's ready access to its liquidity sources.

Content Related to Providers of PCS Services.[13] Individual key FMU and key agent bank playbooks should include:

• Identification and mapping of PCS services to the material entities, identified critical operations, and core business lines that provide those PCS services, and a description of the scale and the way in which each provides PCS services;

• Identification and mapping of PCS services to key clients to whom the firm provides such PCS services and any related credit or liquidity offered in connection with such services;

• Discussion of the potential range of firm contingency arrangements available to minimize disruption to the provision of PCS services to its key clients, including the viability of transferring key client activity and any related assets, as well as any alternative arrangements that would allow the firm's key clients continued access to PCS services if the firm could no longer provide such access (*e.g.,* due to the firm's loss of key FMU or key agent bank access), and the financial and operational impacts of such arrangements from the firm's perspective;

• Descriptions of the range of contingency actions that the firm may take concerning its provision of intraday credit to key clients, including analysis quantifying the potential liquidity the firm could generate by taking such actions in stress and in the resolution period, such as: (i) requiring key clients to designate or appropriately pre-position liquidity, including through prefunding of settlement activity, for PCS-related key FMU and key agent bank obligations at specific material entities of the firm (*e.g.,* direct members of key FMUs) or any similar custodial arrangements that allow ready access to key clients' funds for such obligations in various currencies; (ii) delaying or restricting key client PCS activity; and (iii) restricting, imposing conditions upon (*e.g.,* requiring collateral), or eliminating the provision of intraday credit or liquidity to key clients; and

• Descriptions of how the firm will communicate to its key clients the potential impacts of implementation of any identified contingency arrangements or alternatives, including a description of the firm's methodology for determining whether any additional communication should be provided to some or all key clients (*e.g.,* due to the key client's BAU usage of that access and/or related intraday credit or liquidity), and the expected timing and form of such communication.

Capabilities. The firm is expected to have and describe capabilities to understand, for each material entity, the obligations and exposures associated with PCS activities, including contractual obligations and commitments. The firm should be able to:

• Track the following items by: (i) material entity; and (ii) with respect to customers, counterparties, and agents and service providers, location and jurisdiction:

○ PCS activities, with each activity mapped to the relevant material entities, identified critical operations, and core business lines; [14]

○ Customers and counterparties for PCS activities, including values and volumes of various transaction types, as well as used and unused capacity for all lines of credit; [15]

○ Exposures to and volumes transacted with FMUs, nostro agents, and custodians; and [16]

○ Services provided and service level agreements, as applicable, for other current agents and service providers (internal and external).[17]

• Assess the potential effects of adverse actions by FMUs, nostro agents, custodians, and other agents and service providers, including suspension or termination of membership or services, on the firm's operations and customers and counterparties of those operations; [18]

• Develop contingency arrangements in the event of such adverse actions; [19] and

• Quantify the liquidity needs and operational capacity required to meet all PCS obligations, including any change in demand for and sources of liquidity needed to meet such obligations.

Managing, Identifying, and Valuing Collateral. The firm is expected to have and describe its capabilities to manage, identify and value the collateral that it receives from and posts to external parties and affiliates. Specifically, the firm should:

• Be able to query and provide aggregate statistics for all qualified financial contracts concerning cross-default clauses, downgrade triggers, and other key collateral-related contract terms—not just those terms that may be impacted in an adverse economic environment—across contract types, business lines, legal entities, and jurisdictions;

[12] Examples of potential adverse actions may include increased collateral and margin requirements and enhanced reporting and monitoring.

[13] Where a firm is a provider of PCS services through the firm's own operations, the firm is expected to produce a playbook for the material entities that provide those services, addressing each of the items described under ''Content Related to Providers of PCS Services,'' which include contingency arrangements to permit the firm's key clients to maintain continued access to PCS services.

[14] 12 CFR 243.5(e)(12) and 12 CFR 381.5(e)(12).

[15] *Id.*

[16] 12 CFR 252.34(h).

[17] 12 CFR 243.5(f)(l)(i) and 12 CFR 381.5(f)(1)(i).

[18] 12 CFR 252.34(f).

[19] *Id.*

• Be able to track both collateral sources (*i.e.,* counterparties that have pledged collateral) and uses (*i.e.,* counterparties to whom collateral has been pledged) at the CUSIP level on at least a t+1 basis;
• Have robust risk measurements for cross-entity and cross-contract netting, including consideration of where collateral is held and pledged;
• Be able to identify CUSIP and asset class level information on collateral pledged to specific central counterparties by legal entity on at least a t+1 basis;
• Be able to track and report on inter-branch collateral pledged and received on at least a t+1 basis and have clear policies explaining the rationale for such inter-branch pledges, including any regulatory considerations; and
• Have a comprehensive collateral management policy that outlines how the firm as a whole approaches collateral and serves as a single source for governance.[20]

Management Information Systems. The firm should have the management information systems (MIS) capabilities to readily produce data on a legal entity basis and have controls to ensure data integrity and reliability. The firm also should perform a detailed analysis of the specific types of financial and risk data that would be required to execute the preferred resolution strategy and how frequently the firm would need to produce the information, with the appropriate level of granularity. The firm should have the capabilities to produce the following types of information in a timely manner and describe these capabilities in the Plan:
• Financial statements for each material entity (at least monthly);
• External and inter-affiliate credit exposures, both on- and off-balance sheet, by type of exposure, counterparty, maturity, and gross payable and receivable;
• Gross and net risk positions with internal and external counterparties;
• Guarantees, cross holdings, financial commitments and other transactions between material entities;
• Data to facilitate third-party valuation of assets and businesses, including risk metrics;
• Key third-party contracts, including the provider, provider's location, service(s) provided, legal entities that are a party to or a beneficiary of the contract, and key contractual rights (for example, termination and change in control clauses);
• Legal agreement information, including parties to the agreement and key terms and interdependencies (for example, change in control, collateralization, governing law, termination events, guarantees, and cross-default provisions);
• Service level agreements between affiliates, including the service(s) provided, the legal entity providing the service, legal entities receiving the service, and any termination/transferability provisions;
• Licenses and memberships to all exchanges and value transfer networks, including FMUs;
• Key management and support personnel, including dual-hatted employees, and any associated retention agreements;
• Agreements and other legal documents related to property, including facilities, technology systems, software, and intellectual property rights. The information should include ownership, physical location, where the property is managed and names of legal entities and lines of business that the property supports; and
• Updated legal records for domestic and foreign entities, including entity type and purpose (for example, holding company, bank, broker dealer, and service entity), jurisdiction(s), ownership, and regulator(s).

Shared and Outsourced Services. The firm should maintain a fully actionable implementation plan to ensure the continuity of shared services that support identified critical operations or core business lines and robust arrangements to support the continuity of shared and outsourced services, including, without limitation appropriate plans to retain key personnel relevant to the execution of the firm's strategy. For example, specified firms should evaluate internal and external dependencies and develop documented strategies and contingency arrangements for the continuity or replacement of the shared and outsourced services that are necessary to maintain identified critical operations or core business lines. Examples may include personnel, facilities, systems, data warehouses, and intellectual property. Specified firms also should maintain current cost estimates for implementing such strategies and contingency arrangements.

The firm should (A) maintain an identification of all shared services that support identified critical operations or core business lines;[21] (B) maintain a mapping of how/where these services support its core business lines and identified critical operations; (C) incorporate such mapping into legal entity rationalization criteria and implementation efforts; and (D) mitigate identified continuity risks through establishment of service-level agreements (SLAs) for all shared services that support identified critical operations or core business lines.

SLAs should fully describe the services provided, reflect pricing considerations on an arm's-length basis where appropriate, and incorporate appropriate terms and conditions to (A) prevent automatic termination upon certain resolution-related events and (B) achieve continued provision of such services during resolution. The firm should also store SLAs in a central repository or repositories in a searchable format, develop and document contingency strategies and arrangements for replacement of critical shared services, and complete re-alignment or restructuring of activities within its corporate structure. In addition, the firm should ensure the financial resilience of internal shared service providers by maintaining working capital for six months (or through the period of stabilization as required in the firm's preferred strategy) in such entities sufficient to cover contract costs, consistent with the preferred resolution strategy.

The firm should identify all critical service providers and outsourced services that support identified critical operations or core business lines and identify any that could not be promptly substituted. The firm should (A) evaluate the agreements governing these services to determine whether there are any that could be terminated despite continued performance upon the parent's bankruptcy filing, and (B) update contracts to incorporate appropriate terms and conditions to prevent automatic termination upon commencement of any resolution proceeding and facilitate continued provision of such services. Relying on entities projected to survive during resolution to avoid contract termination is insufficient to ensure continuity. In the Plan, the firm should document the amendment of any such agreements governing these services.

Qualified Financial Contracts. The Plan should reflect how the early termination of qualified financial contracts triggered by the parent company's bankruptcy filing could impact the resolution of the firm's operations, including potential termination of any contracts that are not subject to statutory, contractual or regulatory stays of direct default or cross-default rights. A Plan should explain and support the firm's strategy for addressing the potential disruptive effects in resolution of early termination provisions and cross-default rights in existing qualified financial contracts at both the parent company and material entity subsidiaries. This discussion should address, to the extent relevant for the firm, qualified financial contracts that include limitations of standard contractual direct default and cross default rights by agreement of the parties.

MPOE

Payment, Clearing and Settlement (PCS) Capabilities. Firms are expected to have and describe capabilities to understand, for each material entity, its obligations and exposures associated with PCS activities, including contractual obligations and commitments. For example, firms should be able to:
• As users of PCS services:
○ Track the following items by: (i) material entity; and (ii) with respect to customers, counterparties, and agents and service providers, location and jurisdiction:
▪ PCS activities, with each activity mapped to the relevant material entities, identified critical operations, and core business lines;
▪ Customers and counterparties for PCS activities, including values and volumes of various transaction types, as well as used and unused capacity for all lines of credit;
▪ Exposures to and volumes transacted with FMUs, nostro agents, and custodians; and
▪ Services provided and service level agreements, as applicable, for other current agents and service providers (internal and external).
○ Assess the potential effects of adverse actions by FMUs, nostro agents, custodians, and other agents and service providers,

[20] The policy may reference subsidiary or related policies already in place, as implementation may differ based on business line or other factors.

[21] This should be interpreted to include data access and intellectual property rights.

including suspension or termination of membership or services, on the firm and its customers and counterparties;

○ Develop contingency arrangements in the event of such adverse actions; and

○ Quantify the liquidity needs and operational capacity required to meet all PCS obligations, including intraday requirements.

• As providers of PCS services:

○ Identify their PCS clients and the services they provide to these clients, including volumes and values of transactions;

○ Quantify and explain time-sensitive payments; and

○ Quantify and explain intraday credit provided.

Managing, Identifying and Valuing Collateral. The firm should have appropriate capabilities related to managing, identifying, and valuing the collateral that it receives from and posts to external parties and its affiliates, including tracking collateral received, pledged, and available at the CUSIP level and measuring exposures.

Management Information Systems. The firm should have the management information systems (MIS) capabilities to readily produce data on a legal entity basis and have controls to ensure data integrity and reliability. The firm also should perform a detailed analysis of the specific types of financial and risk data that would be required to execute the preferred resolution strategy. The firm should have the capabilities to produce the following types of information, as appropriate for its resolution strategy, in a timely manner and describe these capabilities in the Plan:

• Financial statements for each material entity (at least monthly);

• External and inter-affiliate credit exposures, both on- and off-balance sheet, by type of exposure, counterparty, maturity, and gross payable and receivable;

• Gross and net risk positions with internal and external counterparties;

• Guarantees, cross holdings, financial commitments and other transactions between material entities;

• Data to facilitate third-party valuation of assets and businesses, including risk metrics;

• Key third-party contracts, including the provider, provider's location, service(s) provided, legal entities that are a party to or a beneficiary of the contract, and key contractual rights (for example, termination and change in control clauses);

• Legal agreement information, including parties to the agreement and key terms and interdependencies (for example, change in control, collateralization, governing law, termination events, guarantees, and cross-default provisions);

• Service level agreements between affiliates, including the service(s) provided, the legal entity providing the service, legal entities receiving the service, and any termination/transferability provisions;

• Licenses and memberships to all exchanges and value transfer networks, including FMUs;

• Key management and support personnel, including dual-hatted employees, and any associated retention agreements;

• Agreements and other legal documents related to property, including facilities, technology systems, software, and intellectual property rights. The information should include ownership, physical location, where the property is managed and names of legal entities and lines of business that the property supports; and

• Updated legal records for domestic and foreign entities, including entity type and purpose (for example, holding company, bank, broker dealer, and service entity), jurisdiction(s), ownership, and regulator(s).

Shared and Outsourced Services. The firm should maintain robust arrangements to support the continuity of shared and outsourced services that support any identified critical operations or are material to the execution of the resolution strategy, including appropriate plans to retain key personnel relevant to the execution of the firm's strategy. For example, specified firms should evaluate internal and external dependencies and develop documented strategies and contingency arrangements for the continuity or replacement of the shared and outsourced services that are necessary to maintain identified critical operations or are material to the execution of the resolution strategy. Examples may include personnel, facilities, systems, data warehouses, and intellectual property. Specified firms also should maintain current cost estimates for implementing such strategies and contingency arrangements.

The firm should: (A) maintain an identification of all shared services that support identified critical operations or are material to the execution of the resolution strategy; and (B) mitigate identified continuity risks through establishment of SLAs for all shared services supporting identified critical operations or are material to the execution of the resolution strategy. SLAs should fully describe the services provided and incorporate appropriate terms and conditions to: (A) prevent automatic termination upon certain resolution-related events; and (B) achieve continued provision of such services during resolution.

The firm should identify all critical service providers and outsourced services that support identified critical operations or are material to the execution of the resolution strategy. Any of these services that cannot be promptly substituted should be identified in a firm's Plan. The firm should: (A) evaluate the agreements governing these services to determine whether there are any that could be terminated despite continued performance upon the parent's bankruptcy filing; and (B) update contracts to incorporate appropriate terms and conditions to prevent automatic termination and facilitate continued provision of such services through resolution. Relying on entities projected to survive during resolution to avoid contract termination is insufficient to ensure continuity. In the Plan, the firm should document the amendment of any such agreements governing these services.

VI. Legal Entity Rationalization & Separability

Legal Entity Rationalization

SPOE

Legal Entity Rationalization Criteria (LER Criteria). A firm should develop and implement legal entity rationalization criteria that support the firm's preferred resolution strategy and minimize risk to U.S. financial stability in the event of the firm's failure. LER Criteria should consider the best alignment of legal entities and business lines to improve the firm's resolvability under different market conditions. LER Criteria should govern the firm's corporate structure and arrangements between legal entities in a way that facilitates the firm's resolvability as its activities, technology, business models, or geographic footprint change over time. Specifically, application of the criteria should:

(A) Facilitate the recapitalization and liquidity support of material entities, as required by the firm's resolution strategy. Such criteria should include clean lines of ownership, minimal use of multiple intermediate holding companies, and clean funding pathways between the parent and material operating entities;

(B) Facilitate the sale, transfer, or wind-down of certain discrete operations within a timeframe that would meaningfully increase the likelihood of an orderly resolution of the firm, including provisions for the continuity of associated services and mitigation of financial, operational, and legal challenges to separation and disposition;

(C) Adequately protect the subsidiary insured depository institutions from risks arising from the activities of any nonbank subsidiaries of the firm (other than those that are subsidiaries of an insured depository institution); and Minimize complexity that could impede an orderly resolution and minimize redundant and dormant entities.

These criteria should be built into the firm's ongoing process for creating, maintaining, and optimizing its structure and operations on a continuous basis.

MPOE

Legal Entity Structure. A firm should maintain a legal entity structure that supports the firm's preferred resolution strategy and minimizes risk to U.S. financial stability in the event of the firm's failure. The firm should consider factors such as business activities; banking group structures and booking models and practices; and potential sales, transfers, or wind-downs during resolution. The Plan should describe how the firm's legal entity structure aligns core business lines and any identified critical operations with the firm's material entities to support the firm's resolution strategy. To the extent a material entity IDI relies upon an affiliate that is not the IDI's subsidiary during resolution, including for the provision of shared services, the firm should discuss its rationale for the legal entity structure and associated resolution risks and potential mitigants.

The firm's corporate structure and arrangements among legal entities should be considered and maintained in a way that facilitates the firm's resolvability as its activities, technology, business models, or geographic footprint change over time.

Separability

SPOE

Separability. The firm should identify discrete operations that could be sold or

transferred in resolution, with the objective of providing optionality in resolution under different market conditions.

A firm's separability options should be actionable, and impediments to their execution and projected mitigation strategies should be identified in advance. Relevant impediments could include, for example, legal and regulatory preconditions, interconnectivity among the firm's operations, tax consequences, market conditions, and other considerations. To be actionable, divestiture options should be executable within a reasonable period of time.

In developing their options, firms should also consider potential consequences for U.S. financial stability of executing each option, taking into consideration impacts on counterparties, creditors, clients, depositors, and markets for specific assets.

Firms should have a comprehensive understanding of the entire organization and certain baseline capabilities. That understanding should include the operational and financial linkages among a firm's business lines, material entities, and identified critical operations. Additionally, information systems should be robust enough to produce the required data and information needed to execute separability options.

The level of detail and analysis should vary based on the firm's risk profile and scope of operations. A separability analysis should address the following elements:

- *Divestiture Options:* The options in the Plan should be actionable and comprehensive, and should include:
  - Options contemplating the sale, transfer, or disposal of significant assets, portfolios, legal entities or business lines.
  - Options that may permanently change the firm's structure or business strategy.
- *Execution Plan:* For each divestiture option listed, the separability analysis should describe the steps necessary to execute the option. Among other considerations, the description should include:
  - The identity and position of the senior management officials of the company who are primarily responsible for overseeing execution of the separability option.
  - An estimated time frame for implementation.
  - A description of any impediments to execution of the option and mitigation strategies to address those impediments.
  - A description of the assumptions underpinning the option.
  - A plan describing the methods and forms of communication with internal, external, and regulatory stakeholders.
- *Impact Assessment:* The separability analysis should holistically consider and describe the expected impact of individual divestiture options. This should include the following for each divestiture option:
  - A financial impact assessment that describes the impact of executing the option on the firm's capital, liquidity, and balance sheet.
  - A business impact assessment that describes the effect of executing the option on business lines and material entities, including reputational impact.
  - An identified critical operation impact assessment that describes how execution of the option may affect the provision of any identified critical operation.
  - An operational impact assessment and contingency plan that explains how operations can be maintained if the option is implemented; such an analysis should address internal operations (for example, shared services, IT requirements, and human resources) and access to market infrastructure (for example, clearing and settlement facilities and payment systems).

Further, the firm should have, and be able to demonstrate, the capability to populate in a timely manner a data room with information pertinent to a potential divestiture of the business (including, but not limited to, carve-out financial statements, valuation analysis, and a legal risk assessment).

Within the Plan, the firm should demonstrate how the firm's LER Criteria and implementation efforts support meeting the separability-related guidance above. The Plan should also provide the separability analysis noted above. Finally, the Plan should include a description of the firm's legal entity rationalization governance process.

MPOE

A Plan should include options for the sale, transfer, or disposal of significant assets, portfolios, legal entities, or business lines in resolution that may be executed in a reasonable period of time. For each option, supporting analysis should include: an execution plan that includes an estimated time frame for implementation, a description of any impediments to execution of the option, and mitigation strategies to address those impediments; a description of the assumptions underpinning the option; a financial impact assessment that describes the impact of executing the option; and an identified critical operation impact assessment that describes how execution of the option may affect the provision of any identified critical operation. Information systems should be robust enough to produce the required data and information needed to execute the options.

VII. Insured Depository Institution (IDI) Resolution

MPOE

If the Plan includes a strategy that contemplates the separate resolution of a U.S. IDI that is a material entity, the Plan should demonstrate how this could be achieved in a manner that is consistent with the overall objective of the Plan to substantially mitigate the risk that the failure of the specified firm would have serious adverse effects on financial stability in the United States while also complying with the statutory and regulatory requirements governing IDI resolution. More specifically,

- If the strategy is other than payout liquidation (*e.g.,* a bridge depository institution (BDI)), the Plan should provide information supporting the feasibility of this strategy. Under the FDI Act, the FDIC generally would complete a least-cost analysis when resolving a failed bank at the time of entry into resolution. A Plan may use an approach such as one of the following in lieu of performing a complete least-cost analysis to demonstrate the feasibility of the proposed strategy.[22]
  - A Plan may demonstrate that a strategy involving an all-deposit BDI would be permissible under the least-cost test of the FDI Act by presenting an analysis which shows that the strategy results in no loss to the Deposit Insurance Fund (DIF) by demonstrating that the incremental estimated cost to the DIF by having the BDI assume all uninsured deposits is offset by the preservation of franchise value connected to the uninsured deposits after accounting for the amount of any loss-absorbing debt instruments and other liabilities subordinate to the depositor class that would be left behind in the receivership.
  - A Plan may demonstrate the feasibility of a strategy involving a BDI that assumes all insured deposits and a portion of uninsured deposits by providing an advance dividend to uninsured depositors for a portion of their deposit claim, as well as the basis for that dividend, and pursuant to which a loss to the DIF occurs, by presenting an analysis comparing the cost of the proposed strategy to the cost of payout liquidation and demonstrating:
    - The incremental estimated cost to the DIF created by the BDI's assumption of the portion of uninsured deposits assumed is offset by the franchise value preserved by maintaining the assumed uninsured deposits, after accounting for the amount of any long-term debt and other liabilities subordinate to the depositor class that would be left behind in the receivership; [23] and
    - The loss to the DIF under the proposed strategy (including the amounts paid by the DIF for more favorable treatment, relative to a payout liquidation, of a portion of uninsured deposits) is less than or equal to the loss to the DIF that would be incurred through a payout liquidation of the IDI; and
  - The deposit payout process for any uninsured deposits that remain in the receivership may be executed in a manner that substantially mitigates the risk of serious adverse effects on U.S. financial stability.
- If the Plan's strategy envisions a payout liquidation for the IDI, with or without use of a Deposit Insurance National Bank or a paying agent, the Plan should demonstrate how the deposit payout and asset liquidation process would be executed in a manner that substantially mitigates the risk of serious adverse effects on U.S. financial stability.
- In all cases, the Plan should show that implementation of the resolution, including the impact on depositors whose accounts are not transferred in whole or in part to the BDI, would not create the risk of serious adverse effects on U.S. financial stability.

Regardless of the IDI resolution strategy chosen, the Plan should assume asset valuations consistent with the severely adverse stress economic scenario and the IDI's condition as a failed institution, as referenced in ''*Guidance regarding Assumptions,*'' Items 4 and 7 below. The Plan, in light of such conditions, should explain the process for determining asset or

[22] *See* 12 U.S.C. 1823(c)(4)(A)(ii) and 1821(n)(2)(A).

[23] *See* 12 U.S.C. 1821(d)(11).

business franchise values, including providing detailed supporting descriptions such as references to historical pricing, benchmarks, or recognized models; evidence supporting client attrition rates; and other relevant information.

With respect to exit from IDI resolution proceedings, a Plan could support the feasibility of an asset liquidation or BDI exit strategy by, for example, describing an actionable process, based on historical precedent or otherwise supportable projections, that winds down certain businesses, includes the sale of assets and deposits to multiple acquirers, or culminates in a capital markets transaction, such as an initial public offering or a private placement of securities.

VIII. Format and Structure of Plans; Assumptions

SPOE & MPOE

Format of Plan

Executive Summary. The Plan should contain an executive summary consistent with the Rule, which must include, among other things, a concise description of the key elements of the firm's strategy for an orderly resolution. In addition, the executive summary should include a discussion of the firm's assessment of any impediments to the firm's resolution strategy and its execution, as well as the steps it has taken to address any identified impediments.

Narrative. The Plan should include a strategic analysis consistent with the Rule. This analysis should take the form of a concise narrative that enhances the readability and understanding of the firm's discussion of its strategy for an orderly resolution in bankruptcy or other applicable insolvency regimes (Narrative).

Appendices. The Plan should contain a sufficient level of detail and analysis to substantiate and support the strategy described in the Narrative. Such detail and analysis should be included in appendices that are distinct from and clearly referenced in the related parts of the Narrative (Appendices).

Public Section. The Plan must be divided into a public section and a confidential section consistent with the requirements of the Rule.

Other Informational Requirements. The Plan must comply with all other informational requirements of the Rule. The firm may incorporate by reference previously submitted information as provided in the Rule.

Guidance Regarding Assumptions

1. The Plan should be based on the current state of the applicable legal and policy frameworks. Pending legislation or regulatory actions may be discussed as additional considerations.

2. The firm must submit a Plan that does not rely on the provision of extraordinary support by the United States or any other government to the firm or its subsidiaries to prevent the failure of the firm.[24] The firm should not submit a Plan that assumes the use of the systemic risk exception to the least-cost test in the event of a failure of an IDI requiring resolution under the FDI Act.

3. The firm should not assume that it will be able to sell identified critical operations or core business lines, or that unsecured funding will be available immediately prior to filing for bankruptcy.

4. The resolution strategy may be based on an idiosyncratic event or action, including a series of compounding events. The firm should justify use of that assumption, consistent with the conditions of the economic scenario.

5. Within the context of the applicable idiosyncratic scenario, markets are functioning and competitors are in a position to take on business. If a firm's Plan assumes the sale of assets, the firm should take into account all issues surrounding its ability to sell in market conditions present in the applicable economic condition at the time of sale (*i.e.,* the firm should take into consideration the size and scale of its operations as well as issues of separation and transfer.).

6. For a firm that adopts an MPOE strategy, the Plan should demonstrate and describe how the failure event(s) results in material financial distress.[25] In particular, the Plan should consider the likelihood that there would be a diminution of the firm's liquidity buffer in the stress period prior to filing for bankruptcy from high unexpected outflows of deposits and increased liquidity requirements from counterparties. Though the immediate failure event may be liquidity-related and associated with a lack of market confidence in the financial condition of the covered company or its material legal entity subsidiaries prior to the final recognition of losses, the demonstration and description of material financial distress may also include depletion of capital. Therefore, the Plan should also consider the likelihood of the depletion of capital.

7. The firm should not assume any waivers of section 23A or 23B of the Federal Reserve Act in connection with the actions proposed to be taken prior to or in resolution.

8. The Plan should support any assumptions that the firm will have access to the Discount Window and/or other borrowings during the period immediately prior to entering bankruptcy. To the extent the firm assumes use of the Discount Window and/or other borrowings, the Plan should support that assumption with a discussion of the operational testing conducted to facilitate access in a stress environment, placement of collateral, and the amount of funding accessible to the firm. The firm may assume that its depository institutions will have access to the Discount Window only for a few days after the point of failure to facilitate orderly resolution. However, the firm should not assume its subsidiary depository institutions will have access to the Discount Window while critically undercapitalized, in FDIC receivership, or operating as a bridge bank, nor should it assume any lending from a Federal Reserve credit facility to a non-bank affiliate.

Financial Statements and Projections. The Plan should include the actual balance sheet for each material entity and the consolidating balance sheet adjustments between material entities as well as pro forma balance sheets for each material entity at the point of failure and at key junctures in the execution of the resolution strategy. It should also include statements of projected sources and uses of funds for the interim periods. The pro forma financial statements and accompanying notes in the Plan must clearly evidence the failure trigger event; the Plan's assumptions; and any transactions that are critical to the execution of the Plan's preferred strategy, such as recapitalizations, the creation of new legal entities, transfers of assets, and asset sales and unwinds.

Material Entities. Material entities should encompass those entities, including foreign offices and branches, which are significant to the maintenance of an identified critical operation or core business line. If the abrupt disruption or cessation of a core business line might have systemic consequences to U.S. financial stability, the entities essential to the continuation of such core business line should be considered for material entity designation. Material entities should include the following types of entities:

1. Any U.S.-based or non-U.S. affiliates, including any branches, that are significant to the activities of an identified critical operation.

2. Subsidiaries or foreign offices whose provision or support of global treasury operations, funding, or liquidity activities (inclusive of intercompany transactions) is significant to the activities of an identified critical operation.

3. Subsidiaries or foreign offices that provide material operational support in resolution (key personnel, information technology, data centers, real estate or other shared services) to the activities of an identified critical operation.

4. Subsidiaries or foreign offices that are engaged in derivatives booking activity that is significant to the activities of an identified critical operation, including those that conduct either the internal hedge side or the client-facing side of a transaction.

5. Subsidiaries or foreign offices engaged in asset custody or asset management that are significant to the activities of an identified critical operation.

6. Subsidiaries or foreign offices holding licenses or memberships in clearinghouses, exchanges, or other FMUs that are significant to the activities of an identified critical operation.

For each material entity (including a branch), the Plan should enumerate, on a jurisdiction-by-jurisdiction basis, the specific mandatory and discretionary actions or forbearances that regulatory and resolution authorities would take during resolution, including any regulatory filings and notifications that would be required as part of the preferred strategy, and explain how the Plan addresses the actions and forbearances. Describe the consequences for the covered company's resolution strategy if specific

[24] 12 CFR 243.4(a)(4)(ii) and 12 CFR 381.4(a)(4)(ii).

[25] See Section 11(c)(5) of the FDI Act, codified at 11 U.S.C. 1821(c)(5), which details grounds for appointing the FDIC as conservator or receiver of an IDI.

actions in a non-U.S. jurisdiction were not taken, delayed, or forgone, as relevant.

IX. Public Section

SPOE & MPOE

The purpose of the public section is to inform the public's understanding of the firm's resolution strategy and how it works.

The public section should discuss the steps that the firm is taking to improve resolvability under the U.S. Bankruptcy Code. The public section should provide background information on each material entity and should be enhanced by including the firm's rationale for designating material entities. The public section should also discuss, at a high level, the firm's intra-group financial and operational interconnectedness (including the types of guarantees or support obligations in place that could impact the execution of the firm's strategy).

The discussion of strategy in the public section should broadly explain how the firm has addressed any deficiencies, shortcomings, and other key vulnerabilities that the agencies have identified in prior plan submissions. For each material entity, it should be clear how the strategy provides for continuity, transfer, or orderly wind-down of the entity and its operations. There should also be a description of the resulting organization upon completion of the resolution process.

The public section may note that the Plan is not binding on a bankruptcy court or other resolution authority and that the proposed failure scenario and associated assumptions are hypothetical and do not necessarily reflect an event or events to which the firm is or may become subject.

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 August 29, 2023.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–19267 Filed 9–18–23; 8:45 am]

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FEDERAL RESERVE SYSTEM

[Docket No. OP–1817]

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064–ZA38

Guidance for Resolution Plan Submissions of Foreign Triennial Full Filers

AGENCY: Board of Governors of the Federal Reserve System (Board) and Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed guidance; request for comments.

SUMMARY: The Board and the FDIC (together, the agencies) are inviting comments on proposed guidance for the 2024 and subsequent resolution plan submissions by certain foreign banking organizations. The proposed guidance is meant to assist these firms in developing their resolution plans, which are required to be submitted pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended (the Dodd-Frank Act), and the jointly issued implementing regulation (the Rule). The scope of application of the proposed guidance would be foreign-based triennial full filers (specified firms or firms), which are foreign-based Category II and III banking organizations, and the guidance, if finalized, would supersede the joint *Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies* (85 FR 83557 (Dec. 22, 2020) (2020 FBO Guidance)). The proposed guidance is based on the agencies' review of the specified firms' 2021 and prior resolution plan submissions, as well as the agencies' experiences dealing with stress events in the international and domestic banking systems, and would describe the agencies' expectations regarding several aspects of the specified firms' plans for an orderly resolution under the U.S. Bankruptcy Code. The agencies invite public comment on all aspects of the proposed guidance.

DATES: Comments must be received by November 30, 2023.

ADDRESSES: Interested parties are encouraged to submit written comments jointly to both agencies. Comments should be directed to:

Board: You may submit comments, identified by Docket No. OP–1817, 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 number 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.

In general, all public comments will be made available on the Board's website at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, and will not be modified to remove confidential, contact or any identifiable information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. during federal business weekdays.

FDIC: You may submit comments, identified by RIN 3064–ZA38, by any of the following methods:

- *FDIC Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.* Follow the instructions for submitting comments on the FDIC's website.
- *Email: comments@fdic.gov.* Include ''RIN 3064–ZA38'' on the subject line of the message.
- *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments—RIN 3064–ZA38, 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 a.m. and 5 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 document 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:

Board: Catherine Tilford, Deputy Associate Director, (202) 452–5240, Elizabeth MacDonald, Assistant Director, (202) 475–6316, Tudor Rus, Lead Financial Institution Analyst, (202) 475–6359, Division of Supervision and Regulation; or Jay Schwarz, Assistant General Counsel, (202) 452–2970; Andrew Hartlage, Special Counsel, (202) 452–6483; Sarah Podrygula, Senior Attorney, (202) 912–4658; or Brian

Kesten, Senior Attorney, (202) 843–4079, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

FDIC: Robert C. Connors, Senior Advisor, (202) 898–3834, Division of Complex Financial Institution Supervision and Resolution; Celia Van Gorder, Senior Counsel, (202) 898–6749; Esther Rabin, Counsel, (202) 898–6860, *erabin@fdic.gov,* Legal Division.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Overview of the Proposed Guidance
III. Paperwork Reduction Act
Appendix: Text of the Proposed Guidance

I. Background

A. The Dodd-Frank Act and the Rule

Section 165(d) of the Dodd-Frank Act [1] and the Rule [2] require certain financial institutions to report periodically to the Board and the FDIC their plans for rapid and orderly resolution under the U.S. Bankruptcy Code (the Bankruptcy Code) in the event of material financial distress or failure. The Rule divides covered companies into three groups of filers: (a) biennial filers; (b) triennial full filers; and (c) triennial reduced filers.[3]

Triennial full filers under the Rule are required to file a resolution plan every three years, alternating between full and targeted resolution plans.[4] The Rule requires each covered company's full resolution plan to include, among other things, a strategic analysis of the plan's components, a description of the range of specific actions the covered company proposes to take in resolution, and a description of the covered company's organizational structure, material entities, and interconnections and interdependencies.[5] Targeted resolution plans are required to include a subset of information contained in a full plan.[6] In addition, the Rule requires that all resolution plans consist of two parts: a confidential section that contains any confidential supervisory and proprietary information submitted to the agencies and a section that the agencies make available to the public.[7] Public sections of resolution plans can be found on the agencies' websites.[8]

B. Recent Developments

Implementation of the Rule has been an iterative process aimed at strengthening the resolution planning capabilities of financial institutions subject to the Rule. To assist the development of covered companies' resolution planning capabilities and plan submissions, the agencies have provided feedback on individual plan submissions, promulgated guidance to certain groups of covered companies, and issued answers to frequently asked questions. The agencies believe that guidance can help focus the efforts of similarly situated covered companies to improve their resolution capabilities and clarify the agencies' expectations for those filers' future progress. The agencies have issued guidance to (a) U.S. global systemically important banks (GSIBs),[9] which constitute the biennial filer group, and (b) certain large foreign banking organizations (FBOs) that are triennial full filers.[10] The agencies have not, however, issued guidance to the domestic firms and additional FBOs that make up the remainder of the triennial full filers.

As the agencies previously indicated,[11] they believe that it is now appropriate to issue guidance to the specified firms. The agencies' review of the 2021 targeted resolution plans submitted by foreign-based triennial full filers not already subject to resolution planning guidance revealed significant inconsistencies in the amount and nature of information they provided on critical informational elements required by the Rule. In addition, some resolution plans included optimistic assumptions regarding the availability of financial resources at the firm at the time of a bankruptcy filing as well as the ability of a firm to access financial assistance prior to and during resolution. The agencies believe that future resolution plans from these firms would benefit from guidance regarding critical informational elements required by the Rule as well as appropriate assumptions. In addition, the agencies' review of 2021 targeted resolution plans submitted by foreign-based triennial full filers subject to the 2020 FBO Guidance revealed opportunities for improvements to the reliability and timeliness of the generation and provision of financial information as well as liquidity- and capital-related resolution capabilities necessary to successfully executing these firms' U.S. resolution strategies. Resolution plans from the specified firms also generally lacked detail and clarity on how the firm's strategy and capabilities for a resolution under the Rule would be complementary to its home country global resolution strategy.

The proposed guidance also reflects the agencies' recent experience with UBS Group AG's acquisition of Credit Suisse Group AG (CS) and, with respect to specified firms with large subsidiary insured depository institutions (IDIs), the resolutions of Silicon Valley Bank (SVB), Signature Bank (SB), and First Republic Bank (First Republic). The agencies' experience with CS illustrates the complexities that can arise in the case of acute stress involving large cross-border firms and the importance of resolution planning and coordination with home country authorities. Like CS, many of the specified firms are foreign GSIBs with a large presence in the United States, and the agencies recognize the importance of maintaining a comprehensive understanding of the U.S. operations of large FBOs. While SVB, SB, and First Republic were not required to file resolution plans under section 165(d) of the Dodd-Frank Act and the Rule, the effects of their failures illustrate that the failure of a large IDI may have serious adverse effects on financial stability in the United States.[12] The agencies' experience with these three banking organizations is particularly instructive in developing guidance to foreign-based triennial full filers that present a U.S. multiple point of entry (U.S. MPOE) resolution strategy and that have large subsidiary IDIs, to assist their progress in developing their resolution plans that comply with the

[1] 12 U.S.C. 5365(d).

[2] 12 CFR parts 243 and 381.

[3] 12 CFR 243.4 and 12 CFR 381.4. The terms ''covered company'' and ''triennial full filer'' have the meanings given in the Rule, as do other, similar terms used throughout this proposal.

[4] 12 CFR 243.4(b) and 12 CFR 381.4(b).

[5] 12 CFR 243.5 and 12 CFR 381.5.

[6] 12 CFR 243.6(b) and 12 CFR 381.6(b).

[7] 12 CFR 243.11(c) and 12 CFR 381.11(c).

[8] The public sections of resolution plans submitted to the agencies are available at *www.federalreserve.gov/supervisionreg/resolution-plans.htm* and *www.fdic.gov/regulations/reform/resplans/.*

[9] Guidance for § 165(d) Resolution Plan Submissions by Domestic Covered Companies applicable to the Eight Largest, Complex U.S. Banking Organizations, 84 FR 1438 (Feb. 4, 2019) (2019 GSIB Guidance).

[10] Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies, 85 FR 83557 (Dec. 22, 2020) (2020 FBO Guidance).

[11] *https://www.federalreserve.gov/newsevents/pressreleases/bcreg20220930a.htm.*

[12] For example, the FDIC—upon the recommendation of two-thirds of each of the board of directors of the FDIC and the Board, as well as a determination by the Secretary of the Treasury, in consultation with the President—resolved SVB and SB using the systemic risk exception to the statutory requirement to employ the least-costly method to resolve a failed IDI. *https://www.federalreserve.gov/newsevents/pressreleases/monetary20230312b.htm; https://www.fdic.gov/news/press-releases/2023/pr23017.html.*

statutory and regulatory requirements governing IDI resolution.

C. Resolution Plan Strategy

The specified firms have adopted one of two U.S. resolution strategies: a U.S. single point of entry (U.S. SPOE) or U.S. MPOE strategy. Under a U.S. SPOE approach, only the top-tier U.S. material entity holding company enters bankruptcy and all U.S. material entity subsidiaries remain operating as a going concern. The U.S. MPOE approach entails multiple U.S. material entities entering separate resolution proceedings: any top-tier U.S. material entity holding company enters bankruptcy; any U.S. material entity IDI subsidiary is resolved separately under the Federal Deposit Insurance Act of 1950, as amended (the FDI Act); and other individual U.S. material entity subsidiaries separately enter bankruptcy (or another applicable resolution regime) or are wound down. The U.S. SPOE and U.S. MPOE resolution plan strategies require firms to consider different risks and require different types of planning and development of capabilities for the execution of the respective strategies. For their 2021 resolution plan submissions, some of the specified firms presented a U.S. SPOE strategy, but most of the specified firms presented a U.S. MPOE strategy.

The agencies do not prescribe a specific resolution strategy for any covered company, nor do the agencies identify a preferred strategy. The proposed guidance is not intended to favor one strategy or another. Specified filers may continue to submit resolution plans using the resolution strategies they believe would be most effective in achieving an orderly resolution of their firms, but a resolution plan must address the key vulnerabilities and support the underlying assumptions required to successfully execute the chosen resolution strategy.

With respect to the specified firms, the Rule requires the firm's U.S. resolution plan to address subsidiaries, branches, and agencies, and identified critical operations and core business lines, as applicable, that are domiciled in the United States or conducted in whole or material part in the United States.[13] To date, the resolution plans of specified filers that have presented a U.S. SPOE strategy have presumed entry of the top tier U.S. intermediate holding company (IHC) into bankruptcy, while its material entity subsidiaries remain open and operating. Each of the specified firms that has presented such an approach is required by the Board's Regulation YY to have a U.S. IHC under which all non-branch U.S. entities are organized.[14] The agencies note that some of the specified firms are not subject to the Regulation YY requirement to establish a U.S. IHC. The agencies are considering whether such a specified firm not subject to a U.S. IHC requirement could provide for the orderly resolution of its U.S. entities and operations utilizing a U.S. SPOE resolution without having a top-tier holding company which would be the only entity to enter resolution.

Question 1: The agencies invite comment on all aspects of the utilization of a U.S. SPOE strategy under section 165(d) of the Dodd-Frank Act by a specified filer whether or not it is subject to the Regulation YY requirement to establish a U.S. IHC, including the feasibility of the U.S. SPOE strategy and the characteristics of the firm's U.S. entities and operations that would facilitate successful U.S. SPOE strategy execution.

D. Long-Term Debt Rulemaking

The agencies, as well as the Office of the Comptroller of the Currency, are issuing a proposed rule for comment that would require certain large IDI holding companies, U.S. intermediate holding companies of FBOs, and certain IDIs, to issue and maintain outstanding a minimum amount of long-term debt (LTD), among other proposed requirements.[15] This proposed rule would improve the resolvability of these firms, and, in particular, their IDI subsidiaries, in case of failure, reducing costs to the Deposit Insurance Fund (DIF) and mitigating financial stability and contagion risks by reducing the risk of loss to uninsured depositors. LTD issued by the IDI could help support resolution strategies by, among other things, recapitalizing a bridge depository institution and facilitating its exit from resolution as a newly chartered IDI that would have new ownership. The agencies expect that a final long-term debt rule could interact with how the specified firms plan for resolution under the Rule, and the agencies anticipate ensuring that the final resolution plan guidance for foreign triennial full filers is consistent with any final long-term debt rule. Accordingly, the agencies welcome comments that take the proposed long-term debt rulemaking into consideration.[16]

II. Overview of the Proposed Guidance

The proposed guidance begins with the proposed scope and then is organized into several substantive topical areas. Each substantive topic is bifurcated, with separate guidance for a U.S. SPOE resolution strategy and a U.S. MPOE resolution strategy. As discussed, each resolution strategy poses distinct risks and requires its own type of planning and capabilities development for executing the strategy. Accordingly, the proposed guidance would account for the different challenges posed by each approach.

The proposed guidance for firms that adopt a U.S. SPOE resolution strategy is generally based on the 2020 FBO Guidance or the associated proposal.[17] Successful execution of a U.S. SPOE strategy relies on the ability to provide sufficient capital and liquidity to material entities, a governance structure that can identify the onset of financial stress events, and the ability to ensure the timely execution of the strategy and to maintain continuity of operations throughout resolution.

Some aspects of this proposal reflect expectations that were included in the 2020 Proposed FBO Guidance. For example, the proposal contains capital and liquidity pre-positioning expectations similar to the 2020 Proposed FBO Guidance, to better support U.S. SPOE strategies and in light of the LTD proposal. Although IDI subsidiaries of certain specified firms may be required under an LTD rule to have outstanding a minimum amount of prepositioned LTD, firms with a U.S. SPOE strategy should have a framework for determining the amount and allocation of resources among the firm's material entities. Similarly, for specified firms that adopt a U.S. SPOE strategy, the agencies are proposing governance mechanisms and separability expectations similar to those contained in the 2020 Proposed FBO Guidance. Governance mechanisms increase the likelihood that the U.S. SPOE strategy would be implemented at a point in the stress continuum prior to the firm having exhausted all financial resources, increasing the likelihood that the bankruptcy reorganization would be successful. Separability provides additional optionality to firms' U.S. SPOE strategies.

The proposed guidance for firms that utilize a U.S. MPOE resolution strategy

[13] 12 CFR 243.5(a)(2) and 12 CFR 381.5(a)(2).

[14] 12 CFR 252.153.

[15] This proposed rulemaking is published elsewhere in this **Federal Register** (LTD proposal).

[16] The public also may provide comments on the proposed guidance that assume that no long-term debt rule is finalized and that specified firms remain subject to current capital rules.

[17] Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies, 85 FR 15449 (March 18, 2020) (2020 Proposed FBO Guidance).

is based upon the 2020 FBO Guidance but tailored for a U.S. MPOE strategy. The agencies are, however, proposing to clarify their expectations for specified firms that utilize a U.S. MPOE strategy that includes the resolution of a material entity that is a U.S. IDI. As discussed elsewhere in this proposal, the resolution of a large U.S. IDI under the FDI Act likely would pose substantial operational and legal challenges and complexities. Accordingly, the agencies believe that the resolution plans of firms whose resolution plans contemplate the separate resolution of a material entity that is a U.S. IDI would benefit from developing capabilities specific to and considering legal requirements regarding U.S. IDI resolution.

The agencies believe that each substantive area of the proposed guidance would play a part in helping to ensure that the specified firms can be resolved in an orderly manner. The proposed guidance would describe the agencies' expectations for each of these areas. In addition, the proposed guidance would consolidate items of feedback provided to a number of the specified firms in the past, thereby providing the public with one source of applicable guidance for the specified firms. The proposed guidance is not, however, intended to override the obligation of an individual specified firm to respond, in its next resolution plan submission, to pending items of individual feedback or any shortcomings or deficiencies identified or determined by the agencies in that specified firm's prior resolution plan submission. The proposed guidance also is not meant to limit specified firms' consideration of additional vulnerabilities or obstacles that might arise based on a firm's particular structure, operations, or resolution strategy, and that should be factored into the specified firm's resolution plan submission.

The proposed guidance concludes with information about the format and structure of a plan that applies equally to plans contemplating either a U.S. SPOE strategy or a U.S. MPOE strategy.

A. Scope of Application

The agencies propose to apply the guidance to all foreign-based triennial full filers. The Board's tailoring framework provides clear, predictable scoping based on publicly reported quantitative data. As discussed above, the agencies believe that it is appropriate to provide resolution planning guidance to all foreign triennial full filers given issues identified in these firms' 2021 targeted resolution plans and considering lessons learned from recent events, including the agencies' experiences in connection with the events leading to UBS AG's acquisition of Credit Suisse, following the intervention of the Swiss authorities.

The agencies would like the specified firms to submit resolution plans that take into consideration the final version of the proposed guidance as soon as practicable. However, the agencies understand that the specified firms may need time to take into consideration the guidance when developing their resolution plans. In light of the timing of this proposal, the agencies are considering providing a short extension of the next resolution plan submission date for the specified firms, with the expectation that these plan submissions would be due sooner than one year after the proposed guidance is published in final form.

The agencies seek comment on all aspects of the proposed scope of application.

Question 2: Should the agencies provide more than 6 months for the specified firms to take into consideration the expectations in the proposed guidance, once finalized? If so, what time period should the agencies provide?

B. Group Resolution Plan

The agencies recognize that the preferred resolution outcome for many specified firms is a successful home country resolution using a global SPOE resolution strategy that does not involve the placement of any U.S. material entities into resolution. However, by law, U.S. resolution planning requirements require relevant FBOs to contemplate their resolution under the Bankruptcy Code.

U.S. operations of an FBO are often highly interconnected with the broader, global operations of the financial institution. To clarify the interaction between U.S. and global resolution strategies, the proposal outlines expectations for specified firms to describe the impact of executing the firm's global, group-wide resolution plan on the firm's U.S. operations and detail the extent to which resolution planning under the Rule relies on different assumptions, strategies, and capabilities from the global plan. A specified firm's broader resolvability framework is expected to consider the objectives of both the group-wide resolution strategy and the U.S. resolution strategy pursuant to the Rule, with complementary efforts to enhance resolvability across plans.

C. Capital

For specified firms with a U.S. SPOE resolution strategy, the agencies propose guidance substantially similar to the 2020 Proposed FBO Guidance regarding capital. The ability to provide sufficient capital to material entities without disruption from creditors is important in order to ensure that material entities can continue to maintain operations as the firm is resolved. The proposal describes expectations concerning the appropriate positioning of capital and other loss-absorbing instruments (*e.g.,* debt that a parent holding company may choose to forgive or convert to equity) among the material entities within the firm (resolution capital adequacy and positioning, or RCAP). The positioning of capital resources within the firm should be consistent with any applicable rules requiring prepositioned resources in IDIs in the form of long-term debt. The proposal also describes expectations regarding a methodology for periodically estimating the amount of capital that may be needed to support each material entity after the bankruptcy filing (resolution capital execution need, or RCEN).

The agencies are not proposing further expectations concerning capital to firms whose plans contemplate a U.S. MPOE resolution strategy, as a U.S. MPOE strategy assumes most material entities do not continue as going concerns upon entry into resolution.

Question 3: In addition to the capital-related resolution plan requirements under the Rule, are there other capital-related expectations that would reasonably enhance the resolvability of a specified firm that utilizes a U.S. MPOE strategy in its resolution plan?

Question 4: Do the capital-related resolution expectations in the proposed guidance align with the provisions of the interagency long-term debt rulemaking proposal? Are there any aspects of the proposed guidance that should be revised, or additional expectations added, in light of the interagency long-term debt rulemaking proposal?

D. Liquidity

For firms that adopt a U.S. SPOE resolution strategy, the agencies propose guidance substantially similar to the 2020 Proposed FBO Guidance regarding liquidity. A firm's ability to reliably estimate and meet its liquidity needs prior to, and in, resolution is important to the execution of a firm's resolution strategy because it enables the firm to respond quickly to demands from stakeholders and counterparties, including regulatory authorities in other

jurisdictions and financial market utilities. Maintaining sufficient and appropriately positioned liquidity also allows the subsidiaries to continue to operate while the firm is being resolved in accordance with the firm's resolution strategy.

For firms that adopt a U.S. MPOE resolution strategy, the agencies propose that a firm should have the liquidity capabilities necessary to execute its resolution strategy, and its plan should include analysis and projections of a range of liquidity needs during resolution.

Question 5: In addition to the liquidity-related resolution plan requirements under the Rule and the liquidity-related expectations in the proposed guidance, are there other liquidity related expectations that would reasonably enhance the resolvability of a specified firm that utilizes a U.S. MPOE resolution strategy? Are there circumstances under which it would be appropriate for a resolution plan that utilizes a U.S. MPOE strategy to include the movement of liquidity among U.S. material entities that are in resolution?

E. Governance Mechanisms

For firms using a U.S. SPOE resolution strategy, the agencies propose guidance that is substantially similar to the 2020 Proposed FBO Guidance regarding governance mechanisms. An adequate governance structure with triggers that identify the onset, continuation, and increase of financial stress is important to ensure that there is sufficient time to communicate and coordinate with the foreign parent regarding the provision of financial support and other key actions. The governance mechanisms section proposes expectations that firms have playbooks that describe the board and senior management actions of the U.S. non-branch material entities that would be necessary in order to execute the firm's U.S. resolution strategy. In addition, the proposal describes expectations that these firms have triggers that are linked to specific actions outlined in these playbooks to ensure the timely escalation of information to both U.S. IHC and foreign parent governing bodies. The proposal also describes the expectations that firms identify and analyze potential legal challenges to planned U.S. IHC support mechanisms, and any defenses and mitigants to such challenges. To the extent the preferred global resolution strategy for the firm is a home country SPOE resolution, the governance mechanisms section proposes expectations that a firm design such mechanisms in a way that does not interfere with the execution of the global strategy.

For firms that adopt a U.S. MPOE resolution strategy, the agencies propose adopting governance mechanisms expectations to ensure communication and coordination between the governing body of the U.S. operations and the foreign parent for the purpose of facilitating preparations for an orderly resolution.

Question 6: Are the governance mechanisms expectations regarding communications and triggers for firms that utilize a U.S. MPOE strategy appropriate and clear? Are there other governance-related expectations that should be extended to resolution plans utilizing a U.S. MPOE resolution strategy?

F. Operational

The development and maintenance of operational capabilities is important to support and enable execution of a firm's resolution strategy, including providing for the continuation of identified critical operations and preventing or mitigating adverse effects on U.S. financial stability. For firms that utilize a U.S. SPOE resolution strategy, the agencies propose adopting portions of the operational expectations of the 2020 FBO Guidance and SR letter 14–1,[18] with modifications that reflect the specific characteristics and complexities of the specified firms. Like the 2020 FBO Guidance, the proposal contains expectations on payment, clearing and settlement activities, managing, identifying and valuing collateral, and shared and outsourced services. For firms that utilize a U.S. MPOE resolution strategy, the agencies propose adopting expectations based on SR letter 14–1 and the 2020 FBO Guidance that are most relevant to an MPOE resolution strategy. For example, the proposed expectations regarding payment, clearing and settlement activities are those most likely to support resolution in the MPOE context.

Question 7: Does the proposed guidance sufficiently address FBOs that plan to utilize a U.S. SPOE strategy that may not be required to comply with U.S. qualified financial contract resolution stay regulations? How should FBOs that are not ''regulated entities'' under ISDA's Resolution Stay Protocol demonstrate that their SPOE resolution strategies will be feasible despite the lack of a stay on cross defaults to the parent company? What guidance should the agencies provide with respect to how the SPOE strategy of such a firm should address the potential effects of early termination of the firm's qualified financial contracts?

G. Legal Entity Rationalization & Separability

For specified firms that utilize a U.S. SPOE resolution strategy, the agencies propose substantively adopting the 2020 FBO Guidance regarding legal entity rationalization and guidance that is substantially similar to the 2020 FBO Proposed Guidance regarding separability. It is important that firms maintain a structure that facilitates orderly resolution. To achieve this, the proposal states that a firm should develop and describe in their plans criteria supporting the U.S. resolution strategy and integrate them into day-to-day decision making processes. The criteria would be expected to consider the best alignment of legal entities and business lines and facilitate resolvability of U.S. operations as a firm's activities, technology, business models, or geographic footprint change over time. In addition, the proposed guidance provides that the firm should identify discrete U.S. operations that could be sold or transferred in resolution to provide meaningful optionality for the resolution strategy under a range of potential failure scenarios and include this information in their plans.

For firms that utilize a U.S. MPOE resolution strategy, the proposed guidance would clarify that the firms should have legal entity structures that support their U.S. resolution strategy and describe those structures in their plans. The proposal also provides that to the extent a material entity IDI relies upon other affiliates during resolution, the firm should discuss its rationale for the legal entity structure and associated resolution risks and potential mitigants. In addition, the agencies propose that the firms include options for the sale, transfer, or disposal of significant assets, portfolios, legal entities, or business lines in resolution.

Question 8: Are there other separability related expectations that would reasonably enhance resolution plans that utilize a U.S. MPOE resolution strategy?

[18] SR letter 14–1, ''Principles and Practices for Recovery and Resolution Preparedness'' (Jan. 24, 2014), available at *https://www.federalreserve.gov/supervisionreg/srletters/sr1401.htm.*

H. Insured Depository Institution (IDI) Resolution [19]

Background. When an IDI fails and the FDIC is appointed receiver, the FDIC generally must utilize the resolution option for the failed IDI that is least costly to the DIF of all possible methods (the least-cost requirement).[20] An exception to this requirement is provided where a determination is made by the Secretary of the Treasury, in consultation with the President and after a written recommendation from two-thirds of the FDIC's Board of Directors and two-thirds of the Board, that complying with the least-cost requirement would have serious adverse effects on economic conditions or financial stability and implementing another resolution option would avoid or mitigate such adverse effects.[21] A specified firm should not assume the use of this systemic risk exception to the least-cost requirement in its resolution plan.

Purchase and Assumption Transaction. The FDIC typically seeks to resolve a failed IDI by identifying, before the IDI's failure, one or more potential acquirers so that as many of the IDI's assets and deposit liabilities as possible can be sold to and assumed by the acquirer(s) instead of remaining in the receivership created on the failure date.[22] This transaction form, termed a ''purchase and assumption'' or ''P&A'' transaction, has historically been the resolution approach that is least costly to the DIF, easiest for the FDIC to execute, and least disruptive to the depositors of the failed IDI—particularly in the case of transactions involving the assumption of all the failed IDI's deposits by the assuming institution (an ''all-deposit transaction'')—and typically can be completed over the weekend following the IDI's closure by its primary regulator but before business ordinarily would commence the following Monday (closing weekend). The limited size and operational complexity present in most small-bank failures has allowed the FDIC to execute a P&A transaction with a single acquirer on numerous occasions. Resolving an IDI via a P&A transaction over the closing weekend, however, may not be available to the FDIC, particularly in failures involving large IDIs. P&A transactions require lead time to identify potential buyers and allow due diligence on, and an auction of, the failing IDI's assets and banking business, also termed its ''franchise.'' Additionally, larger banks can pose significant, and potentially systemic, challenges in resolutions. These challenges include: a more limited pool of potential acquirers as a failed IDI increases in size, which makes a transaction in which nearly all assets and liabilities are transferred to one or more acquirers increasingly less likely; operational complexities which require advance planning on the part of the IDI and the FDIC and the development of certain capabilities; potential market concentration and antitrust considerations; and potentially the need to maintain the continuity of activities conducted in whole or in part in the IDI that are critical to U.S. financial stability.

For example, the largest failed IDI in U.S. history, Washington Mutual Bank, had approximately $307 billion in assets. The DIF did not incur a loss associated with this failure in part because it benefitted from the FDIC's sale of the institution to an acquirer which had first engaged in exhaustive due diligence of the institution during a self-marketing effort conducted by the IDI prior to its failure. A more recent example, that of First Republic Bank, which was also acquired in an all-deposit transaction, illustrates that such a transaction can be difficult to effectuate. The FDIC invited 21 banks and 21 nonbanks to participate in the bidding process and received bids from only 4 bidders.[23] The least costly bid necessitated a loss-sharing agreement, and the transaction is expected to result in a significant loss to the DIF. In addition, the FDIC received only one viable bid for Silicon Valley Bank during the weekend following its failure, but this bid did not satisfy the least-cost test. The FDIC received no viable all-deposit bids for Signature Bank at the time it failed.[24]

If no P&A transaction that meets the least-cost requirement can be accomplished at the time an IDI fails, the FDIC must pursue an alternative resolution strategy. The primary alternative resolution strategies for a failed IDI are: (1) a payout liquidation; or (2) utilization of a BDI. The FDIC conducts payout liquidations by paying insured deposits in cash or transferring the insured deposits to an existing institution or a new institution organized by the FDIC to assume the insured deposits (generally, a Deposit Insurance National Bank or DINB). In payout liquidations, the FDIC as receiver retains substantially all of the failed IDI's assets for later sale, and the franchise value of the failed IDI is lost.

Bridge Depository Institution. If the FDIC determines that temporarily continuing the operations of the failed IDI is less costly than a payout liquidation, it may organize a BDI to purchase certain assets and assume certain liabilities of the failed IDI.[25] Generally, a BDI would continue the failed bank's operations according to business plans and budgets approved by the FDIC and carried out by FDIC-selected leadership of the BDI. In addition to providing depositors access to deposits and banking services, the BDI would conduct any necessary restructuring required to rationalize the failed IDI's operations and maximize value to be achieved in an eventual sale. Subject to the least-cost requirement, the initial structure of the BDI may be based upon an all-deposit transaction, a transaction in which the BDI assumes only the insured deposits, or a transaction in which the BDI assumes all insured deposits and a portion of the uninsured deposits. Once a BDI is established, the FDIC seeks to stabilize the institution while simultaneously planning for the eventual termination of

[19] The FDIC has a separate rule requiring resolution plans from certain IDIs, 12 CFR 360.10, ''Resolution Plans Required for Insured Depository Institutions With $50 Billion or More in Total Assets'' (the IDI Rule). The Rule and the IDI Rule each have different goals and the expected content of the respective resolution plans accordingly also is different. The Rule requires a covered company to submit a resolution plan that would allow rapid and orderly resolution of the covered company under the Bankruptcy Code in the event of material financial distress or failure. The purpose of the IDI Rule is to ensure that the FDIC has access to all of the material information it needs to efficiently resolve an IDI in the event of its failure.

[20] *See* 12 U.S.C. 1823(c)(4). A deposit payout and liquidation of the failed IDI's assets (payout liquidation) is the general baseline the FDIC uses in a least-cost requirement determination. *See* 12 U.S.C. 1823(c)(4)(D).

[21] *See* 12 U.S.C. 1823(c)(4)(G).

[22] *See generally https://www.fdic.gov/resources/resolutions/bank-failures/* for background about the resolution of IDIs by the FDIC.

[23] *See* Remarks by Chairman Martin J. Gruenberg on ''Oversight of Prudential Regulators'' before the Committee on Financial Services, United States House of Representatives available at *https://www.fdic.gov/news/speeches/2023/spmay1523.html; see also* Remarks by Chairman Martin J. Gruenberg on ''Recent Bank Failures and the Federal Regulatory Response'' before the Committee on Banking, Housing, and Urban Affairs, United States Senate available at *https://www.fdic.gov/news/speeches/2023/spmar2723.html.*

[24] To protect depositors and preserve the value of the assets and operations of each of SVB and SB following failure—which can improve recoveries for creditors and the DIF—the FDIC ultimately transferred all the deposits and substantially all of the assets of each failed bank to a full-service bridge depository institution (BDI) operated by the FDIC while the FDIC marketed the institutions to potential bidders.

[25] Before a BDI may be chartered, the chartering conditions set forth in 12 U.S.C. 1821(n)(2) must also be satisfied. For purposes of this guidance, if the Plan provides appropriate analysis concerning the feasibility of the BDI strategy, there is no expectation that the resolution plan also demonstrate separately that the conditions for chartering the BDI have been satisfied.

the BDI. In exiting and terminating a BDI, the FDIC may merge or consolidate the BDI with another depository institution, issue and sell a majority of the capital stock in the BDI, or effect the assumption of the deposits or acquisition of the assets of the BDI.[26] However, many of the same factors that challenge the feasibility of a traditional P&A transaction also complicate planning for the termination of a BDI through a sale of the whole entity or its constituent parts.

The proposed guidance would clarify the expectations for a firm adopting a U.S. MPOE resolution strategy with a material entity IDI to demonstrate how the IDI can be resolved in a manner that is consistent with the overall objective of the Plan to substantially mitigate the risk that the failure of the specified firm would have serious adverse effects on financial stability in the United States, while also adhering to the requirements of the FDI Act regarding failed bank resolutions without relying on the assumption that a systemic risk exception will be available. These expectations would not be applicable to firms adopting a U.S. SPOE resolution strategy because U.S. IDI subsidiaries of such firms would not be expected to enter resolution.

Question 9: Should the guidance indicate that if a specified filer proposes a strategy using a BDI to resolve its subsidiary material entity IDI, the plan should include a detailed description of the balance sheet components that would transfer to the BDI and of the process the specified filer believes is most appropriate to value the transferred components, inclusive of pro forma balance sheet and income statements?

Question 10: Should the guidance indicate that if a specified filer proposes a strategy using a BDI to resolve its subsidiary material entity IDI, the plan should describe and quantify:

- *The amounts to be realized through liquidating the failed IDI's assets and any expected premiums associated with selling the institution's deposits;*
- *Any franchise value bid premiums expected to be realized through maintaining certain ongoing business operations in a BDI; and*
- *A comparison of the loss to the DIF realized from a payout liquidation and from utilizing a BDI so as to support the conclusion that a BDI would result in the least costly resolution?*

[26] 12 U.S.C. 1821(n)(10).

I. Derivatives and Trading Activities

The agencies request comment on whether to provide guidance on derivatives and trading activities for specified firms that utilize a U.S. SPOE resolution strategy. Although most of the specified firms have limited derivatives and trading operations compared to the U.S. GSIBs, it remains important that their derivatives and trading activities can be stabilized and de-risked during resolution without causing significant disruption to U.S. markets, particularly for firms with large U.S. broker-dealers. The agencies also are considering the resolution challenges that may be posed by transactions that originate from and may be managed in the U.S. but are booked outside of the U.S. If the agencies were to provide guidance on derivatives and trading activities, the agencies likely would adopt aspects of the 2020 Proposed FBO Guidance. The agencies do not anticipate providing derivatives and trading activities guidance to specified firms that utilize a U.S. MPOE resolution strategy.

Question 11: Should the agencies provide resolution plan guidance on derivatives and trading activities for specified firms that utilize a U.S. SPOE resolution strategy? If so, what should be the content of that guidance, what methodology should the agencies use to determine the scope of specified firms to be subject to that guidance, and would it be appropriate to adopt all or some of the expectations contained in the 2020 Proposed FBO Guidance? What other derivatives and trading activities-related expectations would reasonably enhance resolution plans that utilize a U.S. SPOE resolution strategy?

Question 12: Should the agencies provide resolution plan guidance on derivatives and trading activities for specified firms that utilize a U.S. MPOE resolution strategy? If so, what should be the content of that guidance and what methodology should the agencies use to determine the scope of specified firms to be subject to that guidance?

Question 13: Should any resolution plan guidance the agencies provide to the specified firms on derivatives and trading activities take a different approach to transactions that originate in the U.S. but are booked outside of the U.S. and transactions that originate and are booked in the U.S.?

J. Branches

U.S. branches of FBOs can play a critical role in a firm's U.S. operations and may present unique issues in a resolution of a specified firm's U.S. entities and operations. The agencies propose guidance that is similar to the 2020 FBO Guidance regarding branches. Under the proposal, specified firms would be expected to show how branches would continue to facilitate the firm's FMU access for identified critical operations and to meet funding needs. The proposal also outlines expectations that the specified firms analyze the effects on the firm's FMU access and identified critical operations of the cessation of operations of any U.S. branch that is a material entity.

K. Format and Structure of Plans; Assumptions

This section states the agencies' preferred presentation regarding the format, assumptions, and structure of resolution plans. Plans should contain an executive summary, a narrative of the firm's resolution strategy, relevant technical appendices, and a public section as detailed in the Rule. The proposed format, structure, and assumptions are generally similar to those in the 2020 FBO Guidance, except that the proposed guidance reflects the expectation that a firm should support any assumptions that it will have access to the Discount Window and/or other borrowings during the period immediately prior to entering bankruptcy and clarifies expectations around such assumptions and that firms should not assume the use of the systemic risk exception to the least-cost test in the event of a failure of an IDI requiring resolution under the FDI Act. In addition, for firms that adopt a U.S. MPOE resolution strategy, the proposal includes the expectation that a plan should demonstrate and describe how the failure event(s) results in material financial distress of its U.S. operations, including consideration of the likelihood of the diminution the firm's liquidity and capital levels prior to bankruptcy.

Question 14: Certain firms' plans rely on lending facilities, including the Discount Window or other government-sponsored facilities in the period immediately preceding a bankruptcy filing. Should the guidance include additional clarifications related to assumptions regarding these lending facilities? Should the guidance contain clarifications relating to other assumptions discussed in the guidance or additional appropriate assumptions?

Question 15: The agencies included in the 2019 GSIB Guidance and 2020 FBO Guidance answers that had been previously published to frequently asked questions (FAQs) the agencies received from the guidance recipients about the topics in resolution plan guidance (e.g., capital, liquidity, etc.); however, there was no FAQ process for the specified firms given the limited number of common questions received. Should the agencies include in resolution guidance for the specified firms answers to FAQs similar to those contained in the 2019 GSIB Guidance and 2020 FBO Guidance? If so, which answers to FAQs should the final guidance contain, and what changes, if any, should the agencies make to the answers to FAQs in the 2019 GSIB Guidance and 2020 FBO Guidance?

III. Paperwork Reduction Act

Certain provisions of the proposed guidance contain ''collections of information'' within the meaning of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The agencies reviewed the proposed guidance and determined that it would revise the reporting revisions that have been previously approved by OMB under the Board's OMB control number 7100–0346 (Reporting Requirements Associated with Regulation QQ; FR QQ) and the FDIC's control number 3064–0210 (Reporting Requirements Associate with Resolution Planning). The Board has reviewed the proposed guidance under the authority delegated to the Board by OMB.

Comments are invited on the following:

(A) Whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(B) The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(C) Ways to enhance the quality, utility, and clarity of the information to be collected;

(D) Ways to minimize the burden of the information collections 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.

Comments on aspects of this document that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section of the Supplementary Information. 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, or by facsimile to (202) 395–5806, Attention, Federal Banking Agency Desk Officer.

Proposed Revisions, With Extension, of the Following Information Collections

Board

Collection title: Reporting Requirements Associated with Regulation QQ.

Collection identifier: FR QQ.

OMB control number: 7100–0346.

Frequency: Triennial, Biennial, and on occasion.

Respondents: Bank holding companies (including any foreign bank or company that is, or is treated as, a bank holding company under section 8(a) of the International Banking Act of 1978 and meets the relevant total consolidated assets threshold) with total consolidated assets of $250 billion or more, bank holding companies with $100 billion or more in total consolidated assets with certain characteristics, and nonbank financial firms designated by the Financial Stability Oversight Council for supervision by the Board.

FDIC

Collection title: Reporting Requirements Associated with Resolution Planning.

OMB control number: 3064–0210.

Current Actions: The proposed guidance would apply to all triennial full filers, but expectations would differ based on whether a firm adopts an SPOE or an MPOE resolution strategy and whether it is foreign or domestic. The proposed guidance is intended to clarify the agencies' expectations concerning the resolution plans required pursuant to the Rule. The document does not have the force and effect of law. Rather, it describes the agencies' expectations and priorities regarding these the resolution plans of triennial full filers and the agencies' general views regarding specific areas where additional detail should be provided and where certain capabilities or optionality should be developed and maintained to demonstrate that each firm has considered fully, and is able to mitigate, obstacles to the successful implementation of its preferred resolution strategy.

The proposed guidance for triennial full filers using an SPOE strategy is based on the 2019 GSIB guidance (for domestic firms) and the 2020 FBO guidance (for foreign firms). It would clarify the agencies' expectations around capital, liquidity, governance mechanisms, and operations. The proposed guidance also would clarify expectations concerning management information systems capabilities and the identification of discrete separability options appropriate to the resolution strategy. Additionally, if finalized, the FBOs that adopt an SPOE resolution strategy should address how their U.S. resolution plan aligns with their group resolution plan.

The proposed guidance for triennial full filers using an MPOE resolution strategy addresses similar topics but reflects the risks of and capabilities needed for an MPOE resolution. The proposed guidance explains the agencies' expectations around liquidity and operational capabilities, and legal entity rationalization. The proposed guidance also provides clarified expectations related to the separate resolution of a U.S. IDI and to identification of discrete separability options. FBOs that adopt an MPOE resolution strategy would have expectations related to governance mechanisms; the role of branches; and the group resolution plan.

The proposed guidance does not specify expectations around derivatives and trading activities.

Historically, the Board and the FDIC have split the respondents for purposes of PRA clearances. As such, the agencies will split the change in burden as well. As a result of this split and the proposed revisions, there is a proposed net increase in the overall estimated burden hours of 13,386 hours for the Board and 17,610 hours for the FDIC. Therefore, the total Board estimated burden for its entire information collection would be 216,853 hours and the total FDIC estimate burden for its entire information collection would be 211,300 hours.

The following table presents only the change in the estimated burden hours, as amended if the guidance were finalized, broken out by agency. The table does not include a discussion of the remaining estimated burden hours,

which remain unchanged.[27] As shown in the table, the Triennial Full filing types would be estimated more granularly according to SPOE and MPOE resolution strategies.

TABLE 1—BURDEN HOUR ESTIMATES UNDER CURRENT REGULATIONS AND UNDER THE PROPOSED GUIDANCE

FR QQ	Estimated number of respondents	Estimated annual frequency	Estimated average hours per response	Estimated annual burden hours
Board Burdens				
Current				
Triennial Full:				
Complex Foreign	1	1	9,777	9,777
Foreign and Domestic	7	1	4,667	32,669
Current Total				*42,446*
Proposed				
Triennial Full:				
FBO SPOE *	2	1	11,848	23,696
FBO MPOE	3	1	5,939	17,817
Domestic MPOE	3		5,513	16,539
Proposed Total				*58,052*
FDIC Burdens				
Current				
Triennial Full:				
Complex Foreign	0	1	9,777	0
Foreign and Domestic	7	1	4,667	32,669
Current Total				*32,669*
Proposed				
Triennial Full:				
FBO SPOE *	2	1	11,848	23,696
FBO MPOE	3	1	5,939	17,817
Domestic MPOE	2	1	5,513	11,026
Proposed Total				*52,539*

* There are currently no domestic triennial full filers utilizing a SPOE strategy. Estimated hours per response for a domestic SPOE triennial full filer would be 11,235 hours.

Appendix: Text of the Proposed Guidance

Guidance for Resolution Plan Submissions of Foreign Triennial Full Filers

I. Introduction

Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5365(d)) requires certain financial companies to report periodically to the Board of Governors of the Federal Reserve System (the Board) and the Federal Deposit Insurance Corporation (the FDIC) (together, the agencies) their plans for rapid and orderly resolution in the event of material financial distress or failure. On November 1, 2011, the agencies promulgated a joint rule implementing the provisions of Section 165(d).[1] Subsequently, in November 2019, the agencies finalized amendments to the joint rule addressing amendments to the Dodd-Frank Act made by the Economic Growth, Regulatory Relief, and Consumer Protection Act and improving certain aspects of the joint rule based on the agencies' experience implementing the joint rule since its adoption.[2] Financial companies meeting criteria set out in the Rule must file a resolution plan (Plan) according to the schedule specified in the Rule.

This document is intended to provide guidance to certain foreign financial companies required to submit Plans regarding development of their respective U.S. strategies to assist their further development of a Plan for their 2024 and subsequent Plan submissions. Specifically, the guidance applies to any foreign-based covered company that is subject to Category II or III standards according to their combined U.S. operations in accordance with the Board's tailoring rule (specified firms).[3] This guidance supersedes the joint *Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies.*[4]

The Plan for a specified firm would address a scenario where its U.S. operations experience material financial distress and the foreign parent is unable or unwilling to provide sufficient financial support for the continuation of U.S. operations, and at least the top tier U.S. IHC files for bankruptcy under Title 11, United States Code. Under such a scenario, the Plan should provide for the orderly resolution of the specified firm's U.S. material entities and operations.

In general, this document is organized around a number of key challenges in resolution (interaction with group resolution plan; capital; liquidity; governance mechanisms; operational; branches; legal

[27] In addition to the proposed revisions to the estimations for Triennial Full filings, the agencies have revised the estimation for Biennial Full filings from 40,115 hours per response to 39,550 hours per response to align the burden estimation methodology with what was used for Triennial Full filings under the proposed guidance. Specifically, the agencies removed a component for a biennial full filer's analysis of its critical operations as part of its submission of targeted and full resolution plans, because this critical operations analysis is integrated in the preparation of such plans.

[1] Resolution Plans Required, 76 FR 67323 (November 1, 2011).

[2] Resolution Plans Required, 84 FR 59194 (November 1, 2019). The amendments became effective December 31, 2019. ''Rule'' means the joint rule as amended in 2019. Terms not defined herein have the meanings set forth in the Rule.

[3] Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and Foreign Banking Organizations, 84 FR 59032 (Nov. 1, 2019).

[4] 85 FR 83557 (Dec. 22, 2020) (2020 FBO Guidance).

entity rationalization and separability; and insured depository institution resolution, if applicable) that apply across resolution plans, depending on their strategy. Additional challenges or obstacles may arise based on a firm's particular structure, operations, or resolution strategy. Each firm is expected to satisfactorily address these vulnerabilities in its Plan. In addition, each topic of this guidance is separated into expectations for a specified firm that utilizes a U.S. single point of entry (U.S. SPOE) resolution strategy for its Plan and expectations for a specified firm that utilizes a U.S. multiple point of entry (U.S. MPOE) resolution strategy for its Plan.[5] Under the Rule, the agencies will review a Plan to determine if it satisfactorily addresses key potential challenges, including those specified below. If the agencies jointly decide that an aspect of a Plan presents a weakness that individually or in conjunction with other aspects could undermine the feasibility of the Plan, the agencies may determine jointly that the Plan is not credible or would not facilitate an orderly resolution under the U.S. Bankruptcy Code.

II. Interaction With Group Resolution Plan

U.S. SPOE & U.S. MPOE

Recognizing that the preferred resolution outcome for the specified firms is often a successful SPOE home country resolution, a specified firm's Plan should describe the impact of executing the global resolution plan on U.S. operations. This description should include a discussion of the expected resolution strategy for the firm's U.S. entities and operations under the global resolution plan. In addition, a specified firm's resolvability work in the United States should consider both the objectives of the firm's group-wide resolution strategy and the Rule. Efforts to enhance the resolvability of U.S. operations and entities should be as complementary as practicable to the group-wide resolution strategy, while complying with the Rule. To the extent that the Plan relies on different assumptions, strategies, and capabilities, such as those used to project liquidity needs in resolution, from those necessary to execute the global strategy, the Plan should include a description of such differences.

III. Capital

U.S. SPOE

The firm should have the capital capabilities necessary to execute its U.S. resolution strategy, including the modeling and estimation process described below.

Resolution Capital Adequacy and Positioning (RCAP). In order to help ensure that a firm's U.S. non-branch material entities[6] could be resolved in an orderly manner, the firm's U.S. IHC should have an adequate amount of loss-absorbing capacity to execute its U.S. resolution strategy. Thus, a firm's U.S. IHC should have outstanding a minimum amount of loss-absorbing capacity, including long-term debt, to help ensure that the firm has adequate capacity to meet that need at the U.S. IHC on a consolidated basis (IHC LAC).[7]

Proceeds from a firm's U.S. IHC LAC should be appropriately positioned between the U.S. IHC and the subsidiaries of the U.S. IHC that are material entities (U.S. IHC subsidiaries), consistent with any applicable rules requiring prepositioned resources at U.S. IDIs in the form of long-term debt. After adhering to any requirements related to prepositioning long-term debt at IDIs, the positioning of a firm's remaining IHC LAC should balance the certainty associated with pre-positioning internal LAC directly at U.S. IHC subsidiaries with the flexibility provided by holding recapitalization resources at the U.S. IHC (contributable resources) to meet unanticipated losses at the U.S. IHC subsidiaries. That balance should take account of both pre-positioning at U.S. IHC subsidiaries and holding resources at the U.S. IHC, and the obstacles associated with each. With respect to material entities that are not subject to pre-positioning requirements, the firm should not rely exclusively on either full pre-positioning or U.S. IHC contributable resources to execute its U.S. resolution strategy, unless it has only one U.S. IHC subsidiary that is an operating subsidiary. The Plan should describe the positioning of internal LAC among the U.S. IHC and the U.S. IHC subsidiaries, along with analysis supporting such positioning.

Finally, to the extent that pre-positioned internal LAC at a U.S. IHC subsidiary is in the form of intercompany debt and there are one or more entities between the lender and the borrower, the firm should structure the instruments so as to ensure that the U.S. IHC subsidiary can be recapitalized.

Resolution Capital Execution Need (RCEN). To the extent necessitated by the firm's U.S. resolution strategy, U.S. non-branch material entities need to be recapitalized to a level that allows for an orderly resolution. The firm should have a methodology for periodically estimating the amount of capital that may be needed to support each U.S. IHC subsidiary after the U.S. IHC bankruptcy filing (RCEN). The firm's positioning of IHC LAC should be able to support the RCEN estimates.

The firm's RCEN methodology should use conservative forecasts for losses and risk-weighted assets and incorporate estimates of potential additional capital needs through the resolution period,[8] consistent with the firm's resolution strategy for its U.S. operations. The RCEN methodology should be calibrated such that recapitalized U.S. IHC subsidiaries will have sufficient capital to maintain market confidence as required under the U.S resolution strategy. Capital levels should meet or exceed all applicable regulatory capital requirements for ''well-capitalized'' status and meet estimated additional capital needs throughout resolution. U.S. IHC subsidiaries that are not subject to capital requirements may be considered sufficiently recapitalized when they have achieved capital levels typically required to obtain an investment-grade credit rating or, if the entity is not rated, an equivalent level of financial soundness. Finally, the methodology should be independently reviewed, consistent with the firm's corporate governance processes and controls for the use of models and methodologies.

U.S. MPOE

The agencies do not propose issuing guidance on this topic to firms whose Plans contemplate a U.S. MPOE resolution strategy.

IV. Liquidity

U.S. SPOE

The firm should have the liquidity capabilities necessary to execute its U.S resolution strategy, including those described below. For resolution purposes, these capabilities should include having an appropriate model and process for estimating and maintaining sufficient liquidity at—or readily available from the U.S. IHC to—U.S. IHC subsidiaries, and a methodology for estimating the liquidity needed to successfully execute the U.S. resolution strategy, as described below.

Capabilities. A firm is expected to have a comprehensive understanding of funding sources, uses, and risks at material entities and identified critical operations, including how funding sources may be affected under stress. For example, a firm should have and describe its capabilities to:

(A) Evaluate the funding requirements necessary to perform identified critical operations, including shared and outsourced services and access to financial market utilities (FMUs);[9]

(B) Monitor liquidity reserves and relevant custodial arrangements by jurisdiction and material entity;[10]

(C) Routinely test funding and liquidity outflows and inflows for U.S. non-branch material entities at the legal entity level

[5] The agencies recognize that the preferred resolution outcome for many specified firms is a successful home country resolution using a global SPOE resolution strategy where U.S. material entities are provided with sufficient capital and liquidity resources to allow them to stay out of resolution proceedings and maintain continuity of operations throughout the parent's resolution. However, because support from the foreign parent in stress cannot be ensured, the Rule provides that the U.S. resolution plan for specified firms should specifically address a scenario where the U.S. operations experience material financial distress, and the Plan should not assume that the specified firm takes resolution actions outside the United States that would eliminate the need for any U.S. subsidiaries to enter resolution proceedings.

[6] The terms ''material entities,'' ''identified critical operations,'' and ''core business lines'' have the same meaning as in the Rule. The term ''U.S. material entity'' means any subsidiary, branch, or agency that is a material entity and is domiciled in the United States. The term ''U.S. non-branch material entity'' means a material entity organized or incorporated in the U.S. including, in all cases, the U.S. IHC. The term ''U.S. IHC subsidiaries'' means all U.S. non-branch material entities other than the U.S. IHC.

[7] Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U.S. Bank Holding Companies and Intermediate Holding Companies of Systemically Important Foreign Banking Organizations, 82 FR 8266 (January 24, 2017); LTD proposal.

[8] The resolution period begins immediately after the U.S. IHC bankruptcy filing and extends through the completion of the U.S. resolution strategy.

[9] 12 CFR 252.156(g)(3).

[10] 12 CFR 252.156(g)(2).

under a range of adverse stress scenarios, taking into account the effect on intra-day, overnight, and term funding flows between affiliates and across jurisdictions;

(D) Assess existing and potential restrictions on the transfer of liquidity between U.S. non-branch material entities; [11] and

(E) Develop contingency strategies to maintain funding for U.S. non-branch material entities and identified critical operations in the event of a disruption in the specified firm's current funding model.[12]

Resolution Liquidity Adequacy and Positioning (RLAP). With respect to RLAP, the firm should be able to measure the stand-alone liquidity position of each U.S. non-branch material entity—*i.e.,* the high-quality liquid assets (HQLA) at the U.S. non-branch material entity less net outflows to third parties and affiliates—and ensure that liquidity is readily available to meet any deficits. The RLAP model should cover a period of at least 30 days and reflect the idiosyncratic liquidity profile of the U.S. IHC and risk of each U.S. IHC subsidiary. The model should balance the reduction in frictions associated with holding liquidity directly at the U.S. IHC subsidiary with the flexibility provided by holding HQLA at the U.S. IHC or at a U.S. IHC subsidiary available to meet unanticipated outflows at other U.S. IHC subsidiaries.[13] The firm should not rely exclusively on either full pre-positioning or U.S. IHC contributable resources to execute its U.S. resolution strategy, unless it has only one U.S. IHC subsidiary that is an operating subsidiary.

The model [14] should ensure that on a consolidated basis the U.S. IHC holds sufficient HQLA to cover net liquidity outflows of the U.S. non-branch material entities. The model should also measure the stand-alone net liquidity positions of each U.S. non-branch material entity. The stand-alone net liquidity position of each U.S. non-branch material entity (HQLA less net outflows) should be measured using the firm's internal liquidity stress test assumptions and should treat inter-affiliate exposures in the same manner as third-party exposures. For example, an overnight unsecured exposure to a non-U.S. affiliate should be assumed to mature. Finally, the firm should not assume that a net liquidity surplus at any U.S. IHC subsidiary that is a depository institution could be moved to meet net liquidity deficits at an affiliate, or to augment U.S. IHC resources, consistent with Regulation W.

Additionally, the RLAP methodology should take into account for each of the U.S. IHC, U.S. IHC subsidiaries, and any branch that is a material entity (A) the daily contractual mismatches between their respective inflows and outflows; (B) their respective daily flows from movement of cash and collateral for all inter-affiliate transactions; and (C) their respective daily stressed liquidity flows and trapped liquidity as a result of actions taken by clients, counterparties, key FMUs, and foreign supervisors, among others.

In calculating its RLAP estimate, the U.S. IHC should calculate its liquidity position with respect to its foreign parent, branches and agencies, and other affiliates (together, affiliates) separately from its liquidity position with respect to third parties, and should not offset inflows from affiliated parties against outflows to external parties. In addition, a U.S. IHC should use cash-flow sources from its affiliates to offset cash-flow needs of its affiliates only to the extent that the term of the cash-flow source from its affiliates is the same as, or shorter than, the term of the cash-flow need of its affiliates.[15]

Resolution Liquidity Execution Need (RLEN). The firm should have a methodology for estimating the liquidity needed after the U.S. IHC's bankruptcy filing to stabilize any surviving U.S. IHC subsidiaries and to allow those entities to operate post-filing, in accordance with the U.S. strategy.

The firm's RLEN methodology should:

A. Estimate the minimum operating liquidity (MOL) needed at each U.S. IHC subsidiary that is a material entity to ensure those entities could continue to operate, to the extent relied upon in the U.S. resolution strategy, after implementation of the U.S. resolution strategy and/or to support a wind-down strategy;

B. Provide daily cash flow forecasts by U.S. IHC subsidiary to support estimation of peak funding needs to stabilize each entity under resolution;

C. Provide a comprehensive breakout of all inter-affiliate transactions and arrangements that could impact the MOL or peak funding needs estimates for the U.S. IHC subsidiaries; and

D. Estimate the minimum amount of liquidity required at each U.S. IHC subsidiary to meet the MOL and peak needs noted above, which would inform the provision of financial resources from the foreign parent to the U.S. IHC, or if the foreign parent is unable or unwilling to provide such financial support, any preparatory resolution-related actions.

The MOL estimates should capture U.S. IHC subsidiaries' intraday liquidity requirements, operating expenses, working capital needs, and inter-affiliate funding frictions to ensure that U.S. IHC subsidiaries could operate without disruption during the resolution.

The peak funding needs estimates should be projected for each U.S. IHC subsidiary and cover the length of time the firm expects it would take to stabilize that U.S. IHC subsidiary. Inter-affiliate funding frictions should be taken into account in the estimation process.

The firm's forecasts of MOL and peak funding needs should ensure that U.S. IHC subsidiaries could operate through resolution consistent with regulatory requirements, market expectations, and the firm's post-failure strategy. These forecasts should inform the RLEN estimate, *i.e.,* the minimum amount of HQLA required to facilitate the execution of the firm's strategy for the U.S. IHC subsidiaries.

For nonsurviving U.S. IHC subsidiaries, the firm should provide analysis and an explanation of how the material entity's resolution could be accomplished within a reasonable period of time and in a manner that substantially mitigates the risk of serious adverse effects on U.S. financial stability. For example, if a U.S. IHC subsidiary that is a broker-dealer is assumed to fail and enter resolution under the Securities Investor Protection Act, the firm should provide an analysis of the potential impacts on funding and asset markets and on prime brokerage clients, bearing in mind the objective of an orderly resolution.

U.S. MPOE

The firm should have the liquidity capabilities necessary to execute its U.S. resolution strategy. A Plan with a U.S. MPOE strategy should include analysis and projections of a range of liquidity needs during resolution, including intraday; reflect likely failure and resolution scenarios; and consider the guidance on assumptions provided in Section X, Format and Structure of Plans; Assumptions.

V. Governance Mechanisms

U.S. SPOE

A firm should identify the governance mechanisms that would ensure that communication and coordination occur between the boards of the U.S. IHC or a U.S. subsidiary and the foreign parent to facilitate the provision of financial support, or if not forthcoming, any preparatory resolution-related actions to facilitate an orderly resolution. *Playbooks, Foreign Parent Support, and Triggers.* Governance playbooks should detail the board and senior management actions of U.S. non-branch material entities that would be needed under the firm's U.S. resolution strategy. The governance playbooks should also include a discussion of: (A) the firm's proposed U.S. communications strategy, both internal and external; [16] (B) the fiduciary responsibilities of the applicable board(s) of directors or other similar governing bodies and how planned actions would be consistent with such responsibilities applicable at the time actions are expected to be taken; (C) potential conflicts of interest, including interlocking boards of directors; (D) any employee retention policy; and (E) any other limitations on the authority of the U.S. IHC and the U.S. IHC subsidiary boards and senior management to implement the U.S. resolution strategy. All responsible parties and timeframes for action should be identified. Governance playbooks should be

[11] *Id.*

[12] 12 CFR 252.156(e).

[13] To the extent HQLA is held at the U.S. IHC or at a U.S. IHC subsidiary, the model must consider whether such funds are freely available. To be freely available, the HQLA must be free of legal, regulatory, contractual, and other restrictions on the ability of the material entity to liquidate, sell, or transfer the asset.

[14] ''Model'' refers to the set of calculations required by Regulation YY that estimate the U.S. IHC's liquidity position.

[15] The U.S. IHC should calculate its cash-flow sources from its affiliates consistent with the net internal stressed cash-flow need calculation in § 252.157(c)(2)(iv) of Regulation YY.

[16] External communications include those with U.S. and foreign authorities and other external stakeholders.

updated periodically for each entity whose governing body would need to act under the firm's U.S. resolution strategy.

In order to meet liquidity needs at the U.S. non-branch material entities, the firm may either fully pre-position liquidity in the U.S. non-branch material entities or develop a mechanism for planned foreign parent support, of any amount not pre-positioned, for the successful execution of the U.S. strategy. Mechanisms to support readily available liquidity may include a term liquidity facility between the U.S. IHC and the foreign parent that can be drawn as needed and as informed by the firm's RLEN estimates and liquidity positioning. To the extent the preferred global resolution strategy for the firm is a home country SPOE resolution, the mechanism should be designed so as to not interfere with the execution of that strategy. The Plan should include analysis of how the U.S. IHC/foreign parent facility is funded or buffered for by the foreign parent. The sufficiency of the liquidity should be informed by the firm's RLAP and RLEN estimates for the U.S. non-branch material entities. Additionally, the Plan should include analysis of the potential challenges to the planned foreign parent support mechanism and associated mitigants. Where applicable, the analysis should discuss applicable non-U.S. law and cross-border legal challenges (*e.g.,* challenges related to enforcing contracts governed by foreign law). The analysis should identify the mitigant(s) to such challenges that the firm considers most effective.

The firm should be prepared to increase communication and coordination at the appropriate time in order to mitigate financial, operational, legal, and regulatory vulnerabilities. To facilitate this communication and coordination, the firm should establish clearly identified triggers linked to specific actions for:

(A) The escalation of information to U.S. senior management, U.S. risk committee and U.S. governing bodies to potentially take the corresponding actions as the U.S. operations experience material financial distress, leading eventually to the decision to implement the U.S. resolution strategy.

i. Triggers should identify when and under what conditions the U.S. material entities would transition from business-as-usual conditions to a stress period.

ii. Triggers should also take into consideration changes in the foreign parent's condition from business-as-usual conditions through resolution.

(B) The escalation of information to and discussions with the appropriate governing bodies to confirm whether the governing bodies are able and willing to provide financial resources to support U.S. operations.

i. Triggers should be based on the firm's methodology for forecasting the liquidity and capital needed to facilitate the U.S. strategy. For example, triggers may be established that reflect U.S. non-branch material entities' financial resources approaching RCEN/RLEN estimates, with corresponding actions to confirm the foreign parent's financial capability and willingness to provide sufficient support.

Corresponding escalation procedures, actions, and timeframes should be constructed so that breach of the triggers will allow prerequisite actions to be completed. For example, breach of the triggers needs to occur early enough to provide for communication, coordination, and confirmation of the provision of resources from the foreign parent.

Support Within the United States. If the Plan provides for the provision of capital and liquidity by a U.S. material entity (*e.g.,* the U.S. IHC) to its U.S. affiliates prior to the U.S. IHC's bankruptcy filing (Support), the Plan should also include a detailed legal analysis of the potential state law and bankruptcy law challenges and mitigants to providing the Support. Specifically, the analysis should identify potential legal obstacles and explain how the firm would seek to ensure that Support would be provided as planned. Legal obstacles include claims of fraudulent transfer, preference, breach of fiduciary duty, and any other applicable legal theory identified by the firm. The analysis also should include related claims that may prevent or delay an effective recapitalization, such as equitable claims to enjoin the transfer (*e.g.,* imposition of a constructive trust by the court). The analysis should apply the actions contemplated in the Plan regarding each element of the claim, the anticipated timing for commencement and resolution of the claims, and the extent to which adjudication of such claim could affect execution of the firm's U.S. resolution strategy. The analysis should include mitigants to the potential challenges to the planned Support. The Plan should identify the mitigant(s) to such challenges that the firm considers most effective.

Furthermore, the Plan should describe key motions to be filed at the initiation of any bankruptcy proceeding related to (as appropriate) asset sales and other non-routine matters.

U.S. MPOE

A firm should identify the governance mechanisms that would ensure that communication and coordination occur between the governing body of the U.S. operations (for example, the boards of the U.S. IHC or a U.S. subsidiary) and the foreign parent to facilitate any preparatory resolution-related actions to facilitate an orderly resolution. The Plan should also detail the board and senior management actions of U.S. material entities that would be needed under the firm's U.S. resolution strategy.

The firm should be prepared to increase communication and coordination at the appropriate time in order to mitigate financial, operational, legal, and regulatory vulnerabilities. To facilitate this communication and coordination, the firm should establish clearly identified triggers linked to specific actions for the escalation of information to U.S. senior management, U.S. risk committee and U.S. governing bodies to potentially take the corresponding actions as the U.S. operations experience material financial distress, leading eventually to the decision to implement the U.S. resolution strategy. The triggers should:

A. Identify when and under what conditions the U.S. material entities would transition from business-as-usual conditions to a stress period.

B. Take into consideration changes in the foreign parent's condition from business-as-usual conditions through resolution.

VI. Operational

U.S. SPOE

Payment, Clearing, and Settlement Activities

Framework. Maintaining continuity of payment, clearing, and settlement (PCS) services is critical for the orderly resolution of firms that are either users or providers,[17] or both, of PCS services. A firm should demonstrate capabilities for continued access to PCS services essential to an orderly resolution under its U.S. resolution strategy through a framework to support such access by:

- Identifying clients,[18] FMUs, and agent banks as key from the firm's perspective for the firm's U.S. material entities, identified critical operations, and core business lines, using both quantitative (volume and value)[19] and qualitative criteria;
- Mapping U.S. material entities, identified critical operations, core business lines, and key clients of the firm's U.S. operations to both key FMUs and key agent banks; and
- Developing a playbook for each key FMU and key agent bank essential to an orderly resolution under its U.S. resolution strategy that reflects the firm's role(s) as a user and/or provider of PCS services.

The framework should address direct relationships (*e.g.,* a firm's direct membership in an FMU, a firm's provision of clients with PCS services through its own operations in the United States, or a firm's contractual relationship with an agent bank) and indirect relationships (*e.g.,* a firm's provision of clients with access to the relevant FMU or agent bank through the firm' membership in or relationship with that FMU or agent bank, or a firm's U.S. affiliate and branch provision of U.S. material entities and key clients of the firm's U.S. operations

[17] A firm is a user of PCS services if it accesses PCS services through an agent bank or it uses the services of a financial market utility (FMU) through its membership in that FMU or through an agent bank. A firm is a provider of PCS services if it provides PCS services to clients as an agent bank or it provides clients with access to an FMU or agent bank through the firm's membership in or relationship with that service provider. A firm is also a provider if it provides clients with PCS services through the firm's own operations (*e.g.,* payment services or custody services).

[18] For purposes of this section, a client is an individual or entity, including affiliates of the firm, to whom the firm provides PCS services and any related credit or liquidity offered in connection with those services.

[19] In identifying entities as key, examples of quantitative criteria may include: for a client, transaction volume/value, market value of exposures, assets under custody, usage of PCS services, and any extension of related intraday credit or liquidity; for an FMU, the aggregate volumes and values of all transactions processed through such FMU; and for an agent bank, assets under custody, the value of cash and securities settled, and extensions of intraday credit.

with access to an FMU or agent bank). The framework also should address the potential impact of any disruption to, curtailment of, or termination of such direct and indirect relationships on the firm's U.S. material entities, identified critical operations, and core business lines, as well as any corresponding impact on key clients of the firm's U.S. operations.

Playbooks for Continued Access to PCS Services. The firm is expected to provide a playbook for each key FMU and key agent bank that addresses considerations that would assist the firm and key clients of the firm's U.S. operations in maintaining continued access to PCS services in the period leading up to and including the firm's resolution under its U.S. resolution strategy.

Each playbook should provide analysis of the financial and operational impact to the firm's U.S. material entities and key clients of the firm's U.S. operations due to adverse actions that may be taken by a key FMU or a key agent bank and contingency actions that may be taken by the firm. Each playbook also should discuss any possible alternative arrangements that would allow continued access to PCS services for the firm's U.S. material entities, identified critical operations and core business lines, and key clients of the firm's U.S. operations, while the firm is in resolution under its U.S. resolution strategy. The firm is not expected to incorporate a scenario in which it loses key FMU or key agent bank access into its U.S. resolution strategy or its RLEN and RCEN estimates. The firm should continue to engage with key FMUs, key agent banks, and key clients of the firm's U.S. operations, and playbooks should reflect any feedback received during such ongoing outreach.

Content Related to Users of PCS Services. Individual key FMU and key agent bank playbooks should include:

- Descriptions of the firm's relationship as a user, including through indirect access, with the key FMU or key agent bank and the identification and mapping of PCS services to the firm's U.S. material entities, identified critical operations, and core business lines that use those PCS services;
- Discussion of the potential range of adverse actions that may be taken by that key FMU or key agent bank when the firm is in resolution under its U.S. resolution strategy,[20] the operational and financial impact of such actions on the firm's U.S. material entities, identified critical operations, and core business lines, and contingency arrangements that may be initiated by the firm in response to potential adverse actions by the key FMU or key agent bank; and
- Discussion of PCS-related liquidity sources and uses in business-as-usual (BAU), in stress, and in the resolution period, presented by currency type (with U.S. dollar equivalent) and by U.S. material entity.
  - PCS Liquidity Sources: These may include the amounts of intraday extensions of credit, liquidity buffer, inflows from FMU participants, and prefunded amounts of key clients of the firm's U.S. operations in BAU, in stress, and in the resolution period. The playbook also should describe intraday credit arrangements (*e.g.,* facilities of the key FMU, key agent bank, or a central bank) and any similar custodial arrangements that allow ready access to a firm's funds for PCS-related key FMU and key agent bank obligations (including margin requirements) in all currencies relevant to the firm's participation, including placements of firm liquidity at central banks, key FMUs, and key agent banks.
  - PCS Liquidity Uses: These may include margin and prefunding by the firm and key clients of the firm's U.S. operations, and intraday extensions of credit, including incremental amounts required during resolution.
  - Intraday Liquidity Inflows and Outflows: The playbook should describe the firm's ability to control intraday liquidity inflows and outflows and to identify and prioritize time-specific payments. The playbook also should describe any account features that might restrict the firm's ready access to its liquidity sources.

Content Related to Providers of PCS Services.[21] Individual key FMU and key agent bank playbooks should include:

- Identification and mapping of PCS services to the firm's U.S. material entities, identified critical operations, and core business lines that provide those PCS services, and a description of the scale and the way in which each provides PCS services;
- Identification and mapping of PCS services to key clients of the firm's U.S. operations to whom the firm's U.S. material entities, identified critical operations, and core business lines provide such PCS services and any related credit or liquidity offered in connection with such services;
- Discussion of the potential range of firm contingency arrangements available to minimize disruption to the provision of PCS services to key clients of the firm's U.S. operations, including the viability of transferring activity and any related assets of key clients of the firm's U.S. operations, as well as any alternative arrangements that would allow the key clients of the firm's U.S. operations continued access to PCS services if the firm could no longer provide such access (*e.g.,* due to the firm's loss of key FMU or key agent bank access), and the financial and operational impacts of such arrangements from the firm's perspective;
- Descriptions of the range of contingency actions that the firm may take concerning its provision of intraday credit to key clients of the firm's U.S. operations, including analysis quantifying the potential liquidity the firm could generate by taking such actions in stress and in the resolution period, such as (i) requiring key clients of the firm's U.S. operations to designate or appropriately pre-position liquidity, including through prefunding of settlement activity, for PCS-related key FMU and key agent bank obligations at specific material entities of the firm (*e.g.,* direct members of key FMUs) or any similar custodial arrangements that allow ready access to funds for such obligations in all relevant currencies of key clients of the firm's U.S. operations; (ii) delaying or restricting PCS activity of key clients of the firm's U.S. operations; and (iii) restricting, imposing conditions upon (*e.g.,* requiring collateral), or eliminating the provision of intraday credit or liquidity to key clients of the firm's U.S. operations; and
- Descriptions of how the firm will communicate to key clients of the firm's U.S. operations the potential impacts of implementation of any identified contingency arrangements or alternatives, including a description of the firm's methodology for determining whether any additional communication should be provided to some or all key clients of the firm's U.S. operations (*e.g.,* due to BAU usage of that access and/or related intraday credit or liquidity of the key client of the firm's U.S. operations), and the expected timing and form of such communication.

Capabilities. The firm is expected to have and describe capabilities to understand, for each U.S. material entity, the obligations and exposures associated with PCS activities, including contractual obligations and commitments. The firm should be able to:

- Track the following items by (i) U.S. material entity and, (ii) with respect to customers, counterparties, and agents and service providers, by location and jurisdiction:
  - PCS activities, with each activity mapped to the relevant material entities, identified critical operations, and core business lines; [22]
  - Customers and counterparties for PCS activities, including values and volumes of various transaction types, as well as used and unused capacity for all lines of credit; [23]
  - Exposures to and volumes transacted with FMUs, nostro agents, and custodians; and [24]
  - Services provided and service level agreements, as applicable, for other current agents and service providers (internal and external); [25]
- Assess the potential effects of adverse actions by FMUs, nostro agents, custodians, and other agents and service providers, including suspension or termination of membership or services, on the firm's U.S. operations and customers and counterparties of those U.S. operations; [26]
- Develop contingency arrangements in the event of such adverse actions; [27] and
- Quantify the liquidity needs and operational capacity required to meet all PCS

[20] Examples of potential adverse actions may include increased collateral and margin requirements and enhanced reporting and monitoring.

[21] Where a firm is a provider of PCS services through the firm's own operations in the United States, the firm is expected to produce a playbook for the U.S. material entities that provide those services, addressing each of the items described under ''Content Related to Providers of PCS Services,'' which include contingency arrangements to permit the firm's key clients of the firm's U.S. operations to maintain continued access to PCS services.

[22] 12 CFR 243.5(e)(12) and 12 CFR 381.5(e)(12).

[23] *Id.*

[24] 12 CFR 252.156(g).

[25] 12 CFR 243.5(f)(l)(i) and 12 CFR 381.5(f)(1)(i).

[26] 12 CFR 252.156(e).

[27] *Id.*

obligations, including any change in demand for and sources of liquidity needed to meet such obligations.

Managing, Identifying, and Valuing Collateral. The firm is expected to have and describe its capabilities to manage, identify, and value the collateral that the U.S. non-branch material entities receive from and post to external parties and affiliates. Specifically, the firm should:

- Be able to query and provide aggregate statistics for all qualified financial contracts concerning cross-default clauses, downgrade triggers, and other key collateral-related contract terms—not just those terms that may be impacted in an adverse economic environment—across contract types, business lines, legal entities, and jurisdictions;
- Be able to track both collateral sources (*i.e.,* counterparties that have pledged collateral) and uses (*i.e.,* counterparties to whom collateral has been pledged) at the CUSIP level on at least a t+1 basis;
- Have robust risk measurements for cross-entity and cross-contract netting, including consideration of where collateral is held and pledged;
- Be able to identify CUSIP and asset class level information on collateral pledged to specific central counterparties by legal entity on at least a t+1 basis;
- Be able to track and report on inter-branch collateral pledged and received on at least a t+1 basis and have clear policies explaining the rationale for such inter-branch pledges, including any regulatory considerations; and
- Have a comprehensive collateral management policy that outlines how the firm as a whole approaches collateral and serves as a single source for governance.[28]

In addition, as of the conclusion of any business day, the firm should be able to:

- Identify the legal entity and geographic jurisdiction where counterparty collateral is held;
- Document all netting and re-hypothecation arrangements with affiliates and external parties, by legal entity; and
- Track and manage collateral requirements associated with counterparty credit risk exposures between affiliates, including foreign branches.

At least on a quarterly basis, the firm should be able to:

- Review the material terms and provisions of International Swaps and Derivatives Association Master Agreements and the Credit Support Annexes, such as termination events, for triggers that may be breached as a result of changes in market conditions;
- Identify legal and operational differences and potential challenges in managing collateral within specific jurisdictions, agreement types, counterparty types, collateral forms, or other distinguishing characteristics; and
- Forecast changes in collateral requirements and cash and non-cash collateral flows under a variety of stress scenarios.

Management Information Systems. The firm should have the management information systems (MIS) capabilities to readily produce data on a U.S. legal entity basis (including any U.S. branch) and have controls to ensure data integrity and reliability. The firm also should perform a detailed analysis of the specific types of financial and risk data that would be required to execute the U.S. resolution strategy and how frequently the firm would need to produce the information, with the appropriate level of granularity. The firm should have the capabilities to produce the following types of information in a timely manner and describe these capabilities in the Plan:

- Financial statements for each material entity (at least monthly);
- External and inter-affiliate credit exposures, both on- and off-balance sheet, by type of exposure, counterparty, maturity, and gross payable and receivable;
- Gross and net risk positions with internal and external counterparties;
- Guarantees, cross holdings, financial commitments and other transactions between material entities;
- Data to facilitate third-party valuation of assets and businesses, including risk metrics;
- Key third-party contracts, including the provider, provider's location, service(s) provided, legal entities that are a party to or a beneficiary of the contract, and key contractual rights (for example, termination and change in control clauses);
- Legal agreement information, including parties to the agreement and key terms and interdependencies (for example, change in control, collateralization, governing law, termination events, guarantees, and cross-default provisions);
- Service level agreements between affiliates, including the service(s) provided, the legal entity providing the service, legal entities receiving the service, and any termination/transferability provisions;
- Licenses and memberships to all exchanges and value transfer networks, including FMUs;
- Key management and support personnel, including dual-hatted employees, and any associated retention agreements;
- Agreements and other legal documents related to property, including facilities, technology systems, software, and intellectual property rights. The information should include ownership, physical location, where the property is managed and names of legal entities and lines of business that the property supports; and
- Updated legal records for domestic and foreign entities, including entity type and purpose (for example, holding company, bank, broker dealer, and service entity), jurisdiction(s), ownership, and regulator(s).

Shared and Outsourced Services. The firm should maintain a fully actionable implementation plan to ensure the continuity of shared services that support identified critical operations[29] or core business lines and robust arrangements to support the continuity of shared and outsourced services, including, without limitation, appropriate plans to retain key personnel relevant to the execution of the firm's strategy. For example, specified firms should evaluate internal and external dependencies and develop documented strategies and contingency arrangements for the continuity or replacement of the shared and outsourced services that are necessary to maintain identified critical operations or core business lines. Examples may include personnel, facilities, systems, data warehouses, and intellectual property. Specified firms also should maintain current cost estimates for implementing such strategies and contingency arrangements.

If a material entity provides shared services that support identified critical operations or core business lines, and the continuity of these shared services relies on the assumed cooperation, forbearance, or other non-intervention of regulator(s) in any jurisdiction, the Plan should discuss the extent to which the resolution or insolvency of any other group entities operating in that same jurisdiction may adversely affect the assumed cooperation, forbearance, or other regulatory non-intervention. If a material entity providing shared services that support identified critical operations or core business lines is located outside of the United States, the Plan should discuss how the firm will ensure the operational continuity of such shared services through resolution.

The firm should (A) maintain an identification of all shared services that support identified critical operations or core business lines; (B) maintain a mapping of how/where these services support its core business lines and identified critical operations; (C) incorporate such mapping into legal entity rationalization criteria and implementation efforts; and (D) mitigate identified continuity risks through establishment of service-level agreements (SLAs) for all shared services that support identified critical operations or core business lines.

SLAs should fully describe the services provided, reflect pricing considerations on an arm's-length basis where appropriate, and incorporate appropriate terms and conditions to (A) prevent automatic termination upon certain resolution-related events and (B) achieve continued provision of such services during resolution.[30] The firm should also store SLAs in a central repository or repositories located in or immediately accessible from the U.S. at all times, including in resolution (and subject to enforceable access arrangements) in a searchable format. In addition, the firm should ensure the financial resilience of internal shared service providers by maintaining working capital for six months (or through the period of stabilization as required in the firm's U.S. resolution strategy) in such entities sufficient to cover contract costs, consistent with the U.S.

[28] The policy may reference subsidiary or related policies already in place, as implementation may differ based on business line or other factors.

[29] ''Shared services that support identified critical operations'' or ''critical shared services'' are those that support identified critical operations conducted in whole or in material part in the United States.

[30] The firm should consider whether these SLAs should be governed by the laws of a U.S. state and expressly subject to the jurisdiction of a court in the U.S.

resolution strategy. The firm should demonstrate that such working capital is held in a manner that ensures its availability for its intended purpose.

The firm should identify all critical service providers and outsourced services that support identified critical operations or core business lines and identify any that could not be promptly substituted. The firm should (A) evaluate the agreements governing these services to determine whether there are any that could be terminated upon commencement of any resolution despite continued performance, and (B) update contracts to incorporate appropriate terms and conditions to prevent automatic termination upon commencement of any resolution proceeding and facilitate continued provision of such services. Relying on entities projected to survive during resolution to avoid contract termination is insufficient to ensure continuity. In the Plan, the firm should document the amendment of any such agreements governing these services.

Qualified Financial Contracts. The Plan should reflect the current state of how the early termination of qualified financial contracts could impact the resolution of the firm's operations, including potential termination of any contracts that are not subject to contractual or regulatory stays of cross-default rights. Specifically, the Plan is expected to reflect the firm's progress regarding contractual stays in qualified financial contracts as of the date the firm submits its Plan or as of a specified earlier date. A firm that has adhered to the International Swaps and Derivatives Association's (ISDA) 2018 U.S. Resolution Stay Protocol or its antecedent, ISDA's 2015 Universal Resolution Stay Protocol (together, the Protocols) should discuss the extent of the firm's adherence to the Protocols in its Plan (and may also discuss the impact on U.S. operations of the firm's adherence to ISDA's 2016 Jurisdictional Modular Protocol on its non-U.S. operations). A Plan should also explain the firm's processes for entering bilateral contracts with third-party entities that do not adhere to the Protocols and provide examples of the contractual language that is used under those circumstances.

U.S. MPOE

Payment, Clearing, and Settlement (PCS) Capabilities. Firms are expected to have and describe capabilities to understand, for each U.S. material entity, its obligations and exposures associated with PCS activities, including contractual obligations and commitments. For example, firms should be able to:

- As users of PCS services:
  - Track the following items by: (i) U.S. material entity; and (ii) with respect to customers, counterparties, and agents and service providers, location and jurisdiction:
    - PCS activities, with each activity mapped to the relevant material entities, identified critical operations, and core business lines;
    - Customers and counterparties for PCS activities, including values and volumes of various transaction types, as well as used and unused capacity for all lines of credit;
    - Exposures to and volumes transacted with FMUs, nostro agents, and custodians; and
    - Services provided and service level agreements, as applicable, for other current agents and service providers (internal and external).
  - Assess the potential effects of adverse actions by FMUs, nostro agents, custodians, and other agents and service providers, including suspension or termination of membership or services, on the firm's U.S. operations and customers and counterparties of those U.S. operations;
  - Develop contingency arrangements in the event of such adverse actions; and
  - Quantify the liquidity needs and operational capacity required to meet all PCS obligations, including intraday requirements.
- As providers of PCS services:
  - Identify their PCS clients of their U.S operations and the services they provide to these clients, including volumes and values of transactions;
  - Quantify and explain time-sensitive payments; and
  - Quantify and explain intraday credit provided.

Managing, Identifying and Valuing Collateral. The firm should have appropriate capabilities related to managing, identifying, and valuing the collateral that the U.S. non-branch material entities receive from and posts to external parties and its affiliates, including tracking collateral received, pledged, and available at the CUSIP level and measuring exposures.

Management Information Systems. The firm should have the management information systems (MIS) capabilities to readily produce data on a U.S. legal entity basis (including any U.S. branch) and have controls to ensure data integrity and reliability. The firm also should perform a detailed analysis of the specific types of financial and risk data that would be required to execute the U.S. resolution strategy. The firm should have the capabilities to produce the following types of information, as appropriate for its U.S. resolution strategy, in a timely manner and describe these capabilities in the Plan:

- Financial statements for each material entity (at least monthly);
- External and inter-affiliate credit exposures, both on- and off-balance sheet, by type of exposure, counterparty, maturity, and gross payable and receivable;
- Gross and net risk positions with internal and external counterparties;
- Guarantees, cross holdings, financial commitments and other transactions between material entities;
- Data to facilitate third-party valuation of assets and businesses, including risk metrics;
- Key third-party contracts, including the provider, provider's location, service(s) provided, legal entities that are a party to or a beneficiary of the contract, and key contractual rights (for example, termination and change in control clauses);
- Legal agreement information, including parties to the agreement and key terms and interdependencies (for example, change in control, collateralization, governing law, termination events, guarantees, and cross-default provisions);
- Service level agreements between affiliates, including the service(s) provided, the legal entity providing the service, legal entities receiving the service, and any termination/transferability provisions;
- Licenses and memberships to all exchanges and value transfer networks, including FMUs;
- Key management and support personnel, including dual-hatted employees, and any associated retention agreements;
- Agreements and other legal documents related to property, including facilities, technology systems, software, and intellectual property rights. The information should include ownership, physical location, where the property is managed and names of legal entities and lines of business that the property supports; and
- Updated legal records for domestic and foreign entities, including entity type and purpose (for example, holding company, bank, broker dealer, and service entity), jurisdiction(s), ownership, and regulator(s).

Shared and Outsourced Services. The firm should maintain robust arrangements to support the continuity of shared and outsourced services that support any identified critical operations or are material to the execution of the U.S. resolution strategy, including appropriate plans to retain key personnel relevant to the execution of the firm's strategy. For example, specified firms should evaluate internal and external dependencies and develop documented strategies and contingency arrangements for the continuity or replacement of the shared and outsourced services that are necessary to maintain identified critical operations or are material to the execution of the U.S. resolution strategy. Examples may include personnel, facilities, systems, data warehouses, and intellectual property. Specified firms also should maintain current cost estimates for implementing such strategies and contingency arrangements. If a material entity provides shared services that support identified critical operations,[31] or are material to the execution of the U.S. resolution strategy, and the continuity of these shared services relies on the assumed cooperation, forbearance, or other non-intervention of regulator(s) in any jurisdiction, the Plan should discuss the extent to which the resolution or insolvency of any other group entities operating in that same jurisdiction may adversely affect the assumed cooperation, forbearance, or other regulatory non-intervention. If a material entity providing shared services that support identified critical operations, or are material to the execution of the U.S. resolution strategy, is located outside of the United States, the Plan should discuss how the firm will ensure the operational continuity of such shared services through resolution.

The firm should (A) maintain an identification of all shared services that support identified critical operations or are material to the execution of the U.S. resolution strategy, and (B) mitigate identified continuity risks through

[31] This should be interpreted to include data access and intellectual property rights.

establishment of SLAs for all shared services supporting identified critical operations or are material to the execution of the U.S. resolution strategy. SLAs should fully describe the services provided and incorporate appropriate terms and conditions to: (A) prevent automatic termination upon certain resolution-related events; and (B) achieve continued provision of such services during resolution.[32]

The firm should identify all critical service providers and outsourced services that support identified critical operations or are material to the execution of the U.S. resolution strategy. Any of these services that cannot be promptly substituted should be identified in a firm's Plan. The firm should: (A) evaluate the agreements governing these services to determine whether there are any that could be terminated upon commencement of any resolution despite continued performance; and (B) update contracts to incorporate appropriate terms and conditions to prevent automatic termination upon commencement of any resolution proceeding and facilitate continued provision of such services. Relying on entities projected to survive during resolution to avoid contract termination is insufficient to ensure continuity. In the Plan, the firm should document the amendment of any such agreements governing these services.

VII. Branches

U.S. SPOE & U.S. MPOE

Continuity of Operations. If the Plan assumes that federal or state regulators, as applicable, do not take possession of any U.S. branch that is a material entity, the Plan should support that assumption.

For any U.S. branch that is a material entity, the Plan should describe and demonstrate how the branch would continue to facilitate FMU access for identified critical operations and meet funding needs. For such a U.S. branch, the Plan should describe how it would meet supervisory requirements imposed by state regulators or the appropriate Federal banking agency, as appropriate, including maintaining a net due to position and complying with heightened asset maintenance requirements.[33] In addition, the Plan should describe how such a U.S. branch's third-party creditors would be protected such that the state regulator or appropriate Federal banking agency would allow the branch to continue operations.

Impact of the Cessation of Operations. The Plan should provide an analysis of the impact of the cessation of operations of any U.S. branch that is a material entity on the firm's FMU access and identified critical operations, even if such scenario is not contemplated as part of the U.S. resolution strategy. The analysis should include a description of how identified critical operations could be transferred to a U.S. IHC subsidiary or sold in resolution, the obstacles presented by the cessation of shared services that support identified critical operations provided by any U.S. branch that is a material entity, and mitigants that could address such obstacles in a timely manner.

VIII. Legal Entity Rationalization & Separability

Legal Entity Rationalization

U.S. SPOE

Legal Entity Rationalization Criteria (LER Criteria). A firm should develop and implement legal entity rationalization criteria that support the firm's U.S. resolution strategy and minimize risk to U.S. financial stability in the event of resolution. LER Criteria should consider the best alignment of legal entities and business lines to improve the resolvability of U.S. operations under different market conditions. LER Criteria should govern the corporate structure and arrangements between the U.S. subsidiaries and U.S. branches in a way that facilitates resolvability of the firm's U.S. operations as the firm's U.S. activities, technology, business models, or geographic footprint change over time.

Specifically, application of the criteria should:

(A) Ensure that the allocation of activities across the firm's U.S. branches and U.S. non-branch material entities support the firm's U.S. resolution strategy and minimize risk to U.S. financial stability in the event of resolution;

(B) Facilitate the recapitalization and liquidity support of U.S. IHC subsidiaries, as required by the firm's U.S. resolution strategy. Such criteria should include clean lines of ownership and clean funding pathways between the foreign parent, the U.S. IHC, and U.S. IHC subsidiaries;

(C) Facilitate the sale, transfer, or wind-down of certain discrete operations within a timeframe that would meaningfully increase the likelihood of an orderly resolution in the United States, including provisions for the continuity of associated services and mitigation of financial, operational, and legal challenges to separation and disposition;

(D) Adequately protect U.S. subsidiary insured depository institutions from risks arising from the activities of any nonbank U.S. subsidiaries (other than those that are subsidiaries of an insured depository institution); and

(E) Minimize complexity that could impede an orderly resolution in the United States and minimize redundant and dormant entities.

These criteria should be built into the firm's ongoing process for creating, maintaining, and optimizing the firm's U.S. structure and operations on a continuous basis.

U.S. MPOE

Legal Entity Structure. A firm should maintain a legal entity structure that supports the firm's U.S. resolution strategy and minimizes risk to U.S. financial stability in the event of the resolution of the firm's U.S. operations. The firm should consider factors such as business activities; banking group structures and booking models and practices; and potential sales, transfers, or wind-downs during resolution. The Plan should describe how the firm's U.S. legal entity structure aligns core business lines and any identified critical operations with the firm's material entities to support the firm's U.S. resolution strategy. To the extent a material entity IDI relies upon an affiliate that is not the IDI's subsidiary during resolution of its U.S. entities, including for the provision of shared services, the firm should discuss its rationale for the legal entity structure and associated resolution risks and potential mitigants.

The firm's corporate structure and arrangements among U.S. legal entities should be considered and maintained in a way that facilitates the firm's resolvability as its activities, technology, business models, or geographic footprint change over time.

Separability

U.S. SPOE

Separability. The firm should identify discrete U.S. operations that could be sold or transferred in resolution, with the objective of providing optionality in resolution under different market conditions.

A firm's separability options should be actionable, and impediments to their projected mitigation strategies should be identified in advance. Firms should consider potential consequences for U.S. financial stability of executing each option, taking into consideration impacts on counterparties, creditors, clients, depositors, and markets for specific assets. The level of detail and analysis should vary based on a firm's risk profile and scope of operations. Additionally, information systems should be robust enough to produce the required data and information needed to execute separability options.

Further, the firm should have, and be able to demonstrate, the capability to populate in a timely manner a data room with information pertinent to a potential divestiture of the identified separability options (including, but not limited to, carve-out financial statements, valuation analysis, and a legal risk assessment). Within the Plan, the firm should demonstrate how the firm's LER Criteria and implementation efforts support meeting the separability-related guidance above. The Plan should also provide the separability analysis noted above. Finally, the Plan should include a description of the firm's legal entity rationalization governance process.

U.S. MPOE

A Plan should include options for the sale, transfer, or disposal of U.S. significant assets, portfolios, legal entities, or business lines in resolution that may be executed in a reasonable period of time. For each option, supporting analysis should include: an execution plan that includes an estimated time frame for implementation, a description of any impediments to execution of the option, and mitigation strategies to address those impediments; a description of the assumptions underpinning the option; a financial impact assessment that describes the impact of executing the option; and an identified critical operation impact assessment that describes how execution of the option may affect the provision of any

[32] The firm should consider whether these SLAs should be governed by the laws of a U.S. state and expressly subject to the jurisdiction of a court in the United States.

[33] Firms should take into consideration historical practice, by applicable regulators, regarding asset maintenance requirements imposed during stress.

identified critical operation. Information systems should be robust enough to produce the required data and information needed to execute the options.

IX. Insured Depository Institution (IDI) Resolution

MPOE

If the Plan includes a strategy that contemplates the separate resolution of a U.S. IDI that is a material entity, the Plan should demonstrate how this could be achieved in a manner that is consistent with the overall objective of the Plan to substantially mitigate the risk that the failure of the specified firm would have serious adverse effects on financial stability in the United States while also complying with the statutory and regulatory requirements governing IDI resolution. More specifically,

- If the strategy is other than payout liquidation (*e.g.,* a bridge depository institution (BDI)), the Plan should provide information supporting the feasibility of this strategy. Under the FDI Act, the FDIC generally would complete a least-cost analysis when resolving a failed bank at the time of entry into resolution. A Plan may use an approach such as one of the following in lieu of performing a complete least-cost analysis to demonstrate the feasibility of the proposed strategy.[34]

○ A Plan may demonstrate that a strategy involving an all-deposit BDI would be permissible under the least-cost test of the FDI Act by presenting an analysis which shows that the strategy results in no loss to the Deposit Insurance Fund (DIF) by demonstrating that the incremental estimated cost to the DIF by having the BDI assume all uninsured deposits is offset by the preservation of franchise value connected to the uninsured deposits after accounting for the amount of any loss-absorbing debt instruments and other liabilities subordinate to the depositor class that would be left behind in the receivership.

○ A Plan may demonstrate the feasibility of a strategy involving a BDI that assumes all insured deposits and a portion of uninsured deposits by providing an advance dividend to uninsured depositors for a portion of their deposit claim, as well as the basis for that dividend, and pursuant to which a loss to the DIF occurs, by presenting an analysis comparing the cost of the proposed strategy to the cost of payout liquidation and demonstrating:

▪ The incremental estimated cost to the DIF created by the BDI's assumption of the portion of uninsured deposits assumed is offset by the franchise value preserved by maintaining the assumed uninsured deposits, after accounting for the amount of any long-term debt and other liabilities subordinate to the depositor class that would be left behind in the receivership; [35]

▪ The loss to the DIF under the proposed strategy (including the amounts paid by the DIF for more favorable treatment, relative to a payout liquidation, of a portion of uninsured deposits) is less than or equal to the loss to the DIF that would be incurred through a payout liquidation of the IDI; and

○ The deposit payout process for any uninsured deposits that remain in the receivership may be executed in a manner that substantially mitigates the risk of serious adverse effects on U.S. financial stability.

- If the Plan's strategy envisions a payout liquidation for the IDI, with or without use of a Deposit Insurance National Bank or a paying agent, the Plan should demonstrate how the deposit payout and asset liquidation process would be executed in a manner that substantially mitigates the risk of serious adverse effects on U.S. financial stability.
- In all cases, the Plan should show that implementation of the resolution, including the impact on depositors whose accounts are not transferred in whole or in part to the BDI, would not create the risk of serious adverse effects on U.S. financial stability.

Regardless of the IDI resolution strategy chosen, the Plan should assume asset valuations consistent with the severely adverse stress economic scenario and the IDI's condition as a failed institution, as referenced in ''*Guidance regarding Assumptions,*'' Items 4 and 7 below. The Plan, in light of such conditions, should explain the process for determining asset or business franchise values, including providing detailed supporting descriptions such as references to historical pricing, benchmarks, or recognized models; evidence supporting client attrition rates; and other relevant information.

With respect to exit from IDI resolution proceedings, a Plan could support the feasibility of an asset liquidation or BDI exit strategy by, for example, describing an actionable process, based on historical precedent or otherwise supportable projections, that winds down certain businesses, includes the sale of assets and deposits to multiple acquirers, or culminates in a capital markets transaction, such as an initial public offering or a private placement of securities.

X. Format and Structure of Plans; Assumptions

U.S. SPOE & U.S. MPOE

Format of Plan

Executive Summary. The Plan should contain an executive summary consistent with the Rule, which must include, among other things, a concise description of the key elements of the firm's strategy for an orderly resolution. In addition, the executive summary should include a discussion of the firm's assessment of any impediments to the firm's U.S. resolution strategy and its execution, as well as the steps it has taken to address any identified impediments.

Narrative. The Plan should include a strategic analysis consistent with the Rule. This analysis should take the form of a concise narrative that enhances the readability and understanding of the firm's discussion of its strategy for an orderly resolution in bankruptcy or other applicable insolvency regimes (Narrative).

Appendices. The Plan should contain a sufficient level of detail and analysis to substantiate and support the strategy described in the Narrative. Such detail and analysis should be included in appendices that are distinct from and clearly referenced in the related parts of the Narrative (Appendices).

Public Section. The Plan must be divided into a public section and a confidential section consistent with the requirements of the Rule.

Other Informational Requirements. The Plan must comply with all other informational requirements of the Rule. The firm may incorporate by reference previously submitted information as provided in the Rule.

Guidance Regarding Assumptions.

1. The Plan should be based on the current state of the applicable legal and policy frameworks. Pending legislation or regulatory actions may be discussed as additional considerations.

2. The firm must submit a Plan that does not rely on the provision of extraordinary support by the United States or any other government to the firm or its subsidiaries to prevent the failure of the firm.[36] The firm should not submit a Plan that assumes the use of the systemic risk exception to the least-cost test in the event of a failure of an IDI requiring resolution under the FDI Act.

3. The firm should not assume that it will be able to sell identified critical operations or core business lines, or that unsecured funding will be available immediately prior to filing for bankruptcy.

4. The U.S. resolution strategy may be based on an idiosyncratic event or action, including a series of compounding events. The firm should justify use of that assumption, consistent with the conditions of the economic scenario.

5. Within the context of the applicable idiosyncratic scenario, markets are functioning and competitors are in a position to take on business. If a firm's Plan assumes the sale of assets, the firm should take into account all issues surrounding its ability to sell in market conditions present in the applicable economic condition at the time of sale (*i.e.,* the firm should take into consideration the size and scale of its operations as well as issues of separation and transfer).

6. For a firm that adopts a U.S. MPOE strategy, the Plan should demonstrate and describe how the failure event(s) results in material financial distress of the U.S. operations.[37] In particular, the Plan should consider the likelihood that there would be a diminution of the firm's liquidity buffer in the stress period prior to filing for bankruptcy from high unexpected outflows of deposits and increased liquidity requirements from counterparties. Though the immediate failure event may be liquidity-related and associated with a lack of market confidence in the financial condition of the covered company or its material legal entity subsidiaries prior to the final recognition of losses, the demonstration and description of

[34] *See* 12 U.S.C. 1823(c)(4)(A)(ii) and 12 U.S.C. 1821(n)(2)(A).

[35] *See* 12 U.S.C. 1821(d)(11).

[36] 12 CFR 243.4(a)(4)(ii) and 12 CFR 381.4(a)(4)(ii).

[37] See Section 11(c)(5) of the FDI Act, codified at 11 U.S.C. 1821(c)(5), which details grounds for appointing the FDIC as conservator or receiver of an IDI.

material financial distress may also include depletion of capital. Therefore, the Plan should also consider the likelihood of the depletion of capital.

7. The firm should not assume any waivers of section 23A or 23B of the Federal Reserve Act in connection with the actions proposed to be taken prior to or in resolution.

8. The Plan should support any assumptions that the firm will have access to the Discount Window and/or other borrowings during the period immediately prior to entering bankruptcy. To the extent the firm assumes use of the Discount Window and/or other borrowings, the Plan should support that assumption with a discussion of the operational testing conducted to facilitate access in a stress environment, placement of collateral and the amount of funding accessible to the firm. The firm may assume that its depository institutions will have access to the Discount Window only for a few days after the point of failure to facilitate orderly resolution. However, the firm should not assume its subsidiary depository institutions will have access to the Discount Window while critically undercapitalized, in FDIC receivership, or operating as a bridge bank, nor should it assume any lending from a Federal Reserve credit facility to a non-bank affiliate.

Financial Statements and Projections. The Plan should include the actual balance sheet for each material entity and the consolidating balance sheet adjustments between material entities as well as pro forma balance sheets for each material entity at the point of failure and at key junctures in the execution of the U.S. resolution strategy. It should also include statements of projected sources and uses of funds for the interim periods. The pro forma financial statements and accompanying notes in the Plan must clearly evidence the failure trigger event; the Plan's assumptions; and any transactions that are critical to the execution of the Plan's preferred strategy, such as recapitalizations, the creation of new legal entities, transfers of assets, and asset sales and unwinds.

Material Entities. Material entities should encompass those entities, including foreign offices and branches, which are significant to the maintenance of an identified critical operation or core business line. If the abrupt disruption or cessation of a core business line might have systemic consequences to U.S. financial stability, the entities essential to the continuation of such core business line should be considered for material entity designation. Material entities should include the following types of entities:

1. Any U.S.-based or non-U.S. affiliates, including any branches, that are significant to the activities of an identified critical operation conducted in whole or material part in the United States.

2. Subsidiaries or foreign offices whose provision or support of global treasury operations, funding, or liquidity activities (inclusive of intercompany transactions) is significant to the activities of an identified critical operation.

3. Subsidiaries or foreign offices that provide material operational support in resolution (key personnel, information technology, data centers, real estate or other shared services) to the activities of an identified critical operation.

4. Subsidiaries or foreign offices that are engaged in derivatives booking activity that is significant to the activities of an identified critical operation, including those that conduct either the internal hedge side or the client-facing side of a transaction.

5. Subsidiaries or foreign offices engaged in asset custody or asset management that are significant to the activities of an identified critical operation.

6. Subsidiaries or foreign offices holding licenses or memberships in clearinghouses, exchanges, or other FMUs that are significant to the activities of an identified critical operation.

7. For each material entity (including a branch), the Plan should enumerate, on a jurisdiction-by-jurisdiction basis, the specific mandatory and discretionary actions or forbearances that regulatory and resolution authorities would take during resolution, including any regulatory filings and notifications that would be required as part of the preferred strategy, and explain how the Plan addresses the actions and forbearances. Describe the consequences for the covered company's U.S. resolution strategy if specific actions in a non-U.S. jurisdiction were not taken, delayed, or forgone, as relevant.

XI. Public Section

U.S. SPOE & U.S. MPOE

The purpose of the public section is to inform the public's understanding of the firm's U.S. resolution strategy and how it works.

The public section should discuss the steps that the firm is taking to improve resolvability under the U.S. Bankruptcy Code. The public section should provide background information on each material entity and should be enhanced by including the firm's rationale for designating material entities. The public section should also discuss, at a high level, the firm's intra-group financial and operational interconnectedness (including the types of guarantees or support obligations in place that could impact the execution of the firm's strategy).

The discussion of strategy in the public section should broadly explain how the firm has addressed any deficiencies, shortcomings, and other key vulnerabilities that the agencies have identified in prior plan submissions. For each material entity, it should be clear how the strategy provides for continuity, transfer, or orderly wind-down of the entity and its operations. There should also be a description of the resulting organization upon completion of the resolution process.

The public section may note that the Plan is not binding on a bankruptcy court or other resolution authority and that the proposed failure scenario and associated assumptions are hypothetical and do not necessarily reflect an event or events to which the firm is or may become subject.

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 August 29, 2023.

James P. Sheesley,

Assistant Executive Secretary.

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Part III

Department of Health and Human Services

Secretarial Review and Publication of the 2022 Annual Report to Congress and the Secretary Submitted by the Consensus-Based Entity Regarding Performance Measurement; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[CMS–3432–N]

Secretarial Review and Publication of the 2022 Annual Report to Congress and the Secretary Submitted by the Consensus-Based Entity Regarding Performance Measurement

AGENCY: Office of the Secretary of Health and Human Services, HHS.

ACTION: Notice.

SUMMARY: This notice acknowledges the Secretary of the Department of Health and Human Services' (the Secretary's) receipt and review of the 2022 National Quality Forum Annual Report to Congress and the Secretary submitted by the consensus-based entity under a contract with the Secretary as mandated by the Social Security Act. The Secretary has reviewed and is publishing the report in the **Federal Register** together with the Secretary's comments on the report not later than 6 months after receiving the report in accordance with section 1890(b)(5)(B) of the Act. This notice fulfills the statutory requirements.

FOR FURTHER INFORMATION CONTACT: Carrie Sena, (410) 786–8003.

SUPPLEMENTARY INFORMATION:

I. Background

The United States Department of Health and Human Services (HHS) has long recognized that a high functioning health care system that provides higher quality care requires accurate, valid, and reliable measurement of quality and efficiency. The Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) (Pub. L. 110–275) added section 1890 of the Social Security Act (the Act), which requires the Secretary of HHS (the Secretary) to contract with a consensus-based entity (CBE) to perform multiple duties to help improve performance measurement. Section 3014 of the Patient Protection and Affordable Care Act (the Affordable Care Act) (Pub. L. 111–148) expanded the duties of the CBE to help in the identification of gaps in available measures and to improve the selection of measures used in health care programs. The Secretary extends his appreciation to the CBE in their partnership for the fulfillment of these statutory requirements.

In January 2009, a competitive contract was awarded by HHS to the National Quality Forum (NQF) to fulfill requirements of section 1890 of the Act. A second, multi-year contract was awarded again to NQF after an open competition in 2012. A third, multi-year contract was awarded again to NQF after an open competition in 2017. Section 1890(b) of the Act requires the following:

Priority Setting Process: Formulation of a National Strategy and Priorities for Health Care Performance Measurement: The CBE must synthesize evidence and convene key stakeholders to make recommendations on an integrated national strategy and priorities for health care performance measurement in all applicable settings. In doing so, the CBE must give priority to measures that: (1) address the health care provided to patients with prevalent, high-cost chronic diseases; (2) have the greatest potential for improving quality, efficiency, and patient-centered health care; and (3) may be implemented rapidly due to existing evidence, standards of care, or other reasons. Additionally, the CBE must take into account measures that: (1) may assist consumers and patients in making informed health care decisions; (2) address health disparities across groups and areas; and (3) address the continuum of care furnished by multiple providers or practitioners across multiple settings.

Endorsement of Measures: The CBE must provide for the endorsement of standardized health care performance measures. This process must consider whether measures are evidence-based, reliable, valid, verifiable, relevant to enhanced health outcomes, actionable at the caregiver level, feasible to collect and report, responsive to variations in patient characteristics such as health status, language capabilities, race or ethnicity, and income level and are consistent across types of health care providers, including hospitals and physicians.

Maintenance of CBE Endorsed Measures: The CBE is required to establish and implement a process to ensure that endorsed measures are updated (or retired if obsolete) as new evidence is developed.

Convening Multi-Stakeholder Groups: The CBE must convene multi-stakeholder groups to provide input on: (1) the selection of certain categories of quality and efficiency measures, from among such measures that have been endorsed by the entity and from among such measures that have not been considered for endorsement by such entity but are used or proposed to be used by the Secretary for the collection or reporting of quality and efficiency measures; and (2) national priorities for improvement in population health and in the delivery of health care services for consideration under the national strategy. The CBE may also provide input to the Secretary on measures that could be considered for removal. The CBE provides input on measures for use in certain specific Medicare programs, for use in programs that report performance information to the public, and for use in health care programs that are not included under the Act. The multi-stakeholder groups provide input on quality and efficiency measures for various federal health care quality reporting and quality improvement programs including those that address certain Medicare services provided through hospices, ambulatory surgical centers, hospital inpatient and outpatient facilities, physician offices, cancer hospitals, end stage renal disease (ESRD) facilities, inpatient rehabilitation facilities, long-term care hospitals, psychiatric hospitals, and home health care programs.

Transmission of Multi-Stakeholder Input: Not later than February 1 of each year, the CBE must transmit to the Secretary the input of multi-stakeholder groups.

Annual Report to Congress and the Secretary: Not later than March 1 of each year, the CBE is required to submit to the Congress and the Secretary an annual report. The report is to describe:

- The implementation of quality and efficiency measurement initiatives and the coordination of such initiatives with quality and efficiency initiatives implemented by other payers;
- Recommendations on an integrated national strategy and priorities for health care performance measurement;
- Performance of the CBE's duties required under its contract with the Secretary;
- Gaps in endorsed quality and efficiency measures, including measures that are within priority areas identified by the Secretary under the national strategy established under section 399HH of the Public Health Service Act (National Quality Strategy), and where quality and efficiency measures are unavailable or inadequate to identify or address such gaps;
- Areas in which evidence is insufficient to support endorsement of quality and efficiency measures in priority areas identified by the Secretary under the National Quality Strategy, and where targeted research may address such gaps; and
- The convening of multi-stakeholder groups to provide input on: (1) the selection of quality and efficiency measures from among such measures that have been endorsed by the CBE and such measures that have not been considered for endorsement by the CBE but are used or proposed to be used by

the Secretary for the collection or reporting of quality and efficiency measures; and (2) national priorities for improvement in population health and the delivery of health care services for consideration under the National Quality Strategy.

Section 50206(c)(1) of the Bipartisan Budget Act of 2018 (Pub. L. 115–123) amended section 1890(b)(5)(A) of the Act to require the CBE's annual report to the Congress to include the following: (1) an itemization of financial information for the previous fiscal year ending September 30th, including annual revenues of the entity, annual expenses of the entity, and a breakdown of the amount awarded per contracted task order and the specific projects funded in each task order assigned to the entity; and (2) any updates or modifications to internal policies and procedures of the entity as they relate to the duties of the CBE including specifically identifying any modifications to the disclosure of interests and conflicts of interests for committees, work groups, task forces, and advisory panels of the entity, and information on external stakeholder participation in the duties of the entity.

The statutory requirements for the CBE to annually report to the Congress and the Secretary also specify that the Secretary must review and publish the CBE's annual report in the **Federal Register**, together with any comments of the Secretary on the report, not later than 6 months after receiving it.

This **Federal Register** notice complies with the statutory requirement for Secretarial review and publication of the CBE's annual report. NQF submitted a report on its 2022 activities to the Congress and the Secretary on March 1, 2023. The Secretary's Comments on this report are presented in section II. of this notice, and the 2022 Annual Report to the Congress and the Secretary is provided, as submitted to HHS, in the addendum to this **Federal Register** notice in section III.

II. Secretarial Comments on the National Quality Forum 2022 Activities: Report to Congress and the Secretary of the Department of Health and Human Services

Across the country, many communities are facing immense challenges that have been exacerbated by public health emergencies including the opioid crisis, disasters related to climate change, and the COVID–19 pandemic. Throughout these recent crises and to prudently prepare for imminent threats the Department of Health and Human Services (HHS) must continue to focus on advancing equity and inclusion, strengthening public trust, and building meaningful engagement and learning across the health care system. By embedding the cross-cutting principles [1] of equity, public trust, and collaboration into its diverse programs and initiatives, HHS is working to improve the health and well-being of individuals and families.

HHS values the work of the consensus-based entity for performance measurement and our mutual commitment to promote a resilient, high value, and safe health care system for all Americans. In 2022, HHS supported the work conducted by the CBE to identify health care quality measurement priorities and to provide consensus-based recommendations about measures to use for assessing and improving quality. As the CBE in 2022, the NQF continued to use rigorous standards to review measures for quality measure endorsement and maintain highly reliable and scientifically sound measures across priority health care topic areas. As required by section 1890(b) of the Act, the NQF Measure Applications Partnership (MAP) provided input on measures under consideration for quality reporting and value-based purchasing programs across various settings including ambulatory, acute care, post-acute care and long-term care. Specifically, the MAP considered measures related to health equity, COVID–19, person-centered care, rural health, and care coordination. The MAP also deliberated over measures for potential removal from HHS programs. The MAP supported HHS and national priorities to keep measures that are of the highest-value, aligned across programs, prioritizing patient-reported outcome measures, digital measures, and those that reflect consideration of social determinants of health.

In 2022, the CBE also convened the Core Quality Measures Collaborative (CQMC), a public-private partnership with the Centers for Medicare and Medicaid Services (CMS) and America's Health Insurance Plans (AHIP), to maximize alignment of quality measures among public and private payers. The CBE established a Health Equity Workgroup that identified disparity-sensitive measures within the CQMC core sets and proposed approaches for future considerations to prioritize measures that address social determinants of health. In alignment with HHS priorities to advance data interoperability and digital measure use, the CQMC Digital Measurement Workgroup continued, in 2022, to identify ways to address barriers to using digital quality measures and supporting efforts to align data standards for measurement.

To support the CMS National Quality Strategy [2] and critical health care priorities, the CBE worked with quality measurement experts, clinicians, health plans, hospitals, accrediting and certifying entities, consumer organizations and others to improve areas of behavioral health, rural health, health care communication and coordination, and patient-centered care. In 2022, the CBE developed measurement frameworks detailing guidance, recommendations, and identifying measurement gaps for Opioid-Related Outcomes Among Individuals With Co-occurring Behavioral Health Conditions; Leveraging Quality Measures to Improve Rural Health; and Leveraging Electronic Health Record-Sourced Measures to Improve Care Communication and Coordination. Additional CBE projects included provided guidance for Best Practices for Developing and Testing Risk Adjustment Models; Building a Roadmap From Patient-Reported Outcome Measures to Patient-Reported Outcome Performance Measures; and establishing a Patient and Caregiver Engagement Advisory Group.

In many ways, the CBE activities detailed in its 2022 Report to Congress enhanced quality measurement strategies that support HHS and national progress towards safe, accessible, value-based, and equitable care for individuals and communities. As our world and the demands on our health care system continue to evolve, HHS recognizes the increasing importance of varied experiences and perspectives, of consensus-based recommendations, and of evidence-based foundations that inform policies and strategies to improve the health care system. HHS looks forward to the continuity of activities with a new CBE, Battelle, who has extensive expertise and experience in collaborating with and engaging various health care partners to advance quality performance measurement.

III. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements.

[1] HHS Strategic Cross-Cutting Principles, available at *https://www.hhs.gov/about/strategic-plan/2022-2026/overview/index.html.*

[2] CMS National Quality Strategy available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Value-Based-Programs/CMS-Quality-Strategy.*

Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

IV. Addendum

In this Addendum, we are publishing the *NQF Report on 2022 Activities to Congress and the Secretary of the Department of Health and Human Services,* as submitted to HHS.

Dated: September 12, 2023.

Xavier Becerra,

Secretary, Department of Health and Human Services.

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NATIONAL QUALITY FORUM
Driving measurable health improvements together

NQF 2022 Activities: Report to Congress and the Secretary of the Department of Health and Human Services

Final Report

March 1, 2023

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Contents

I. Executive Summary 4
II. Introduction 10
III. Recommendations on National Strategies and Priorities 11
Overview of National Strategies and Priorities 11
Priority Initiative: Opioid and Behavioral Health 12
Priority Initiative: Leveraging Quality Measures to Improve Rural Health 14
IV. Implementation of Quality and Efficiency Measurement Initiatives (Performance Measurement) 15
NQF Measure Portfolio 15
Cross-Cutting Initiatives to Improve the Measurement Process 27
V. Stakeholder Recommendations on the Priority-Setting Process 30
Overview of the Measure Applications Partnership 31
2022 Enhancements to the MAP Process: MSR Process Implementation for Workgroups and Advisory Groups 32
2021–2022 MAP Measures Under Consideration Cycle Results 33
2022 MAP Measure Set Review Cycle Results 44
VI. Identified Gaps in Endorsed Quality and Efficiency Measures 51
Gaps Identified in Endorsement Projects 51
Gaps Identified in the Measure Applications Partnership 51
Gaps Identified in the Core Quality Measures Collaborative 52
Gaps Identified in Additional Targeted Research 52
VII. Targeted Research Areas Not Supported by the Endorsement of Quality and Efficiency Measures 53
Leveraging Electronic Health Record-Sourced Measures to Improve Care Communication and Care Coordination 53
VIII. Coordination With Measurement Initiatives Led by Other Payers 55
Core Quality Measures Collaborative – Private and Public Alignment 55
IX. Other Activities Performed Under Contract With HHS 57
Common Formats for Patient Safety 57
X. Financial Information for FY 2022 (October 1, 2021 – September 30, 2022) 58
XI. Updates to CBE Policies and Procedures in 2022 58
XII. Summary and Conclusion 58
XIII. References 60

Appendix A: 2022 Activities Performed Under Contract With HHS and Financials 64
Appendix B: All NQF Multistakeholder Group Rosters 66
Appendix C: Federal Quality Reporting and Performance-Based Payment Programs Considered by MAP 75
Appendix D: MAP Structure, Members, Criteria for Service, and Rosters 76
Appendix E: CQMC Measure Selection Principles 79
Appendix F: CQMC Workgroup Rosters 81
Appendix G: Identified Gaps by NQF Measure Portfolio 87
Appendix H: Medicare Measure Gaps Identified by MAP 89
Appendix I: Crosswalk Between 2022 NQF Activities and CMS Meaningful Measures 2.0 Goals 91
Appendix J: Statutory Requirement of Annual Report Components 92

I. Executive Summary

Introduction

The National Quality Forum (NQF) is a not-for-profit, nonpartisan, membership-based organization. NQF brings together highly diverse experts with unique healthcare quality and safety perspectives to develop consensus-based standards and recommendations to eliminate avoidable healthcare harms and advance optimal patient health outcomes, equity, and affordability. Since 2009, NQF has served as the nation's statutorily recognized consensus-based entity (CBE), fostering multistakeholder collaboration to oversee the nation's portfolio of healthcare quality measures. NQF's work to endorse best-in-class measures, bring multistakeholder input to federal programs, and identify measure gaps and measurement strategies improves the health and well-being of all individuals. NQF Committees are established as volunteer, multistakeholder groups that develop consensus standards and recommendations and are responsible for tasks such as evaluating measures and providing strategic recommendations and technical guidance. A variety of value-based programs in both the public and private sectors use NQF's work and provide important levers to drive better health outcomes that are both affordable and equitable.

This Annual Report to Congress and the Secretary of the Department of Health and Human Services (HHS) summarizes NQF's work under contract with HHS between January 1 and December 31, 2022. As required by statute, this report, mandated by section 1890(b)(5)(A) of the Social Security Act (SSA), addresses the following items:

- Recommendations on national strategies and priorities
- Implementation of quality and efficiency measurement initiatives
- Stakeholder recommendations on the priority-setting process
- Identified gaps in endorsed quality and efficiency measures
- Targeted research areas not supported by the endorsement of quality and efficiency measures
- Coordination with measurement initiatives led by other payers
- Other activities performed under contract with HHS
- Financial information for fiscal year (FY) 2022
- Updates to CBE policies and procedures in 2022

The body of this report describes NQF's work funded by the Centers for Medicare & Medicaid Services (CMS) on each of the items referenced above. This Executive Summary presents a brief synthesis.

Summary of 2022 Activities

In 2022, NQF worked with CMS to continue to identify quality measurement priorities and advance consensus on methods and measures for assessing and improving quality. NQF achieves these aims through three ongoing programs and targeted projects. In 2022, as the CBE, NQF continued to run core programs (as described below) through structured, transparent, and consensus-based processes that

convene diverse volunteer stakeholders and multiple committees to review and comment on the endorsement, use, and alignment of quality measures:

- **Endorsement and Maintenance:** Through its Endorsement & Maintenance (E&M) process, NQF convened stakeholders to set rigorous standards for quality measures as well as to endorse and maintain scientifically sound and feasible healthcare quality measures across 14 clinical and cross-cutting topic areas. In 2022, NQF reviewed a total of 54 measures across a wide variety of topics reflecting some of the CMS National Quality Strategy focus areas, including health equity, COVID-19 vaccination coverage, rural health, and patient experience of care. NQF endorsed 47 measures and approved two for trial use. [Section IV: Implementation of Quality and Efficiency Measurement Initiatives (Performance Measurement)]
- **Measure Applications Partnership:** The Measure Applications Partnership (MAP) provides multistakeholder input on ambulatory, acute, and post-acute care/long-term care measures proposed for use in specific CMS public-reporting and value-based payment programs. NQF also formally launched a new MAP process to annually review measures for potential removal from these CMS programs. During its most recent deliberations, the MAP considered the need for, validity of, and burden of proposed and actively used measures across a wide scope of topics, including health equity, COVID-19, person-centered care, rural health, and care coordination. The MAP also provided input on 29 measures CMS suggested for use in its programs and considered 22 measures for removal. [Section V: Stakeholder Recommendations on the Priority-Setting Process]
- **Core Quality Measures Collaborative:** This public-private partnership, convened in partnership with CMS and America's Health Insurance Plans (AHIP), continued to align the measures that payers use to assess ambulatory clinicians, maintaining 10 common core sets of measures for use in value-based payment programs and addressing barriers to implementation of the core measure sets. In 2022, the Core Quality Measures Collaborative (CQMC) conducted four main activities: maintenance of its 10 core measure sets; launching an effort to elevate and address health equity and health disparities; lowering the burden of using digital quality measures (dQMs) through advancing data interoperability and other mechanisms; and reducing reporting burden through increased alignment on aspects of measurement, such as collection, transmission, standardization, aggregation, and dissemination of measure data. These efforts reflect a recognition that aligning multiple aspects of measurement can better support implementing CQMC core sets. For example, to speed implementation of digital measures, the CQMC is identifying specific data elements as priorities for interoperability in Fast Healthcare Interoperability Resources (FHIR) to inform the Office of the National Coordinator for Health Information Technology's (ONC) alignment of data standards for measurement. [Section VIII: Coordination With Measurement Initiatives Led by Other Payers]

To address persistent gaps in equity, NQF enhanced activities in all three core programs mentioned above to advance stakeholder consensus on the use of quality measures that support progress on equity. For example, NQF seated a Health Equity Workgroup to identify which measures in the CQMC's existing aligned core sets of measures can best be used to measure, track, and reduce disparities and

reviewed additional measures of health equity that the collaborative could consider for later addition to its existing sets of measures.

In addition to the three core programs, NQF worked with CMS to target priority gap areas in which there may not yet be sufficient research or measures. For these projects, NQF developed measurement "frameworks" that organize the most important topics to measure about a critical priority area and describe how measurement should take place (e.g., entities involved in measurement, who is held responsible for measurement, relevant care settings, cadence of measurement, and relevant population). NQF's measurement framework projects (described further below) align with and advance the priorities identified in the CMS National Quality Strategy and Meaningful Measures 2.0:

- The **CMS National Quality Strategy**, introduced in 2022, is a "long-term initiative that aims to promote the highest quality outcomes and safest care for all individuals."[2] It supports progress toward a person-centered approach to healthcare across the life span of an individual, builds on lessons learned from the COVID-19 pandemic, and reflects increased demand from stakeholders for data to inform healthcare decisions. The CMS National Quality Strategy sets eight specific goals: (1) embedding quality in the care journey, (2) advancing health equity, (3) promoting patient safety, (4) fostering patient engagement, (5) strengthening resiliency, (6) embracing digital measurement, (7) adopting innovative technology, and (8) increasing measurement alignment for better care coordination.[2]
- **CMS Meaningful Measures 2.0** is consistent with the CMS National Quality Strategy but more specifically guides quality measurement priorities to have a maximal impact with minimum burden. It sets forth a measurement strategy of using the highest-value measures, aligning measures across programs, prioritizing patient-reported measures that augment the patient's voice and other outcome measures, transitioning to fully digital measures, and advancing measures that reflect consideration of social determinants of health (SDOH).[3]

NQF's 2022 measurement framework projects include work to identify and address measurement strategies, including identifying gaps, critical to the health of the nation. Reports from each of these projects provide specific recommendations, guidance, and/or strategies:

- **Opioid-Related Outcomes Among Individuals With Co-occurring Behavioral Health Conditions:** Detailed guiding principles and use case exemplars on how to implement a recommended quality measurement framework for measuring, evaluating, and addressing overdose and mortality for individuals with substance use disorder/opioid use disorder (SUD/OUD) and co-occurring behavioral health conditions.
- **Leveraging Quality Measures to Improve Rural Health:** An updated set of the best-available measures for measurement and quality improvement programs in rural areas, including measures that address rural-relevant topics, such as behavioral health, infectious disease, access to care, and equity, and are resistant to low case-volume challenges.
- **Leveraging Electronic Health Record-Sourced Measures to Improve Care Communication and Coordination:** An overview of multistakeholder recommendations on how to use EHR data to

facilitate more effective care communication and coordination and advance the measurement of these functions to better support high quality healthcare.

In addition, NQF worked with stakeholders to advance consensus and strategies for measurement science to support the development and use of high-priority patient-centered measures, such as clinical outcome and patient-reported outcome measures. In 2022, CMS supported NQF projects to create the following:

- **Best Practices for Developing and Testing Risk Adjustment Models:** Stakeholder-informed detailed guidance that advances consensus on best practices for the use of social risk factors (e.g., race, ethnicity, and income) and functional risk factors (e.g., frailty) in risk-adjusted outcome measures to make certain such measures are fair and advance equity.
- **Building a Roadmap From Patient-Reported Outcome Measures to Patient-Reported Outcome Performance Measures:** A comprehensive roadmap providing guidance and links to resources to support the development and implementation of patient-reported outcome performance measures (PRO-PMs).
- **Patient and Caregiver Engagement Advisory Group:** Approaches to expand patient and caregivers' input into the work of the CBE.

Measurement Gaps Identified Through NQF Activities

NQF identifies gaps in measurement areas through several mechanisms. Standing Committees, focused on reviewing and endorsing measures as part of NQF's E&M process, also discuss measurement gaps in their topical area of focus. They identified gaps focused on behavioral health, cost measurement, palliative care, and perinatal care. Likewise, the MAP identified gaps relating largely to long-term and post-acute care settings, stating a need for more patient experience measures and PRO-PMs, as well as measures of mental health. MAP members also noted that the COVID-19 pandemic has exposed a lack of infection control measures in many long-term care facilities. In addition, the CQMC, as part of maintaining its 10 clinician-focused aligned measure sets, identified gaps for each of the sets. Overarching gaps included outcome measures (e.g., PRO-PMs), cross-cutting measures (e.g., patient safety, patient and family engagement, care coordination, and population health), health equity and disparities-sensitive measures, digital quality measures, and telehealth-relevant measures. Lastly, several additional NQF projects, including the work on opioids, rural health, and equity noted above, identified measure gaps. The Opioid-Related Outcomes Among Individuals With Co-occurring Behavioral Health Conditions project highlighted gaps in behavioral health measures, including all-payer measures addressing behavioral health, measures addressing harm reduction strategies, and measures on person-centered and evidence-based SUD care. The Leveraging Quality Measures to Improve Rural Health project also emphasized specific topic areas lacking measures on care quality, such as care for intentional and unintentional injuries, serious illness and end-of-life care, and telehealth care. Overarching comments from these projects noted the need for measures on access to care and care coordination, as well as the need to develop risk-adjusted and stratified versions of measures that do not unintentionally penalize providers that serve high-risk populations.

Conclusion

In summary, as the recognized CBE, NQF achieves the administration and evolution of three major ongoing consensus-based processes—E&M, the MAP, and the CQMC—and targeted activities. NQF's work is both informed by and guides the identification and alignment of national priorities. Figure 1 illustrates how NQF's 2022 activities advance the 2022 CMS National Quality Strategy Goals.

This alignment of priorities facilitates progress across the measurement community and is helping advance the measurement methods and measures we most need to improve quality. For example, measures newly endorsed in 2022 focused on improving patient safety and moving to fully digital measurement to lower measurement burden, such as NQF #0471e *ePC-02 Cesarean Birth*, which is a fully digital version of a currently endorsed cesarean birth measure that looks at nulliparous women with a term, singleton baby in a vertex position delivered by cesarean birth. Other new measures sought to improve patient-centered care via patient-reported outcomes (PROs), such as a PRO-PM measuring improvement in function after elective hip and knee replacements, NQF #3639 *Clinician-Level and Clinician Group-Level Total Hip Arthroplasty and/or Total Knee Arthroplasty*. Still, others aimed to improve value, such as NQF #3626 *Lumber Spine Fusion for Degenerative Disease, 1-3 Levels*, an episode-based cost measure that evaluates a clinician's risk-adjusted cost to Medicare for patients who undergo surgery for lumbar spine fusion. The availability of feasible endorsed measures in high-priority areas is critical to advance optimal patient health outcomes, equity, and affordability.

Figure 1. Crosswalk Between NQF's 2022 Activities and the CMS National Quality Strategy Goals

CMS NATIONAL QUALITY STRATEGY GOALS	NQF 2022 ACTIVITIES: Endorsement & Maintenance (E&M)	Measure Applications Partnership (MAP)	Core Quality Measures Collaborative (CQMC)	Addressing Opioids-Related Outcomes Among Individuals with Co-Occurring Behavioral Health Conditions	Leveraging Quality Measurement to Improve Rural Health	Patient and Caregiver Engagement (PACE)	Building a Roadmap from Patient-Reported Outcome Measures to Patient-Reported Outcome Performance Measures (PRO-PMs)	Best Practices for Developing and Testing Risk Adjustment Models	Leveraging Electronic Health Record (EHR) Sourced Measures to Improve Care Communication and Coordination	Common Formats for Patient Safety
1. Embed Quality into the Care Journey		✓		✓	✓	✓	✓	✓	✓	
2. Advance Health Equity		✓	✓	✓	✓	✓		✓		
3. Promote Safety	✓	✓			✓					✓
4. Foster Engagement	✓	✓		✓		✓	✓			
5. Strengthen Resilience			✓							
6. Embrace the Digital Age	✓	✓	✓				✓		✓	✓
7. Incentivize Innovation and Technology							✓		✓	
8. Increase Alignment	✓	✓	✓	✓	✓		✓	✓	✓	

The deliverables produced under contract with HHS in 2022 are referenced throughout this report. Appendix I lists these deliverables and indicates their alignment with the CMS National Quality Strategy and Meaningful Measures 2.0 goals. For more information on the contents of this report as required in statutory language, please reference Appendix J.

II. Introduction

NQF, a not-for-profit, nonpartisan, membership-based organization, brings together highly diverse experts with unique healthcare quality and safety perspectives to develop consensus-based standards and recommendations to eliminate avoidable healthcare harms and advance optimal patient health outcomes, equity, and affordability. Since 2009, NQF has served as the nation's statutorily recognized CBE, fostering multistakeholder collaboration to oversee the nation's portfolio of healthcare quality measures. NQF's work to endorse best-in-class measures, bring multistakeholder input to federal programs, and identify measure gaps and measurement strategies improves the health and well-being of all individuals. NQF Committees are established as volunteer, multistakeholder groups that develop consensus standards and recommendations and are responsible for tasks such as evaluating measures, providing strategic recommendations, and offering technical guidance. A variety of value-based programs in both the public and private sectors use NQF's work and provide important levers to drive better health outcomes that are both affordable and equitable.

In 2022, NQF collaborated with CMS to continue to identify quality measurement priorities and advance consensus on methods and measures for assessing and improving quality. NQF achieved these aims through three ongoing core programs and targeted projects. The core programs are:

- **Endorsement and Maintenance**: Through its E&M process, NQF convened stakeholders to set rigorous standards for quality measures as well as to endorse and maintain scientifically sound and feasible healthcare quality measures across 14 clinical and cross-cutting topic areas. *[Section IV: Implementation of Quality and Efficiency Measurement Initiatives (Performance Measurement)]*
- **Measure Applications Partnership:** The MAP provided multistakeholder input on which ambulatory, acute, and post-acute care/long-term care measures to incorporate into some of CMS' public-reporting and value-based payment programs. *[Section V: Stakeholder Recommendations on the Priority-Setting Process]*
- **Core Quality Measures Collaborative**: This public-private partnership, convened in partnership with CMS and AHIP, continued to align the measures that payers use to assess ambulatory clinicians, maintaining common core sets of measures for use in value-based payment programs and providing input on activities to advance the implementation of the core measure sets. *[Section VIII: Coordination With Measurement Initiatives Led by Other Payers]*

NQF's 2022 work also included targeted projects to advance measurement science and identify measurement strategies and gaps critical to the health of the nation. Specifically, NQF provided guidance related to use of social and functional risk factors in risk-adjusted outcome measures, development and implementation of PRO-PMs, and expansion of patient and caregivers' input into the work of the CBE. In addition, NQF reports provided specific recommendations, guidance, and/or strategies on implementing a recommended quality measurement framework for measuring, evaluating, and addressing overdose and mortality for individuals with SUD/OUD and co-occurring behavioral health conditions, using an updated set of the best-available measures for measurement and quality

improvement programs in rural areas, and using EHR data to facilitate providing and measuring more effective care communication and coordination.

This Annual Report to Congress and the Secretary of HHS summarizes NQF's work under contract with HHS between January 1 and December 31, 2022. As required by statute, this report, mandated by section 1890(b)(5)(A) of the SSA, addresses the following items:

- Section III: Recommendations on National Strategies and Priorities
- Section IV: Implementation of Quality and Efficiency Measurement Initiatives
- Section V: Stakeholder Recommendations on the Priority-Setting Process
- Section VI: Identified Gaps in Endorsed Quality and Efficiency Measures
- Section VII: Targeted Research Areas Not Supported by the Endorsement of Quality and Efficiency Measures
- Section VIII: Coordination With Measurement Initiatives Led by Other Payers
- Section IX: Other Activities Performed Under Contract With HHS
- Section X: Financial Information for Fiscal Year 2022
- Section XI: Updates to CBE Policies and Procedures in 2022

This report describes NQF's CMS-funded work in sections aligned with the list above.

III. Recommendations on National Strategies and Priorities

Section 1890(b)(1) of the Social Security Act (the Act) mandates that the consensus-based entity (entity) shall "synthesize evidence and convene key stakeholders to make recommendations . . . on an integrated national strategy and priorities for healthcare performance measurement in all applicable settings.[1] In making such recommendations, the entity shall ensure that priority is given to measures: (i) that address the healthcare provided to patients with prevalent, high-cost chronic diseases; (ii) with the greatest potential for improving the quality, efficiency, and patient-centeredness of healthcare; and (iii) that may be implemented rapidly due to existing evidence, standards of care, or other reasons."[1] In addition, the entity is to "take into account measures that: (i) may assist consumers and patients in making informed healthcare decisions; (ii) address health disparities across groups and areas; and (iii) address the continuum of care a patient receives, including services furnished by multiple healthcare providers or practitioners and across multiple settings."[1] The CBE is required to describe this activity in this report pursuant to section 1890(b)(5)(A)(i)(II) of the Act.[1]

Overview of National Strategies and Priorities

One responsibility of the CBE is to make recommendations on national strategies and priorities for healthcare measurement. In accordance with the statutory language, NQF's work is both informed by and guides the identification and alignment of national priorities. Furthermore, NQF's 2022 projects align with and advance the priorities identified in the CMS National Quality Strategy and Meaningful Measures 2.0:

- The **CMS National Quality Strategy**, introduced in 2022, is a "long-term initiative that aims to promote the highest quality outcomes and safest care for all individuals."[1] It supports progress toward a person-centered approach to healthcare across the life span of an individual, builds on lessons learned from the COVID-19 pandemic, and reflects increased demand from stakeholders for data to inform healthcare decisions. The CMS National Quality Strategy sets eight specific goals: (1) embedding quality in the care journey, (2) advancing health equity, (3) promoting patient safety, (4) fostering patient engagement, (5) strengthening resiliency, (6) embracing digital measurement, (7) adopting innovative technology, and (8) increasing measurement alignment for better care coordination.[2]
- **CMS Meaningful Measures 2.0** is consistent with the CMS National Quality Strategy but more specifically guides quality measurement priorities to have a maximal impact with minimum burden. It sets forth a measurement strategy of using the highest value measures, aligning measures across programs, prioritizing patient-reported measures that augment the patient's voice and other outcome measures, transitioning to fully digital measures, and advancing measures that reflect consideration of social determinants of health (SDOH).[3]

This alignment of priorities facilitates progress across the measurement community and is helping advance the measurement methods and measures we most need to improve quality. In 2022, NQF worked with CMS to continue to identify quality measurement priorities and gap areas through the three core multistakeholder convenings as described above [Section II: Introduction]:

- E&M [Section IV: Implementation of Quality and Efficiency Measurement Initiatives (Performance Measurement)]
- MAP [Section V: Stakeholder Recommendations on the Priority-Setting Process]
- CQMC [Section VIII: Coordination With Measurement Initiatives Led by Other Payers]

Consistent with section 1890(b)(1), NQF addressed persistent gaps in equity by enhancing activities in all three core programs mentioned above as well as additional projects described throughout this report. This work advanced stakeholder consensus on and the use of quality measures that support progress on equity. For example, NQF seated a Health Equity Workgroup to identify which measures in the CQMC's existing core sets of measures can best be used to measure, track, and reduce disparities and reviewed additional measures of health equity that the collaborative could consider for later addition to its existing sets of measures. More information is in Section VIII: Coordination With Measurement Initiatives Led by Other Payers.

In addition, NQF furthered work on behavioral health by reconvening a multistakeholder committee on co-occurring opioid use disorder and behavioral health to create guiding principles and a use case to inform implementation of prior NQF recommendations. NQF also updated a proposed list of measures for measuring quality in underserved rural populations. These two specific projects are described below.

Priority Initiative: Opioid and Behavioral Health

Overdose deaths in the United States (U.S.) reached a historic high in 2021, with 107,270 reported fatalities. This fourth and newest wave of the opioid crisis[5,6] has been driven by polysubstance use

involving synthetic and semi-synthetic opioids (SSSOs) and the co-use of opioids and psychostimulants. Adding to the complexity of this wave is the increased overlap between individuals with SUDs and co-occurring behavioral health conditions. Furthermore, COVID-19 has increased risks for this population: Research has shown that individuals with a recent diagnosis of SUD, specifically OUD and tobacco use disorder, were at higher risk for worse outcomes from COVID-19.[28]

The co-occurrence of OUD with other behavioral health conditions remains a national priority as the crisis continues to escalate. Measurement is urgently needed to guide improvement. To address this gap, NQF convened the Opioid and Behavioral Health Committee from 2020 to 2022. The multistakeholder Committee's charge was overseeing the development of an approach to measuring performance on this topic (i.e., a measurement framework) to help payers and providers combat the fourth wave of the opioid crisis. The resulting framework identified the three most important domains to measure:

- Equitable access
- Clinical interventions
- Integrated and comprehensive care for concurrent behavioral health conditions

While the development of this framework does provide guidance on how to use measurement to support better care, NQF and CMS recognized that it is also critical to prepare the field for implementation, given the significant impact from OUD, SUD, and behavioral health on public health. In response, NQF reconvened the Opioid and Behavioral Health Committee in 2022 to continue building on this framework through the development of a use case that showcases examples of the measurement framework in action.

The 2022 updates to the Opioid and Behavioral Health Final Report focus on application and implementation. To provide additional guidance on how to use the measurement framework, the Committee identified five guiding principles for driving measurement and reducing overdose and mortality: promoting health equity, reducing stigma, emphasizing shared decision making, encouraging innovation, and intentionality in measure development. The Committee also created a use case to demonstrate how to apply the framework. The use case provides the following: (1) a detailed overview of critical stakeholders most affected by existing gaps in care or who could help address measurement areas identified in the report, (2) overarching barriers and challenges to measuring SUD and co-occurring behavioral health conditions (e.g., stigma, limited resources, payment, data inconsistency, and a rapidly evolving measurement) along with corresponding solutions, and (3) three case exemplars that show specific barriers and solutions to each of the domains of the measurement framework. In these case exemplars, the strategies include relevant existing measures or measure concepts, prevalent barriers in SUDs/OUD and behavioral healthcare pathways, performance gaps that can be addressed, and diversification of settings to showcase variation in performance.

The measurement framework provides the foundational steps to begin measuring, evaluating, and addressing overdose and mortality for individuals with SUD/OUD and co-occurring behavioral health conditions. In addition to alignment with the President's priority to address the opioid and addiction

epidemic,[10] the Committee's efforts also align with the health equity goals in the 2022 CMS National Quality Strategy.[9] During its discussion in 2022, the Committee identified health equity as a foundational guiding principle. Furthermore, the Committee incorporated health equity via the Equitable Access framework domain, which recognizes and identifies equity-related measures, barriers to care, and social risk factors and their impact on vulnerable populations who are at higher risk for SUDs/OUD and co-occurring behavioral health conditions.[12,13] Furthermore, the Committee's work focuses on fostering better engagement and coordination of care and ensuring quality in a patient's care journey. This report successfully establishes foundational tools that stakeholders can use to help mitigate the national opioid crisis and its effects from the COVID-19 pandemic.

Priority Initiative: Leveraging Quality Measures to Improve Rural Health

Nearly 1 in 5 Americans live in rural areas,[10] with rural patients experiencing factors such as geographic isolation and transportation issues, higher rates of comorbid conditions (e.g., smoking and high blood pressure) as compared to their non-rural counterparts, and limited access to healthcare supports.[11] Addressing challenges to high quality rural care is a national priority for achieving optimal health outcomes. This measurement gap area is further complicated by issues such as low case-volume[12] (i.e., when providers do not have enough patients to achieve reliable and valid measurement results).

In response to measurement challenges in rural populations, NQF continued to support the MAP Rural Health Advisory Group's role in the MAP and expanded its work to address additional rural measure priorities. In addition to its continued review of all measures considered for use or removal from selected CMS programs (see Section V: Stakeholder Recommendations on the Priority-Setting Process), the Rural Health Advisory Group also undertook a major effort to update a list of key rural measures—the best-available measures that focus on topics relevant to rural areas and are resistant to low case-volume challenges.

The updated key measures list is summarized in the 2022 Key Rural Measures Final Report. The Advisory Group did not elect to remove any measures from the existing key measures list due to the importance of the topics addressed and the lack of alternative measures. The Advisory Group did, however, add 17 new measures (for a total of 37 rural measures), with a heavy focus on measures of behavioral and mental health, substance use, infectious disease, access to care, equity, and SDOH.

Advisory Group members also discussed existing gaps and emerging needs for performance measurement in rural health. While the updated key measures list addresses several prioritized topic areas, such as substance use, the Advisory Group noted that measurement gaps remain where existing measures did not adequately address intentional or unintentional injury; infectious diseases, such as COVID-19 and HIV; cost measures; cancer screening; and telehealth-relevant measures. Future iterations may include community-level measures to reflect SDOH and population health. The updated list offers providers and administrators a more comprehensive set of quality measures for conditions relevant to rural populations that may be feasible to implement in their facilities. The updated list can also promote alignment and inform the development of new measures. The group also underscored the rapidly evolving nature of healthcare in rural communities and emphasized the importance of regular updates

to the list of key rural measures and recommended summarizing best practices for implementing and monitoring measures in rural areas in the future.

IV. Implementation of Quality and Efficiency Measurement Initiatives (Performance Measurement)

Section 1890(b)(2) of the Social Security Act requires that "The entity shall provide for the endorsement of standardized healthcare performance measures. The endorsement process under the preceding sentence shall consider whether a measure—(A) is evidence-based, reliable, valid, verifiable, relevant to enhanced health outcomes, actionable at the caregiver level, feasible to collect and report, and responsive to variations in patient characteristics, such as health status, language capabilities, race or ethnicity, and income level; and (B) is consistent across types of healthcare providers, including hospitals and physicians."

Section 1890(b)(3) of the Social Security Act also requires that "The entity shall establish and implement a process to ensure that measures endorsed under paragraph (2) are updated (or retired if obsolete) as new evidence is developed."

The CBE is required to describe these duties in this report pursuant to section 1890(b)(5)(A)(i)(I) of the Act.

NQF uses a structured, transparent, multistakeholder process to review and endorse quality measures submitted to NQF for endorsement that fully aligns with statutory requirements. NQF convenes diverse experts and stakeholders to review new and existing measures against NQF's rigorous, consensus-based measure evaluation criteria. The process supports the endorsement of measures that stakeholders agree reflect current evidence, are reliable and valid, are useful for accountability and quality improvement, and are feasible. The process takes into consideration measure importance, including how well measures support progress on national quality aims, and as noted above, considers measure alignment across programs.

In addition to maintaining a portfolio of NQF-endorsed measures, NQF also conducts additional projects that support improvements in measurement science and provide useful guidance to those who develop and implement measures. Below is an overview of the current NQF measure portfolio, as well as updates on ongoing cross-cutting projects.

NQF Measure Portfolio

Overview of the Endorsement and Maintenance Process

Through its E&M process, NQF convenes diverse stakeholders to set rigorous standards for quality measures as well as to endorse and maintain measures through inclusive, structured processes. High quality, standardized measures help stakeholders assess and address healthcare performance by highlighting whether the care provided is optimal and appropriate; identifying where to focus efforts to improve care; and allowing for comparisons across clinicians, hospitals, health plans, and other providers. Payers may use measures for a variety of reporting and accountability purposes.

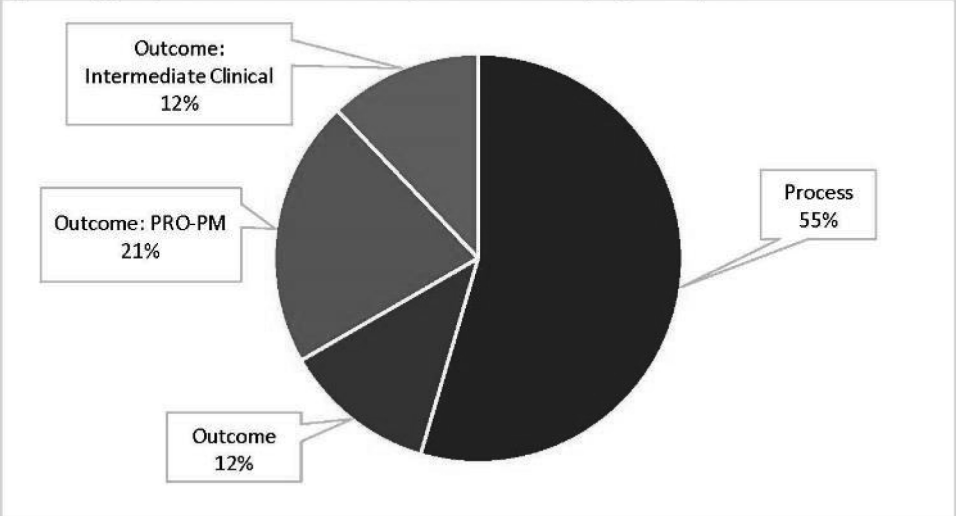
NQF's E&M process comprises six main components, including a request for candidate measures; a call for nominations to seat review committees; Standing Committee review of candidate measures; a public commenting period; an endorsement decision made by a governing body (the Consensus Standards Approval Committee [CSAC]); and an appeals period. Through this process NQF generates and maintains a portfolio of endorsed measures that meet NQF's rigorous evaluation criteria, ensuring they are up to date, reflective of the current evidence, reliable and valid, useful for accountability and quality improvement, and feasible. To keep the endorsed measure portfolio current and up to date, the E&M process also includes maintenance activities (i.e., a Committee review of previously endorsed measures to determine whether a measure should keep or lose endorsement.)

NQF's current endorsed measure portfolio represents 14 clinical and cross-cutting topic areas. From 2021 to 2022, NQF reviewed a total of 54 measures across a wide variety of topics reflecting some of the CMS National Quality Strategy focus areas, including health equity, COVID-19 vaccination coverage, rural health, and patient experience of care.

Table 1. Number of New and Maintenance Measures Reviewed During E&M Fall 2021/Spring 2022 Cycle (N=54)

Measure Cycle	Number of New Measures	Number of Maintenance Measures
Fall 2021	10	2
Spring 2022	18	24

Figure 2. Types of Measures Reviewed During E&M Fall 2021/Spring 2022 Cycles



Measure Endorsement and Maintenance Accomplishments

The results of the endorsement process during the spring and fall cycles follow below. Results are presented by portfolio: All-Cause Admissions and Readmissions, Behavioral Health and Substance Use, Cancer, Cardiovascular, Cost and Efficiency, Geriatrics and Palliative Care, Neurology, Patient Experience and Function, Patient Safety, Perinatal and Women's Health, Prevention and Population Health, Primary Care and Chronic Illness, Renal, and Surgery.

All-Cause Admissions and Readmissions

Unplanned hospital readmissions are associated with poor health outcomes and are a leading healthcare concern in the U.S. due to the implications for the quality of care provided to hospitalized patients as well as the healthcare costs associated with readmission.[13,14] Avoidable admissions and readmissions affect patients' daily lives and contribute to unnecessary healthcare spending.[15] In 2018, the U.S. had a total of 3.8 million adult hospital readmissions within 30 days among all payers, of which Medicare accounted for 60.3 percent (2.3 million readmissions) and Medicaid accounted for 19.0 percent (721,300 readmissions).[16] Furthermore, the average readmission rate for the U.S. is 14 percent, with an average readmission cost of $15,200, accounting for more than $17 billion in Medicare expenditures annually.[13,16] Preventable hospital readmissions are often attributed to structural and process issues, such as gaps in care coordination, rather than disease-specific factors.[17-19] This has prompted important study and discussion to meet quality goals while protecting access to necessary and appropriate care. The measures reviewed and endorsed by the Standing Committee for this portfolio align with the CMS National Quality Strategy goals of embedding quality into the care journey, increasing alignment, and promoting safety. The measures also align with Meaningful Measures 2.0's focus on aligning quality measures with quality improvement activities and improving patient safety.

The All-Cause Admissions and Readmissions portfolio currently includes 37 endorsed measures, including all-cause and condition-specific admissions and readmissions measures addressing numerous settings (e.g., hospital, hospital outpatient, ambulatory surgical centers [ASCs], skilled nursing facility [SNFs], home health, and accountable care organizations [ACOs]). Table 2 reports recent activity for the All-Cause Admissions and Readmissions portfolio during the fall 2021, spring 2022, and fall 2022 measure cycles.

Table 2. 2022 Updates to the All-Cause Admissions and Readmissions Portfolio

Cycle	Measures Reviewed
Fall 2021 Cycle	No measures were submitted for review.
Spring 2022 Cycle	The All-Cause Admissions and Readmissions Standing Committee evaluated two maintenance measures focused on unplanned readmissions among patients who enter an SNF from an acute care hospital and hospitalizations among long-term residents of SNFs. The Standing Committee recommended two measures for endorsement. The CSAC upheld the Standing Committee's recommendation and endorsed both measures.
Fall 2022 Cycle	Two measures were submitted for review.

Behavioral Health and Substance Use

Behavioral health disorders, including mental illness and SUD, affect millions of Americans, their families, and their communities. One in five U.S. adults, and 1 in 6 children, experience mental illness each year. In 2020, 17 million adults experienced co-occurring mental illness and SUD.[20,21] While these data demonstrate the prevalence of behavioral health disorders in the U.S., many Americans are not pursuing treatment for these conditions. Quality measurement and quality improvement tools remain important aspects of assessing and improving the treatment of behavioral health disorders. The measures reviewed by the Standing Committee for this portfolio align with the CMS National Quality Strategy goals of embedding quality into the care journey, advancing equity, and fostering patient engagement. The measures also align with the Meaningful Measures 2.0 goal of promoting health equity.

The Behavioral Health and Substance Use portfolio currently includes 34 endorsed measures, including measures for alcohol and drug use, care coordination, depression, medication use, the experience of care, tobacco use, and physical health. Table 3 reports recent activity for the Behavioral Health and Substance Use portfolio during the fall 2021, spring 2022, and fall 2022 measure cycles.

Table 3. 2022 Updates to the Behavioral Health and Substance Use Portfolio

Cycle	Measures Reviewed
Fall 2021 Cycle	No measures were submitted for review.
Spring 2022 Cycle	The Behavioral Health and Substance Use Standing Committee evaluated seven maintenance measures addressing depression screening, response, and remission; follow-up care for medication management; and continuity of care for withdrawal management. The Standing Committee recommended four measures for endorsement but did not recommend the three remaining measures. The CSAC upheld the Standing Committee's recommendations and endorsed the four recommended measures.
Fall 2022 Cycle	No measures were submitted for review.

Cancer

Cancer remains a significant burden to patients and the U.S. healthcare system. According to the National Cancer Institute (NCI), an estimated 15.7 million people live with cancer in the U.S.[22] In 2022 alone, an estimated 1.9 million new cancer cases were diagnosed in the U.S., and more than 600,000 people died of cancer.[24] Furthermore, a recent study estimates that the costs of cancer care could reach $222 billion in 2025.[23] Given these data points, cancer continues to be recognized as a national priority for quality improvement by HHS, CMS, and other healthcare stakeholders, including commercial payers and medical professional societies. These organizations are actively engaged in strategies to address quality of care issues in cancer, including the development and use of quality measures.[24-26] The measures in this portfolio align with CMS National Quality Strategy priorities by embedding quality into the care journey, advancing health equity, and fostering engagement between individuals and their care teams. These measures also align with Meaningful Measures 2.0 in their focus on promoting equity and closing gaps in care.

The Cancer portfolio currently includes 18 endorsed measures, including measures for hematologic cancers (e.g., lymphomas, leukemias, and myelomas), breast cancer, colon cancer, prostate cancer, and other cancer measures. Table 4 reports recent activity for the Cancer portfolio during the fall 2021, spring 2022, and fall 2022 measure cycles.

Table 4. 2022 Updates to the Cancer Portfolio

Cycle	Measures Reviewed
Fall 2021 Cycle	No measures were submitted for review.
Spring 2022 Cycle	No measures were submitted for review.
Fall 2022 Cycle	No measures were submitted for review.

Cardiovascular

Cardiovascular disease (CVD) is the foremost cause of death in the U.S., leading to approximately 1 in 4 deaths per year and significantly impacting most ethnic and racial groups.[27,28] In addition, heart disease is the highest direct health expenditure in the U.S. From 2016 to 2017, heart disease accounted for 13 percent of healthcare expenditures and was responsible for approximately $363 billion of accrued cost annually to the U.S. healthcare system (direct costs [i.e., cost of physicians and other professionals, hospital services, prescribed medications, and home healthcare] and indirect costs [i.e., lost productivity]).[27] The ongoing COVID-19 pandemic has heightened existing health inequities related to CVD and adds importance and urgency to the measures in this portfolio. This work aligns with the CMS National Quality Strategy's focus on embedding quality in the care journey, advancing health equity, promoting safety, and fostering engagement between individuals and their care teams. These measures similarly align with Meaningful Measures 2.0 in their efforts to promote health equity.

The Cardiovascular portfolio currently includes 39 endorsed measures, including primary prevention and screening, coronary artery disease (CAD), ischemic vascular disease (IVD), acute myocardial infarction (AMI), cardiac catheterization, percutaneous catheterization intervention (PCI), heart failure (HF), rhythm disorders, implantable cardioverter-defibrillators (ICDs), cardiac imaging, cardiac rehabilitation, and high blood pressure. Table 5 reports recent activity for the Cardiovascular portfolio during the fall 2021, spring 2022, and fall 2022 measure cycles.

Table 5. 2022 Updates to the Cardiovascular Portfolio

Cycle	Measures Reviewed
Fall 2021 Cycle	No measures were submitted for review.
Spring 2022 Cycle	No measures were submitted for review.
Fall 2022 Cycle	Four measures were submitted for review.

Cost and Efficiency

U.S. healthcare spending was estimated to have reached $4.3 trillion per year and is projected to have grown by 4.2 percent in 2021.[29] Total spending is projected to increase to $6.8 trillion per year by 2030.[29] Currently, U.S. healthcare costs are growing 1.1 percent faster than the annual gross domestic product (GDP), and it is estimated that U.S. healthcare spending will account for almost 20 percent of the GDP by 2028.[29] Medicare is expected to experience the fastest spending growth due to having the

highest projected enrollment growth (7.6 percent per year over 2019–2028).[30] U.S. hospital spending and physician and clinical service spending rates were also expected to increase in 2022 (6.9 percent for hospital spending and 6.2 percent for physician and clinical service spending).[29] Compared to other high-income countries, the U.S. has worse health outcomes and mortality rates while having the highest costs.[31] Resource use must be examined to improve efficiencies and value in the healthcare delivery system. The measures overseen by the Cost and Efficiency Standing Committee support the CMS National Quality Strategy goal of improving alignment and the Meaningful Measures 2.0 goal of streamlining and aligning quality measurement.

The Cost and Efficiency portfolio currently includes 13 endorsed measures, including both condition-specific and non–condition-specific measures, cost and resource measures, and broader efficiency measures. Table 6 reports recent activity for the Cost and Efficiency portfolio during the fall 2021, spring 2022, and fall 2022 measure cycles.

Table 6. 2022 Updates to the Cost and Efficiency Portfolio

Cycle	Measures Reviewed
Fall 2021 Cycle	No measures were submitted for review.
Spring 2022 Cycle	The Cost and Efficiency Standing Committee evaluated three newly submitted measures focused on Medicare spending per beneficiary. These measures examined elective primary hip arthroplasty, nonemergency coronary artery bypass graft (CABG), and lumbar spine fusion for degenerative disease. All three measures were recommended for NQF endorsement. The CSAC upheld the Standing Committee's recommendation and endorsed all three measures.
Fall 2022 Cycle	No measures were submitted for review.

Geriatrics and Palliative Care

Palliative care focuses on improving the quality of life for people living with a serious illness by easing pain and discomfort and relieving the stress and symptoms associated with a severe medical illness.[32,33] It aims to improve the quality of life for the patient and those who care for the patient. Palliative care is beneficial to patients and their families, as it provides mental and physical comfort while allowing the continuation of curative measures and prolonging survival.[34,35] The need for palliative care is highlighted by the increasing population of individuals ages 65 and older in the U.S. In 2019, more than 1 in every 7 Americans were over the age of 65, which totaled approximately 54.1 million older American adults (i.e., 16 percent of the total U.S. population).[36] Additionally, the provision of palliative care lowers healthcare expenditures, thereby increasing cost savings with an average of $3,237 per hospital stay per patient.[37-39] The measures stewarded by this Standing Committee are aligned with the CMS National Quality Strategy goals of embedding quality in the care journey, fostering patient engagement, and promoting safety and alignment, as well as the Meaningful Measures 2.0 goals of increasing caregiver engagement in measure development and aligning quality measures with quality improvement activities.

The Geriatrics and Palliative Care portfolio currently includes 35 endorsed measures, including measures related to physical, spiritual, religious, ethical, and legal aspects of palliative/end-of-life (EOL) care; general care of the patient nearing the EOL; and measures relating to geriatrics. Table 7 reports recent

activity for the Geriatrics and Palliative Care portfolio during the fall 2021, spring 2022, and fall 2022 measure cycles.

Table 7. 2022 Updates to the Geriatrics and Palliative Care Portfolio

Cycle	Measures Reviewed
Fall 2021 **Cycle**	The Geriatrics and Palliative Care Standing Committee evaluated three newly submitted measures. One measure focused on hospice visits in the last days of life, and the other two measures were PRO-PMs focusing on ambulatory care palliative patients' experience of feeling heard and understood, as well as receiving desired help for pain. The Standing Committee recommended all three measures for endorsement. The CSAC upheld the Standing Committee's recommendations and endorsed all three measures.
Spring 2022 **Cycle**	The Geriatrics and Palliative Care Standing Committee evaluated four maintenance measures undergoing maintenance review. Measures reviewed during this cycle focused on timely enrollment in palliative and hospice services, reduction of aggressive EOL interventions, and documentation of patient treatment preferences. The Standing Committee recommended three measures for endorsement. For the fourth measure, the Standing Committee recommended the measure at the facility level but not at the clinician-group level. The CSAC upheld the Standing Committee's recommendation and endorsed all four measures according to the recommendations.
Fall 2022 Cycle	Seven measures were submitted for review.

Neurology

Neurological conditions affect the brain, spinal cord, and nerves found throughout the body. The Global Burden of Disease study found that stroke, Alzheimer's and other dementias, and migraine headaches are the three most burdensome neurological conditions in the U.S. Additionally, the study found that due to an increasingly aging population, many neurological disorders are rising in prevalence, incidence, and mortality, impacting absolute numbers of disability-adjusted life years (DALYs).[32] Measuring the quality of care is a fundamental step toward improving healthcare outcomes, and quality measures are increasingly used in value-based purchasing (VBP) applications and maintenance of certification requirements. The measures overseen by the Neurology Standing Committee align with the CMS National Quality Strategy's focus on embedding quality into the care journey and advancing health equity as well as the Meaningful Measures 2.0 goal of leveraging quality measures to promote health equity and close gaps in care.

The Neurology portfolio currently includes 14 endorsed measures, including measures for stroke, subarachnoid and intracerebral hemorrhage, dementia, and carotid stenosis. Table 8 reports recent activity for the Neurology portfolio during the fall 2021, spring 2022, and fall 2022 measure cycles.

Table 8. 2022 Updates to the Neurology Portfolio

Cycle	Measures Reviewed
Fall 2021 Cycle	No measures were submitted for review.
Spring 2022 Cycle	No measures were submitted for review.

Cycle	Measures Reviewed
Fall 2022 Cycle	No measures were submitted for review.

Patient Experience and Function

Patient experience and function (PEF) is an important measure topic area that encompasses patient functional status, satisfaction, the experience of care, and issues related to care coordination. While it is a desirable outcome unto itself, positive patient experience of care has also been shown to be associated with improved clinical outcomes.[40,41] The U.S. healthcare delivery system has increasingly embraced the idea of ensuring each person, family, and caregiver is engaged within a care partnership, which is critical to achieving better patient outcomes.[42] Care coordination measures spanning the continuum of care are important for the success of promoting quality care delivery, better patient experiences, and more meaningful outcomes.[43-45] Well-coordinated care includes effective shared communication and decision making among all patients and providers across the care spectrum and supports accountable structures and processes in place for the integration of comprehensive plans of care across providers and settings.[46-48] The measures in the PEF portfolio align with the CMS National Quality Strategy goals of fostering engagement between individuals and their care teams, advancing health equity, and embedding quality into the care journey. PEF measures also align with the Meaningful Measures 2.0 goals due to their focus on promoting health equity, expanding and prioritizing caregiver engagement during the measure development process, and increasing the number of PRO-PMs.

The PEF portfolio currently includes 42 endorsed measures, including measures on functional status change and assessment, shared decision making, care coordination, patient experience, and long-term services and support measures. Table 9 reports recent activity for the PEF portfolio during the fall 2021, spring 2022, and fall 2022 measure cycles.

Table 9. 2022 Updates to the Patient Experience and Function Portfolio

Cycle	Measures Reviewed
Fall 2021 Cycle	No measures were submitted for review.
Spring 2022 Cycle	No measures were submitted for review.
Fall 2022 Cycle	Five measures were submitted for review.

Patient Safety

While widespread efforts have been made over the past 20 years to reduce preventable harm across healthcare arenas, mistakes continue to happen, with more than 200,000 patients annually suffering from hospital errors, injuries, accidents, and infections.[49] Patient safety and high quality care remain a top priority for the U.S.[50] Patient safety is not only about providing safe and efficient care but also about promoting a culture of safety across the continuum of healthcare settings. An environment that fosters equitable psychological safety in reporting errors, implementing solutions, and adopting system improvements is vital to harm reduction.[51] All healthcare team members and systems significantly impact the delivery of care and the culture of the environment in which care is delivered. The work of the Patient Safety Standing Committee directly connects with the CMS National Quality Strategy goals of embedding quality into the care journey, advancing health equity, promoting safety, and embracing the

digital age through interoperable and shared data. Patient Safety measures also align with the Meaningful Measures 2.0 goal of promoting health equity to close gaps in care and streamlining quality measurement to align with quality improvement activities.[49]

The Patient Safety portfolio currently includes 51 endorsed measures, including measures on medication safety, healthcare-associated infections, perioperative safety, falls, mortality, venous thromboembolism, pressure ulcers, workforce safety, and radiation safety. Table 10 reports recent activity for the Patient Safety portfolio during the fall 2021, spring 2022, and fall 2022 measure cycles.

Table 10. 2022 Updates to the Patient Safety Portfolio

Cycle	Measures Reviewed
Fall 2021 **Cycle**	The Patient Safety Standing Committee evaluated four newly submitted measures and one maintenance measure. Measures reviewed during this cycle focused on unintended weight loss, COVID-19 vaccination coverage, and radiation exposure from computed tomography (CT) scans. The Standing Committee recommended all five measures for endorsement. The CSAC upheld the Standing Committee's recommendations and endorsed all five measures.
Spring 2022 **Cycle**	The Patient Safety Standing Committee evaluated three newly submitted measures and three maintenance measures. The measure topics reviewed include the inappropriate diagnosis of illness in hospitalized medical patients, pediatric CT radiation dosing, measuring the nursing work environment, and reducing blood culture contamination rates. The Standing Committee recommended all six measures for endorsement. The CSAC upheld the Standing Committee's recommendations and endorsed all six measures.
Fall 2022 Cycle	Five measures were submitted for review.

Perinatal and Women's Health

Women in the U.S. face a variety of health and wellness concerns during pregnancy and childbirth. Despite spending nearly 1 in every 5 dollars on healthcare expenditures, which is more than twice that of other high-income countries (i.e., Australia, Canada, France, Germany, the Netherlands, New Zealand, Norway, Sweden, Switzerland, and the United Kingdom), the U.S. continues to have the highest maternal morbidity and mortality rates among these countries.[52] A 2020 report published by the Commonwealth Fund found that while most maternal deaths are preventable, the U.S. rates for maternal deaths have continued to increase rather than decrease since 2000. Data also show significant disparities for marginalized women (including those with demographic, economic, and other social risk factors) in maternal and infant morbidity and mortality, health screenings and prevention, and the treatment of preventable conditions. In 2020, the U.S. maternal mortality rate was 28.3 deaths per 100,000 live births, increasing to 55.3 deaths per 100,000 live births for non-Hispanic Black populations.[53] Maternal health disparities vary across the country based on ethnicity, socioeconomic status, and access to quality healthcare. Lack of access to high quality care decreases the opportunity for the identification of risk factors and mitigation of conditions that lead to poor outcomes. Appropriate care and management of pregnancy and childbirth are essential to the health and wellness of women and their families across the nation. The measures overseen by the Perinatal and Women's Health Standing Committee align with the CMS National Quality Strategy and Meaningful Measures 2.0 goals of

promoting health equity and closing gaps in care. These measures also align with the CMS National Quality Strategy goal of promoting safety.

The Perinatal and Women's Health portfolio currently includes 13 endorsed measures, including measures for life-threatening maternal or newborn complications, cesarean delivery, and contraception. Table 11 reports recent activity for the portfolio during the fall 2021, spring 2022, and fall 2022 measure cycles.

Table 11. 2022 Updates to the Perinatal and Women's Health Portfolio

Cycle	Measures Reviewed
Fall 2021 Cycle	No measures were submitted for review.
Spring 2022 Cycle	The Perinatal and Women's Health Standing Committee evaluated four newly submitted measures addressing reproductive health for both pregnant and nonpregnant women. These measures focus on severe obstetric complications, cesarean birth, and the self-identified need for contraceptive care. The Standing Committee recommended one measure for endorsement and two measures for trial use. The Standing Committee did not recommend one measure for endorsement; however, the measure developer submitted an appeal to the CSAC, with which the CSAC agreed. Therefore, the endorsement determination is not yet final. The Standing Committee will re-evaluate this measure in 2023.
Fall 2022 Cycle	No measures were submitted for review.

Prevention and Population Health

Prevention and population health services play a key role in the mitigation of disease and the improvement of the nation's health. Prevention and population health services are often characterized by routine disease screening practices and various risk assessment methods, as well as early disease detection and treatment. The results of these activities support the achievement of positive health outcomes within an identified population. A study revealed that primary clinical preventive services have an estimated net savings of $7 billion on personal health expenditures.[54] Population health activities also target the reduction of health inequities and disparities across populations; however, nearly 50 percent of health outcomes are affected by SDOH, which include housing, food and nutrition, transportation, social and economic mobility, education, and environmental conditions.[55] The prevention-based population health approach remains a relevant practice across all domains of disease control and provides a commonly shared roadmap for clinical health professionals to optimally engage their patients. The Prevention and Population Health Standing Committee oversees measures that directly align with the CMS National Quality Strategy and Meaningful Measures 2.0 goals of promoting health equity and closing gaps in care.

The Prevention and Population Health portfolio currently includes 21 endorsed measures, including measures for dental care, cancer screenings, immunizations, and well-child visits. Table 12 reports recent activity for the Prevention and Population Health portfolio during the fall 2021, spring 2022, and fall 2022 measure cycles.

Table 12. 2022 Updates to the Prevention and Population Health Portfolio

Cycle	Measures Reviewed
Fall 2021 Cycle	No measures were submitted for review.
Spring 2022 Cycle	The Prevention and Population Health Standing Committee evaluated two newly submitted measures and four maintenance measures. Measures reviewed during this cycle focused on topical fluoride for cavity prevention and influenza vaccination. The Standing Committee recommended all six measures for endorsement. The CSAC upheld the Standing Committee's recommendations and endorsed all six measures.
Fall 2022 Cycle	Three measures were submitted for review.

Primary Care and Chronic Illness

Primary care is a multidimensional framework that serves as the primary medical resource for patients to access equitable and affordable quality healthcare. Primary care encompasses health maintenance and promotion, disease prevention, counseling, patient education, and diagnosing and treating acute and chronic illnesses. Chronic diseases, broadly defined as conditions lasting a year or more and requiring continuous medical attention, are the leading causes of illness, disability, and death in the U.S.[56] Chronic diseases, such as cancer, heart disease, and diabetes, account for most of the nation's $4.1 trillion healthcare expenditures.[57] Healthcare costs are expected to grow at an average rate of 5.4 percent between 2019 and 2028, reaching $6.2 trillion by 2028.[30] The measures in the Primary Care and Chronic Illness portfolio align with the CMS National Quality Strategy goals of embedding quality into the care journey, advancing health equity, and fostering patient engagement. They also align with the Meaningful Measures 2.0 goal of promoting health equity and closing gaps in care.

The Primary Care and Chronic Illness portfolio currently includes 61 endorsed measures related to primary care and management of chronic disease, including nonsurgical procedures for eyes, ears, nose, and throat conditions; diabetes care; osteoporosis; HIV; rheumatoid arthritis; gout; back pain; asthma; chronic obstructive pulmonary disease (COPD); and acute bronchitis. Table 13 reports recent activity for the Primary Care and Chronic Illness portfolio during the fall 2021, spring 2022, and fall 2022 measure cycles.

Table 13. 2022 Updates to the Primary Care and Chronic Illness Portfolio

Cycle	Measures Reviewed
Fall 2021 Cycle	The Primary Care and Chronic Illness Standing Committee evaluated two newly submitted measures and one measure undergoing maintenance review. These measures focused on monitoring patients' days at home and out of the hospital, biomarker genetic testing of surgical pathology reports in some cancers, and behavioral health assessments in children. The Standing Committee recommended two measures for endorsement but did not recommend the remaining measure for endorsement. The CSAC upheld the Standing Committee's recommendations and endorsed the two recommended measures.

Cycle	Measures Reviewed
Spring 2022 Cycle	The Primary Care and Chronic Illness Standing Committee evaluated one newly submitted measure and three measures undergoing maintenance review. Measures reviewed during this cycle focused on several clinical areas, including asthma care, specifically emergency department (ED) visits for children post-discharge; Transcranial Doppler (TCD) ultrasonography screening among children with sickle cell anemia (SCA); diabetes care; and lung cancer operative-associated morbidity and mortality. The Standing Committee recommended all four measures for endorsement. The CSAC upheld the Standing Committee's recommendations and endorsed the four recommended measures.
Fall 2022 Cycle	No measures were submitted for review.

Renal

Chronic kidney disease (CKD) has emerged as one of the most prominent causes of morbidity and mortality in the 21st century.[58] Worldwide, kidney disease has increased in prevalence from 2000 to 2019 and rose from the 13th leading cause of death to the 10th.[59] In 2020, it was the 10th leading cause of death in the U.S.[60] It is also estimated that 37 million adults in the U.S. have CKD.[61] If CKD is not treated, it can progress to end-stage renal disease (ESRD), which is treated via dialysis or a kidney transplant. The Centers for Disease Control and Prevention (CDC) estimate that 360 new people per day begin dialysis treatment.[61] The selection of treatment and the education accompanying the treatment are critical factors for the overall cost and quality of patient outcomes. Treating kidney disease has also led to increased Medicare expenditures. In 2019, treating those with CKD cost $87.2 billion, and treating those with ESRD cost $37.3 billion.[61] The measures overseen by the Renal Standing Committee align with the CMS National Quality Strategy goals of advancing health equity, improving patient safety, and embedding quality in the care journey. The measures also align with Meaningful Measures 2.0 goals of promoting health equity and streamlining quality measurement to align with quality improvement activities.

The Renal portfolio currently includes 17 endorsed measures, including measures for hemodialysis, standardized mortality and transfusion ratios, phosphorus concentration, hypercalcemia, pediatric hemodialysis, angiotensin-converting enzyme (ACE) inhibitor or angiotensin receptor blocker (ARB) therapy, optimal ESRD treatment cycle starts, and bloodstream infections in hemodialysis patients. Table 14 reports recent activity for the Renal portfolio during the fall 2021, spring 2022, and fall 2022 measure cycles.

Table 14. 2022 Updates to the Renal Portfolio

Cycle	Measures Reviewed
Fall 2021 Cycle	No measures were submitted for review.

Cycle	Measures Reviewed
Spring 2022 Cycle	The Renal Standing Committee reviewed five newly submitted measures and one maintenance measure. These measures focused on the rate of fistula use, the ratio of switches from in-center to home dialysis, the timely start of renal replacement therapy, and timely access to kidney or kidney-pancreas transplants. The Standing Committee recommended two of the six measures for endorsement. The CSAC upheld the Standing Committee's recommendations and endorsed the two recommended measures.
Fall 2022 Cycle	Three measures were submitted for review.

Surgery

Patients undergo surgery to repair an injury, relieve symptoms, restore function, remove diseased organs, and replace diseased body parts. Many surgeries are planned, though several types occur under emergency conditions, such as trauma, burns, and fracture. For example, in the U.S., more than 1 million total knee and total hip procedures occur annually, a number that is expected to rise with the aging population.[62] By 2030, it is estimated that roughly 2 million arthroplasties will be performed annually, with an accrued cost of nearly $50 billion each year.[62] The measures reviewed and endorsed by the Surgery Standing Committee align with the CMS National Quality Strategy and Meaningful Measures 2.0 goals of promoting health equity. These Surgery measures also align with the CMS National Quality Strategy goals of promoting patient safety and fostering engagement between individuals and their care teams.

The Surgery portfolio currently includes 57 endorsed measures, including measures on perioperative safety; general surgery; and specialty surgeries, including cardiac, cardiothoracic, colorectal, ocular, orthopedic, urogynecology, and vascular surgery. Table 15 reports recent activity for the Surgery portfolio during the fall 2021, spring 2022, and fall 2022 measure cycles.

Table 15. 2022 Updates to the Surgery Portfolio

Cycle	Measures Reviewed
Fall 2021 Cycle	The Surgery Standing Committee evaluated one newly submitted measure: a PRO-PM focused on providing information to patients and clinicians about clinician and clinician group-level, risk-standardized PROs, such as pain and functional status, following elective primary total hip arthroplasty (THA) and/or total knee arthroplasty (TKA). The Standing Committee recommended the measure for endorsement. The CSAC upheld the Standing Committee's recommendation and endorsed the measure.
Spring 2022 Cycle	No measures were submitted for review.
Fall 2022 Cycle	No measures were submitted for review.

Cross-Cutting Initiatives to Improve the Measurement Process

With funding from CMS, NQF implemented several projects that advance consensus on measurement science and policy. The measurement activities described in these cross-cutting projects span care settings and providers and deliver practical insights for a wide variety of patients, providers, and payers.

This year's cross-cutting work advanced progress on high-priority measures through projects that refined guidance and established strategies (i.e., strategies that: (1) addressed social risk factors in risk adjustment, (2) addressed barriers to the development of digital PRO-PMs, and (3) furthered patient and caregiver engagement in NQF's review of measures for endorsement).

Cross-Cutting Initiative: Best Practices for Developing and Testing Risk Adjustment Models

Risk adjustment is a statistical method that can be applied to certain types of healthcare quality measures to account for different characteristics that put some patients at greater risk of worse health outcomes. Using risk adjustment to account for differences in clinical factors, such as severity of illness or other health conditions, is widely accepted and widely implemented in quality measurement to ensure fair comparisons across providers. However, adjusting for social factors, like income or education, and functional risk factors, such as the ability to perform activities of daily living, is not yet standard practice and merits careful consideration.

There is broad agreement that quality measurement must support efforts to improve health equity and that measures should not be biased. Yet, the root causes of inequities that affect health outcomes are multiple and often interrelated, and the question of whether and how to use risk adjustment to account for social and functional risk is a matter of significant debate. Both proponents and critics of adjusting for social risk factors point to concerns about possible unintended consequences. Those who favor adjustment note that failure to account for social risk factors in performance metrics can result in lower scores for providers that care for populations with high social risk and might, therefore, cause them to avoid caring for these populations. On the other hand, opponents argue that adjusting measures obscures true disparities in care and fails to promote further investment in achieving health equity.

In 2022, NQF completed and released Technical Guidance for developing risk adjustment models to facilitate unbiased healthcare quality measurement and to advance health equity. The Technical Guidance addresses a longstanding need for standardization and transparency by providing a step-by-step process for developing and testing risk models that consider social and functional risk. As the shift to value-based payment programs closely linking payment to quality has taken hold, it has highlighted the importance of understanding and accounting for the impact social factors have on healthcare quality assessments.

The Guidance is the result of a two-year effort. In the first year, NQF conducted an environmental scan, convened a Technical Expert Panel (TEP), and solicited public input to produce the initial draft guidance. During this second year, the draft guidance was vetted through a series of focus groups that included representatives from patient groups, clinicians, public and private health system administrators, risk adjustment methodologists, and NQF-convened measure evaluation Committees. With keen attention to divergent perspectives, NQF placed particular emphasis on gathering feedback from stakeholders with contrasting viewpoints to the Guidance and from historically, medically underserved communities.

Based on the input from stakeholders and the TEP, the final Technical Guidance identifies several key areas of consensus and defines seven risk adjustment best practices. Among other practices, it recommends that measure developers prepare a conceptual model that illustrates the potential

pathways between the social and/or functional risk factors, patient clinical risk factors, and the measured outcome. It establishes a minimum set of social and functional risk factors to consider within the overall risk adjustment strategy. It reflects the consensus that race is qualitatively different from other social risk factors and should be considered for adjustment on a case-by-case basis. And it articulates guidance for stratification analyses, as this can be a critical tool for reporting on differences in measure results between patient subgroups.

The specific design of risk adjustment models is left up to developers. The statistical approaches identified within the Guidance are not intended to be overly prescriptive as to limit the use of novel methods or to add significant burden to measure developers. The Guidance is intended to facilitate greater consistency in the development and evaluation of risk adjustment models by guiding developers through a step-by-step process to get there.

Cross-Cutting Initiative: Building a Roadmap From Patient-Reported Outcome Measures to Patient-Reported Outcome Performance Measures

PRO-PMs are unique quality measures that are specifically designed to elevate patients' voices in quality assessment. PRO-PMs are measures that assess quality using patient responses to patient-reported outcome measure (PROM) survey instruments. PRO-PMs therefore reflect quality as uniquely informed by patients' direct self-report of their outcomes.[63] Healthcare stakeholders, including professional societies across multiple disciplines, healthcare information technology (IT) providers, and federal agencies, recognize PRO-PMs as an important opportunity in quality measurement. CMS has repeatedly expressed its support for digital PRO-PMs, including through Meaningful Measures 2.0 (which explicitly identifies the importance of "prioritizing outcome and patient-reported measures") and the CMS National Quality Strategy goals of fostering engagement with patients and embracing the digital age. At present, PRO-PMs compose less than seven percent of all NQF-endorsed quality measures, and only one PRO-PM was included on the CMS list of Merit-Based Incentive Payment System (MIPS) quality measures for 2022.[64,65]

Challenges continue to hamper the broad adoption of these measures. PROMs, the tools on which PRO-PMs are based, have not become standard in clinical practice, and their implementation requires data gathering and clinical workflow changes. Patients lack awareness about the benefits of PROMs and PRO-PMs, such as the ability to compare outcomes across different clinicians, hospitals, and health plans, and may not prioritize responding to PROMs. PRO-PMs are also complex measures, and measure developers lack thorough yet accessible technical guidance to develop high quality performance measures based on patient-reported data.[66,63] Digital measurement is uniquely challenging for PRO-PMs, in part due to the reliance on data that patients digitally generate.

To further the development and use of PRO-PMs, in 2022 CMS and NQF continued the Building a Roadmap from Patient-Reported Outcome Measures to Patient-Reported Outcome Performance Measures project to continue addressing the need for straightforward guidance to help developers navigate the unique challenges of developing digital PRO-PMs. To update guidance helpful for developers with different levels of experience and at different stages in their careers, NQF worked with a 22-member Technical Expert Panel (TEP) representing the combined experience and perspectives of

measure developers, health IT professionals, clinicians, researchers, payers, patients, and others. This initiative produced the updated Building a Roadmap From Patient-Reported Outcome Measures to Patient-Reported Outcome Performance Measures technical guidance report that serves as a catalyst for building a more robust database of digital PRO-PMs, which will ultimately elevate patient voices and prioritize outcomes that matter to patients.

Cross-Cutting Initiative: Patient and Caregiver Engagement

Including patient advisors' perspectives (i.e., those who provide the primary perspective of patients, caregivers, and patient advocates) throughout the measure development and endorsement process is essential for quality measurement. In 2022, NQF convened the PACE Advisory Group, composed of 14 patient advisors, on a quarterly basis. The Advisory Group provided guidance on how to best prepare patient advisors to effectively participate in NQF's Standing Committees. The PACE Advisory Group helped brainstorm opportunities to increase participation of patient advisors in the E&M process, reviewed E&M pre-evaluation survey questions for readability and understandability, and provided feedback on a pilot mentorship program to pair new patient advisors with more experienced patient advisors. NQF also continued to offer an honorarium to mitigate the financial barriers that could hinder the participation of patient advisors in Standing Committees. Engaging patients and caregivers aligns with the CMS National Quality Strategy by fostering engagement, promoting equity, and ensuring quality in the care journey. This effort also aligns with the Meaningful Measures 2.0 goals of empowering consumers and closing gaps in care.

V. Stakeholder Recommendations on the Priority-Setting Process

Section 1890(b)(7)(A)(i) of the Social Security Act (the Act) requires that "The entity shall convene multistakeholder groups to provide input on (i) the selection of certain quality and efficiency measures from among: (I) such measures that have been endorsed by the entity; and (II) such measures that have not been considered for endorsement by such entity but are used or proposed to be used by the Secretary for the collection or reporting of quality and efficiency measures; and (ii) national priorities (as identified under section 280j of this title) for improvement in population health and in delivery of healthcare services for consideration under the national strategy established under section 280j of this title." The CBE is required to describe these duties in this report pursuant to section 1890(b)(5)(A)(i)(VI) of the Act.

Under section 1890A(a) of the Act, the HHS Secretary "shall establish a pre-rulemaking process under which the following steps occur with respect to the selection of quality and efficiency measures described in the consensus-based entity section 1395aaa(b)7(B) of this title:

(1) Input - Pursuant to section 1395aaa(b)7 of this title, the entity with a contract under section 1395aaa (currently NQF) shall convene multistakeholder groups to provide input to the Secretary on the selection of quality and efficiency measures for use in certain federal programs described in subparagraph (B) of such paragraph.

(2) Public Availability of Measures Considered for Selection - Not later than December 1 of each year (beginning with 2011), the Secretary shall make available to the public a list of quality and efficiency measures described in section 1395aaa(b)7(B) of this title that the Secretary is considering for selection.

(3) Transmission of Multi-Stakeholder Input - Pursuant to section 1395aaa(b)8 of this title, not later than February 1 of each year (beginning with 2012), the consensus-based entity shall transmit to the Secretary the input of the multistakeholder groups described in paragraph (1).

(4) Consideration of Multi-Stakeholder Input - The Secretary shall take into consideration the input from the multistakeholder groups described in paragraph (1) in selecting quality and efficiency measures described in section 1395aaa(b)."

Overview of the Measure Applications Partnership

The MAP is a multistakeholder set of committees convened by NQF that brings together consumers and patients, purchasers, health plans, clinicians and providers, community and state agencies, and suppliers to advise CMS on measures proposed for use in specific CMS public-reporting and value-based payment programs. Since 2011, CMS has called on the MAP to convene multistakeholder groups that review and provide recommendations to HHS on which measures to use in select public-reporting and performance-based payment programs (Appendix C). The MAP provides input to HHS so that the measures used in federal programs address national healthcare priorities, fill critical measurement gaps, and increase public-private payer alignment. The MAP's reviews and recommendations directly support the CMS National Quality Strategy and Meaningful Measures 2.0 goals to use the highest value and highest-impact measures in key quality domains, integrate quality into the care journey, use measures to drive outcome improvement, advance health equity, promote safety, support the digital age, incorporate patients' voices, and align measures across public and private entities. During its most recent deliberations, the MAP considered the need for validity and the burden of proposed and actively used measures across a wide scope of topics, including health equity, COVID-19, person-centered care, rural health, and care coordination.

The MAP operates under a three-part structure consisting of the following: (1) a Coordinating Committee, (2) three setting-specific Workgroups (i.e., Clinician, Hospital, and Post-Acute Care/Long-Term Care [PAC/LTC]), and (3) two Advisory Groups (i.e., Rural Health and Health Equity). The Coordinating Committee provides strategic direction and final approval of the measure

recommendations. The three Workgroups advise the Coordinating Committee on measures for specific care settings, care providers, and patient populations. The two Advisory Committees provide feedback to the Workgroups on cross-cutting issues. For example, the Rural Health Advisory Group provides input on access, cost, or quality issues encountered by rural residents, data collection and/or reporting challenges, and potential unintended consequences for rural providers when reviewing proposed measures. The Health Equity Advisory Group provides feedback on relevant SDOH; methodological challenges related to data collection, stratification, and risk adjustment; and potential unintended consequences when reviewing proposed measures.

The MAP consists of two processes: the Measures Under Consideration (MUC) process and the Measure Set Review (MSR) process.

Measures Under Consideration (MUC) Process. The annual MUC process begins with a public call for measures, after which CMS selects candidate measures that HHS is considering adopting, through the federal rulemaking process, for use in Medicare reporting and value-based payment programs. This list of candidate measures is referred to as the measures under consideration (MUC) list. The MAP convenes to review the measures on the list and make recommendations about whether the proposed measures are appropriate for use in select federal healthcare quality programs. The recommendations are published in a notice of proposed rulemaking in the *Federal Register*. The Workgroups use the MAP-developed measure selection criteria (MSC) to assess how well each measure fits the needs of a specified program and make one of the following determinations for each candidate measure: support for rulemaking, conditional support for rulemaking, do not support for rulemaking with potential for mitigation, or do not support for rulemaking.

Measure Set Review (MSR) Process. The 2021 Consolidated Appropriations Act expanded the role of the CBE and allowed it the opportunity to "provide input to the Secretary on quality and efficiency measures that could be considered for removal"[1] from select public-reporting and performance-based payment programs. In 2022, NQF expanded the MAP's scope to include the MSR process. The Workgroups use the MAP-developed Measure Review Criteria (MRC) to identify measures that no longer meet program priorities and provide valuable information for public-reporting and payment systems. The MAP makes one of the following determinations for each nominated measure: support for retaining, conditional support for retaining, conditional support for removal, or support for removal.

Within this section of the report, NQF will reference and describe enhancements to the MAP process in 2022 and recommendations resulting from the 2021–2022 MUC and 2022 MSR cycles.

2022 Enhancements to the MAP Process: MSR Process Implementation for Workgroups and Advisory Groups

During the 2022 cycle, NQF expanded the MSR process based on feedback on the criteria and processes from the 2021 pilot. The pilot process only included a review of measures by the Coordinating Committee. In the 2022 cycle, NQF expanded the process to include measure reviews by the three setting-specific Workgroups and two Advisory Groups, added two public comment opportunities, and piloted a consent calendar process. To begin the MSR process, NQF and CMS worked together to select

federal programs for review conducted by the MAP. The Workgroups and Advisory Groups then responded to a survey nominating measures to discuss for removal from the selected programs, using the MRC to inform their decisions. NQF posted the measures with the most survey votes for public comment, then sent the measures to the MAP Workgroups and Advisory Groups for discussion. The measures were then sent to the Coordinating Committee, using a consent calendar to facilitate and focus the review. More specifically, the process placed measures with strong consensus (i.e., 80 percent or more of the Workgroup voting for the same decision category) on the consent calendar. The process calls for pulling measures from the consent calendar if no consensus was reached, a strong consensus was not reached, or the Committee members requested to pull the measures with a clear and compelling rationale. The Coordinating Committee discussed those measures that were pulled from the consent calendar.

2021–2022 MAP Measures Under Consideration Cycle Results

The MAP published the results of its 2021–2022 pre-rulemaking deliberations in February and March of 2022. The MAP made recommendations on 29 unique measures for 13 federal programs, including several cross-setting measures considered for multiple programs, resulting in 44 measure-program pairs. Measure alignment, health equity, risk adjustment, and PROs were common themes throughout the cycle, not only in member discussion but also in the public comments. Members also emphasized the important role of cross-setting digital and safety measures to prevent critical clinical safety events in the inpatient setting.

Rural Health Advisory Group Recommendations

The Rural Health Advisory Group reviews MUCs in order to highlight issues that may be particularly relevant to rural populations, such as access, cost, or quality issues encountered by rural residents, data collection and/or reporting challenges, and potential unintended consequences for rural providers. This input directly supports HHS' commitment to better understand and improve outcomes for patients in rural areas throughout the U.S.

As part of the MAP's annual pre-rulemaking process, the Rural Health Advisory Group: (1) provides input to the MAP Workgroups on any potential rural health issues related to MUCs; (2) identifies gaps in measurement that might specifically impact rural settings; and (3) provides recommendations regarding priority rural measurement challenges, including low case-volume and access to care.

Key themes from the Rural Health Advisory Group's discussion included the following:

1. Low case-volume could affect the reliability of measures that address specialty procedures and conditions instead of cross-cutting topics, such as medication safety, immunizations, obstetric care, and kidney health.
2. Risk adjustment is especially important to fairly interpret and compare performance for rural providers. Rural patients are more likely to have unique risk factors (e.g., they may be more likely to work physically demanding jobs, which can impact outcomes after hip or knee surgery) and rural practices tend to have limited resources in which rural providers cannot always affect the social needs of their patients.

3. Availability of services and access to specialty care can be a challenge for rural patients and providers. These issues can lead to loss-to-follow-up situations in their patient population, and data collection for rural providers can be especially difficult.
4. Reporting burden tends to have a higher impact on rural providers. Rural settings may have lower overall staffing numbers, thus placing greater reporting burden on the clinician. Rural providers who have been unable to update their infrastructure may score poorly or have incomplete data for measures that depend on EHR data.
5. The newly established Rural Emergency Hospitals program should focus on measures related to care coordination and communication (e.g., understanding transfers) and focus measurement on measures with low reporting burden.

Health Equity Advisory Group Recommendations

New to the 2021–2022 MAP cycle, NQF convened a Health Equity Advisory Group to provide input on MUCs to HHS with a lens to measurement issues affecting health disparities and the 1,000-plus U.S. critical access hospitals (CAHs). The Health Equity Advisory Group provides input on MUCs with the goal of reducing health differences closely linked with social, economic, or environmental disadvantages. This input aligns with the CMS National Quality Strategy and Meaningful Measures 2.0 goals to advance health equity and leverage quality measures to close gaps in care.

During the MAP's annual pre-rulemaking process, the Health Equity Advisory Group: (1) provides input to the MAP Workgroups on measurement issues affecting CAHs, (2) identifies health disparities affecting MUCs, measures under review, and disparity-related gaps in measurement, and (3) provides recommendations to reduce disparities that are linked to SDOH.

Key themes from the Health Equity Advisory Group's discussion included the following:

- Potential categories of stratification could include age, sex, race, ethnicity, English proficiency, gender identity, sexual orientation, visit type, insurance, disability, markers of economic disparities, rurality, setting type, etc.
- Measures should only be stratified where appropriate rather than stratifying measures by all categories. The group emphasized the need for guidance on standardized data collection and the stratification of measures.
- Equity should be considered throughout the measure development process (e.g., understanding access to procedures and treatments, focusing on conditions with known disparities, translating and validating PRO-PM tools, and testing measures with diverse patient populations).
- Improving health equity will be an iterative process, and organizations should monitor the use of equity measures for any unintended consequences, especially for measures tied to payment that could reduce funding for low-resource facilities.

Clinician Workgroup Recommendations

The MAP Clinician Workgroup provides recommendations for coordinating clinician performance measurement across federal programs, including feedback on the alignment of measures and data sources to reduce burden, promote program goals, and drive standardization. This Workgroup typically reviews measures and provides annual pre-rulemaking input for three programs: MIPS, the Medicare

Shared Savings Program (SSP), and the Medicare Part C and Part D Star Ratings. During the 2021–2022 MAP cycle, the MAP Clinician Workgroup reviewed 13 measures across MIPS and the Medicare Part C and D Star Ratings programs; the SSP did not have any measures under consideration during this cycle.

Recommendations for the Merit-Based Incentive Payment System

MIPS was established by the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) to consolidate pre-existing Medicare incentive and quality reporting programs for clinicians into a single program. The quality payment program considerations for the MIPS Program include improvement in beneficiary outcomes, increased adoption of advanced alternative payment models (APMs) which use additional payments to incentivize high-quality care, improved data and information sharing, reduced burden on clinicians, maximized participation, and operational excellence in program implementation. The MIPS Program makes positive and negative payment adjustments for eligible clinicians (ECs) based on their performance in four categories: quality, cost, promoting interoperability, and improvement activities. To meet the quality component of the program, individual ECs or groups of ECs choose six measures to report to CMS. One of these measures must be an outcome measure or another high-priority measure. Clinicians can also choose to report a specialty-specific measure set.

The MAP Clinician Workgroup reviewed 10 measures for inclusion in MIPS. The measures and their final decision categories are as follows:

Table 16. MAP Clinician Workgroup Recommendations on Measures Under Consideration for MIPS

Determination	Measure No.	Measure Description
Support for Rulemaking	**MUC2021-127**	Adult Kidney Disease: Angiotensin Converting Enzyme (ACE) Inhibitor or Angiotensin Receptor Blocker (ARB) Therapy
Conditional Support for Rulemaking	**MUC2021-058**	Appropriate Intervention of Immune-Related Diarrhea and/or Colitis in Patients Treated With Immune Checkpoint Inhibitors
*	**MUC2021-090**	Kidney Health Evaluation
*	**MUC2021-105**	Mismatch Repair (MMR) or Microsatellite Instability (MSI) Biomarker Testing Status in Colorectal Carcinoma, Endometrial, Gastroesophageal, or Small Bowel Carcinoma
*	**MUC2021-107**	Clinician-Level and Clinician Group-Level Total Hip Arthroplasty and/or Total Knee Arthroplasty (THA and TKA) Patient Reported Outcome-Based Performance Measure (PRO-PM)
*	**MUC2021-125**	Psoriasis – Improvement in Patient-Reported Itch Severity
*	**MUC2021-134**	Screen Positive Rate for Social Drivers of Health
*	**MUC2021-135**	Dermatitis – Improvement in Patient-Reported Itch Severity
*	**MUC2021-136**	Screening for Social Drivers of Health
Do Not Support for Rulemaking with Potential for Mitigation	**MUC2021-063**	Care Goal Achievement Following a Total Hip Arthroplasty (THA) or Total Knee Arthroplasty (TKA)

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Recommendations for Medicare Part C and Part D Star Ratings

The Medicare Part C and Part D Star Ratings Program was enacted by the Medicare Prescription Drug Improvement and Modernization Act of 2003, also called the Medicare Modernization Act (MMA). The MMA provided for private health plans known as Medicare Advantage Plans (Part C) and expanded Medicare to include an optional prescription drug benefit (Part D). This is a quality payment program with the goals of public reporting on Medicare Plan Finder (MPF), quality improvement, marketing and enrollment, and financial incentives. The ratings of health plans (Part C) are based on performance in five domains: staying healthy (i.e., screenings, tests, and vaccines), managing chronic (i.e., long-term) conditions, member experience with the health plan, member complaints and changes in the health plan's performance, and health plan customer service. The ratings of drug plans (Part D) are based on four domains: drug plan customer service, member complaints and changes in the drug plan's performance, member experience with the drug plan, and drug safety and accuracy of drug use.

The MAP Clinician Workgroup reviewed three measures for inclusion in the Medicare Part C and Part D Star Ratings Program. The measures and their final decision categories are as follows:

Table 17. MAP Clinician Workgroup Recommendations on Measures Under Consideration for Medicare Part C and D Star Ratings

Determination	Measure No.	Measure Description
Support for Rulemaking	**MUC2021-053**	Concurrent Use of Opioids and Benzodiazepines (COB)
Conditional Support for Rulemaking	**MUC2021-056**	Polypharmacy: Use of Multiple Anticholinergic Medications in Older Adults (Poly-ACH)
*	**MUC2021-066**	Polypharmacy: Use of Multiple Central Nervous System (CNS)-Active Medications in Older Adults (Poly-CNS)

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Key Themes From the Clinician Workgroup Review

Key themes from the Clinician Workgroup's discussion included the following:

- The Workgroup noted that reporting on all-payer data in the Medicare SSP could have unintended consequences related to equity, as Federally Qualified Health Centers (FQHCs) or others who care for disproportionately disadvantaged populations with limited access to care could be inappropriately penalized in payment programs.
- The Workgroup expressed enthusiasm for equity-related measurement and noted that proposed SDOH measures would fit well within the SSP.
- The Workgroup's review of equity-related measures supports the CMS National Quality Strategy goal to advance health equity, as well as the Meaningful Measures 2.0 goal to promote health equity with quality measures.
- The Workgroup recognized that MUCs for the Medicare Part C and D Star Ratings Program focused on opioid use and polypharmacy in older adults. These measures support CMS' efforts to use measures for improved patient safety and equity in alignment with the CMS National Quality Strategy and Meaningful Measures 2.0 and reflect important national care gaps.

Hospital Workgroup Recommendations

The Hospital Workgroup provides input to the Coordinating Committee on matters related to the selection and coordination of measures for hospitals, including inpatient acute, outpatient, cancer, and psychiatric hospitals.

The Hospital Workgroup reviewed 23 measures for annual pre-rulemaking input on the following programs:

- Hospital Inpatient Quality Reporting (Hospital IQR) Program
- Medicare and Medicaid Promoting Interoperability Program for Eligible Hospitals and Critical Access Hospitals
- Hospital Value-Based Purchasing (VBP) Program
- Prospective Payment System-Exempt Cancer Hospital Quality Reporting (PCHQR) Program
- Hospital-Acquired Conditions Reduction Program (HACRP)
- End-Stage Renal Disease Quality Incentive Program (ESRD QIP)

The following programs did not have any MUCs during the 2021–2022 pre-rulemaking cycle:

- Hospital Outpatient Quality Reporting Program (Hospital OQR Program)
- Inpatient Psychiatric Facility Quality Reporting (IPFQR) Program
- Hospital Readmissions Reduction Program (HRRP)
- Ambulatory Surgical Center Quality Reporting (ASCQR) Program

Recommendations for the Hospital Inpatient Quality Reporting Program

The Hospital Inpatient Quality Reporting (Hospital IQR) Program is a pay-for-reporting and public-reporting program established by section 501(b) of the MMA of 2003 and expanded by the Deficit Reduction Act (DRA) of 2005. This program requires hospitals paid under the Inpatient Prospective Payment System (IPPS) to report on process, structure, outcome, patient perspectives on care, efficiency, and cost of care measures. Hospitals that do not participate or that participate but fail to meet program requirements receive a one-fourth reduction of the applicable percentage increase in their annual payment update. The program aims to make progress towards paying providers based on quality rather than quantity of care and providing consumers with information about hospital quality to make informed choices about care. The data are publicly reported on the CMS Care Compare website.

The MAP Hospital Workgroup reviewed 11 measures for inclusion in the Hospital IQR Program. The measures and their final decision categories are as follows:

Table 18. MAP Hospital Workgroup Recommendations on Measures Under Consideration for the Hospital IQR Program

Determination	Measure No.	Measure Description
Support for Rulemaking	**MUC2021-084**	Hospital Harm – Opioid-Related Adverse Events
*	**MUC2021-122**	Excess Days in Acute Care (EDAC) After Hospitalization for Acute Myocardial Infarction (AMI)

Determination	Measure No.	Measure Description
*	MUC2021-131	Medicare Spending per Beneficiary (MSPB) Hospital
Conditional Support for Rulemaking	MUC2021-098	National Healthcare Safety Network (NHSN) Healthcare-Associated *Clostridioides difficile* Infection Outcome Measure
*	MUC2021-100	National Healthcare Safety Network (NHSN) Hospital-Onset Bacteremia & Fungemia Outcome Measure
*	MUC2021-104	Hospital Harm – Severe Obstetric Complications eCQM
*	MUC2021-106	Hospital Commitment to Health Equity
*	MUC2021-118	Hospital-Level Risk-Standardized Complication Rate (RSCR) Following Elective Primary Total Hip Arthroplasty (THA) and/or Total Knee Arthroplasty (TKA)
*	MUC2021-120	Hospital-Level, Risk-Standardized Payment Associated With an Episode of Care for Primary Elective Total Hip and/or Knee Arthroplasty (THA/TKA)
*	MUC2021-134	Screen Positive Rate for Social Drivers of Health
*	MUC2021-136	Screening for Social Drivers of Health

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Recommendations for the Medicare Promoting Interoperability Program for Eligible Hospitals and Critical Access Hospitals

The Medicare Promoting Interoperability Program for Hospitals (originally established as the Medicare and Medicaid EHR Incentive Program) is a pay-for-reporting and public-reporting program established in 2011 to encourage eligible entities to adopt, implement, upgrade, and demonstrate meaningful use of certified electronic health record technology (CEHRT). CMS' three-stage implementation process culminated with the final stage in 2017, focusing on the use of CEHRT to improve health outcomes. Eligible hospitals that fail to meet program requirements, including meeting the clinical quality measure (CQM) requirements, receive a three-fourths reduction on the applicable percentage increase. The program's name change in 2018 reflected the focus on interoperability and improving patient access to health information.

The MAP Hospital Workgroup reviewed four measures for inclusion in the Medicare and Medicaid Promoting Interoperability Program for Eligible Hospitals and Critical Access Hospitals. The measures and their final decision categories are as follows:

Table 19. MAP Hospital Workgroup Recommendations on Measures Under Consideration for the Medicare and Medicaid Promoting Interoperability Program for Eligible Hospitals and Critical Access Hospitals

Determination	Measure No.	Measure Description
Support for Rulemaking	MUC2021-084	Hospital Harm – Opioid-Related Adverse Events
Conditional Support for Rulemaking	MUC2021-098	National Healthcare Safety Network (NHSN) Healthcare-Associated *Clostridioides difficile* Infection Outcome Measure

Determination	Measure No.	Measure Description
*	**MUC2021-100**	National Healthcare Safety Network (NHSN) Hospital-Onset Bacteremia & Fungemia Outcome Measure
*	**MUC2021-104**	Hospital Harm – Severe Obstetric Complications eCQM

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Recommendations for the Hospital Value-Based Purchasing Program

The Hospital Value-Based Purchasing (VBP) Program is a pay-for-performance program established by section 3001(a) of the ACA, under which value-based incentive payments are made each FY to hospitals meeting performance standards established for a performance period of the program year. The amount equal to 2 percent of the base operating Medicare severity diagnosis-related group (MS-DRG) is withheld from reimbursements of participating hospitals and redistributed to them as incentive payments. The program strives to improve healthcare quality by realigning hospitals' financial incentives and providing incentive payments to hospitals that meet or exceed performance standards.

The MAP Hospital Workgroup reviewed two measures for inclusion in the Hospital VBP Program. The measures and their final decision categories are as follows:

Table 20. MAP Hospital Workgroup Recommendations on Measures Under Consideration for the Hospital VBP Program

Determination	Measure No.	Measure Description
Support for Rulemaking	**MUC2021-131**	Medicare Spending per Beneficiary (MSPB)
Conditional Support for Rulemaking	**MUC2021-118**	Hospital-Level Risk-Standardized Complication Rate (RSCR) Following Elective Primary Total Hip Arthroplasty (THA) and/or Total Knee Arthroplasty (TKA)

Recommendations for the Prospective Payment System-Exempt Cancer Hospital Quality Reporting Program

Section 3005 of the Affordable Care Act (ACA) added subsections to section 1866 of the SSA and established the Prospective Payment System (PPS)-Exempt Cancer Hospital Quality Reporting (PCHQR) Program for hospitals referred to as PPS-Exempt Cancer Hospitals or PCHs. Currently, 11 PCHs are excluded from payment under the IPPS. The PCHQR Program is a voluntary, quality-reporting program intended to encourage hospitals and clinicians to improve the quality of care, share information, and learn from each other's experiences and best practices. There are no payment implications for these hospitals, and data are published on the Provider Data Catalog (PDC) website.

The MAP Hospital Workgroup reviewed three measures for inclusion in the PCHQR Program. The measures and their final decision categories are as follows:

Table 21. MAP Hospital Workgroup Recommendations on Measures Under Consideration for the PPS-Exempt Cancer Hospital Quality Reporting Program

Determination	Measure No.	Measure Description
Conditional Support for Rulemaking	MUC2021-091	Appropriate Treatment for Patients With Stage I (T1c) Through III HER2 Positive Breast Cancer
*	MUC2021-098	National Healthcare Safety Network (NHSN) Healthcare-Associated *Clostridioides difficile* Infection Outcome Measure
*	MUC2021-100	National Healthcare Safety Network (NHSN) Hospital-Onset Bacteremia & Fungemia Outcome Measure

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Recommendations for the Hospital-Acquired Conditions Reduction Program

The Hospital-Acquired Conditions Reduction Program (HACRP) is a pay-for-performance and public-reporting program established by section 1886(p)(6)(B) of the SSA. The worst-performing 25 percent of hospitals in the program, as determined by the measures in the program, will have their Medicare payments reduced by 1 percent. The program aims to encourage hospitals to reduce hospital-acquired conditions (HACs) through penalties and to link Medicare payments to healthcare quality in the inpatient hospital setting.

The MAP Hospital Workgroup reviewed two measures for inclusion in the HACRP. The measures and their final decision categories are as follows:

Table 22. MAP Hospital Workgroup Recommendations on Measures Under Consideration for the HACRP

Determination	Measure No.	Measure Description
Conditional Support for Rulemaking	MUC2021-098	National Healthcare Safety Network (NHSN) Healthcare-Associated *Clostridioides difficile* Infection Outcome Measure
*	MUC2021-100	National Healthcare Safety Network (NHSN) Hospital-Onset Bacteremia & Fungemia Outcome Measure

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Recommendations for the End-Stage Renal Disease Quality Incentive Program

The End-Stage Renal Disease Quality Incentive Program (ESRD QIP) is a value-based payment program established to promote high quality services in dialysis facilities treating patients with ESRD. The ESRD QIP was established in accordance with section 1881(h) of the SSA, added by section 153(c) of the Medicare Improvements for Patients and Providers Act (MIPPA). As of 2012, payments to dialysis facilities are reduced if facilities do not meet or exceed the required total performance score. Payment reductions are on a sliding scale and can amount to a maximum of 2 percent per year. The goals of the ESRD QIP include improving the quality of dialysis care and producing better outcomes for dialysis beneficiaries.

The MAP Hospital Workgroup reviewed one measure for inclusion in the ESRD QIP. The measure and the final decision category are as follows:

Table 23. MAP Hospital Workgroup Recommendations on Measures Under Consideration for the ESRD QIP

Determination	Measure No.	Measure Description
Do Not Support for Rulemaking	**MUC2021-101**	Standardized Readmission Ratio (SRR) for Dialysis Facilities

Key Themes From the Hospital Workgroup Review

Key themes from the Hospital Workgroup's discussion included the following:

- The Workgroup discussed, by statutory requirement, that any measure intended for the Hospital VBP Program must first be implemented for at least one year in the Hospital IQR Program.
- The Workgroup noted that older versions of some measures are currently implemented in federal programs. When these measures are replaced with updated versions in federal programs, it may be helpful for hospitals to receive communications to provide context on any associated performance changes.
- The Workgroup expressed support for increased equity-related measurement.
- The Workgroup's cross-program discussion (e.g., discussion of MUC2021-084, MUC2021-098, MUC2021-100, and MUC2021-104 for both the Hospital IQR Program and the Promoting Interoperability Program) further reinforced the CMS National Quality Strategy goal of increasing quality measurement alignment.

Post-Acute Care/Long-Term Care Workgroup Recommendations

The PAC/LTC Workgroup reviews measures for post-acute and long-term care programs. The PAC/LTC Workgroup makes recommendations for alignment while considering the broad range of patient needs across settings (e.g., different types and levels of care; multiple provider types; and varying payment structures, including differing requirements between Medicare and Medicaid).

The PAC/LTC Workgroup reviewed eight measures for annual pre-rulemaking input on the following programs, with one measure crossing three programs:

- Skilled Nursing Facility Value-Based Purchasing (SNF VBP) Program
- Skilled Nursing Facility Quality Reporting Program (SNF QRP)
- Inpatient Rehabilitation Facility Quality Reporting Program (IRF QRP)
- Long-Term Care Hospital Quality Reporting Program (LTCH QRP)

The following programs did not have any MUCs during this year's pre-rulemaking cycle:

- Home Health Quality Reporting Program (HH QRP)
- Hospice Quality Reporting Program (HQRP)

Recommendations for the Skilled Nursing Facility Value-Based Purchasing Program

The Skilled Nursing Facility Value-Based Purchasing (SNF VBP) Program awards incentive payments to SNFs based on a single all-cause readmission measure, as mandated by the Protecting Access to

Medicare Act (PAMA) of 2014. SNFs' performance period risk-standardized readmission rates are compared to their own past performance to calculate an improvement score and the national SNF performance during the baseline period to calculate an achievement score. The higher of the two scores becomes the SNF's performance score.

The Consolidated Appropriations Act of 2021 allows the Secretary of HHS to apply up to nine additional measures, which may include measures focusing on functional status, patient safety, care coordination, or patient experience for payments for services furnished on or after October 1, 2023.

The MAP reviewed four MUCs for inclusion in the SNF VBP Program. The measures and their final decision categories are as follows:

Table 24. MAP PAC/LTC Workgroup Recommendations on Measures Under Consideration for SNF VBP

Determination	Measure No.	Measure Description
Support for Rulemaking	**MUC2021-130**	Discharge to Community – Post Acute Care Measure for Skilled Nursing Facilities
*	**MUC2021-095**	CoreQ Short Stay Discharge Measure
Conditional Support for Rulemaking	**MUC2021-124**	Skilled Nursing Facility Healthcare–Associated Infections Requiring Hospitalization
*	**MUC2021-137**	Total Nursing Hours per Resident Day

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Recommendations for the Skilled Nursing Facility Quality Reporting Program

The Skilled Nursing Facility Quality Reporting Program (SNF QRP) was established in accordance with the Improving Medicare Post-Acute Care Transformation Act of 2014 (IMPACT Act), which added section 1899B to the SSA requiring data submission from SNFs. SNFs that submit data under the SNF PPS are required to participate in the SNF QRP, excluding units that are affiliated with CAHs. The IMPACT Act requires measures that address five quality domains, or three measure categories, including resource use, hospitalization, and discharge to the community. Initiated in FY 2018, providers who fail to submit required quality data to CMS will have their annual payment update reduced by 2 percentage points. SNF QRP data are publicly reported on the Care Compare website with the goal of increasing transparency so that patients, families, and caregivers can make informed choices.

The MAP reviewed two MUCs for inclusion in the SNF QRP. The measures and their final decision categories are as follows:

Table 25. MAP PAC/LTC Workgroup Recommendations on Measures Under Consideration for SNF QRP

Determination	Measure No.	Measure Description
Support for Rulemaking	**MUC2021-123**	Influenza Vaccination Coverage Among Healthcare Personnel
Conditional Support for Rulemaking	**MUC2021-098**	National Healthcare Safety Network (NHSN) Healthcare-associated *Clostridioides difficile* Infection Outcome Measure

Recommendations for the Long-Term Care Hospital Quality Reporting Program

The Long-Term Care Hospital Quality Reporting Program (LTCH QRP) was established in accordance with section 1886(m) of the SSA, as amended by section 3004(a) of the ACA. The LTCH QRP applies to all designated LTCH facilities under the Medicare program with the goal of furnishing extended medical care to individuals with clinically complex problems (e.g., multiple acute or chronic conditions needing hospital-level care for relatively extended periods of greater than 25 days). Data sources for LTCH QRP measures include Medicare Fee-for-Service (FFS) claims, the CDC's National Healthcare Safety Network (NHSN) data submissions, and the LTCH Continuity Assessment Record and Evaluation (CARE) Data Set (LCDS) assessment data.

The MAP reviewed one MUC for inclusion in LTCH QRP. The measure and the final decision category are as follows:

Table 26. MAP PAC/LTC Workgroup Recommendations on Measures Under Consideration for LTCH QRP

Determination	Measure No.	Measure Description
Conditional Support for Rulemaking	**MUC2021-098**	National Healthcare Safety Network (NHSN) Healthcare-associated *Clostridioides difficile* Infection Outcome Measure

Recommendations for the Inpatient Rehabilitation Facility Quality Reporting Program

The Inpatient Rehabilitation Facility Quality Reporting Program (IRF QRP) was established in accordance with section 1886(j) of the SSA as amended by section 3004(b) of the ACA. IRFs that receive the IRF PPS are required to participate in the IRF QRP (e.g., IRF hospitals, IRF units that are co-located with affiliated acute-care facilities, and IRF units affiliated with CAHs). The goal of the IRF QRP is to address the rehabilitation needs of the individuals, including improved functional status and the achievement of a successful return to the community post-discharge. Data sources for IRF QRP measures include Medicare FFS claims, the CDC's NHSN data submissions, and Inpatient Rehabilitation Facility Patient Assessment Instrument (IRF-PAI) assessment data.

The MAP reviewed one MUC for inclusion in IRF QRP. The measure and the final decision category are as follows:

Table 27. MAP PAC/LTC Workgroup Recommendations on Measures Under Consideration for IRF QRP

Determination	Measure No.	Measure Description
Conditional Support for Rulemaking	**MUC2021-098**	National Healthcare Safety Network (NHSN) Healthcare-associated *Clostridioides difficile* Infection Outcome Measure

Key Themes From the PAC/LTC Workgroup Review

Key themes from the PAC/LTC Workgroup's discussion included the following:

- The Workgroup discussed the topic of infection throughout the cycle, reviewing multiple measures related to healthcare-associated infections (i.e., MUC2021-098 and MUC2021-124).
- The Workgroup noted that the COVID-19 pandemic uncovered an under-preparedness and lack of resources related to infection control. Infection control resources have recently been provided for nursing homes, but these are time-limited. Aligning measures on infection control performance is a high priority in the future.
- The Workgroup agreed with the importance of health equity and equity-related measurement.
- The Workgroup's discussion and review of infection measures reinforce national quality priorities, given that promoting safety is a CMS National Quality Strategy goal.

2022 MAP Measure Set Review Cycle Results

During the 2022 MSR cycle, the MAP reviewed and made recommendations on 32 measures under review for six CMS quality reporting and value-based payment programs covering ambulatory, acute, and PAC/LTC settings. The MAP submitted recommendations to HHS on September 22, 2022. The MAP's recommendations for measures included in the MSR reflect national priorities to ease the burden associated with an increased number of performance measures and identify measures that no longer meet program priorities and provide valuable information for public-reporting and payment programs.

Rural Health Advisory Group Recommendations

The Rural Health Advisory Group provides input on all measures under review and highlights measures that may be particularly pertinent to issues in the rural population (e.g., access, costs, or quality issues encountered by rural residents; data collection and/or reporting challenges; and potential unintended consequences for rural providers). The Rural Health Advisory Group provides a rural health perspective to the MAP Workgroups on the measures under review during the MSR, as well as identifying rural-relevant gaps in measurement and providing recommendations on priority rural health issues.

No common themes arose from the Rural Health Advisory Group's measure discussions this cycle.

Health Equity Advisory Group Recommendations

During the 2021–2022 MUC cycle, NQF launched the Health Equity Advisory Group to incorporate perspectives on health inequities and disparities into the measure review. This Advisory Group provides input on all measures under review, focusing on measurement issues related to health disparities and their potential impact on CAHs. The Health Equity Advisory Group also identifies health disparities and gaps in measurement, as well as provides recommendations to identify and reduce health differences linked with social, economic, or environmental disadvantages.

Key themes from the Health Equity Advisory Group's discussion included the following:

- Grouping measures by specific equity concerns (e.g., related to care delivery or limited community resources) could be a valuable approach for future measure evaluations.
- Measures are not consistently stratified, which makes it difficult to evaluate measures without a direct focus on equity. The Advisory Group noted that performance stratified by factors such as race and ethnicity are needed for a full review of disparities-sensitive measures.

- The Advisory Group suggested engaging academics and researchers to identify equity-related literature on measures and to develop a framework to better assess measures for equity sensitivity.
- The Advisory Group's discussion supports national quality priorities: Advancing health equity is a goal of the CMS National Quality Strategy, and promoting health equity is a facet of the CMS Meaningful Measures 2.0 initiative.

Clinician Workgroup Recommendations

The Clinician Workgroup provides recommendations related to clinician performance measurement in federal programs. The Clinician Workgroup provides feedback on the alignment of measures and data sources, with the goal of reducing burden, helping to identify characteristics of an ideal measure set to promote cross-cutting goals, and promoting standardization.

During the 2022 MSR cycle, the Clinician Workgroup reviewed 14 measures for two programs, the Medicare SSP and MIPS. No measures for the Medicare Part C and D Star Ratings Program were reviewed during the 2022 MSR cycle.

Recommendations for the Medicare Shared Savings Program

The Medicare SSP was established by section 3022 of the ACA to facilitate coordination and cooperation among healthcare providers to improve the quality of care for Medicare FFS beneficiaries and reduce the rate of growth in expenditures under Medicare Parts A and B. The goals for this value-based program include the promotion of accountability for a patient population, the coordination of items and services for the ACOs' patient population Medicare FFS beneficiaries, and the encouragement of investment in high quality and efficient services. Beginning with performance year 2021, ACOs are required to report their quality data to CMS via the APM Performance Pathway (APP). Their performance will be evaluated in the following four categories:

- Quality (50 percent)
- Cost (0 percent)
- Promoting interoperability (30 percent)
- Improvement activities (20 percent)

The MAP Clinician Workgroup reviewed seven measures for the 2022 MSR deliberations in the SSP. The measures and their final decision categories are as follows:

Table 28. MAP Clinician Workgroup Recommendations From Measure Set Review for the Medicare Shared Savings Program

Determination	Measure No.	Measure Description
Support for Retaining	**00515-C-MSSP**	Preventive Care and Screening: Screening for Depression and Follow-Up Plan
*	**eCQM ID: CMS2v11**	Preventive Care and Screening: Screening for Depression and Follow-Up Plan (eCQM)
*	**06040-C-MSSP**	Hospital-Wide, 30-Day All-Cause Unplanned Readmission (HWR) Rate for MIPS-Eligible Clinician Groups

Determination	Measure No.	Measure Description
*	02517-C-MSSP	Consumer Assessment of Healthcare Providers and Systems (CAHPS) for MIPS Survey
Conditional Support for Retaining	02816-C-MSSP	Clinician and Clinician Group Risk-Standardized Hospital Admission Rates for Patients with Multiple Chronic Conditions
*	01246-C-MSSP	Controlling High Blood Pressure
*	eCQM ID: CMS165v10	Controlling High Blood Pressure (eCQM)

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Recommendations for the Merit-Based Incentive Payment System

The MIPS Program was established by the MACRA to consolidate pre-existing Medicare incentive and quality-reporting programs for clinicians into a single program. The Quality Payment Program (QPP) goals for the MIPS Program include improving the quality of patient care and outcomes for Medicare FFS, rewarding clinicians for innovative patient care, and driving fundamental movement toward value in healthcare. The MIPS Program makes positive and negative payment adjustments for ECs (including clinical social workers and midwives) based on their performance in four categories:

- Quality (30 percent)
- Cost (30 percent)
- Promoting interoperability (25 percent)
- Improvement activities (15 percent)

The MAP Clinician Workgroup reviewed seven measures for the 2022 MSR deliberations in the MIPS Program. The measures and their final decision categories are as follows:

Table 29. MAP Clinician Workgroup Recommendations From Measure Set Review for MIPS

Determination	Measure No.	Measure Description
Support for Retaining	00641-C-MIPS	Functional Outcome Assessment
*	05826-E-MIPS	Closing the Referral Loop: Receipt of Specialist Report
Conditional Support for Retaining	02381-C-MIPS	Adult Primary Rhegmatogenous Retinal Detachment Surgery: Visual Acuity Improvement Within 90 Days of Surgery
*	00254-C-MIPS	Diabetic Retinopathy: Communication With the Physician Managing Ongoing Diabetes Care
*	05796-E-MIPS	Diabetic Retinopathy: Communication With the Physician Managing Ongoing Diabetes Care
Conditional Support for Removal	01101-C-MIPS	Barrett's Esophagus

Determination	Measure No.	Measure Description
*	**05837-E-MIPS**	Children Who Have Dental Decay or Cavities

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Key Themes From the Clinician Workgroup Review

Key themes from the Clinician Workgroup's discussion included the following:

- During the MUC cycle, the Workgroup raised concerns with an all-payer approach to electronic clinical quality measures (eCQMs) within the SSP. Specific concerns were raised on behalf of facilities and clinicians with large populations of disadvantaged patients (e.g., Medicaid or uninsured patients) whose results could be skewed.
- This theme is in alignment with the CMS National Quality Strategy goal to increase quality measurement alignment to promote seamless and coordinated care.

Hospital Workgroup Recommendations

The Hospital Workgroup provides input to the Coordinating Committee on matters related to the selection and coordination of measures for hospitals, including inpatient acute, outpatient, cancer, and psychiatric hospitals.

During the 2022 MSR cycle, the Hospital Workgroup reviewed eight measures across three programs:

- Hospital OQR Program
- ASCQR Program
- PCHQR Program

The Hospital Workgroup did not review any measures for the following programs during the 2022 MSR:

- IPFQR Program
- HRRP
- Hospital IQR Program
- Medicare Promoting Interoperability Program for Hospitals
- Hospital VBP Program
- HACRP
- ESRD QIP

Recommendations for the Hospital Outpatient Quality Reporting Program

The Hospital Outpatient Quality Reporting Program (Hospital OQR Program) was enacted by section 109 of the Tax Relief and Healthcare Act (TRHCA) of 2006. The program requires subsection (d) hospitals providing outpatient services paid under the Outpatient Prospective Payment System (OPPS) to report on process, structure, outcomes, efficiency, costs of care, and patient experience of care measures. The goals of this pay-for-reporting and public-reporting program are to progress towards paying providers based on the quality rather than the quantity of care they give patients and to provide consumers information about hospital outpatient departments' (HOPD) quality so that they can make informed choices about their care. Data are publicly reported on the CMS Hospital Compare website.

The MAP Hospital Workgroup reviewed five measures for the 2022 MSR deliberations in the Hospital OQR Program. The measures and their final decision categories are as follows:

Table 30. MAP Hospital Workgroup Recommendations From Measure Set Review for the Hospital OQR Program

Determination	Measure No.	Measure Description
Support for Retaining	02930-C-HOQR	Hospital Visits After Hospital Outpatient Surgery
Conditional Support for Retaining	00140-C-HOQR	Magnetic Resonance Imaging (MRI) Lumbar Spine for Low Back Pain
*	02599-C-HOQR	Abdomen Computed Tomography (CT)—Use of Contrast Material
*	00930-C-HOQR	Median Time From ED Arrival to ED Departure for Discharged ED Patients
*	00922-C-HOQR	Left Without Being Seen

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Recommendations for the Ambulatory Surgical Center Quality Reporting Program

The Ambulatory Surgical Center Quality Reporting (ASCQR) Program was enacted by section 109(b) of the Medicare Improvements and Extension Act of 2006, Division B, and Title I of the Healthcare TRHCA of 2006. The statute provides the authority for requiring ASCs paid under the ASC fee schedule (ASCFS) to report on process, structure, outcomes, patient experience of care, efficiency, and costs of care measures. The goals of this quality payment and public-reporting program are to progress towards paying providers based on the quality rather than the quantity of care they give patients and to provide consumers information about ASC quality so that they can make informed choices about their care.

The MAP Hospital Workgroup reviewed two measures for the 2022 MSR deliberations in the ASCQR Program. The measures and their final decision categories are as follows:

Table 31. MAP Hospital Workgroup Recommendations From Measure Set Review for the ASCQR Program

Determination	Measure No.	Measure Description
Support for Retaining	02936-C-ASCQR	Normothermia Outcome
Conditional Support for Retaining	01049-C-ASCQR	Improvement in Patient's Visual Function Within 90 Days Following Cataract Surgery

Recommendations for the Prospective Payment System Exempt Cancer Hospital Quality Reporting Program

Section 3005 of the ACA added subsections to section 1866 of the SSA and established the PCHQR Program for hospitals referred to as PCHs. These hospitals (currently, 11 have been granted with this distinction by CMS) are excluded from payment under the IPPS. The PCHQR Program is a voluntary

quality-reporting program. There are no payment implications for these hospitals, and data are published on the PDC website. The PCHQR Program is intended to encourage hospitals and clinicians to improve the quality of care, to share information, and to learn from each other's experiences and best practices.

The MAP Hospital Workgroup reviewed one measure for the 2022 MSR deliberations in the PCHQR Program. The measure and the final decision category are as follows:

Table 32. MAP Hospital Workgroup Recommendations From Measure Set Review for the PCHQR Program

Determination	Measure No.	Measure Description
Conditional Support for Retaining	05735-C-PCHQR	Proportion of Patients Who Died From Cancer Not Admitted to Hospice

Key Themes From the Hospital Workgroup Review

Key themes from the Hospital Workgroup's discussion included the following:

- The Workgroup members expressed a desire for additional measures that address imaging services and emergency department (ED) care.
- The Workgroup noted that because ASCs provide a wide range of services, it is difficult for outpatient quality reporting programs to capture the quality of these services. A potential approach may be focusing on patient volume in future measure development.
- The Workgroup noted an observed decline in patient safety since the start of the COVID-19 pandemic across the three hospital programs reviewed during the MSR. Patient safety measures should be prioritized and evaluated after re-evaluating performance gaps, and future discussion should balance broader program discussion with condition-specific discussion.
- These themes are in direct alignment with several of the 2022 CMS National Quality Strategy goals: embed quality into the care journey, promote patient safety, and increase quality measurement alignment to promote seamless and coordinated care.

Post-Acute/Long Term Care Workgroup Recommendations

The PAC/LTC Workgroup reviews measures for post-acute and long-term care programs. Its aim is to establish performance measurement alignment across PAC/LTC settings while emphasizing that alignment must be balanced with consideration for the range of patient needs across settings.

In the 2022 MSR cycle, the PAC/LTC Workgroup reviewed 10 measures for the Home Health Quality Reporting Program (HH QRP). The Workgroup also reviewed the Hospice Quality Reporting Program (HQRP) as part of the 2022 MSR; however, no measures in this program were selected for discussion.

The PAC/LTC Workgroup did not review any measures for the following programs during the 2022 MSR:

- SNF QRP

- IRF QRP
- LTCH QRP
- SNF VBP Program

Recommendations for the Home Health Quality Reporting Program

The HH QRP was established by section 1895 of the SSA. The goals of this pay-for-reporting program include alignment with the mission of the National Academy of Medicine (NAM), which has defined quality as having the following properties or domains: effectiveness, efficiency, equity, patient-centeredness, safety, and timeliness. For the 2022 MSR deliberations, the MAP reviewed 10 measures for the HH QRP.

The measures and their final decision categories are as follows:

Table 33. MAP PAC/LTC Workgroup Recommendations From Measure Set Review for HH QRP

Determination	Measure No.	Measure Description
Support for Retaining	02944-C-HHQR	Discharge to Community – Post Acute Care (PAC) Home Health (HH) Quality Reporting Program (QRP)
Conditional Support for Retaining	00185-C-HHQR	Improvement in Bathing
*	00187-C-HHQR	Improvement in Dyspnea
*	00189-C-HHQR	Improvement in Management of Oral Medications
*	00196-C-HHQR	Timely Initiation of Care
*	00212-C-HHQR	Influenza Immunization Received for Current Flu Season
*	01000-C-HHQR	Improvement in Bed Transferring
Conditional Support for Removal	03493-C-HHQR	Application of Percent of Residents Experiencing One or More Falls With Major Injury (Long Stay)
*	02943-C-HHQR	Total Estimated Medicare Spending per Beneficiary (MSPB) – Post Acute Care (PAC) HHQRP
*	05853-C-HHQR	Application of Percent of Long-Term Care Hospital (LTCH) Patients With an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function

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Key Themes From the PAC/LTC Workgroup Review

Key themes from the PAC/LTC Workgroup's discussion included the following:

- The Workgroup expressed interest in better-aligned measures addressing patient function and symptoms (e.g., dyspnea). Members were also interested in measures related to systematic barriers to care and preventive care.
- The Workgroup suggested reviewing current measures for their relevance across all PAC/LTC settings, as well as identifying functional measures that are most strongly linked to outcomes.
- The Workgroup suggested that the goals of care for certain populations may be stabilization and risk mitigation rather than improvement.

- The Workgroup stated that SDOH should be used for risk adjustment where appropriate, and measures that capture disparities are priorities for future discussion.
- The Workgroup noted that using EHRs and interoperable systems will contribute to more consistent measurement; funding a tiered, mandated approach could help encourage the use of EHRs for home healthcare.
- The Workgroup's discussion reinforced priorities stated in the CMS National Quality Strategy, including embedding quality into the care journey, addressing health equity, embracing the digital age, and increasing alignment.

VI. Identified Gaps in Endorsed Quality and Efficiency Measures

Under section 1890(b)(5)(A)(i)(IV) of the Act, the entity is required to describe in the annual report "gaps in endorsed quality measures, which shall include measures that are within priority areas identified by the Secretary under the national strategy established under section 280j of this title and where quality measures are unavailable or inadequate to identify or address such gaps."

As part of the NQF's work, NQF identifies gaps in measurement and available quality measures. These gap areas, noted throughout this document and summarized below, can inform future priorities and drive measure development and inclusion in reporting programs.

Gaps Identified in Endorsement Projects

As part of the endorsement process, NQF's Standing Committees reviewed their current measure portfolios and identified gap areas in which few or no measures exist. The Behavioral Health and Substance Use Standing Committee highlighted measurement of telehealth services as a gap since these are often not included in the development of outcome measures was noted as gaps in the area of behavioral health. For cost and efficiency measures, more measures are needed that link cost and quality. The Perinatal and Women's Health Standing Committee noted a need for specialized measures examining independent conditions of maternal morbidity in order to produce data that can be translated into quality improvement efforts. Measurement gaps were also noted in the area of palliative care concerning hospice care for pediatric patients, as well as the need to approach hospice measures holistically and include all care disciplines involved for a more thorough understanding of the care experience. These gap areas align with the CMS National Quality Strategy goals of embedding quality into the care journey, incentivizing innovation and technology, and increasing alignment. A list of the gap areas identified by the Standing Committees in 2022 is included in Appendix G.

Gaps Identified in the Measure Applications Partnership

In addition to making recommendations on MUC list measures, the MAP also provides feedback on measurement gaps within federal programs. In 2022, the MAP identified gaps in measures of infection control, mental health, and patient-reported outcomes. The MAP also noted the need for measures that reflect not only the patient perspective, but also that of the family and caregiver, stating that these perspectives must be integrated into measurement for individual needs to be met. Regarding mental health, the MAP recognized isolation, loneliness, and depression as program measure gaps. In the area

of infection control, the MAP noted an under-preparedness and a general lack of resources in both SNFs and LTCHs. A complete list of the identified gap areas, organized by program, is included in Appendix H.

Gaps Identified in the Core Quality Measures Collaborative

As part of the CQMC's core set maintenance process, the CQMC Workgroups identify measurement gaps in clinician-level measures appropriate for use in value-based payment programs. Across all 10 core sets, the Workgroups identified broad gap areas: outcome measures, including PRO-PMs; cross-cutting measures addressing topics such as patient safety, patient and family engagement, care coordination, and population health; health equity and disparities-sensitive measures that assess social needs and risks, quality of care, and the wider equity ecosystem; digital quality measures; and telehealth-relevant measures that account for telehealth visits and address access and quality of care provided via telehealth. For example, the Pediatrics Workgroup identified gap areas, including obesity and body mass index measures (outcomes); substance use screening measures appropriate for adolescents and follow-up visits after identifying behavioral health conditions (cross-cutting); disparities in access to care (equity); and well-care visits, including telehealth and virtual care. Some Workgroups also indicated a preference for clinician-level versions of existing measures that address priority conditions (e.g., a clinician-level version of the Pharmacy Quality Alliance's [PQA] plan-level *Adherence to Antiretrovirals* measure). The detailed gap areas identified by the CQMC Workgroups between 2021 and 2022 are available in the Analysis of Measurement Gap Areas and Measure Alignment Report online.

Gaps Identified in Additional Targeted Research

In addition to gaps identified as part of E&M, MAP, and the CQMC, the following measurement gap areas were identified through NQF's special projects related to opioids, rural health, and equity:

- **Opioid and Behavioral Health**: all-payer measures addressing opioid use, misuse, and behavioral health conditions; care coordination and collaboration with nonmedical professionals; harm reduction strategies; person-centeredness and recovery; linking individuals to evidence-based treatment for SUDs/OUD; recognition of high-risk populations; monitoring of unintended consequences, impact on quality, and outcomes; and mortality from polysubstance use
- **Leveraging Quality Measures to Improve Rural Health**: access to timely care; care coordination; intentional and unintentional injury; COVID-19 measures; HIV; serious illness, including hospice and palliative care; telehealth-relevant measures; equity and disparities measures; provider-level measures addressing topics such as cancer screening measures; and cost measures that do not unfairly penalize rural providers
- **The CQMC's Health Equity Workgroup**: community or population-level metrics to understand population health and the equity ecosystem; system-level measures to assess services that affect access and experience of care (e.g., availability of interpreters and translation services); care coordination, transitions, and equity considerations throughout the patient journey; geriatrics and hospice; and palliative care

VII. Targeted Research Areas Not Supported by the Endorsement of Quality and Efficiency Measures

Under section 1890(b)(5)(A)(v) of the Act, the entity is required to describe "areas in which evidence is insufficient to support endorsement of quality measures in priority areas identified by the Secretary under the national strategy established under section 280j of this title and where targeted research may address such gaps."

NQF drives meaningful improvements in care through its work to tackle emerging issues and national priorities. Often, critical issues are measurement gap areas in need of guidance on measurement and improvement strategies. To address these needs, NQF develops measurement "frameworks" with multistakeholder input that organize the most important topics to measure about a critical priority area and describe how measurement should take place (e.g., entities involved in measurement, who is held responsible for measurement, relevant care settings, cadence of measurement, and relevant population). These frameworks also describe currently available measures and measure concepts and identify additional gap areas in which measures should be developed in the future.

In 2022, NQF completed targeted research and produced framework documents in five areas: opioid use, adjustment for social risk factors, rural health, digital PRO-PMs, and EHR-sourced measures for care coordination. Two of these initiatives, the Opioids and Behavioral Health project and the Leveraging Quality Measures to Improve Rural Health project, are described in more detail within the *Recommendations on National Strategies and Priorities* section of this report (pages 12 and 14). Two other framework projects, the Best Practices for Developing and Testing Risk Adjustment Models project and the Building a Roadmap from Patient-Reported Outcome Measures to Patient-Reported Outcome Performance Measures project, are described within the *Cross-Cutting Initiatives to Improve the Measurement Process* section of this report (pages 28 and 29). The goals and outcomes of the fifth project on EHR-sourced measures are described in more detail below.

Leveraging Electronic Health Record-Sourced Measures to Improve Care Communication and Care Coordination

In our healthcare system, patients interact with a wide range of clinicians and allied health professionals across different settings. Patient care in the U.S. has become increasingly fragmented as medical care has advanced and disparities in care have widened. Seamless care communication and care coordination across the care team and between settings are essential for ensuring patients receive high quality care. However, these functions are often limited by the intricacies of the healthcare system, which is poorly designed for the coordinated treatment needed to care for complex patients. Poor care communication and care coordination can negatively affect a patient's ability to achieve their goals and limits a care team's ability to adhere to care standards by either prescribing treatments that directly conflict with other treatments or are unnecessarily duplicative.[67] The Leveraging EHR-Sourced Measures to Improve Care Communication and Care Coordination project focused on addressing these problems in the healthcare system, aligning with the 2022 CMS National Quality Strategy goals of increasing quality

measurement alignment to promote seamless and coordinated care, embracing the digital age, and incentivizing innovation and technology adoption to drive care improvements.

From 2021 to 2022, NQF convened a multistakeholder Committee to identify best practices for leveraging EHR-sourced measures, namely recommendations for using EHRs to measure and improve care communication and care coordination across payers and settings. NQF collaborated with the Committee to develop two final Recommendations Reports designed for two different audiences: one report is high level for nontechnical stakeholders (i.e., Shortened Final Recommendations Report) and one is extensively detailed for technical stakeholders (i.e., Final Recommendations Report).

These reports emphasize that improving EHRs is crucial to enable patients, families, and caregivers to engage more deeply with their care to improve clinical outcomes and reduce healthcare disparities. EHR maturity (i.e., an EHR's ability to perform care communication and care coordination functions and leverage these functions for EHR-sourced measurement) is on a continuum and can vary within and across EHR systems. The report provides examples of important EHR functionalities at different maturities, as well as recommending incremental approaches to increase interoperability and use existing data standardization initiatives wherever possible. The report also summarizes important themes related to trust between clinicians, healthcare systems, and patients; the burden of data collection from both clinicians and patients; the cost of EHR utilization; and the role of incentives related to data collection and use.

The report puts forth five recommendations to support the evolution of EHR-based care communication, care coordination, and performance measurement to drive quality improvement and equitable health outcomes:

1. **Collect and share standardized data**: Stakeholders should focus on advancing interoperability and data standardization in their efforts to enhance EHR functionalities; EHRs should incorporate SDOH data elements, which can be used in measurement and can help identify health disparities.
2. **Optimize EHR usability for patients and caregivers**: For EHRs to be usable and intuitive for patients and caregivers, stakeholders should incorporate innovative solutions, such as the utilization of patient portals and other virtual communication.
3. **Optimize EHR usability for clinicians**: For EHRs to be usable and intuitive for clinicians, stakeholders should create solutions that improve clinical workflows and enhance evidence-based care.
4. **Develop novel EHR data elements to improve measurement**: New, standardized EHR data elements can help facilitate the measurement of care communication and care coordination.
5. **Leverage EHR data to fill measurement gaps**: Existing and novel EHR data elements can be leveraged in new measures to close priority measurement gaps (e.g., patient goals, SDOH measures, and follow-up measures with better specificity).

In addition to the previously listed CMS National Quality Strategy goals of increasing alignment, embracing the digital age, and incentivizing innovation and technology, the Leveraging EHR-Sourced Measures to Improve Care Communication and Care Coordination project also addresses the goal of

embedding quality into the care journey. The Committee's recommendations focus on coordinated care as a part of the overall care journey for a patient, recognizing that care coordination can facilitate optimal and affordable care and best outcomes for patients (e.g., avoiding duplicative testing, choosing treatment based on patient goals). In addition, the use of EHR-sourced measures to measure and improve care communication and care coordination minimizes the burden for providers because the data for these measures are less time-consuming to collect. Lastly, improving care communication and care coordination creates a significant opportunity to improve health outcomes by making care safer (e.g., reducing diagnostic errors) and more affordable by increasing the communication and coordination of patient care. The project also addresses goals of the CMS National Quality Strategy and Meaningful Measures 2.0 initiatives, including leveraging quality measures to promote health equity and close gaps in care, streamlining quality measurement, and improving efficiency by transitioning to digital measures. The Committee recommended improving EHR functionalities to better facilitate the collection of standardized electronic data (e.g., meaningful SDOH data) for digital quality measures and highlighted the importance of measurement to promote health equity and close gaps in care.

VIII. Coordination With Measurement Initiatives Led by Other Payers

Section 1890(b)(5)(A)(i)(I) of the Social Security Act (the Act) mandates that the Annual Report to Congress and the Secretary include a description of "the implementation of quality measurement initiatives under this chapter and the coordination of such initiatives with quality initiatives implemented by other payers."

Alignment of quality measures among public and private payers helps maximize the impact and efficiency of performance measurement and quality improvement. NQF continues to drive alignment through facilitating important dialogue and building consensus among private and public payers, particularly through the CQMC.

Core Quality Measures Collaborative – Private and Public Alignment

As the U.S. healthcare system shifts from a quantity-based FFS model to a value-based model, quality measures have become increasingly important in assessing the success of value-based payment programs and APMs. However, the increasing number and lack of alignment among measures used by different stakeholders have increased reporting burden and difficulty comparing performance results for providers, payers, consumers, and purchasers.[68,69] The CQMC was founded in 2015 to address these challenges and is currently supported by both CMS and AHIP and convened by NQF. This public-private partnership convenes approximately 80 member organizations, including providers, primary care and specialty societies, payers, consumers and purchasers, and regional quality collaboratives. To reduce measurement burden on clinicians measured by multiple payers, CQMC members review and align on high value, high-impact measures for use by public and private payers in VBPs and APMs, thus reducing measurement burden and improving health outcomes. The CQMC also creates guidance and recommendations on high-priority topics in quality measurement, identifies gap areas for measure development, and proposes solutions to implementation challenges.

In conducting its work, the CQMC leverages other areas of CMS-funded work to maximize alignment. For example, the CQMC Workgroups review relevant MAP rulemaking recommendations for clinician programs to inform maintenance and potential additions. The CQMC Workgroups also review information generated through the E&M review process for NQF-endorsed measures to help make certain the highest value measures are included in the core sets. In addition, the CQMC continues to advance elements in the CMS National Quality Strategy and Meaningful Measures 2.0, contributing to a better understanding of health disparities and gaps in care, empowerment of consumers through performance measures, promotion of digital measures, and increased quality measurement alignment to move towards more coordinated care and improved outcomes.

In 2022, NQF convened the CQMC to update and maintain its existing consensus-based core measure sets, ensuring their continued relevancy to the current measurement landscape. The CQMC Workgroups convened and shared recommended updates for eight of the 10 measure sets: Accountable Care Organization (ACO)/Patient-Centered Medical Home (PCMH)/Primary Care, Behavioral Health, Cardiology, Gastroenterology, HIV and Hepatitis C, Obstetrics and Gynecology (OB/GYN), Orthopedics, and Pediatrics. Notable Workgroup recommendations included the addition of a person-centered primary care measure in the ACO/PCMH/Primary Care core set, a pharmacotherapy measure for OUD in the Behavioral Health set, a maternal morbidity measure in the OB/GYN set, and behavioral health measures for children in the Pediatrics set. In addition to core set maintenance, the CQMC also continued to develop and update supporting materials and guidance, including yearly updates to the CQMC's measure selection principles, the Analysis of Measurement Gap Areas and Measure Alignment Report summarizing outstanding measurement gaps that should be prioritized by developers, and updates to the CQMC Implementation Guide summarizing barriers and solutions to the implementation of the core sets within value-based payment and APMs.

In early 2022, NQF also established the CQMC Health Equity Workgroup to elevate and align approaches to measuring health inequities and disparities through the CQMC core sets. The Workgroup included 34 representatives representing healthcare professionals, specialty societies, health plans, hospitals, nonprofits, state agencies, quality measurement organizations, and regional health collaboratives. The Workgroup developed and applied criteria for identifying disparities-sensitive measures already included in the CQMC core sets. These criteria categorized 137 of 150 measures in the CQMC core sets as potentially disparities-sensitive, illustrating that most measures likely demonstrate some level of disparity and that further prioritization is needed to determine the most important measures and appropriate stratification recommendations. The Health Equity Workgroup also identified 11 measures and measure concepts for future consideration into the core sets that align with the CQMC's measure selection principles and promote health equity (i.e., addressing topics including enablers of cultural responsiveness, access to care, social needs and risks, quality of care, and the broader equity ecosystem). The Health Equity Workgroup summarized its findings and recommendations through October 2022 in the CQMC Health Equity Final Report, which puts forth the proposed approach to prioritize disparities-sensitive measures within the CQMC core sets; identifies measures that directly address aspects of health equity, such as consideration of SDOH; and explores future opportunities to integrate health equity considerations into the CQMC core set maintenance process. In late 2022, the

Health Equity Workgroup launched a six-month effort to further refine the approach for identifying disparities-sensitive measures and to test the approach in the Pediatrics and Cardiology core sets. The Workgroup is also evaluating how health equity-focused measures should be considered in future core sets.

To address barriers to the uptake and full use of the aligned core sets, the CQMC also conducted focused work in two areas. First, the CQMC addressed barriers to the use of lower-burden dQMs, including the eCQMs currently in the core sets. In 2022, the CQMC's Digital Measurement Workgroup continued to further the collaborative's understanding of barriers to dQM use and opportunities to lower them. The CQMC Digital Measurement Report establishes common terminology and characterizes the digital measurement landscape, including a shared, near-term future state data flow that illustrates potential pathways for the exchange of interoperable data defined in FHIR resources and is applicable to both public- and private-sector stakeholders. The report also proposes future activities for the CQMC, such as identifying and accelerating the interoperability of key data elements needed for measurement. In late 2022, the Workgroup launched a six-month effort to develop a measure-driven approach to advance the use of interoperable data elements. CQMC members will identify high-impact measures for which identifying and specifying FHIR data elements should be prioritized. The CQMC's data priorities will directly inform the ONC's efforts to align data standards for measurement.

Second, to lower the burden of measure use, the CQMC examined ways that aspects of the measurement process (e.g., collection, transmission, standardization, aggregation, and dissemination practices) could be aligned to potentially lower measure implementation burden. The Measure Model Alignment Workgroup's findings, summarized in the Aligning Approaches to Measure Models Report, include options and examples of governance, structural, and operational models that may pose opportunities for increased alignment in the future.

IX. Other Activities Performed Under Contract With HHS

Common Formats for Patient Safety

In partnership with the Agency for Healthcare Research and Quality (AHRQ) and with support from CMS, NQF continues to address patient safety in alignment with the CMS National Quality Strategy goals to both improve patient safety and strengthen the resilience of healthcare systems through its work on Common Formats. AHRQ develops and maintains the Common Formats to facilitate and support standardized data collection for patient safety events. The Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act) provides for the development of reporting formats that use common language and definitions (i.e., Common Formats) to standardize the reporting of information for healthcare quality and patient safety improvement purposes both clinically and electronically. Common Formats is a set of standardized definitions and formats for providers to collect and exchange information for any patient safety event. They apply to all patient safety concerns, including incidents, near misses or close calls, and unsafe conditions.

In 2022, NQF continued to provide the public opportunities to comment on all elements of Common Formats modules using commenting tools developed and maintained by NQF to collect data for analysis. Specifically, NQF updated the Common Formats for Event Reporting – Diagnostic Safety Version 1.0

(CFER-DSV1.0) commenting tool. In addition, NQF reviewed public comments for six Common Formats for Event Reporting and Common Formats for Surveillance tools. During the commenting period, NQF did not receive any public comments across all Common Formats. NQF shared quarterly public commenting updates with AHRQ for review. Maintaining Common Formats advances CMS' 2022 priorities on patient safety and strengthening resilience in health systems in alignment with the CMS National Quality Strategy and Meaningful Measures 2.0 goals.

X. *Financial Information for FY 2022 (October 1, 2021 – September 30, 2022)*

Section 1890(b)(5)(A) (ii)(I)(II)(III) of the Social Security Act contains a requirement for the Consensus-Based Entity (CBE) to include in its annual report to Congress and the Secretary "An itemization of financial information for the fiscal year ending September 30 of the preceding year, including—

(I) Annual revenues of the entity (including any government funding, private sector contributions, grants, membership revenues, and investment revenue); (II) Annual expenses of the entity (including grants paid, benefits paid, salaries or other compensation, fundraising expenses, and overhead costs); and

(III) A breakdown of the amount awarded per contracted task order and the specific projects funded in each task order assigned to the entity. "

NQF's revenues for FY 2022 were $16,538,896, including federal funds authorized under section 1890(d) of the SSA, private-sector contributions, membership revenues, and investment revenue. NQF's expenses for FY 2022 were $21,351,595. These expenses include grants and benefits paid, salaries and other compensations, fundraising expenses, and overhead costs. A complete breakdown of the amount awarded per contract is available in Appendix A. NQF has made no updates or modifications to the disclosure of interest and conflict of interest policies. Rosters of Committees, Workgroups, and TEPs funded under the CBE contract are available in Appendix B.

XI. *Updates to CBE Policies and Procedures in 2022*

There were no updates made to the CBE policies or procedures in 2022.

XII. *Summary and Conclusion*

In 2022, NQF continued to deliver on its core work to identify quality measurement priorities and advance consensus on methods and measures for assessing and improving healthcare quality. NQF achieves these aims through three core programs (i.e., E&M, the MAP, and the CQMC) and targeted projects. This past year, NQF convened stakeholders to review a total of 54 measures for endorsement and maintenance across a variety of topics reflecting the CMS National Quality Strategy focus areas, including health equity, COVID-19 vaccination coverage, rural health, and patient experience of care. NQF endorsed 47 measures and approved two measures for trial use. The MAP reviewed measures for CMS' value-based payment and quality reporting programs, considering the need for, validity of, and burden of

proposed and actively used measures across a wide scope of topics, including health equity, COVID-19, person-centered care, rural health, and coordination measures. Further, NQF launched a process to review measures for potential removal from these CMS programs. The MAP provided input on 29 measures suggested for use in CMS programs and considered 22 measures for removal. The CQMC continued to align the measures that payers use to assess ambulatory clinicians, updating and maintaining CQMC measure sets. In addition, the CQMC Workgroups put forth recommendations and initiated actions to address barriers to uptake and use. The recommendations focused on three important opportunities for further alignment, including but not limited to, digital measurement, aligning measure models, and health equity.

In addition to the three core programs, NQF's work advanced consensus and strategies for measurement science to support the development and use of high-priority measures. Specifically, NQF released best practices for the use of social risk factors (e.g., race, ethnicity, and income) and functional risk factors (e.g., frailty) in risk-adjusted outcome measures; guidance to support the development and implementation of PRO-PMs; and approaches to expanding patient and caregivers' input into the work of the CBE. In 2022, NQF also worked with CMS to identify and address measurement strategies, including identifying gaps, critical to the health of the nation. These measurement framework initiatives produced the following: (1) guiding principles and use case exemplars on how to implement a recommended quality measurement framework for measuring, evaluating, and addressing overdose and mortality for individuals with SUD/OUD and co-occurring behavioral health conditions; (2) an updated set of the best-available measures for measurement and quality improvement programs in rural areas; and (3) recommendations on how to use EHR data for more effective care communication and coordination and measurement of these functions.

NQF identified gaps in measurement areas throughout its work in 2022. The E&M process led to identification of gaps related largely to long-term and post-acute care settings, demonstrating a need for more patient experience measures and PRO-PMs, as well as measures of mental health. MAP members also noted that the COVID-19 pandemic has exposed a lack of infection control measures in many long-term care facilities. In addition, the CQMC, as part of maintaining its 10 clinician-focused aligned measure sets, identified gap areas for each of the sets. Overarching gaps included outcome measures (e.g., PRO-PMs), cross-cutting measures (e.g., patient safety, patient and family engagement, care coordination, and population health), health equity and disparities-sensitive measures, digital quality measures, and telehealth-relevant measures. Lastly, several additional NQF projects, including the work on opioids, rural health, and equity described in this report, identified gaps as well as overarching themes, including the need for measures on access to care and care coordination, as well as the need to develop risk-adjusted and stratified versions of measures that do not unintentionally penalize providers that serve high-risk populations.

In summary, as the statutorily recognized CBE, NQF successfully executed three core ongoing consensus-based processes as well as targeted activities to advance and align high-impact valid quality measures. NQF's work was informed by and guided the identification and alignment of critical national priorities. For example, to address persistent gaps in equity, NQF enhanced activities in all three core programs mentioned above and throughout additional NQF projects to advance stakeholder consensus on and the

use of quality measures that support progress on equity. NQF's work also addressed key priority areas, such as SUD/OUD and co-occurring behavioral health conditions; measurement in rural areas, digital measurement, PRO-PMs, use of EHR data for measurement, and incorporating the patient voice. NQF has the unique ability to bring stakeholders together to advance consensus on quality measurement and improvement strategies by driving consensus. NQF's work in 2022 has facilitated progress across the measurement community and is advancing the measurement methods and measures we most need to strengthen patient and caregiver engagement, eliminate disparities, reduce burden, and improve quality for all.

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Appendix A: 2022 Activities Performed Under Contract With HHS and Financials

Table 1. Federally Funded Contracts Awarded in FY 2022 Under IDIQ Contract HHSM-500-2017-0060I

Contract Number	Task Order Name	Description	Period of Performance	Negotiated Contract Amount for FY 2022
75FCMC19F0007	Leveraging Quality Measurement to Improve Rural Health	Reconvene the MAP Rural Health Workgroup to review, update, and potentially expand a core set of rural-relevant measures originally created in 2017-2018 that represent the best-available measures to address topics relevant to rural patients and are resistant to low case-volume.	12/14/2021-8/15/2022 (Option Period 2)	$274,023
75FCMC20F0003	Building a Roadmap from Patient-Reported Outcome Measures to Patient-Reported Outcome Performance Measures	This project will create a roadmap for measure developers to utilize the attributes of high quality PROMs in developing digital PRO-PMs.	12/1/2021-11/30/2022 (Option Period 1)	$666,673
75FCMC21F0002	Measure Additional, Removal, and Prioritization for Expansion of the CQMC	Identify and align high value, high-impact, and evidence-based measures across public and private payers that promote better patient outcomes and provide useful information for improvement, decision making, and payment.	9/17/2022-3/26/2023	$348,018
HHSM500T0001	Endorsement & Maintenance	Endorsement and maintenance of endorsement of standardized healthcare performance measures	9/27/2022-3/26/2023 (Option Year 5)	$3,774,201

Contract Number	Task Order Name	Description	Period of Performance	Negotiated Contract Amount for FY 2022
HHSM500T0002	Annual Report to Congress and HHS	Report to Congress and the Secretary that highlights the implementation of quality and efficiency measurement initiatives under the SSA	9/27/2022-3/26/2023 (Option Year 5)	$144,341
HHSM500T0003	Measure Applications Partnership	Provide recommendations related to multistakeholder group input on the selection of quality and efficiency measures for payment and public-reported programs.	9/27/2022-3/26/2023 (Option Year 4)	$2,430,758
Total Award	*	*	*	**$7,638,014**

* Cell intentionally left empty

Table 2. NQF Financial Information for FY 2022 (unaudited)

Financial Statement 2022	Amount
Contributions and Grants	$17,284,623
Program Service Revenue	$7,600.00
Investment Income	$-771,096.00
Other Revenue	$17,769.00
TOTAL REVENUE	$16,538,896.00
Grants and Similar Amounts Paid	0.00
Benefits Paid to or for Members	0.00
Salaries, Other Compensation, Employee Benefits	$14,032,329.00
Other Expenses	$7,319266.00
TOTAL EXPENSES	$21,351,595.00

Appendix B: All NQF Multistakeholder Group Rosters

As a CBE, National Quality Forum (NQF) includes comprehensive representation from the healthcare sector across all its convened Committees, Workgroups, Task Forces, and Advisory Panels. In addition, NQF requires all multistakeholder representatives to undergo a disclosure of interest (DOI) process prior to being appointed. This allows for a fair, open, and transparent process. During this time, NQF did not identify any known conflicts of interest that would undermine the objectivity of the deliberations mentioned above.

Per the NQF Conflict of Interest Policy for Committees, all nominees are asked to complete a general DOI form for each Committee to which they have applied prior to being seated on the Committee. The DOI form for each nominee is reviewed holistically and in the context of the topic area in which the Committee will be reviewing measures, if applicable. This general DOI form must be completed annually through NQF's website in order to participate in a Committee. Specific to E&M Standing Committees, once nominees have been selected to serve on a Committee, a measure-specific DOI form is distributed near the beginning of each evaluation cycle. This measure-specific DOI form is used to determine whether any members will be required to recuse themselves from the discussion of one or more measures under review based on prior involvement or relationships to entities relevant to the topic area. Because Standing Committee members are asked to review various types of measures throughout their term of service, NQF asks members to complete the measure-specific DOI form for all measures being evaluated in each cycle, as well as any measures that are related to, or competing with, measures being evaluated to identify any potential conflicts or biases. Committee members who fail to return a completed measure-specific DOI form prior to the measure evaluation meetings will not be allowed to participate in the discussion or submit votes on the measures being evaluated.

In 2022, NQF collected DOI forms from 28 Committees. No conflicts that impacted their participation on Committees were disclosed.

In 2022, NQF convened 1,036 volunteers across 41 multistakeholder groups. Of these groups, it included the following:

Healthcare Sector	Percentage
Consumer	1%
Health Plan	20%
Health Professional	24%
Patient/Caregiver	9%
Provider	18%
Public Community Health Agency Council	5%
Purchaser	3%
Quality Measurement Research & Improvement	14%
Supplier	6%

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Appendix C: Federal Quality Reporting and Performance-Based Payment Programs Considered by MAP

Measures within the following programs, which now use or will use quality and efficiency measures, are reviewed by the MAP as part of the MUC pre-rulemaking and MSR processes. Programs shown in boldface had one or more measures reviewed during the 2021–2022 pre-rulemaking cycle. Programs indicated with an asterisk (*) had one or more measures reviewed during the 2022 MSR process.

- ASCQR*
- **ESRD QIP**
- HH QRP*
- Hospice Quality Reporting Program (HQRP)
- **HACRP**
- **Hospital IQR**
- Hospital OQR*
- HRRP
- **Hospital VBP**
- IPFQR
- **IRF QRP**
- **LTCH QRP**
- **Medicare Part C and D Star Ratings**
- **Medicare Promoting Interoperability Program for Eligible Hospitals (EHs) and CAHs (Medicare Promoting Interoperability Program)**
- Medicare SSP*
- **MIPS***
- **PCHQRP***
- **SNF QRP**
- **SNF VBP**

Appendix D: MAP Structure, Members, Criteria for Service, and Rosters

The MAP operates through a two-tiered structure. Guided by the priorities and goals of the Department of Health and Human Services' (HHS) National Quality Strategy, the MAP Coordinating Committee provides direction and direct input to HHS. The MAP Workgroups and Advisory Groups counsel the Coordinating Committee on measures needed for specific care settings, care providers, and patient populations. Each multistakeholder group includes individuals with content expertise and organizations particularly affected by the work.

MAP members are selected based on National Quality Forum (NQF) Board-adopted selection criteria through an annual nominations process and an open public commenting period. Balance among stakeholder groups is paramount. Due to the complexity of the MAP's tasks, individual subject-matter experts are included in the groups. Federal government ex officio members are nonvoting because federal officials cannot advise themselves. MAP members serve staggered three-year terms.

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AmeriHealth Caritas
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The Joint Commission
The Leapfrog Group
National Committee for Quality Assurance
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Medtronic
Memphis Business Group on Health
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Appendix E: CQMC Measure Selection Principles

Background

The selection principles guide the development and revision of the CQMC core sets and serve as a reference when determining whether a measure should be included in a core set. The principles for core measure sets are intended to balance concepts valued across the membership and outline the CQMC's vision for a comprehensive core set. They aid members in determining whether a set is promoting the overarching values and goals of the Collaborative. The principles for measure selection describe the attributes a measure should possess for inclusion in the CQMC core sets so that the CQMC members can weigh the merits of an individual measure, in addition to whether it will contribute to a balanced core set that meets the CQMC's intention. Ideally, each core set should encompass all core measure set principles, and individual measures should reasonably align with all principles for measures. However, some principles are more aspirational in nature to encourage advancement in the field. Measures in a core set that no longer meet the selection principles should be considered for potential removal and discussed by the appropriate Workgroup.

Principles for the CQMC Core Measure Sets

1. Provide a holistic view of quality that assesses whether care is safe, effective, person-centered, timely, efficient, and equitable.
2. Provide meaningful and usable information to all the CQMC constituencies (i.e., consumers, providers, payers, purchasers, and regional collaboratives).
3. Include measures relevant to the medical condition of focus (i.e., "specialty-specific measures"), but also promote care that is coordinated across care settings and/or integrated across specialties.
4. Seek parsimony, alignment, and efficiency of measurement (i.e., minimum number of measures and the least burdensome measures).
5. Include an appropriate mix of measure types:
    a. Allow for structural and process measures as needed, particularly for emerging areas of measurement.
    b. Emphasize outcome measures.
    c. Exclude cost and resource use measures, as such aspects are encompassed in value-based care payment programs.
6. Highlight the value of consumer engagement in healthcare including through the incorporation of PRO-PMs.
7. Encourage the use of solely standardized digital measurement to harness new data sources and reduce reporting burden.
8. Encourage continuous improvement by seeking out novel measures that address identified clinical quality gaps.
9. Pursue measures that go beyond clinical care and are intended to address health equity and SDOH.

Principles for Measures Included in the CQMC Core Measure Sets

I. Align with the CQMC's values, goals, and measure set selection principles.
II. Support the advancement of health and healthcare improvement goals.

1. Prioritize measures addressing clinical areas with significant impacts on health.
2. Emphasize measure concepts that have a strong tie to outcomes.
3. Address areas in which change would be consequential (i.e., where there is variation in clinical care or an opportunity for overall improvement).

III. Are unlikely to promote unintended adverse consequences.

IV. Promote health equity by adopting measures that measure access to care, stratify clinical care measures to identify disparities, or measure progress toward addressing social needs.

V. Are scientifically sound (e.g., NQF-endorsed or otherwise proven to be evidence based, reliable, and valid in diverse populations).
1. Articulate the source of the evidence used to form the basis of the measure clearly.
2. Demonstrate high quality, sufficient quantity, and consistency of evidence that acting on the measure result will reduce variation and improve health outcomes.
3. Define the measure specifications clearly and transparently.
4. Are tested at the applicable level of care.

VI. Represent a meaningful balance between measurement burden and innovation.
1. Minimize data collection and reporting burden, while maintaining clinical credibility (i.e., measures that fit into existing workflows, are feasible, and do not duplicate efforts).
2. Are ambitious, yet providers being measured can meaningfully influence the results and are implemented at the intended level of attribution.
3. Are appropriately risk-adjusted and account for factors beyond the control of providers, as necessary.

VII. Encourage the use of digital quality measures, including eCQMs, to take advantage of the opportunities provided by digital data sources.

Appendix F: CQMC Workgroup Rosters

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Blue Cross Blue Shield of Michigan
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Defense Health Agency (DHA)
Healthcare Service Corporation (HCSC)
Health Resources and Services Administration (HRSA)
Humana
Kentuckiana Health Collaborative
Memphis Business Group on Health (MBGH)
Mental Health America
Purchaser Business Group on Health (PBGH)
Shatterproof
The Leapfrog Group
U.S. Department of Veterans Affairs (VA)
UPMC Health Plan

(NONVOTING)
American Hospital Association (AHA)
Children's Hospital Association (CHA)
Civitas Network for Health
Contexture
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American Medical Association (AMA)
America's Health Insurance Plans (AHIP)
Blue Cross and Blue Shield of North Carolina (BCBSNC)
Blue Cross Blue Shield Association
CareFirst Blue Cross Blue Shield
Centene
Centers for Medicare & Medicaid Services (CMS)
Defense Health Agency (DHA)
Magellan Health
National Kidney Foundation
National Patient Advocate Foundation (NPAF)
The Leapfrog Group
U.S. Department of Veterans Affairs (VA)

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American College of Lifestyle Medicine
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Memorial Hermann Health System
Obesity Medicine Association
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Cross Cutting Workgroup

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American College of Obstetricians and Gynecologists (ACOG)
American College of Physicians (ACP)
American Gastroenterological Association (AGA)
American Occupational Therapy Association
America's Health Insurance Plans (AHIP)
AmeriHealth Caritas
Blue Cross Blue Shield Association
CareFirst Blue Cross Blue Shield
Centene
Centers for Medicare & Medicaid Services (CMS)
College of American Pathologists (CAP)
Health Resources and Services Administration (HRSA)
Minnesota Community Measurement
National Patient Advocate Foundation (NPAF)
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National Committee for Quality Assurance (NCQA)
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AmeriHealth Caritas
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AmeriHealth Caritas
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Centers 84 or Medicare & Medicaid Services (CMS)
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Obesity Medicine Association
Texas Medical Association (TMA)
Vizient

Orthopedics Workgroup

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Blue Cross Blue Shield Association

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American College of Physicians (ACP)
American Medical Association (AMA)
American Occupational Therapy Association
American Specialty Health (ASH)
America's Health Insurance Plans (AHIP)
Blue Cross and Blue Shield of North Carolina (BCBSNC)
Blue Cross Blue Shield of Michigan
Bone Health and Osteoporosis Foundation
CareFirst Blue Cross Blue Shield
Centene
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Civitas Network for Health
Memorial Hermann Health System
Obesity Medicine Association
Texas Medical Association (TMA)

Pediatrics Workgroup

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American College of Emergency Physicians (ACEP)
American College of Physicians (ACP)
American Heart Association
America's Health Insurance Plans (AHIP)
AmeriHealth Caritas
Blue Cross and Blue Shield of North Carolina (BCBSNC)
Blue Cross Blue Shield Association
Blue Cross Blue Shield of Michigan
CareFirst Blue Cross Blue Shield
Centers for Medicare & Medicaid Services (CMS)
Defense Health Agency (DHA)
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Kentuckiana Health Collaborative
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UnitedHealth Group	Children's Hospital Association (CHA)	Memorial Hermann Health System
	Civitas Network for Health	Texas Medical Association (TMA)
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Appendix G: Identified Gaps by NQF Measure Portfolio

In 2022, National Quality Forum (NQF) Standing Committees identified the following measure gaps—in which high value measures are too few or nonexistent to drive improvement—across topic areas for which measures were reviewed for endorsement.

All-Cause Admissions and Readmissions

No measure gaps were identified.

Behavioral Health and Substance Use

The Standing Committee highlighted that the significant increase in the use of telehealth behavioral health services since the COVID-19 pandemic should be accounted for in current and future measures. The Standing Committee also emphasized the need for more innovative Behavioral Health and Substance Use measures, noting that the Standing Committee rarely reviews new Behavioral Health and Substance Use measures, and most measures in the current portfolio are process measures that were initially developed over a decade ago.

Cancer

No measure gaps were identified.

Cardiovascular

No measure gaps were identified.

Cost and Efficiency

The Standing Committee emphasized the importance of creating measures that linked cost and quality, noting that while it is important to demonstrate improvements in costs, those reductions in cost should not result in reductions in quality. Specifically, the Standing Committee noted that measures should either measure both cost and quality or be able to demonstrate the relationship between performance on cost and related quality measures.

Geriatrics and Palliative Care

The Standing Committee noted that hospice measures should account for adult and pediatric patients either in the same measure or with separate related measures. The Standing Committee also stressed that all care disciplines that provide support during hospice care should be incorporated into measures in order to conduct a more holistic review of the patient and caregiver experience.

Neurology

No measure gaps were identified.

Patient Experience and Function

No measure gaps were identified.

Patient Safety

No measure gaps were identified.

Perinatal and Women's Health

The Standing Committee emphasized the need to create specialized or condition-specific measures instead of broad measures so that accountable entities can foster and improve data for quality and process improvement efforts.

Prevention and Population Health

No measure gaps were identified.

Primary Care and Chronic Illness

No measure gaps were identified.

Renal

No measure gaps were identified.

Surgery

No measure gaps were identified.

Appendix H: Medicare Measure Gaps Identified by MAP

MAP Clinician Workgroup

Within the Medicare SSP, the MAP noted a concern regarding the application of an all-payer approach to eCQMs and its impact on those facilities and clinicians with large populations of disadvantaged patients, particularly Medicaid or uninsured patients. The MAP further noted that it is problematic to adopt measures that are meant for individual clinicians for large groups, such as ACOs, because performance issues could arise.

MAP Hospital Workgroup

The MAP noted a limited number of measures on imaging and emergency departments, highlighting this as critical to outpatient care. The MAP further noted a lack of measures within outpatient quality reporting programs and commented on the need to better understand patient safety since the pandemic and the gaps that exist.

MAP Post-Acute Care/Long-Term Care Workgroup

The MAP suggested alignment across measures for the PAC/LTC programs related to function and symptoms, care initiation, and prevention. In addition, the MAP identified a broader issue regarding systematic barriers when accessing home health and access to care and measures to capture SDOH and health disparities as suggestions for future measures.

Further, the MAP noted a lack of FFS data and that quality should be measured in both the FFS and Medicare Advantage plans to evaluate the quality being delivered. It suggested interoperability as another gap within PAC/LTC programs, especially for the prevention of errors and to streamline information.

In addition, the MAP suggested caregivers' needs and training as a gap and noted the importance of mental health, such as depression and social isolation, and the need for psychiatric nurse practitioners across PAC settings.

The MAP noted a lack of PRO-PMs within SNF QRP, suggesting that the definition of quality is different for each individual, and unless that definition is integrated into measurement, individual needs will not be met. The MAP also suggested mental health, specifically isolation, loneliness, and depression, as potential program measure gaps. It noted the need for a focus on community re-integration, especially functional performance measures related to mobility.

The MAP noted that the COVID-19 pandemic has uncovered a huge under-preparedness and lack of resources related to infection control; therefore, aligned, ongoing measurement that reflects overall infection control performance for SNFs and LTCHs is needed.

Within SNF QRP, the MAP noted that pain management is a measurement gap that needs to be considered.

The MAP also noted the importance of a balance of structure, process, and outcome measures within SNF value-based payment, especially regarding patient experience. It suggested the need for information transfers and not just within the silos of care settings. In addition, the MAP specifically commented on medication reconciliation and its impact on care, such as decreasing hospital readmissions.

Appendix I: Crosswalk Between 2022 NQF Activities and CMS Meaningful Measures 2.0 Goals

Appendix J: Statutory Requirement of Annual Report Components

The Social Security Act (the Act)—specifically section 1890(b)(5)(A)— mandates that the entity report be sent to Congress and the Secretary of the Department of Health and Human Services (HHS) no later than March 1st of each year.

The report must include descriptions of the following:

- How the entity has implemented quality and efficiency measurement initiatives under the Act and coordinated these initiatives with those implemented by other payers
- The entity's recommendations with respect to an integrated national strategy and priorities for healthcare performance measurement in all applicable settings
- The entity's performance of the duties required under its contract with HHS (Appendix A)
- Gaps in endorsed quality and efficiency measures, including measures that are within priority areas identified by the Secretary under HHS' national strategy, and where quality and efficiency measures are unavailable or inadequate to identify or address such gaps
- Areas in which evidence is insufficient to support endorsement of measures in priority areas identified by the Secretary under the [National Quality Strategy], and where targeted research may address such gaps
- Matters related to convening multistakeholder groups to provide input on the following: (1) the selection of certain quality and efficiency measures and (2) national priorities for improvement in population health and in the delivery of healthcare services for consideration under the National Quality Strategy
- An itemization of financial information for the fiscal year ending September 30 of the preceding year, including the following: (1) annual revenues of the entity (including any government funding, private sector contributions, grants, membership revenues, and investment revenue); (2) annual expenses of the entity (including grants paid, benefits paid, salaries or other compensation, fundraising expenses, and overhead costs); and (3) a breakdown of the amount awarded per contracted task order and the specific projects funded in each task order assigned to the entity
- any updates or modifications of internal policies and procedures of the entity as they relate to the duties of the entity under this section, including the following: (1) specifically identifying any modifications to the disclosure of interests and conflicts of interests for committees, work groups, task forces, and advisory panels of the entity and (2) information on external stakeholder participation in the duties of the entity under this section (including complete rosters for all committees, workgroups, task forces, and advisory panels funded through government contracts, descriptions of relevant interests and any conflicts of interest for members of all committees, work groups, task forces, and advisory panels, and the total percentage by healthcare sector of all convened committees, workgroups, task forces, and advisory panels.

92

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Part IV

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 271 and 275

Provisions To Improve the Supplemental Nutrition Assistance Program's Quality Control System; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271 and 275

[FNS–2020–0016]

RIN 0584–AE79

Provisions To Improve the Supplemental Nutrition Assistance Program's Quality Control System

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Agriculture (the Department) is issuing this notice of proposed rulemaking to improve the Food and Nutrition Service's (FNS) Supplemental Nutrition Assistance Program (SNAP) quality control (QC) system as required in the Agriculture Improvement Act of 2018 (2018 Farm Bill). The proposed changes are intended to strengthen and improve the integrity and accuracy of the SNAP QC system and to better align SNAP with requirements in the Payment Integrity Information Act of 2019 (PIIA). These changes include a significant adjustment to the SNAP QC system that involves changes to Federal and State agency sampling processes, as well as changes to the active case review process. Quality Control case sampling and review processes are key aspects of the system used to annually assess SNAP payment error rates. The Department requests comment on this rule's proposed provisions.

DATES: Written comments must be received on or before November 20, 2023 to ensure their consideration.

ADDRESSES: The Food and Nutrition Service, USDA, invites interested persons to submit written comments on this proposed rule. Comments may be submitted in writing by one of the following methods:

—*Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

—*Mail:* Send comments to John M., Branch Chief, Quality Control Branch, Program Accountability and Administration Division; Food and Nutrition Service; 1320 Braddock Place, 5th Floor; Alexandria, Virginia 22314.

—*Email:* Send comments to *SNAPQCReform@usda.gov*. Include Docket ID Number FNS–2020–0016, ''Provisions to Improve the SNAP QC System'' in the subject line of the message.

—All written comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the written comments publicly available on the internet via *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: John M., 703–457–7747, Food and Nutrition Service, 1320 Braddock Place, 5th Floor, Alexandria, Virginia 22314, *SNAPQCReform@usda.gov*.

SUPPLEMENTARY INFORMATION:

I. Table of Contents
a. Acronyms or Abbreviations
b. Severability Clause
II. Background/History
a. SNAP QC—In General
b. Farm Bill Provisions
c. Improper Payment Determinations
d. Historical Information Supporting Congress' Request for Improvement and QC Reform
i. State QC Integrity Reviews (QCIRs)
ii. FNS Response
e. SNAP QC—Current Processes
f. New Proposed QC Approach
III. General (This section begins discussion of the proposed provisions)
a. Terminology Clean Up
b. Subpart A—Administration
i. Staffing Standards
ii. FNS Access to State Systems
iii. Federal Monitoring—Federal Subsampling
iv. Sampling—Federal Sub Sample
v. Federal Monitoring—Arbitration
c. Subpart C—Quality Control (QC) Reviews
i. Sampling—General
ii. Sampling Plan—Content
iii. Sampling Plan—Design
iv. Sample Size—Active and Negative Cases
v. Sample Size—Alternative Designs
vi. Sample Selection—Corrections
vii. Sample Frame—Active Cases
viii. Sample Universe—Active Cases
ix. Active Sample Allocation and Weighting
x. Review of Active Cases—General
xi. Review of Active Cases—Household Case Record Review
xii. Review of Active Cases—Field Investigation
xiii. Review of Active Cases—Personal Interviews
xiv. Review of Active Cases—Collateral Contacts
xv. Review of Active Cases—Variance Identification
xvi. Review of Active Cases—Variances Excluded From the Error Analysis
xvii. Review of Active Cases—Other Findings
xviii. Review of Active Cases—Reporting of Review Findings
xix. Review of Active Cases—Disposition of Case Reviews
d. Subpart E—Corrective Action
i. Corrective Action Planning—Negative Cases
ii. Corrective Action Planning—Incomplete Cases
e. Subpart F—Responsibilities for Reporting on Program Performance
i. Quality Control Review Reports—Mandating the Use of SNAP QC System
f. Subpart G—Program Performance
i. Determination of State Agency Program Performance—Determination of Payment Error Rates
ii. State Agency Error Rates—Completion Rate Penalty
iii. High Performance Bonuses
iv. Performance Measures—Program Access Index
g. Proposed Timeframe for Implementation of QC Sampling and Active Review Changes
IV. Procedural Matters
V. Amendatory Text

Acronyms or Abbreviations

Agriculture Improvement Act of 2018 (Pub. L. 115–334), the 2018 Farm Bill
Case and Procedural Error Rate, CAPER
Code of Federal Regulations, CFR
Corrective Action Plan, CAP
Department of Justice, DOJ
Federal Quality Control Reviewer, FQCR
Food and Nutrition Act of 2008, FNA
Food and Nutrition Service, FNS
Office of Management and Budget, OMB
Payment Error Rate, PER
Quality Control, QC
Quality Control Reviewer, QCR
Regional Office, RO
Request for Information, RFI
Supplemental Nutrition Assistance Program, SNAP
Supplemental Nutrition Assistance Program's Automated Quality Control System, SNAP–QCS
State Quality Control Reviewer, SQCR
U.S. Department of Agriculture, the Department or USDA
U.S. Department of Agriculture Office of Inspector General, USDA OIG

Severability: The Department proposes that certain individual components of this proposed rule are severable and seeks comment on that proposal. Specifically, the Department considers changes proposed in the following sections to be severable: *Staffing Standards; FNS Access to State Systems*; *Federal Monitoring—Arbitration; Review of Active Cases—Other Findings*; *Review of Active Cases—Disposition of Case Reviews* (with the exception of changes proposed to 7 CFR 275.12(g)(2)); *Corrective Action Planning—Negative Cases; Corrective Action Planning—Incomplete Cases*; *State Agency Error Rates—Completion Rate Penalty*; and *Performance Measures.* If a court were to find unlawful any or some combination of this rule as finalized, the Department still would intend any individual or combination of the above sections of

this proposed rule to stand. The Department seeks comment regarding considerations about whether stakeholders consider those and any other provisions in this proposed rule severable or not.

Background

SNAP QC—In General

The Supplemental Nutrition Assistance Program (SNAP) is the nation's largest domestic food assistance program for Americans, reaching about 40 million people (approximately 12 percent of the nation's population) per month during fiscal year 2020.[1]

Although the Federal government funds SNAP benefits, under 7 U.S.C. 2020(a)(1), State agencies are responsible for general program administration of SNAP within their States, including determining the eligibility of individuals and households to receive SNAP benefits and issuing monthly allotments of benefits.

However, given the large volume of SNAP cases, complexities of eligibility policies, and availability of State options, State agencies may issue overpayments or underpayments of SNAP allotments to participant households.

Pursuant to Section 16 of the Food and Nutrition Act of 2008, as amended (FNA), each State agency is responsible for monitoring and improving its administration of SNAP. A Quality Control (QC) system is necessary to help ensure State agencies measure improper payments and improve their administration of SNAP. SNAP QC reviews have four goals, identified at 7 CFR 275.10(b), which are to provide: (1) a systematic method of measuring the validity of the SNAP eligibility caseload; (2) a basis for determining all SNAP error rates; (3) a timely, continuous flow of information on which to base corrective action at all levels of administration; and (4) a basis for establishing State agency liability for payment errors that exceed the National performance measure pursuant to Section 16(c)(1)(C) of the FNA.

To comply with Section 16 of the FNA, State agencies conduct monthly reviews of a statistically representative sample of both participating SNAP households (active cases) and households for whom participation was denied, terminated, or suspended (negative cases). These reviews measure the accuracy of SNAP eligibility and ongoing allotment determinations and ultimately serve as the basis for the SNAP payment error rate (PER) and case and procedural error rate (CAPER).[2] The results of these reviews provide feedback on State-by-State and national administration of the Program, including how State agencies' chosen policy options, waivers, and business processes affect the accuracy of their eligibility determinations. In short, the QC system allows FNS and the States to assess the integrity of SNAP by determining the extent to which the program is operating as required by statute and regulations. The system directly measures the accuracy of State actions to certify households as eligible for SNAP allotments and to determine the amount of those allotments, which are the actions that States should prioritize to ensure effective stewardship of taxpayer dollars and effective service to households in need.

Farm Bill Provisions

On December 20, 2018, the President signed Public Law 115–334, the Agriculture Improvement Act of 2018 (2018 Farm Bill). Section 4013(b) of the 2018 Farm Bill required the Department to issue an interim final rule to: (1) ensure the SNAP QC system produces valid statistical results; (2) provide for the oversight of contracts entered into by a State agency to improve payment accuracy; (3) ensure the accuracy of data collected in the QC system; and (4) provide for the evaluation of the integrity of the QC system for a minimum of two State agencies per fiscal year. Section 4013(e) of the 2018 Farm Bill also required that cost sharing for State computerization costs be, in part, contingent on State agencies granting FNS access to all State computer systems containing documentation and evidence related to SNAP eligibility. The Department determined that the most effective way to meet the statutory requirements was to issue two rules: (1) an IFR for the non-discretionary provisions, which FNS believed were necessary to comply with the 2018 Farm Bill and would be effective immediately, and (2) a proposed rule for the additional, discretionary provisions to improve the integrity and data quality of SNAP QC. By doing so, the Department ensures that major discretionary changes to SNAP QC go through the full notice and comment process, which allows stakeholders an opportunity to be part of the rulemaking process.

The Department codified all the non-discretionary requirements in Section 4013(b) in SNAP regulations by publishing the interim final rule (IFR) titled, ''Supplemental Nutrition Assistance Program: Non-Discretionary Quality Control Provisions of the Agricultural Improvement Act of 2018'' on August 13, 2021 (86 FR 44575.[3]) A correction to that interim final rule was published on September 2, 2021 (86 FR 49229[4]) and the final rule was published on April 18, 2023 (88 FR 23559[5]).

Improper Payment Determinations

The SNAP QC review process precedes Federal improper payment laws, including the Payment Integrity Information Act of 2019 (PIIA) (Pub. L. 116–117.[6]) These PIIA requirements include: identifying any case that a reviewer is unable to determine the accuracy of (known as an incomplete case) as an improper payment (31 U.S.C. 3352(c)(2)); and measuring technically improper payments, or payments in which a recipient was entitled to a payment but the payment failed to follow statutory or regulatory requirements (31 U.S.C. 3351(4)). With Congress' requirement to improve the SNAP QC system, the Department is including proposed changes in this rule that will better align SNAP with requirements in PIIA. In addition, the proposed shift in review focus for active cases (discussed later) will align the SNAP QC review process for determining SNAP payment errors more closely with the processes used to determine improper payments in other Federal programs that provide benefits to similar populations (*e.g.,* Medicaid and the Earned Income Tax Credit).

Historical Information Supporting Congress' Request for Improvement and QC Reform

The section that follow discusses challenges FNS faced and overcame that impacted the integrity of the QC system in the recent past; specifically, the challenges that occurred when State agencies introduced bias into the QC system's data. While FNS addressed the

[1] *https://www.ers.usda.gov/topics/food-nutrition-assistance/food-assistance-data-collaborative-research-programs/snap-and-wic-administrative-data/.*

[2] In fiscal year 2012, the procedures for reviewing cases in the negative frame changed to include the State's procedural processes in determining a negative case's validity. FNS has referred to the negative error rate since then as the case and procedural error rate, or CAPER, to reflect this change.

[3] *https://www.govinfo.gov/content/pkg/FR-2023-04-18/pdf/2023-08122.pdf.*

[4] *https://www.govinfo.gov/content/pkg/FR-2021-09-02/pdf/2021-18743.pdf.*

[5] *https://www.govinfo.gov/content/pkg/FR-2023-04-18/pdf/2023-08005.pdf.*

[6] S.375—116th Congress (2019–2020): Payment Integrity Information Act of 2019 | Congress.gov |Library of Congress: *https://www.congress.gov/bill/116th-congress/senate-bill/375.*

issues and has since regained confidence in the integrity of the data collected by State agencies, additional improvements and changes to the QC system will help ensure SNAP's QC system will be less susceptible to bias. The historical information below offers context and support for Congress' request for improvement and the reform proposals in this rule.

In 2015, an audit of SNAP QC's error rate determination process by the Department's Office of Inspector General (OIG)),[7] and FNS's study on Enhancing Completion Rates for SNAP QC Reviews,[8] both identified issues with the reliability of State-reported QC data. The OIG recommendations included that FNS amend and enforce its policies to ensure payment error rates are accurate and in compliance with regulations, and that FNS eliminate the two-comparison allotment test process, which is used to determine payment errors. FNS's Completion Rate study identified QC system issues including: the performance bonus system's creation of financial incentives for State agencies to underreport payment errors (which was subsequently eliminated by the 2018 Farm Bill), and State agencies' improper coding of QC cases as incomplete in order to reduce their payment errors.

State QC Integrity Reviews (QCIRs)

To identify the full extent of the QC data reliability issues, FNS began QCIRs in April 2015 and completed reviews of all 53 State agencies by September 2016. The purpose of the QCIRs was to validate that State agency QC systems did not include bias, as bias impacts the integrity of the data. During these reviews, FNS was able to validate only 11 State agencies' QC systems for FY 2015 and found data integrity issues in the remaining 42 States. As a result, FNS was unable to use the States' QC data to establish State or national SNAP payment error rates for FY 2015 and FY 2016.

The findings from the reviews fell into four categories related to integrity in the QC system and aligned with ways to mitigate errors. The first category centered on inadequate documentation. FNS found more than half of the State agencies were not properly documenting information in the QC case file, as required in the SNAP QC Review Handbook (the FNS–310).[9] Inadequate documentation prevents FNS from having the information needed to do a thorough and independent validation of the cases completed by State agencies.

The second category concerned improper use of error review committees. State agencies may use error review committees after State quality control reviewers (SQCRs) transmit completed QC cases to FNS, to identify corrective actions that may be needed to improve the accuracy of eligibility and allotment determinations. However, State agencies are strictly prohibited from using error review committees prior to the SQCR transmission of completed QC cases to FNS. On August 1, 2005, after identifying concerns regarding the improper use of error review committees, FNS issued a policy memorandum [10] on the proper use of an error review committee to develop corrective action to prevent future errors. The memo reiterated that FNS prohibited the use of such committees to mitigate errors in cases actively under review. Despite this longstanding guidance, in the FY 2015 QCIRs, FNS discovered more than half of the State agencies continued to use error review committees inappropriately to discuss and mitigate the errors found in cases actively under review before submitting review results to FNS.

The third category of findings from the QCIRs related to the failure of more than half the State agencies to disclose complete case information to FNS, as required by 7 CFR 275.23(b). This finding included some State agencies refusing to give FNS access to their systems for auditing purposes, as required by Section 16(c)(4) of the FNA. Section 4013(a)(2) of the 2018 Farm Bill addressed this and required State agencies to give FNS access to their State systems for QC and oversight purposes. Section 4013(e)(2) of the 2018 Farm Bill required cost-sharing for computerization to be conditioned on State agencies being able to provide FNS access to their systems for audit and inspection purposes. The 2018 IFR codified the requirement to give FNS access, and this proposed rule includes the cost-sharing condition from Section 4013(e)(2) of the 2018 Farm Bill for State agencies to give FNS access.

The fourth category of findings from the QCIRs found that more than half of the State agencies were incorrectly interpreting and applying certification policy, sometimes intentionally, to mitigate QC errors. For example, during QC reviews, some State agencies were using an inappropriate number of weeks or months to determine a household's earned income. This approach led to the QC reviewer artificially increasing or decreasing the earned income amount of the household, with the goal of obtaining a result that more closely matched the amount used at the eligibility and allotment determination, thus mitigating the likelihood and potential impact of a payment error.

As a result of FNS's initial integrity findings in 2015, the Department of Justice (DOJ) began investigating State agencies for violations of Federal law in connection with the underreporting of SNAP QC payment errors. Between 2017 and 2021, DOJ settled with eight States for False Claims Act allegations of introducing bias into their QC processes. In addition, DOJ settled with a contracting company that provided QC support to all eight State agencies.

FNS Response

In January 2016, in response to early findings from the QCIRs, FNS issued a policy memorandum [11] to address concerns with the integrity of State agency QC systems. The memorandum reiterated and clarified FNS policies that are necessary to prevent bias from entering the QC system.

In September 2016, after completing all QCIRs, FNS issued revisions to its primary QC case review policy manual, the FNS Handbook 310,[12] to help address FNS' and OIG's concerns regarding the integrity of the QC system. These revisions reinforced the January 2016 policy memorandum and addressed other issues affecting QC system integrity, including documentation and verification in QC reviews. By November 2016, FNS had trained all Federal quality control reviewers (FQCR) and SQCRs on the new manual and integrity-related provisions.

During the QCIRs, and while working with State agencies to address findings and resolve corrective action plans, FNS found the complex structure of QC reviews contributed to not only unintentional mistakes, but also to an environment that allowed for both the manipulation and mitigation of SNAP QC payment error findings. For instance, the QC review begins with an examination of the sample month circumstances for a household, which could be any month of the household's certification period. However, because of the complexity of Federal SNAP

[7] *https://www.usda.gov/oig/webdocs/27601-0002-41.pdf.*

[8] *https://www.fns.usda.gov/snap/enhancing-completion-rates-supplemental-nutrition-assistance-program-snap-quality-control-reviews.*

[9] *https://fns-prod.azureedge.net/sites/default/files/snap/FNS_310_Handbook.pdf.*

[10] *https://fns-prod.azureedge.net/sites/default/files/snap/QCPolicyMemo05-01.pdf.*

[11] *https://www.fns.usda.gov/snap/integrity-snap-quality-control-system.*

[12] *https://www.fns.usda.gov/snap/fns-handbook-310 https://www.fns.usda.gov/snap/fns-handbook-310.*

certification policy, as well as State SNAP policy options and waivers, reviews regularly involve a reviewer assessing household circumstances across multiple months. FNS determined this complexity creates an opportunity for both purposeful errors and unintentional review mistakes and, in some cases, can blur the connection between payment errors found during the QC review process and the relevant certification actions, which is where errors are occurring.

Often it is not possible for SQCRs to complete cases due to difficulties associated with obtaining verifications for past months and securing household cooperation. For instance, to simplify administrative procedures, some State agencies have chosen to implement a policy that allows them to forego verification of shelter expenses at certification if the expenses are not questionable. In the QC system, there are no comparable options, and these expenses must always be verified. While certification rules allow for a waiver of the requirement to verify expenses that are not questionable,[13] these rules do not waive the requirement that correct expenses be used to determine program eligibility and allotments. SNAP households may then be skeptical of the SQCR's request for verifications of their shelter costs since it was not required for the certification worker to determine an allotment amount, increasing the odds that the household will not comply with the QC review. Additionally, the household may not be able to supply verification because they do not have a copy of the required record or did not retain it, not having needed it previously. In this circumstance, the SQCR would determine the case incomplete since the required verifications were unavailable.

The conclusion that the complexity of SNAP eligibility policy and the QC system's complexity played a major role in many of the integrity issues led FNS to explore ways to simplify and improve the QC review process. On June 1, 2018, the Department published a Request for Information (RFI) in the **Federal Register** (83 FR 25425 [14]) to solicit input on how best to simplify and improve the QC system. FNS received 26 unique comments in response to the publication. This preamble references substantive comments from the 2018 RFI in the relevant sections that follow.

FNS also conducted focus groups with stakeholders who work in State SNAP QC and certification policy, social science research partners with government programs, and hunger advocates on conceptual ideas for the proposed provisions in this rule. These focus groups assisted FNS in identifying areas of concern, particularly with changing the review focus to a narrower eligibility scope.

Additionally, during national and regional conferences, State and Federal staff verbally expressed to FNS an interest in narrowing the QC review to focus solely on the eligibility action to simplify the QC review and increase compliance with QC review requirements while still maintaining a focus on measuring the validity of critical State agency decisions. This narrowed focus is consistent with how other social safety net programs (*e.g.*, Medicaid, earned income tax credit) measure improper payments. These other programs do not measure ongoing administration of benefits, as is done in SNAP's current QC review process. Creating such an alignment would allow Congress and others to compare improper payments more effectively across social safety net programs.

SNAP QC—Current Processes

To assist the reader in understanding the review process changes being proposed, this section discusses how the QC review process is currently structured. The SNAP QC system[15] consists of two tiers, a State tier and a Federal tier. At the State agency level, a statistician develops a sampling plan consistent with Federal regulations at 7 CFR 275.11 that the State agency then submits to FNS for approval. Each month, according to that sampling plan, State agencies select a sample of active cases (7 CFR 275.12) and negative cases (7 CFR 275.13) from the universe of their SNAP caseload and conduct reviews of the cases to determine the accuracy of the determination and allotment amount. Active cases are comprised of those households who are participating in SNAP and negative cases are comprised of cases in which the State agency acted to deny, terminate, or suspend a household or applicant (7 CFR 275.10(a)).

SQCRs must schedule and conduct face-to-face interviews with households selected for review in the active sample frame (7 CFR 275.12(c)(1)).[16] There are few exceptions to a face-to-face interview for QC. For instance, State agencies may conduct telephonic interviews for hard-to-reach Alaskan households (7 CFR 275.12(c)) or in situations of a declared disaster using the SNAP waiver process (7 CFR 272.3(c)). SQCRs use the information gathered during interviews along with information in the case files, various databases, and documentation from collateral contacts, such as neighbors, banks, and employers, during the review (7 CFR 275.12(c)(2)).

The review itself consists of an examination of a random month during a case's certification period, called the sample month (7 CFR 275.12(a). SQCRs verify all factors of eligibility and allotment issuance for that sample month and calculate an allotment amount based off that information, which is referred to as the household budget calculation (7 CFR 275.12(e)). They then compare that calculated amount to the amount that was issued to the household for that month This is called Comparison I. If Comparison I results in the household budget calculation producing an allotment amount for the sample month that is either over or under the household's authorized issuance amount for that month, in an amount that exceeds the current fiscal year's threshold for excluding small errors,[17] the SQCR will conduct a second comparison, called Comparison II. With Comparison II, the SQCR would then examine the month in which the most recent certification action occurred. The SQCR would correct any mistakes made at the time of this certification action, compute another budget, calculate an allotment amount based on those findings, and compare the SQCR budget for the certification action to the amount that was authorized at the certification action. If there is also a difference in the SQCR's budget and the authorized budget for Comparison II, the SQCR uses the lesser of the two determined error amounts as the case's payment error.[18] After States transmit cases to FNS, any QC finding of an overissuance must be reported to the State office responsible for claims, and underissuance cases must be reported to the State offices responsible for

[13] As determined by guidelines promulgated pursuant to 7 CFR 273.2(f)(2).

[14] *https://www.federalregister.gov/documents/2018/06/01/2018-11849/request-for-information-supplemental-nutrition-assistance-program-snap-quality-control-integrity-and*.

[15] Discussed throughout 7 CFR 275.

[16] FNS temporarily provided State agencies the flexibility to conduct QC interviews by telephone to assist State agencies in case completion during the COVID–19 public health emergency. The flexibilities have been extended through September 2024.

[17] Under Section 16(c)(1)(A)(ii) of the FNA, the tolerance level for excluding small errors is $37 for fiscal year 2014, adjusted by the percentage adjustment of thrifty food plan for each subsequent fiscal year. The most recently announced threshold, for FY 2023, is $54.

[18] As previously noted, the OIG's 2015 report recommended that this two-comparison allotment test be eliminated.

supplements, to evaluate and address whether an action must be taken on the reviewed cases (7 CFR 275.12(f)). This requirement is not impacted by this rule.

For all active frame cases,[19] SQCRs enter their data into either a paper or automated version of the form FNS–380, Worksheet for QC Reviews (OMB Control Number: 0584–0074; Expiration Date: 07/31/2025), to document the information needed to make a determination about the accuracy of the case (7 CFR 275.21(b)). State agencies also code the results of the reviews for all active cases onto the FNS–380–1, the QC Review Schedule (OMB Control Number: 0584–0299; Expiration Date: 07/31/2023; currently under review with OMB) (7 CFR 275.21(b)). State agencies then submit the completed forms through SNAP's Federally funded automated computer system, SNAP Quality Control System (SNAP–QCS), for transmission to FNS (7 CFR 275.21(b)(1)). For negative frame cases, State agencies complete form FNS–245, Negative Case Review Schedule (OMB Control Number: 0584–0034; Expiration Date: 1212/31/2024) (7 CFR 275.21(b)). and submit completed forms through SNAP–QCS (7 CFR 275.21(b)(1)).

FNS then works to validate the State agency findings. FQCRs, who are in FNS regional offices, review a subsample of the active cases reviewed by State agencies (7 CFR 275.3(d)(1)(i)). The subsample is comprised not only of cases State agencies complete, but also of *all* active cases the State agencies selected but were unable to complete, and *all* cases that were determined by the State agency to be ''not subject to review.'' [20] After FQCRs identify the cases for the subsample, they then request the relevant QC case file documents from the State agencies and conduct a comprehensive, independent review of each case (7 CFR 275.3(d)(1)(ii)).[21] After case reviews are complete and final determinations made, FNS calculates two error rates: (1) the payment error rate (PER) for the active sampling frame (7 CFR 275.3(d)(1)); and (2) the case and procedural error rate (CAPER) for the negative sampling frame (7 CFR 275.3(d)(3)). FNS also calculates an annual application timeliness rate for State agencies with data from the active sampling frame.

The PER is based on the difference between the amount of allotments issued to households and the amount those households should have received had their cases been processed correctly (7 CFR 275.23(b)). The overall PER is the sum of two breakdowns: underpayment and overpayment error rates. For CAPER, the review of negative actions considers procedural aspects of case processing in addition to whether the action to deny, suspend, or terminate a household was accurate. Procedural components of this review include timeliness of the action and accuracy of the household notification, among other things. The negative review results in a determination of whether the negative actions were valid or invalid (7 CFR 275.13(c)(1)). The CAPER is based on what percentage of the negative actions reviewed were invalid compared to the total number of negative actions processed by the State agency.

New Proposed QC Approach

The rest of this preamble will share the Department's proposals for this rulemaking. The Department proposes to improve the SNAP QC active review process using lessons learned from the QCIRs, the OIG audit, the completion rate study on QC, the 2018 RFI [22] on QC, and other activities, such as technical assistance, that FNS has completed since FY 2015. As such, the Department is proposing a different active case review that: (1) would be less complicated, thus making it easier for State agencies and households to comply with, FNS to oversee, and less susceptible to bias; and (2) would still be capable of collecting detailed program information regarding State agency administration and the over and under issuance of SNAP allotments. In addition, the proposed active review would resolve an ongoing concern from OIG about how SNAP QC's use of Comparison I and Comparison II resulted in a measurement from two different points in time.

SNAP regulations require all SNAP State agencies to operate a QC system (7 CFR 275.10(a)). Although the 2018 IFR increased various reporting and recordkeeping requirements for State agencies to comply with the 2018 Farm Bill, the active review process for the SNAP QC system has remained relatively unchanged since February 1984 (49 FR 6292) [23] and can be improved upon. Since SNAP's QC system existed at least 25 years prior to the first Federal improper payment laws, such as the Improper Payments Information Act of 2002 (IPIA). SNAP's active QC review methodology and processes require adjustment to come into alignment with other Federal programs where the improper payment determination procedures were created after the first Federal improper payment laws and associated regulations and guidance came into existence.

The proposed process would change the active case review to focus on eligibility actions instead of a random, point-in-time review for each case. This proposed change would eliminate the two-comparison allotment tests (Comparison I and Comparison II) from the QC review and instead focus on eligibility determinations, consider cases that a State agency cannot validate as total dollar errors, and alter the sampling and sampling plan requirements to correspond to the changed review focus.

To help the reader understand the flow of the proposed provisions that follow, the provisions are organized in the same order as existing regulations found in the Code of Federal Regulations at 7 CFR part 275. It is important to note, this is a proposed rule that requires public comment before a final rule may implement any changes to SNAP's QC system. The Department proposes the following provisions for comment.

General

Prior to discussing the provisions, the Department would like to convey that this rule is very technical in nature. The provisions discussed include specific detail about QC review processes and detailed statistical formulas necessary to carry out the QC process. The Department will continue to explain technical information throughout this proposed rule when able; however, in areas where precision and specific vocabulary are necessary to accurately convey the proposal, such as with statistical formulae, an explanation in more colloquial terms could result in an inaccurate portrayal of the proposed concepts. Thus, the technical language will remain.

[19] QC cases in the active frame are comprised of households certified prior to or during the sample month and issued a SNAP allotment for the sample month. QC review years follow the Federal fiscal year from October through September the following year.

[20] ''Not Subject to Review'' is a term that refers to cases that are not subject to quality control review. This means they do not meet the requirements to be reviewed by a QC reviewer. Examples include cases under active investigation by the State's fraud unit and cases where the household did not receive an allotment for the sample month under review.

[21] The FQCR review may result in agreement or disagreement with the State's findings. When there is a disagreement, the State can dispute the Federal finding. If the State office and RO cannot agree on the outcome of a case, the State may appeal to the national arbitrator, a neutral third party whose decisions are final.

[22] *https://www.govinfo.gov/content/pkg/FR-2018-06-01/pdf/2018-11849.pdf.*

[23] *https://archives.federalregister.gov/issue_slice/1984/2/17/6278-6313.pdf#page=33.*

Terminology Updates

In 7 CFR parts 271 and 275, the Department proposes to update or remove outdated and duplicative terminology and update currently applicable terminology to reflect the proposed review process. The following terms are no longer current: ''negative case error rate'' (or ''negative error rate'') and ''Immigration and Naturalization Services (INS).'' Therefore, the Department proposes to change these to ''case and procedural error rate (CAPER)'' [24] and ''United States Citizenship and Immigration Services (USCIS),'' respectively. The Department proposes to update the definition of ''overissuance'' to remove reference to paper food stamp coupons. The Department proposes to revise the definitions for ''active case,'' ''error,'' ''review date,'' and ''sample month'' in 7 CFR 271.2 to reflect changes made by this proposed rule. Additionally, the term ''active case error rate'' is currently used interchangeably with the term ''payment error rate'' throughout 7 CFR 275. To avoid confusion, the Department proposes to use ''payment error rate'' consistently throughout 7 CFR 275.

Subpart A—Administration

7 CFR 275.2(b)—Staffing Standards

The Department proposes to add a provision in the Staffing Standards section under 7 CFR 275.2(b) to specify the expectation that State agencies ensure the independence and objectivity of the merit staff performing QC case reviews. The QC integrity reviews found instances where State agency managers were putting undue influence on SQCRs to find that the eligibility worker's initial determination was correct, as opposed to independently focusing on the accuracy of the case, which is the purpose of the QC review. A separate audit completed by USDA OIG further supported these findings, as well as action by DOJ to settle allegations of violations of Federal law with eight State agencies. These findings provide substantial evidence that SQCRs reporting in the organizational structure to the same individuals responsible for overseeing eligibility determinations has an adverse effect on their ability to objectively review cases and determine errors. To address these issues and ensure the accuracy of the PER and CAPER estimates, the Department proposes to require a new provision in 7 CFR 275.2(b) that State agencies take proactive measures to ensure SQCRs work independently and are free from undue influence by ensuring the staff used to conduct QC reviews operate independently from those responsible for overseeing the eligibility determination process to ensure objective and accurate assessments of the Performance Reporting System. For example, QC staff would not have the same immediate supervisor or director as the eligibility staff.

In addition, the Department proposes to clarify the components that constitute prior knowledge for purposes of staff disqualification under 7 CFR 275.2(b). The focus on integrity and bias in SNAP's QC system generated concerns in State agencies about SQCRs unintentionally biasing the QC process. FNS has heard from State agencies, anecdotally, that QC workers were concerned that a staff person might know information about a household one of their colleagues was reviewing but felt that disclosing that information would be considered a prohibited practice. The Department proposes to address this issue by removing the current language at 7 CFR 275.2(b) and adding a modified provision to QC's Staffing Standards at 7 CFR 275.2(b)(2) clarifying that even though State agency staff must disqualify themselves from directly working on a QC review if they have prior knowledge of a household, they are allowed to participate in a QC review as a collateral contact [25] of the household. In such situations, the staff must follow the governing rules regarding collateral contacts at 7 CFR 273.2(f)(4)(ii).

7 CFR 275.2(d)—FNS Access to State Systems

Section 4013(e)(2) of the 2018 Farm Bill—which amends Section 16(g)(1)(A) of the Food and Nutrition Act of 2008 (codified as 7 U.S.C. 2025(g)(1)(A))—specifies that cost sharing for computerization for systems is an allowable SNAP administrative expense only when, among other criteria, the Secretary determines the systems to be accessible to the Department for review and audit purposes. Therefore, to implement this statutory provision, in the paragraph at 7 CFR 275.2(d), the Department is requiring cost sharing for State agency system costs to be conditioned on, in part, FNS having access to all State agency records and systems in which those records are contained.[26] The Department believes this will incentivize State agencies to make the necessary changes to come into compliance with the requirement of allowing remote access to State agency computer systems so that Federal QC staff have access to the full case record for all QC sampled cases to ensure the accuracy of the collected data. FNS will continue to work with State agencies collaboratively to establish data sharing and system integrity agreements to facilitate the required systems access. This new sentence in 7 CFR 275.2(d) will reference existing regulations and procedures for the suspension or disallowance of administrative funds found at 7 CFR 277.16 if State agencies do not comply with the requirement.

7 CFR 275.3(d)—Sampling—Federal Sub Sample

To be consistent with the changes proposed for State agency sampling in 7 CFR 275.11, discussed later in this rule, the Department proposes at 7 CFR 275.3(d)(1)(i)(A) to only have one minimum Federal subsampling calculation table to determine the Federal subsampling pull for the re-review of active cases. In addition to the change in Federal subsample size, the Department also proposes the Federal subsample be allocated across five strata in order to capture cases from each of the points in time where the State agency makes a determination to authorize or re-authorize benefits and to be consistent with the weighting that is proposed to determine the State agency's sampling frame. The five strata reflect all the possible action types and reporting periods. Since the reporting system and certification period length assigned at certification impact the number of reports that will end up in the sampling universe under the proposed sampling procedures, the five strata as well as weighting are used to ensure that all types of households are included in the sampling universe and to even out selection probabilities so that all cases have a chance to be selected for sampling in determining the SNAP PER. The five strata are based on the combination of action types (*i.e.,* certification, recertification, and when a required monthly, quarterly, or periodic

[24] In fiscal year 2012, the procedures for reviewing cases in the negative frame, changed to include the State's procedural processes in determining a negative case's validity. FNS has referred to the negative error rate since then as the case and procedural error rate, or CAPER, to reflect this change.

[25] For a definition of collateral contact, see 7 CFR 273.2(f)(4)(ii)—*https://www.ecfr.gov/current/title-7/subtitle-B/chapter-II/subchapter-C/part-273#p-273.2(f)(4)(ii).*

[26] State systems contain information on participants in a multitude of different programs, each of which can have (as some currently do) statutory and regulatory language prohibiting the disclosure of such information outside of said program. As such, the State systems must be able to limit user access to SNAP information only before sharing the system with FNS for SNAP QC purposes to ensure compliance with Federal law.

report is due and an allotment is issued in the following month) and reporting period (*i.e.,* less than six months, exactly six months, and more than six months). FNS chose certifications, recertifications, and required reports with allotments in the following month because they are points in which the State agency must make an eligibility determination or terminate the household from the Program. FNS based the proposed strata on an analysis of the FY 2017 SNAP QC data (see table).

Strata	Action type	Reporting period	Frequency	Percentage
A	Certification/recertification	Less than 6 months	365	4.9
B	Redetermination	Less than 6 months	94	1.3
C	Certification/recertification	Exactly 6 months	3,873	52.2
D	Redetermination	Exactly 6 months	1,628	21.9
E	Any*	More than 6 months	1,457	19.6

* Includes the three actions: certification, recertification, and redetermination.

The proposed changes to determine the Federal subsample would be necessary to determine State agency PERs based on the new proposed methodology. Under the proposed changes, the Federal subsample size would be determined using the following table:

Average monthly reviewable caseload (N)	Federal subsample target (n')
60,000 and over	n′ = 400.
10,001 to 59,999	n′ = .005 N + 100.
10,000 and under	n′ = 150.

Once the Federal subsample size *n'* is determined using Table 1 above, the Federal subsample must be allocated across the five strata proportionally to the State final weights to ensure the Federal subsample is self-weighting and there is no loss of precision due to differential sampling probabilities. The Federal subsample size for each stratum shall be determined as follows:

Strata	Sample Universe	Sampling Frame	State Sample Size	State Final Weights	Federal Sample Size	Federal Sampling Weights
a	N_a	F_a	n_a	$W_a=N_a/ n_a$	$n'_a= n'\times N_a/N$	$W'_a=W_a\times(n_a / n'_a)=N/N'$
b	N_b	F_b	n_b	$W_b=N_b/ n_b$	$n'_b= n'\times N_b/N$	$W'_b=W_b\times(n_b / n'_b)=N/N'$
c	N_c	F_c	n_c	$W_c=N_c/ n_c$	$n'_c= n'\times N_c/N$	$W'_c=W_c\times(n_c / n'_c)=N/N'$
d	N_d	F_d	n_d	$W_d=N_d/ n_d$	$n'_d= n'\times N_d/N$	$W'_d=W_d\times(n_d / n'_d)=N/N'$
e	N_e	F_e	n_e	$W_e=N_e/ n_e$	$n'_e= n'\times N_e/N$	$W'_e=W_e\times(n_e / n'_e)=N/N'$
Total	$N=\sum_{i=a}^{e} N_i$	$F=\sum_{i=a}^{e} F_i$	$n=\sum_{i=a}^{e} n_i$	$\sum_{i=a}^{e} n_i W_i = N$	$n'=\sum_{i=a}^{e} n'_i$	

In the table formulas above: N is the sampling universe/monthly caseload; F is the sampling frame; n is the state sampling size; n' is the Federal subsample size; W is the state sampling weights; and W' is the Federal sampling weights. For stratum *i,* the Federal subsample size n'_i shall be proportional to the sum of the final state weights for that stratum, $ni\times W_i = N_i$, in other words

$$n'_i = n' \times \frac{n'_i W_{i_i}}{\sum_{i=a}^{e} n'_i W_i}.$$

This means that the final weight for the cases selected for the Federal subsample from stratum *i, W'i,* is given by:

$$W'_i = W_i \times \frac{\sum_i n_i W_i}{n' W_i} = N/n'$$

for every *i,* which is a constant across the strata.

7 CFR 275.3(d)(4)(i)(A)—Federal Monitoring—Arbitration

Currently, when there is a dispute between a State agency and FNS regarding a finding (whether a case was correct, overissued, underissued, or was ineligible as of the review date) or disposition (whether a case was complete, not subject to review, incomplete, or the case was deselected) of a QC case, the State agency may request arbitration from the FNS Arbitrator. FNS's Arbitrator is the SNAP Administrative and Judicial Review Branch. This Branch includes administrative review officers who serve as a neutral third party, as they do not directly work with SNAP certification policy or quality control. The disputes subject to arbitration are limited to disagreements over finding or disposition only and the arbitrator's decision on a case is considered final and not subject to subsequent appeal. Any other disagreements should be handled through an informal resolution process, which is separate from the arbitration process.

FNS issued a policy memorandum dated November 7, 2003, that provided procedures for arbitrating application processing timeliness (APT) disagreements when the APT measure was first introduced. FNS intended the memorandum to be temporary, covering FY 2003 only, but did not identify an expiration date. The preamble in the final rule, Quality Control Provisions of the Mickey Leland Childhood Hunger Relief Act (62 FR 29652 [27]), published June 2, 1997, detailed the reasoning for why arbitrations were only to be used for finding and disposition disagreements. The Department noted that arbitrating ''agree cases,'' which encompasses disagreements solely on APT, would adversely impact the accuracy and timeliness of the arbitration process. FNS discovered in 2017 that some FNS regional offices were still allowing their State agencies to arbitrate APT-only disagreements. The FNS national office provided clarification through policy guidance, but to clarify the Department's original intent in the 1997 Rule, the Department proposes to update language in 7 CFR 275.3(d)(4)(i)(A) to clarify that, other than those circumstances specified in regulations, other disagreements would not be provided arbitration rights.

In addition, current regulations instruct State agencies to send arbitration requests to their FNS regional office, addressed to the attention of the FNS Arbitrator. Over time, FNS found that by providing the Arbitrator's contact information for State agencies to make direct arbitration requests, FNS was not only able to provide better customer service, but also have a more efficient request process. Therefore, the Department proposes to update its regulations at 7 CFR 275.3(d)(4)(iv) to require that a State agency send its request for arbitration directly to the FNS Arbitrator and copy the appropriate FNS regional office.

Subpart C—Quality Control (QC) Reviews

7 CFR 275.11—Sampling—General

Currently, the universe (all cases with the possibility of being selected for the QC sample) for SNAP's active frame includes all households receiving SNAP allotments in any given sample month. Under this proposed rule, the active frame sample universe would no longer include all households receiving SNAP allotments in any given sample month. Instead, only those households that experienced an eligibility action—*i.e.,* certification for SNAP, recertification for SNAP, or requirement to submit a required monthly, quarterly, or periodic report in the sample month and an allotment is issued in the following month—would constitute the universe for the active frame. The following paragraphs in this preamble explain the proposed new sampling plan in 7 CFR 275.11, which would then be reviewed according to the proposed sampling review procedures in 7 CFR 275.12.

7 CFR 275.11(a)(1)–(2)—Sampling Plan—Content and Criteria

Currently, at 7 CFR 275.11(a), State agencies have two options for designing their minimum QC sampling size: a standard or a reduced sample size. The Department proposes to remove the language about alternative sampling designs at 7 CFR 275.11(a)(2) since, unlike the current methodology, the proposed methodology would not be conducive to State agencies utilizing a reduced sample size due to issues with reliability of the estimates that would result from the sample size reduction. This would include the removal of alternative sampling related rules in subsections 7 CFR 275.11(a)(2)(iii) and 7 CFR 275.11(a)(2)(iv). In addition, the Department proposes to add language in section 7 CFR 275.11(a)(2)(ii) about the sample size selection to help State agencies ensure they follow the procedures set forth in subsections (b), (c), (d), (e), and (f).

7 CFR 275.11(a)(3)—Sampling Plan—Design

Computer programs and systems that assist in selecting probability samples have progressed considerably since the publication of the current QC regulations in 1977. Now, systematic sampling is but one of the many possible ways to select a probability or random sample, and there are new statistical software tools available that can easily draw a random sample without using systematic sampling. The Department proposes to amend the recommendation at 7 CFR 275.11(a)(3) that State agencies should primarily utilize systematic sampling to also recommend that State agencies be open to considering other sampling software tools.

In addition, the Department proposes to revise the language at 7 CFR 275.11(a)(3), describing the proposed active sampling design. This revised language provides specific details about how State agencies would need to design their new sampling procedures

[27] *https://www.federalregister.gov/documents/1997/06/02/97-13946/food-stamp-program-quality-control-provisions-of-the-mickey-leland-childhood-hunger-relief-act.*

to align with the new review process, including how to construct the new sampling frame and which variables to use to create the proposed strata (discussed further below). The revision would also clarify that each month, State agencies must select a sample size equal to one twelfth of the annual sample size specified in 7 CFR 275.11(b) (rounded to the next whole number) to ensure the sample accurately reflects the entire year of SNAP cases.

7 CFR 275.11(b)(1)–(2)—Sample Size—Active Cases and Negative Cases

The Department proposes to simplify and standardize the active case review process by (1) eliminating the current allowance for choosing between two different possible sample sizes and (2) increasing the current sample size for active cases specified in 7 CFR 275.11(b)(1)(iii) by 30 percent. Increasing the overall sample size ensures that the new sampling design would deliver the same level of precision as the current sampling design by providing for sufficient sample sizes within each stratum. Without this increase in overall sample size and proper allocation among the strata, the new design would over-represent cases with shorter reporting periods and under-represent those with longer reporting periods. Having a larger overall sample size is necessary to ensure statistical validity of the sample, which results in a more precise PER estimate. The Department proposes to remove the choice of the other sample size option, currently described at 7 CFR 275.11(b)(1)(ii), because in order for the new sampling methodology to provide a basis for calculating a national PER, all States must follow the same sampling design; therefore, a second option is no longer appropriate. Given the proposed deletion of 7 CFR 275.11(b)(1)(ii), the Department proposes to re-designate the remaining paragraphs of 7 CFR 275.11(b)(1) that follow paragraph 7 CFR 275.11(b)(1)(i).

In the final rule published on June 11, 2010, titled, ''Supplemental Nutrition Assistance Program: Quality Control Provisions of Title IV of Public Law 107–171'' (75 FR 33422)[28], the regulations pertaining to SNAP negative case reviews (the review of cases that were denied, terminated, or suspended) were changed to emphasize customer service. This rule required State agencies to determine whether the action on the negative case under review was correct and whether the State agency correctly notified the household or participant [29] in clearly understandable language of the adverse action on their case.

The Department implemented this change in FY 2012, and later began informally referring to the associated error rate as the case and procedural error rate, as opposed to the negative error rate, to reflect the change in focus. This practice of referring to the error rate for negative case reviews as CAPER continues today and is the commonplace term State agencies and FNS use. As such, the Department proposes to amend 7 CFR 275.11(b)(2)(i) to include the explanation that negative case reviews result in determining the ''case and procedural error rate.''

The Department found State agencies typically utilize the minimum annual sampling size for their negative case samples. Just as with the proposed removal of the alternative active case sampling design discussed earlier, the Department proposes to amend 7 CFR 275.11(b)(2)(i) to remove the alternative design option for the negative sample size so that sample sizes are standard, provide more precision for error rate estimates, and align with the language used for the selection of active cases in 7 CFR 275.11(b)(1)(i).

7 CFR 275.11(b)(4)—Sample Size—Alternative Designs

Consistent with the proposed removal of alternative design options for both the active and negative sampling frames, the Department also proposes to remove the regulatory provisions at 7 CFR 275.11(b)(4) through 7 CFR 275.11(b)(4)(iii) since those paragraphs discuss the options for State agencies concerning alternative QC sampling sizes.

7 CFR 275.11(c)(2)—Sample Selection—Corrections

To ensure they select enough cases to review annually, State agencies often pull supplemental samples when they find they do not have enough cases to meet FNS requirements. FNS refers to this act of pulling a supplemental sample in current regulations at 7 CFR 275.11(c)(2) as a 'correction.' Corrections can be necessary for many reasons but most often occur because some cases in the sample were later determined to be not subject to QC review or because an increase in the average monthly reviewable caseload necessitated an increase in monthly sample size. The Department proposes to amend the provisions regarding corrections at 7 CFR 275.11(c)(2) to clarify that the new procedures for sample size, sample selection, sample frame, and sample allocation in proposed paragraphs 7 CFR 275.11(b), (c), (e), and (g) are also applicable to corrections, or in other words, when State agencies pull additional cases to compensate for under sampling.

7 CFR 275.11(e)—Sample Frame

Current regulations at 7 CFR 275.11(e) allow State agencies a 'choice' in what their sampling frame must include. The Department proposes to remove language concerning the 'choice' of the sampling frame since the Department's proposed methodology requires State agencies to use a specific frame for sampling.

7 CFR 275.11(e)—Sample Frame—Active Cases

The Department proposes to change its active case sampling frame description at 7 CFR 275.11(e)(1) to include only households that either experienced an initial certification action, a recertification action, or were required to submit a required monthly, quarterly, or periodic report in the sampling month and an allotment is issued in the following month. As noted earlier, this simplified QC process would shift the review focus to when an eligibility action occurred rather than a review of a random month within a household's certification period.

The simplification of only reviewing the eligibility action would ease compliance with QC requirements for both recipients and SQCRs by eliminating the complex aspects of the current review process and by making the SNAP review consistent with other benefit programs' improper payment review procedures. The complexities of the current process can contribute to State agencies having low QC case review completion rates and to, the integrity issues discussed throughout this proposed rule.

7 CFR 275.11(f)—Sample Universe—Active Cases

Regulations at 7 CFR 275.11(f)(1) inform State agencies which cases they must exclude from their sampling frames. Consistent with proposed changes in this rule to the sampling frame, the Department is also proposing corresponding changes for those cases the State agency must exclude. The Department proposes to amend one condition and remove one condition from the current list of excludable households for review at 7 CFR 275.11(f)(1).

[28] *https://www.govinfo.gov/content/pkg/FR-2010-06-11/pdf/2010-13446.pdf.*

[29] Not all adverse actions are against an entire household. Sometimes an adverse action will occur against a specific participant in a household.

The Department proposes to amend the provision at 7 CFR 275.11(f)(1)(iv) that addresses the exclusion of a household appealing an adverse action when the review date falls within the time period covered by continuing participation pending a fair hearing, or in other words, the time the household continues to receive benefits while they await their fair hearing. Instead of the condition being ''when the review date falls within the time period covered by continuing participation pending the hearing,'' the Department proposes to exclude all cases under review where the household is appealing an adverse action for any of the sampled actions, since the benefit determination is subject to change based on the result of the appeal.

The Department also proposes to remove the condition for exclusion at 7 CFR 275.11(f)(1)(v) that indicates a household can be excluded when the household is receiving restored benefits but is not participating based upon an approved application. This condition no longer applies to the new proposed sampling method because only approved applications will be included in the sample. As such, only the instruction that, ''Other households excluded from the active case universe during the review process are identified in 7 CFR 275.12(g)'' would remain in this paragraph.

7 CFR 275.11(g)–(h)—Active Sample Allocation and Weighting

In order for the new sampling method to be reflective of the SNAP caseload, the Department proposes to add two new paragraphs at 7 CFR 275.11(g), entitled ''Active sample allocation'' and 7 CFR 275.11(h), entitled ''Weighting,'' which will describe how State agencies would allocate the sample across the strata defined in the new sampling design and compute the weights needed to make the sample representative of the sample universe/target population.

As described earlier, the Department proposes to add requirements at 7 CFR 275.11(g) for the active sample allocation so that active cases are allocated to five pre-defined strata. These five strata are based on the combination of action type (*i.e.,* certification, recertification, and when a required monthly, quarterly, or periodic report is due and an allotment is issued in the following month) and reporting period (*i.e.,* less than six months, six months, and more than six months). This proposed change would ensure the resulting allocation will contain sufficient sample sizes within each stratum and cases from each stratum are represented in the sample.

In addition, the Department proposes to add a section, 7 CFR 275.11(h) ''Weighting'' to illustrate how to compute the weights needed to make the sample representative of the universe/target population. The new sampling design samples cases with unequal probabilities across the strata and, therefore, some cases have higher selection probabilities than others. State agencies must provide FNS the data necessary to compute the weights. To compensate for the unequal probabilities of selection across the strata, the Department is proposing the following formula for the weights W_i:

$W_i = (N_i/F_i) \times (F_i/n_i) = N_i/n_i$ for i = a,b,c,d,e,

Where:

—W_i is the weight for cases sampled from stratum i (the new proposed sampling design has five strata);

—N_i is the size of stratum i in the sampling universe/target population;

—F_i is the size of stratum i in the sampling frame;

—n_i is the number of cases sampled from stratum i.

—F_i/n_i is in the inverse of the sampling probability for cases sampled from stratum i (also called sampling weight), while N_i/F_i represents the post-stratification weights and corrects for the biases in the sampling frame. This ensures the sample represents the sampling universe, *i.e.,* the SNAP caseload.

State agencies would be responsible for providing to FNS the counts N_i, F_i, and n_i (for i = a,b,c,d,e).

7 CFR 275.12—Review of Active Cases—General

By focusing only on eligibility actions, the Department anticipates the information obtained through the modified QC review process will be more useful for program improvement purposes, as it will be focused on the main touchpoints of a SNAP case and will be collected closer in time to those touchpoints. Currently, SNAP's error rates are a combination of errors measured at random points of time within a household's certification period and at points of eligibility. By narrowing the review, FNS would issue an error rate derived from the time of most recent eligibility action for all cases reviewed. This would allow FNS to more accurately identify where errors are occurring and allow State agencies to correct more effectively the causes of error at certification or the point of most recent eligibility action. FNS would also be collecting information at a point in time that is closer to when many actions and their corresponding errors are occurring, making the monitoring of State agency performance timelier than is possible under the current QC system.

Under the new proposed methodology, the PER would be representative of points in time when households have an obligation to report or confirm their circumstances and attest the information is accurate. In addition, at those points in time, the State agency also has an obligation to verify those household circumstances and accurately determine the household's eligibility and benefit level. With this new approach, payment errors would specifically reflect errors made directly as a result of the benefit determination process, a connection that has proven challenging with the current review system due to the distance in time between the selected review month and the action causing the errors. By identifying errors in a timelier manner, FNS could raise deficiencies in program operations more quickly and effectively, and State agencies and FNS would be able to address the root causes of errors more quickly than under the current QC system.

Another significant impact of moving from a random ''point in time'' review of the present QC system to this modified ''eligibility action-only'' review is that FNS would no longer require SQCRs to re-create all of a household's sample month circumstances for a random month within a certification period. Currently, to review the sample month (which can be at any point in time during a household's certification period), SQCRs must collect and validate the household's circumstances for that new month, which most of the time does not exist in the case record, to determine whether the allotment they received that month is accurate for what they should have received based on those circumstances. In order to determine whether the sample month's allotment determination by the SQCR is accurate, the SQCR must often request information about household circumstances for the past months in between the sample month and the most recent certification month, if they are not one in the same, making the review process very complex and prone to inaccurately applying QC policy since it relies on the ability to collect information from SNAP households for, in some instances, a year or more in the past. The reason these are so challenging to obtain is that SNAP households do not always have stable incomes, bank accounts, and contracts with cellular phone carriers or other utility companies, for example, that

would make verifications easy to recall months later.[30]

In the new approach, SQCRs would still be required to verify the household's circumstances for the sample month; however, the sample month would be the month the action took place, eliminating the need to look at previous months. As a result, the process would require fewer months to review, and much of the information a SQCR needs to verify the household's circumstances and determine the allotment's accuracy should already be available in the case record. In addition, if verifications do not already exist in the case record and SQCRs must either obtain this information from the SNAP household or collateral contacts, it would be less challenging for them to produce verification from the previous month or two than it would be for them to produce verification issued at some point in the previous four to twelve months, as is necessitated under the current system. Since this change would make obtaining verifications less challenging, compliance from households and collateral contacts will likely increase and SQCRs would be able to complete more of their QC case reviews, resulting in a more accurate PER.

Given the proposed change in review focus, FNS considered whether an ex parte review, in which the SQCR relies solely on the case record and does not contact the household, would be appropriate. FNS determined that relying solely on an ex parte review for QC reviews would not be appropriate for several reasons. First, the purpose of the QC review is to determine the accuracy of the allotment authorized by the State, and to accomplish that purpose, SQCRs must verify all household circumstances in the sample month. However, using allowable administrative flexibilities, many States choose to ease verification requirements at certification to reduce the administrative burden on applicants. As a result, verifications of all household circumstances may not be included in the case record and available for QC reviewers. Generally accepted government auditing standards (GAGAS) require reviewers to obtain sufficient, appropriate evidence to provide a reasonable basis for addressing review objectives and supporting their findings and conclusions.[31] If SQCRs rely solely on the information in the case record, they may not have sufficient evidence from which to assess the accuracy of eligibility and benefit determinations. In addition, GAGAS require reviewers to have a certain level of independence when conducting quality control evaluations and audits, and to avoid situations that could lead reasonable and informed third parties to conclude they are not independent and thus are not capable of exercising impartial judgment.[32] If SQCRs were to rely solely on the information in the case record, they may not be able to independently review all elements of eligibility and benefit determinations.

This proposed review would still require a complete and independent review of the household's circumstances to assess whether the State agency accurately determined the household's eligibility and SNAP benefit amount. By focusing on the eligibility action and not on a random sample month, FNS hopes to place greater emphasis for corrective action on making more accurate benefit determinations through better documentation, verification, and accountability.

The change in review procedure would also eliminate the current SNAP QC Comparison I and Comparison II process when determining a QC case's reportable error (an error that is above the current fiscal year threshold for excluding small errors).[33] As described earlier, SQCRs and FQCRs conduct up to two assessments, Comparison I and Comparison II, to determine the final error amount in a case. In Comparison I, the reviewer determines the accuracy of the benefit received by the household based on the household's sample month circumstances. If the reviewer finds an error above the national error tolerance threshold (presently $54) in Comparison I, the reviewer completes Comparison II by examining the accuracy of the certification action that authorized the sample month's benefits. The final error amount is the lesser error amount of the two comparisons. In OIG's audit report titled, ''FNS Quality Control Process for SNAP Error Rate,'' [34] OIG asserted that these comparisons measure two different points in time and suggested FNS should take action to increase consistency in the PER measure. FNS has determined the improvements to the quality and consistency of QC data inherent with the proposed approach would address OIG's concerns regarding the Comparison I and II processes. Along with these changes, the Department also proposes to eliminate the concept of ''as of the review date'' throughout 7 CFR 275.12, since eligibility actions would now be the critical focus of the QC review and this phrase would no longer be meaningful.

7 CFR 275.12(b)—Review of Active Cases—Household Case Record Review

The process of reviewing a case in QC has several distinct components, including the household case record review, where the reviewer gathers information and evidence from the case record to determine what occurred in the case and to plan for the next fact-finding phase.

The Department proposes to amend the regulations at 7 CFR 275.12(b) to update the case record review provisions to reflect the new proposed review process. The proposed change specifies that the case record must include the initial certification or recertification application or, the monthly, quarterly, or periodic report, and QC worksheets applicable to the sample month determination. Documentation contained in the eligibility case record is allowable as verification, but only if the evidence used in the eligibility determination meets or exceeds QC verification standards found in the FNS Handbook 310. The Department also proposes to eliminate the requirement at 275.12(b) that reviewers examine the household issuance record for pertinent information if they cannot find the household's case record, as the case record review would be an essential component of the active review process. Under the proposed rule, situations where the case record could not be located would result in an incomplete case and, therefore, the total dollar amount issued would be reported as an error. Further discussion on incompletes becoming total dollar errors is in this preamble under the heading, *Review of active cases—Disposition of case reviews.*

The purpose of this proposed change is two-fold. First, including dropped/incomplete cases in the error amount would strengthen integrity by acting as a deterrent against the types of dropped-case manipulation that previously led to unreliable State PER data reporting, discussed in the history part of this preamble. Second, by including dropped/incomplete cases now

[30] Enhancing SNAP Quality Control Completion Rates Final Report, January 2016, *https://fns-prod.azureedge.us/sites/default/files/ops/SNAPQCCompletion.pdf.*

[31] See Section 5.08 of the Government Auditing Standards, GAO 21–368G, April 2021, Government Auditing Standards: 2018 Revision Technical Update April 2021 (Supersedes GAO–18–568G) | U.S. GAO.

[32] See Section 3.19 of the Government Auditing Standards, GAO 21–368G, April 2021, Government Auditing Standards: 2018 Revision Technical Update April 2021 (Supersedes GAO–18–568G) | U.S. GAO.

[33] See Section 16(c)(1)(A)(ii) of the FNA or 7 CFR 275.12(f)(2).

[34] OIG Audit Report 27601–0002–41.

excluded from the improper payment rate calculation, the proposed change would align SNAP with PIIA and other Federal programs, as noted in an audit released on July 6, 2016, by the General Accounting Office.[35]

7 CFR 275.12(c)—Review of Active Cases—Field Investigation

The field investigation is another fact-finding phase of the QC review and includes interviewing the household and collateral contacts. Collateral contacts can include, for example, individuals, organizations, governmental agencies, and businesses that hold relevant information on the household's circumstances.

While conducting QCIRs, FNS staff found that State agencies do not widely use technology to collect documentary evidence during the field investigation phase. For example, while some SQCRs have access to digital scanners or cellular phone cameras to make electronic copies of verifications, many SQCRs have no access to these technologies during the field investigation or were not aware the use of electronic devices was a permissible way of obtaining documentary evidence that could not be brought back to the office.

Additionally, in the 2018 RFI,[36] FNS asked for recommendations to encourage greater use of technology that could enhance the accuracy of case reviews. A prevalent response was that more funding and grants from the Federal Government would assist in State agencies using additional technology. The Department emphasizes here that, under current regulations at 7 CFR 277.3, expenditures for technology to aid in program administration, including in association with QC reviews, qualifies for reimbursement up to 50 percent.

FNS hopes that promoting the use of technology in regulations to collect documentary evidence from both households and collateral contacts would encourage State agencies to offer households better customer service by limiting the need to send in a physical copy of documentary evidence, a step that can prove challenging for many. Therefore, the Department proposes to amend paragraph 7 CFR 275.12(c) to provide that the use of technology is not only permitted, but encouraged, to obtain verification, including copies of documentary evidence from households and collateral contacts, so long as the privacy of the household and the information gathered are protected pursuant to applicable Federal and State privacy laws.

7 CFR 275.12(c)(1)—Review of Active Cases—Personal Interviews

QC regulations currently require SQCRs to conduct a face-to-face personal interview for all households. Under current regulations at 7 CFR 275.12(c)(1), only specific circumstances allow telephone interviews to be used in lieu of face-to-face interviews for the QC field investigation. Seventy percent of State agency responses to the RFI[37] question about the interview process included requests that telephone interviews be an acceptable interview method instead of face-to-face, citing reports of QC staff regularly traveling long distances only to find households failing to meet for the scheduled interview times, resulting in lost time and wasted administrative funds. During FNS's QCIRs, SQCRs raised concerns about staff safety while conducting the required face-to-face interviews outside of the local office. Finally, comments on the RFI from non-profit organizations presented that face-to-face interviews may be more challenging for SNAP's working households to comply with.

In considering the various comments provided by different stakeholders, the Department determined that switching to telephone interviews as the primary interview method will continue to meet the needs of the proposed QC review changes in this rule. As a result, the Department proposes to revise the QC personal interview regulation at 7 CFR 275.12(c)(1) to require that telephone interviews be the default interview format, and require that State agencies inform households that a face-to-face interview is an option available to them by request. This change will not only address the concerns brought forth by commenters but may also have a positive impact on State agency completion rates since the increased flexibility that telephone interviewing allows will provide more households the opportunity to comply with the QC review process. The reason the Department proposes standardizing the telephonic interview as the default interview mode as opposed to making it another interview option is to ensure fair treatment for all sampled households during the QC review process. In addition, because of this change, the Department proposes to eliminate the exception at 7 CFR 275.12(c)(1) available to remote, isolated households in Alaska because this proposed change will cause the exception to be unnecessary.

Regulations at 7 CFR 275.12(c)(1)(iii) require that, during the personal interview, reviewers must review with the household all documentary evidence in the household's possession and secure information about collateral sources of verification. The Department proposes to amend the provisions at 7 CFR 275.12(c)(1)(iii) to codify that during the personal interview, reviewers would also be required to review with the household all documentary evidence that is already in the case file and request new documentary evidence from the household, as needed. This is a best practice of State agencies and, by codifying this requirement, FNS seeks to ensure greater consistency in the interview process as well as accountability for the quality and scope of interviews, a vital component in the QC review process.

7 CFR 275.12(c)(1)–(2)—Review of Active Cases—Collateral Contacts

During, prior to, or after the personal interview, the SQCR may need to contact a collateral contact of the household who can be used as a source to verify household circumstances. Because State law might require an SQCR to obtain consent from the head of household to contact collateral contacts FNS codified the provision at 7 CFR 275.12(c)(1)(iv), which currently reads, ''If required by the State, the reviewer shall obtain consent from the head of the household to secure collateral information.'' However, FNS has since discovered the language of 7 CFR 275.12(c)(1)(iv) is being interpreted differently by States. For example, some States without such laws are still mandating consent be obtained, which has created roadblocks for SQCRs and resulted in preventing the SQCR from being able to complete cases. It is imperative that SQCRs accurately complete as many QC cases as possible without any unnecessary burdens. Therefore, the Department proposes to amend the language at 7 CFR 275.12(c)(1)(iv) to clarify its intent by linking obtaining consent to the presence of a State law.

Currently, regulations at 7 CFR 275.12(c)(2) require SQCRs to obtain verification from collateral contacts in all instances when adequate documentation is not available from the household. The current regulatory provision does not address situations when there is inadequate documentation in the case file. Therefore, the Department proposes to

[35] GAO 16–708–T, *https://www.gao.gov/products/GAO-16-708T*.

[36] *https://www.govinfo.gov/content/pkg/FR-2018-06-01/pdf/2018-11849.pdf*.

[37] *https://www.govinfo.gov/content/pkg/FR-2018-06-01/pdf/2018-11849.pdf*.

amend 7 CFR 275.12(c)(2) to require the reviewer to obtain verification from collateral contacts in all instances when adequate documentation is not available.

7 CFR 275.12(d)—Review of Active Cases—Variance Identification

According to Section 2(b) of the PIIA,[38] an improper payment includes ''any payment that should not have been made or that was made in an incorrect amount, under a statutory, contractual, administrative, or other legally applicable requirement.'' Per Section 2(c), when an agency cannot discern whether a payment was proper because of lacking or insufficient documentation, the payment shall be treated as an improper payment. The Department proposes to amend and reorganize 7 CFR 275.12(d), as discussed in the three sections that follow, to reflect the new review focus and align it with requirements in PIIA. In addition, consistent with what was noted earlier, all references under 7 CFR 275.12(d) regarding the ''sample month'' would either be changed to ''action under review'' or eliminated, where applicable.

7 CFR 275.12(d)(2)—Review of Active Cases—Variances Excluded From Error Analysis

Regulations at 7 CFR 275.12(d) define a 'variance' as a review finding that policy was applied incorrectly or that information verified as of the review date differs from the information used at the most recent certification action. The Department is also proposing to allow fewer opportunities for variance exclusion from the error analysis. There are two reasons for this proposal: (1) a more restrictive review focus in accordance with PIIA specifications on which errors are and are not considered payment errors; and (2) the change in review focus to reviewing only the household's eligibility determination versus a point in time analysis. As such, the Department proposes to eliminate regulations at 7 CFR 275.12(d)(2)(i), (iii), and (ix). These provisions are related to variances associated with countable income unable to be verified at the time of certification, changes in household circumstances that were not yet required to be reported as of the review date, and changes to child support orders that occurred after the most recent certification action, respectively, and no longer align with the new review focus. Provisions (ii) and (viii) regarding variances resulting from postponed verification for expedited service households and from incorrect written Federal policy, respectively, would be revised, as further discussed below, and references to Immigration and Naturalization Services (INS) would be updated.

FNS found in its QCIRs that inadequate documentation in household eligibility case records presents challenges for reviewers to complete cases, particularly in expedited service cases where verification of certain elements of eligibility is postponed. In these cases, the QC reviewer must rely solely on the eligibility case record to determine what verification was postponed and if any variances in benefits resulting from the postponed verification qualify to be excluded from the error rate calculation, called a variance exclusion. In these cases, a lack of required documentation should result in forfeiture of the variance exclusion since the reviewer cannot validate if regulatory requirements regarding verification were followed accurately. Current regulations are not clear that a lack of documentation means the exclusion does not apply, and some State agencies have used this ambiguity to apply the variance exclusion inappropriately. Therefore, the Department proposes to amend the language at 7 CFR 275.12(d)(2)(ii) to clarify that, for this exclusion to apply, the case record must include clear documentation indicating which elements of verification were postponed. Otherwise, if an eligibility worker does not sufficiently document an element to indicate they properly postponed it, the exclusion would not apply and any variances arising from errors related to the element would then be included in the error determination process.

The Department proposes to amend the current regulatory language at 7 CFR 275.12(d)(2)(viii) [re-designated as 7 CFR 275.12(d)(2)(vii)] regarding policy memoranda for clarity. Instead of specifying categories of policy memoranda, as exists now, the Department proposes to generalize the concept to be all-inclusive of SNAP policy memoranda issued.

7 CFR 275.12(d)(3)—Review of Active Cases—Other Findings

The regulations at 7 CFR 275.12(d) define a variance as a review finding that policy was applied incorrectly or that information verified as of the review date differs from the information used at the most recent certification action while the regulations at 7 CFR 275.12(d)(1) and (2) further describe which variances are included in and excluded from the error analysis. Regulations at 7 CFR 275.12(d)(3) describe findings other than variances; however, there is currently no requirement to report these findings to a local office. When a SQCR does report a finding other than a variance, they do so through a notification comment that is sent along with the case's official QC results. The lack of a requirement to report these findings can lead SQCRs to bypass those issues, thereby reducing the local eligibility office's ability to determine whether a change in the case record is warranted following the QC review. This is important to address, because currently it is possible for a SQCR to learn information about a household's current circumstances that do not affect the sample month under review but could affect the household's ongoing SNAP allotment after the sample month. For example, a SQCR conducts an interview with a household in May for a case selected for the March sample month. During the interview, the SQCR finds that a household member recently started a new job that increased the household's earned income over the income limit for its household size but failed to report this information to the State agency within the required time frames. The new earnings are excludable from the review because they occurred after the sample month, but the household is required to report this change and it may impact the household's ongoing SNAP allotment in future months.

As a result, the Department is proposing to amend 7 CFR 275.12(d)(3) by adding that the State QC office would be required to notify the local office of these other findings in all cases, regardless of the error impact those deficiencies may have on the case. The Department believes this notification is essential to good management of the Program, because it provides information about inaccuracies in the case file to eligibility staff, enabling them to correct the issue, prevent future errors from occurring, and potentially provide improved customer service to households. The Department also proposes to remove the following examples from the same paragraph since the household would not have been eligible for benefits according to SNAP rules at 7 CFR 273, and therefore, any benefits issued to such households are considered improper payments under PIIA: [39] an overdue subsequent certification and no current application on file. Additionally, the Department proposes to remove the following examples from the same paragraph since

[38] 31 U.S.C. 3351.

[39] *https://www.whitehouse.gov/wp-content/uploads/2018/06/M-18-20.pdf*; Page 8.

the change in review focus would no longer exclude them from variances cited in the QC review: insufficient documentation and incorrect application of the verification requirements specified in part 273.

Currently, at 7 CFR 275.12(d)(3), State agencies have the discretion to act on findings other than error variances discovered during the review, which are pertinent to the SNAP household or the case record. Such findings may include, for example, the incorrect age of a household member that is unrelated to an element of eligibility and deficiencies in work registration procedural requirements, among others. The Department proposes to maintain this State agency discretion to act or not act on additional information discovered during the QC review.

7 CFR 275.12(f)—Review of Active Cases—Reporting of Review Findings

Consistent with the changes made at 7 CFR 275.12(d)(3), where SQCRs would be required to document all variances discovered in the review and not just those causing a reportable error, the Department proposes to revise regulations at 7 CFR 275.12(f)(1) and (f)(2) to require reviewers include all variances in their individual review findings reports for both eligibility and basis of issuance variances, respectively. Changes in both sections would also remove the reference to 'sample month', as this would be consistent with the shift in review focus from a point in time to the eligibility action under review.

7 CFR 275.12(g)—Review of Active Cases—Disposition of Case Reviews

As noted, proposed updates to the active review would be more reflective of improper payment requirements for PIIA, which requires a more thorough reporting of errors. Currently, FNS ''charges'' State agencies a penalty for having a low QC completion rate. This penalty is part of the calculation that determines the State agency's PER. This method is unique to SNAP. Other programs that report for PIIA, follow a different process, whereby any case they are unable to complete for QC results in a total dollar error. In SNAP, reviewers drop cases for which they cannot verify an element of eligibility or basis for the benefit amount. For instance, if a case indicates the household received earned income, and the household is unable to provide verification or a collateral contact that can validate the information, the reviewer drops the case as incomplete.

To be consistent with PIIA, the Department proposes to amend 7 CFR 275.12(g)(1) so that, as with other Federal programs, all cases that cannot be completed, regardless of the reason, would result in the reporting of an error for the total allotment issued for the action under review. The Department requests public comment for considerations of circumstances it should consider in implementing this policy.

The Department is also seeking feedback on whether there should be a threshold applied to completion rates in the proposed error rate calculation methodology, similar to the current percent completion threshold which requires a penalty be applied to a State agency's error rate if it fails to complete at least 98 percent of its minimum QC case load.

Current regulations at 7 CFR 275.12(g)(1)(ii) list instances in which the household's unwillingness to cooperate in completing a QC review has the effect of a refusal to cooperate. Those instances include when the household fails to respond to mail sent Certified Mail-Return Receipt Requested; when the household fails to attend an agreed upon interview; and when the household does not return a signed release of information after agreeing to do so or after receiving one through Certified Mail-Return Receipt Requested. FNS received input from State agencies through various meetings with the American Public Human Services Association (APHSA) that the use of certified mail is prohibitively expensive and that delivery and service issues with the United States Postal Service (USPS) have presented challenges even when using Certified Mail-Return Receipt Requested.

APHSA members requested reviewers be provided an opportunity to use a process similar to the Request for Contact (RFC) process used for unclear information, as found in 7 CFR 273.12(c)(3)(i)(A). FNS determined the use of a modified RFC process; whereby households that fail to respond to the request are suspended from SNAP for one month, with opportunity to verify their circumstances during that time, prior to having their SNAP participation terminated; is appropriate for QC purposes. This new process would be referred to as a request for quality control contact or RFQCC. Allowing a RFQCC will help State agencies complete cases and reduce the number of incomplete cases that, under the new process, would count as total dollar errors. The availability of this process will ensure integrity in the Program by encouraging households to cooperate with the QC process. It will also protect access to the Program for those households that do cooperate as required, as current regulations do not provide an additional month for the household to cooperate before the State must pursue termination of their participation. In addition, commonly known issues with mail delivery necessitate other allowable processes for States to utilize in gaining household cooperation. For that reason, the Department proposes to revise 7 CFR 275.12(g)(1)(ii) by reordering the examples and adding the previously mentioned RFQCC process as an alternative way to respond to households that either refuse or fail to ever respond to communication from State QC to cooperate with the QC review. Similar to the RFC process outlined in 7 CFR 273.12(c)(3)(i)(B)(2), if the household fails to respond to the RFQCC, the reviewer will inform the State and the State will send a notice of adverse action that suspends the household for one month to allow the household an opportunity to cooperate with QC prior to termination. If the household does not cooperate with QC by the deadline provided in the notice of adverse action, the reviewer must notify the State agency of the household's refusal and the State must follow through with terminating the household as stated at 7 CFR 275.12(g)(1)(ii).

The proposed review process would also require an update to regulations at 7 CFR 275.12(g)(2) regarding active cases that are not subject to review. The Department proposes to eliminate the current provisions at 7 CFR 275.12(g)(2)(iv) and 7 CFR 275.12(g)(2)(ix) pertaining to households receiving restored benefits and households not receiving benefits in the sampled month, because the provisions would no longer be relevant to the way cases would be sampled. In addition, 7 CFR 275.12(g)(2)(x) would be removed because all cases in which the household is unable to be reached for the QC review would result in a total dollar error amount for the eligibility action under review, as mentioned above, and, therefore, no longer be considered a case not subject to review. As a result of the proposed changes, the Department would also reorganize the section to accommodate the removals and additions.

Subpart E—Corrective Action

7 CFR 275.16(b)(2)—Corrective Action Planning—Negative Cases

In 2012, the Department changed the negative case review process in the final rule titled, *Supplemental Nutrition Assistance Program: Quality Control*

Provisions of Title IV of Public Law 107–171 (75 FR 33421),[40] from a review of the accuracy of a denial, termination, or suspension to a process that incorporated a customer service review of those actions, including whether the State agency accurately informed the household of the reason for the action and whether the State agency's procedures were correct. Since that change, the requirement at 7 CFR 275.16(b)(2) for State agencies to implement a corrective action plan (CAP) whenever its CAPER rose above one percent has become impractical, as exceeding the one percent threshold became routine because of the new review procedures. State agencies have informed FNS of their concerns in various ways, including through conferences and advisory group meetings, since the first CAPER release in calendar year 2013. In the 2018 RFI,[41] FNS requested feedback from commenters regarding the factors FNS should consider in revising the current CAP requirement for negative cases. FNS received ten comments about changes to CAP requirements and three suggested a threshold change for CAPs required on CAPERs. However, those three commenters overwhelmingly agreed the threshold should be increased. FNS based the current threshold on the previous negative case review process and now agrees that the threshold should be adjusted to better accommodate the process implemented in FY 2012.

Consequently, the Department is proposing that a State agency would be required to implement a CAP when its CAPER is higher than the national CAPER for a given fiscal year. To do so, the Department proposes to amend 7 CFR 275.16(b)(2) by removing the phrase ''of 1 percent or more in negative cases'' and adding in its place the phrase ''above the national average CAPER.'' However, because FNS has received only limited and mainly anecdotal feedback from State agencies since the changes, the Department is seeking additional comments through this rulemaking regarding when State agencies would be required to implement a CAP to improve their CAPER.

7 CFR 275.16(b)(4)—Corrective Action Planning—Incomplete Cases

The CAP requirement at 7 CFR 275.16(b)(4) for incomplete cases is another area that State agencies have questioned. A CAP is currently required whenever a State agency is unable to complete more than 5 percent of its annual QC caseload. The Department received comments to the 2018 RFI[42] on factors to consider in revising the current CAP requirement in this area. Ten commenters provided comments on factors to consider if revising the current CAP requirements. The commenters, which included eight State agencies, provided the following to consider: adjust the completion rate because a 95 percent completion rate is unreasonable and unattainable for many State agencies; utilize the Federal regression rate penalty only if State agencies are not completing cases in accordance with Federal rules and regulations; adjust acceptable levels of performance before corrective action occurs based on trends and current data; and initiate CAPs only when FQCRs demonstrates that incomplete cases were completed by FQCRs and SQCRs had the ability to complete the case in the same manner. The Department considered these comments but determined that, due to the proposed new handling of incomplete cases as complete dollar amount errors, the most appropriate revision to this threshold would be to eliminate the CAP requirement altogether for active cases.

Since this rule proposes to count the full allotment for incomplete cases as an error, the Department has concluded that the development of a separate CAP for active cases would be duplicative and unnecessary. This is due, in part, to the fact that an excess number of dropped cases would result in higher PERs and the Department has procedures, namely the liability and sanction process, to respond to high PERs.

For negative cases, current rules related to dispositioning a case as incomplete in the negative sample frame stipulate that State agencies may list as incomplete only those cases where the whole case file cannot be located. This largely stems from long-standing requirements that eligibility workers fully document their case files in sufficient detail to permit a reviewer to determine the reasonableness and accuracy of the determination. As a practical matter, the incidence of incomplete negative cases by State agencies is extremely low. For example, for FY 2019, there were no dropped cases in the negative sample frame.

For these reasons, the Department is proposing to remove the provision at 7 CFR 275.16(b)(4). As a result, current regulations at 7 CFR 275.16(b)(5) will be redesignated as 7 CFR 275.16(b)(4).

Subpart F—Responsibilities for Reporting on Program Performance

7 CFR 275.21(b)(1)—Quality Control Review Reports—Mandating the Use of SNAP QC System

In 2013, FNS successfully implemented a web-based electronic QC review system (SNAP–QCS) for State agencies to input their QC case review data, including the documentary evidence to support case reviews. Therefore, the Department is proposing to require State agencies to use the Federally funded SNAP–QCS.

The primary purpose of SNAP–QCS is to provide a central location to house QC review cases which can be accessed at both the State and Federal levels. SNAP–QCS provides complete audit and status tracking for each case. All changes, beyond drafts, are available (where authorized) for comparison to prior iterations. SNAP–QCS contains edit check rules that prevent the submission by any user of information that violates business logic or other policy/regulatory guidance. In all cases, SNAP–QCS informs users of the nature of the rule violation in a manner that allows for correction of any such violation.

Since its inception, SNAP–QCS has replaced numerous State agency legacy systems. The system provides the following functionality: the creation of worksheets and review schedules (FNS 380, FNS–245 and FNS–380–1)[43] by the States, workflow management for State review worksheets and schedules; the Federal subsampling of QC review cases, the creation of review notes and findings by FQCRs, detailed workflow management for the Federal review process; tracking of case-related information, reporting tools for workflow and case characteristics, and analysis tools for advanced QC finding reports.

FNS requested comments in the 2018 RFI[44] as to whether the Department should mandate SNAP–QCS for all QC Worksheets. Ten State agency respondents commented on such a mandate. Four State agencies expressed support for mandated use of SNAP–QCS because they currently use it and asserted that it would allow for improved consistency in the submittal of required information to FNS across States. One State agency indicated it

[40] *https://www.govinfo.gov/content/pkg/FR-2010-06-11/pdf/2010-13446.pdf.*

[41] *https://www.govinfo.gov/content/pkg/FR-2018-06-01/pdf/2018-11849.pdf.*

[42] *https://www.govinfo.gov/content/pkg/FR-2018-06-01/pdf/2018-11849.pdf.*

[43] FNS 380—OMB Form 0584–0074; FNS 245–OMB Form 0584–0034; FNS 380–1—OMB Form 0584–0299.

[44] *https://www.govinfo.gov/content/pkg/FR-2018-06-01/pdf/2018-11849.pdf.*

had no concerns about the mandate because State agencies would retain the option to maintain their own internal automated QC system and upload the results into SNAP–QCS. However, four State agencies objected to the mandated use of SNAP–QCS. One State agency noted SNAP–QCS does not account for special budgeting rules, such as waivers, and other commenters expressed concerns related to State system variability resulting in system modifications, increased work, and inefficient use of State agency staff time (*e.g.,* double data entry).

The Department appreciates all comments submitted. Most State agency commenters who opposed the requirement to use SNAP–QCS did not have experience using the automated version of the system. The Department understands there is a learning curve when a new reviewer begins using SNAP–QCS. FNS anticipates that mandating the use of SNAP–QCS will improve data integrity and expects that the edit checks would assist in accurate data collection. Therefore, the Department proposes to mandate the use of SNAP–QCS at 7 CFR 275.21(b)(1). This includes using the Auto-FNS Form 380, FNS Form 380–1, and FNS Form 245, and upload all documentation necessary to understand the disposition and findings for each sampled case.

Subpart G—Program Performance

7 CFR 275.23(b)(2)—Determination of State Agency Program Performance—Determination of Payment Error Rates

To accurately apply the new sampling method to determine State agency program performance, the Department proposes to amend the language at 7 CFR 275.23(b)(2)(i)(A) to clarify what the quantities y_1, b_1, x_1, and X_1 in the PER determination formula are and that X_1 should be weighted (using W_i) to account for the differential selection probabilities of the new sampling design. The Department also proposes to amend the language at 7 CFR 275.23(b)(2)(i)(B) to clarify what the quantities y_2, b_2, x_2, and X_2 in the formula are and that X_2 should be weighted (using W_i) to account for the differential selection probabilities of the new sampling design. The Department also proposes to remove language about stratified sample designs covered by both provisions because it would no longer apply when using the proposed sampling method.

To avoid confusion with the notation introduced in the new paragraph 7 CFR 275.11(g), Active sample allocation, the Department proposes to change the notation of ''u'' to ''Z'' in paragraph 7 CFR 275.23(b)(2)(i)(C). In addition, the Department proposes to remove and rephrase language about the quantity ''Z'' to make its definition clearer.

The assignment of error rates by FNS, whether for active or negative cases, has occurred only infrequently in the past. Typically, FNS made assignments because of extraneous circumstances beyond a State agency's control, such as when a large disaster impedes its ability to complete cases. However, situations do arise in which FNS must assign rates to State agencies due to other reasons. FNS assigned multiple State agency error rates in FY 2017 due to data integrity issues and found that greater clarity in regulations at 7 CFR 275.23(b)(2)(ii) is necessary. First, the Department proposes to amend the regulation to reflect the name change of the error rates for negative cases and clarify that assigned rates could be used in the determination of liability status, subject to 7 CFR 275.23(d). Second, the Department proposes to amend the paragraph by adding a statement at the end of the section to indicate that under no circumstance, would an assigned rate be eligible for appeal unless the rate resulted in a liability amount, per 7 CFR 275.23(d). While these clarifications are consistent with current practice and law, the Department maintains that the additional language adds emphasis.

7 CFR 275.23(b)(2)(iii)—State Agency Error Rates—Completion Rate Penalty

The Department proposes to change the current penalties applied to State agencies that fail to complete 98 percent of their active QC caseload as described in 7 CFR 275.23(b)(2)(iii) by changing the application of the penalty to apply to any State agency that fails to sample the required minimum annual sample size, while also increasing the impact of the penalty. Since State agencies would report all active cases with a disposition of incomplete as a total dollar error for the sampled action under review, the Department believes there is a sufficient deterrent to past State agency practices of dispositioning cases as incomplete to avoid errors. Still, situations exist where a State agency may not sample the minimum sample size. For FY 2022, a total of seven States did not sample enough cases to meet the minimum regulatory requirement for active and negative sample frames. This could happen in situations beyond the control of the State agency, such as when a natural disaster impedes the State agency's ability to sample and complete its required QC reviews. This could also occur in situations that are within the State agency's control to prevent, such as when a State agency fails to sufficiently staff the QC unit and is subsequently unable to complete the required minimum sample size.

Specifically, the Department seeks input on the proposal to apply an adjustment penalty to a State agency's error rate when the State agency fails to sample enough cases to complete the minimum sample size in any given sample month, including the following: (1) if the changes proposed to the current penalty formula are sufficient and (2) whether FNS should distinguish in how it applies the penalty based on whether a State agency cannot sample its minimum sample size due to situations beyond its control.

7 CFR 275.24—High Performance Bonuses

Section 4013(d) of the 2018 Farm Bill removed the requirement for the Secretary to award performance bonus payments to State agencies and prohibited the Secretary from awarding performance bonuses in calendar year 2019 for FY 2018 performance. The 2018 Farm Bill also required the Department to establish performance criteria relating to actions taken to correct errors, reduce rates of error, improve eligibility determinations and any other indicators of effective administration determined by the Secretary.

To ensure SNAP performance bonuses are removed from regulations throughout 7 CFR 275.24, the Department proposes to amend current regulations at 7 CFR 275.24 with this rulemaking and replace that language with performance criteria, as directed by Congress pursuant to Section 4013(d)(3) of the 2018 Farm Bill. The performance criteria mirror current language at 7 CFR 275.24 but removes all references to bonuses and adjusts the language, grammar, and structure of the provision accordingly. The Department proposes these performance criteria because they mirror prior performance bonus criteria, which the Department believes, based on prior experience with performance bonuses, are informative measures of performance.

7 CFR 275.24(a)(3)—Performance Measures—Program Access Index

As one of the technical changes, the Department proposes to remove the fourth sentence in subparagraph 7 CFR 275.24(a)(3)(i) as it is no longer necessary to allow an exception to calculating the program access index rate for the State of California as the State converted its cash out program to allow households to receive SNAP. Therefore, the Department can use actual SNAP participant numbers for

their calculation and the sentence is unnecessary.

Proposed Timeframe for Implementation of QC Sampling and Active Review Changes

The Department recognizes the significant sampling and active review changes will require lead time and technical assistance for State agencies to come into compliance for implementation. The Department is considering establishing an implementation date of two full fiscal years after publication of the final rule. For example, if a final rule were published in March of 2027, the Department would establish an implementation date of October of 2029. The Department seeks input on this implementation timeline.

To summarize, the simplification of the QC review is expected to benefit several stakeholders. Households would benefit from no longer having to provide verifications for multiple months in the certification period if their case is selected for QC review, SQCRs and FQCRs would have an equally robust but less complicated active case review to conduct, and the Department and Congress would benefit from both an improvement in the quality of information that comes out of the reviews and by being able to compare improper payments more effectively across government social safety net programs.

In addition, simplifying the QC review in the proposed manner would also allow State agencies to implement more timely corrective actions. Timely corrective actions should reduce the compounding impact of improper payments as State agencies would be able to correct systemic errors and implement policies or processes more immediately, thus improving customer service to recipients, State agencies, and the American taxpayer.

The Department acknowledges some of the most impactful changes for State agencies administering SNAP and households sampled for review include (1) the shift in review of the action that authorized the allotment; (2) the handling of cases that cannot be validated, and (3) the introduction of the RFQCC process. The Department asks for and welcomes comment on all provisions in this proposed rulemaking, and we also request comments on potential impacts, direct and indirect, of these changes on State agencies and SNAP households. The Department reiterates this is a proposed rule, and we will consider all comments provided before a final rule implements any changes to SNAP's QC system.

Procedural Matters

Executive Order 12866, 13563, and 14094

Executive Orders 12866, 13563, and 14094 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Under Executive Order 12866, as amended, OMB's Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to OMB review. This proposed rule has been determined to likely be significant under E.O. 12866, as amended, and is being reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The analysis below outlines the impacts that the Department anticipates may result from this proposed rule, if finalized, and was prepared pursuant to the above-mentioned executive orders.

Summary of Total Cost Impacts

A regulatory impact analysis (RIA) must be prepared for rules which are determined to be significant under Section 3(f)(1) of E.O. 12866, as amended ($200 million or more in economic effects in any one year). USDA does not anticipate this proposed rule is likely to have an economic impact of $200 million or more in any one year, and therefore, does not meet the definition of significant under Section 3(f)(1) of E.O. 12866 as amended. This proposed rule will not impact SNAP participants' benefit levels. Overall household burden will increase due to the increase in case samples required by the new process, not by adding additional burden to individual households.

The Department expects several of the proposed rule provisions to impact State Administrative Expenses (SAE) or FNS administrative costs. The rule includes the following changes expected to have measurable impacts:

—Section 275.11(b)(1)(iii) modifies the active case sample size formulas for State reviewers and Federal re-reviewers, increasing the sample size by 30 percent, to maintain the current level of precision.

—Section 275.11(3)(1) changes the active case sampling frame from all households to those with an action, including initial certification, recertification, and the submission of monthly, quarterly, or periodic reports.

—Section 275.12(b) clarifies that reviewers will only be required to examine households' circumstances for the month that the action took place, eliminating the need for comparing households' circumstances at the month of action versus the month of the review. As a result of the changes to the active case reviews, the shift to only reviewing eligibility actions will result in collecting less information about the household since only the point of eligibility will be reviewed, rather than a random point in time during a household's certification, which requires the collection of a new month's circumstances, not one that's already in the case record.

—Section 275.11(g) specifies that the active sample is divided into five strata, allowing the sample to be representative of the SNAP caseload.

—Section 275.12(d)(3) requires SQCRs to notify local offices of all non-error causing variances found in the review.

—Section 275.21(b)(1) mandates that SQCRs use the SNAP–QC system for QC reporting, rather than using their State systems.

Below in Table E.1 is a summary of the combined impacts of these provisions on both State Agencies and the Federal Government. The *Annual Baseline* column shows the current annual costs for each row. The columns with *FY* headers are the difference between the annual baseline and new procedures resulting from this rule change in that specific fiscal year, with FY 2024 being the first implementation year and the first year in which the discount rate is applied. The *Total* column shows the sum of the five *FY* columns: the costs over the first five years of implementation. As noted previously, there are no anticipated impacts on SNAP allotments, but there are some expected costs for SNAP households as a result of the increased number of sampled households. Cost savings are anticipated after the implementation year, in FY 2026, due to expected reductions in the time needed for a caseworker to perform a QC review in under the new rule from 8.98 to 6.33 hours.

TABLE E.1—SUMMARY OF TOTAL COST IMPACTS **

Impacts on state administrative expense (cost in nominal FY 2024 $000s)	Baseline:	Annualized cost differences from pre-rule baseline					
	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Total
New Sampling Procedures	$11,370.3	$3,393.4	−$950.9	−$950.9	−$950.9	−$950.9	−$410.2
Training	0.0	974.2	0.0	0.0	0.0	0.0	974.2
Reporting all variances	0.0	0.0	411.5	411.5	411.5	411.5	1,646.0
Record keeping	59.8	0.0	17.9	17.9	17.9	17.9	71.6
Help Desk **	70.0	0.0	210.0	210.0	210.0	210.0	840.0
Require all States use QCS **	175.0	0.0	525.0	525.0	525.0	525.0	22,100.0
Total	11,675.1	4,367.6	213.5	213.5	213.5	213.5	55,221.6
Discounted Cost Impact							
7 percent	11,675.1	4,081.9	186.5	174.3	162.9	152.2	4,757.7
3 percent	11,675.1	4,240.4	201.2	195.4	189.7	184.2	5,010.9
Impacts on Household Burden (cost in nominal 000s)							
Increase in Household Burden for Newly Sampled Cases	0.0	49.5	49.5	49.5	49.5	49.5	247.5
Discounted Cost Impact							
7 percent	0.0	46.3	43.2	40.4	37.8	35.3	203.0
3 percent	0.0	48.1	46.7	45.3	44.0	42.7	226.7

* Totals may not sum due to rounding.
** These costs are incurred only by the Federal Government.

The net present value of costs to State and Federal governments over five years is $4,76 million at a seven percent discount rate and $5,01 million at a three percent discount rate. The net present value of costs to SNAP participants over five years is $203.0 thousand at a seven percent discount rate and $226.7 thousand at a three percent discount rate. Annualized in perpetuity, the government costs are $333.04 ($150.33) thousand per year at a seven (three) percent discount rate, and participant costs are $14.21 ($6.80) thousand per year at a seven (three) percent discount rate.

This rule change will result in substantive benefits for QC reviewers. By changing the active case review to focus on eligibility determinations (certifications, recertifications, and submission of required reports), the rule will result in the SNAP QC process being better aligned with how other Federal programs measure payment accuracy and with PIIA. The proposed changes are also expected to simplify QC reviews, which in turn will improve the quality of the reviews and of the information collected. The time spent by each caseworker in QC review is anticipated to drop from 8.98 to 6.33 hours per case, which will result in −$950.9 thousands in savings per year, even accounting for the expected increase in 13,649 QC reviews per year (see Table E.3). Simplifying the process and focusing on eligibility actions will also allow for more timely corrective actions.

Implementation Costs (State and Federal Administrative Expense)

Developing New Sampling Plans. Statisticians from each of the 53 State Agencies will need to develop new sampling plans for active cases. It will take an estimated 40 hours for each State Agency to develop a plan. Given an hourly rate of $47.81 (the median hourly wage for a statistician, according to the Bureau of Labor Statistics (BLS)), the total one-time cost is $101,400 (Table E.2). Because these are State Administrative Expenses for which the Federal Government reimburses States, $50,700 will be borne by the Federal Government and $50,700 will be borne by State Agencies.

Training SQCRs on new review procedures. SQCRs will need to be trained in the changes to the active case QC review process. There are approximately 634 SQCRs. Training will take an estimated 40 hours. At an hourly rate of $27.83 (the median hourly rate for a social worker, according to the BLS at time of analysis), the total cost for training will be $705,800. Because these are State Administrative Expenses for which the Federal Government reimburses States, $352,900 will be borne by the Federal Government and $352,900 will be borne by State Agencies.

Training SQCRs on entering data into the SNAP QC system. All SQCRs will be required to enter QC review data into the SNAP QC system. Currently, 263 SQCRs of an estimated 634 SQCRs nationwide are entering QC data into the SNAP QC system. Therefore, based on this estimate, an additional 371 SQCRs will need to be trained on how to enter data into SNAP–QCS by making the system mandatory. This training will take an estimated 26 hours. At an average social worker rate of $27.83, the cost for this training will be $268,400. Because these are State Administrative Expenses for which the Federal Government reimburses States, $134,200 will be borne by the Federal Government and $134,200 will be borne by State Agencies.

Longer time initially processing cases. During the first year, reviewers are expected to take an estimated 2 hours longer to review each case as they become accustomed to the changes in QC. With an estimated 59,149 cases, at $27.83 an hour, the one-year cost is $3,292,100. Because these are State Administrative Expenses for which the Federal Government reimburses States, $1,646,100 will be borne by the Federal Government and $1,646,100 will be borne by State Agencies.

These one-time implementation costs will total an estimated $4,367,700, of which $2,183,900 will be borne by the Federal Government and $2,183,900 borne by State Agencies.

TABLE E.2—IMPLEMENTATION COSTS (STATE AND FEDERAL ADMINISTRATIVE EXPENSE) *

	Develop sampling plan	Train SQCRs on new review procedures	Train QC revisers to use QC system	Additional time for SQCRs to process active cases	Total implementation cost
Number Impacted	53.0	634.0	371.0	59,146.1	
Time (hours)	40.0	40.0	26.0	2.0	
Hourly rate	$47.8	$27.8	$27.8	$27.8	
Total Cost ($000)	$101.4	$705.8	$268.4	$3,292.1	$4,367.7
Federal Share ($000)	$50.7	$352.9	$134.2	$1,646.1	$2,183.9
State Share ($000)	$50.7	$352.9	$134.2	$1,646.1	$2,183.9

* Totals may not sum due to rounding.

Annual Operational Costs and Cost Savings (State Administrative Expense)

Impact of changes in sample size and review procedures. Currently, SQCRs review 45,497 active cases per year.[45] It takes an average of 8.908908 hours per review. The median hourly rate for a social worker is $27.83. Thus, the cost of performing QC reviews is currently an estimated $11,370,300. (Table E.3)) Under the proposal, SQCRs will review about 59,146 cases per year, an increase of 30 percent. However, after the first year, the average time per review is expected to drop from 8.908908 hours to 6.33 hours. This is because reviewers will only be required to examine households' circumstances for the month that the action took place, eliminating the need for comparing households' circumstances at the month of action versus the month of the review. The cost of performing QC reviews is estimated to be $10,419,400, a savings of $950,900. Because these are State Administrative Expenses the savings will be equally split between the Federal Government and State Agencies, with each saving $475,450.

New requirement to report non-error causing variances. Currently, States are not required to report non-error causing variances back to local SNAP offices. Section 275.12(d)(3) will require SQCRs to notify the local office of deficiencies in all cases, regardless of the error impact on the case. Little is known about how many variances of these kinds are currently reported, how many non-error causing variances will be reported under the requirement, or how long it takes to report such variances. Some cases will have no non-error causing variances, whereas others may have multiples of these variances. FNS is assuming that the additional time will average 15 minutes per case. This average is not meant to assume that all cases will have variances to report; rather, it is an average to balance cases with many variances to report against cases that have no additional variances to report. Using the hourly rate of $27.83 for a social worker times 59,146 cases (this is equal to 30 percent more than the FY 2017 actives QC case load, as required by the proposed sampling methodology) times 15 minutes per case yields a cost estimate of about $411,500, of which nearly $205,750 will be borne by the Federal Government and $205,750 will be borne by State Agencies.

Record keeping for more cases. States are required to keep records of all State QC reviews. It is estimated that the record keeping takes about 3 minutes per case, and that will be unchanged under the proposed system. However, because the number of cases is increasing by 13,649, using the average hourly rate of $27.83 for a social worker, the cost will increase by an estimated $17,900. This cost will be split between the Federal Government ($8,950) and State Agencies ($8,950).

New requirement to attest the validity of the sampling plan. State Agencies will now be required to provide an annual statement attesting to the validity of the sampling plan. The time to provide the statement is estimated to be 12 minutes. Each of the 53 State Agencies will have a SNAP manager provide this statement. According to the Bureau of Labor and Statistics, the median rate for a general manager is $55.41 at time of analysis. Thus, the cost is $600 per year, $300 borne by the Federal Government and $300 borne by State Agencies.

Increased QC help desk support. FNS will be required to provide increased help desk support. Currently, FNS contracts for one staff member to provide this support, at an annual cost of $70,000. FNS anticipates needing to contract for three additional people, for an additional cost of $210,000. This cost will be entirely borne by the Federal Government.

Additional QC data storage. FNS currently stores the SNAP QC data on six servers, at an annual cost of $27,333.33 per server, or $164,000 total. In addition, the storage costs are currently $11,000 per year. With all States using the SNAP QC data system and the increased sample size, FNS anticipates that these costs will quadruple, to $656,000 for the servers and $44,000 for storage, for a total of $700,000. The additional cost will total $492,000 for the servers and $33,000 for storage, for a total of $525,000. This cost will be entirely borne by the Federal Government.

The total annual administrative cost of the changes to the QC review process is estimated to be $214,100. Because some costs, such as help desk support and additional data storage, are not shared with State Agencies, the estimated cost to the Federal Government is $474,600. State Agencies are expected to save $260,500 annually due to the reduced case processing time.

Annual Household Administrative Burden

As discussed previously, the changes to the case sampling procedures will result in an overall increase in the number of cases sampled each year, from 45,497 annually to 59,146 (an increase of 13,649 cases). As described in the Paperwork Reduction Act section of this proposed rule, the burden to an individual household selected for review is not expected to change and will remain about 30 minutes per household. However, since the number of cases selected will increase, overall household burden will also increase. The increase is expected to cost $49,477.6 annually (13,649 cases × .5 hours per case × minimum wage of $7.25).

Uncertainties

While this proposed rule is expected to improve SNAP program integrity, it is

[45] The changes in sampling procedures only affect active cases, not negative cases.

unclear whether the rule provisions will result in additional sanctions or liabilities being imposed on State Agencies as a result of these proposed changes.

TABLE E.3—ANNUAL OPERATING COSTS AND SAVINGS (CHANGES FROM CURRENT PROCEDURES) *

Annual variable costs	Current units	Proposed units	Difference	Current hours	Proposed hours	Difference ($)	Current hourly rate ($)	Proposed hourly rate ($)	Difference ($)	Current cost ($000's)	Proposed cost ($000's)	Difference ($000's)
Processing Active Cases	45,497.00	59,146.10	13,649.10	8.98	6.33	−2.65	27.83	27.83	0.00	11,370.30	10,419.40	−950.90
Reporting all non-error causing Variances	0.00	59,146.00	59,146.00	0.25	0.25	0.00	27.83	27.83	0.00	0.00	411.50	411.50
Record Keeping	45,497.00	59,146.10	13,649.10	0.05	0.05	0.00	27.83	27.83	0.00	59.80	77.70	17.90
Attest Sample Plan	53.00	53.00	0.00	0.00	0.20	0.20	55.41	55.41	0.00	0.00	0.60	0.60
Annual Fixed Costs							Current unit cost ($)	Proposed unit cost ($)				
Help Desk Support	1.00	4.00	3.00	N/A	N/A	N/A	70,000.00	70,000.00	0.00	70.00	280.00	210.00
Servers	6.00	24.00	18.00	N/A	N/A	N/A	27,333.33	27,333.33	0.00	164.00	656.00	492.00
Storage	1.00	4.00	3.00	N/A	N/A	N/A	11,000.00	11,000.00	0.00	11.00	44.00	33.00
Total Annual Costs										11,675.10	11,889.20	214.10
Federal Share										5,95960.05	6,434.60	474.55
State Share										5,75715.05	5,454.60	−260.45

*Totals may not sum due to rounding.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. The entities impacted by this rule are State SNAP agencies that conduct QC reviews, which are not considered small entities for purposes of this analysis.

Pursuant to our review, the Department certifies that this rule will not have a significant impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and Tribal governments, and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local or Tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and Tribal governments, or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

SNAP is listed in the Catalog of Federal Domestic Assistance under Number 10.551. For the reasons set forth in the Final Rule codified in 7 CFR part 3015, subpart V and the related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13121.

The Department has considered the impact of this proposed rule, with comment, on State and local governments and has determined that this rule does not have federalism implications. Therefore, under Section 6(b) of the Executive Order, a federalism summary is not required.

Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed the proposed rule, Provisions to Improve the Supplemental Nutrition Assistance Program's QC System, in accordance with the Department Regulation 4300–004, Civil

Rights Impact Analysis to identify and address any major civil rights impacts the proposed rule may have on participants on the basis of race, color, national origin, sex, and disability. A comprehensive Civil Rights Impact Analysis (CRIA) was conducted on the proposed rule, including an analysis of data and provisions contained in the proposed rule. The CRIA outlines outreach and mitigation strategies to lessen any possible civil rights impacts. The CRIA concludes the provisions of the proposed rule will impact the statistical design and active case review process, as well as clarify and update current regulations. The proposed rule would result in more SNAP households being selected for QC review in the active frame. The demographic profile of SNAP participants includes minorities, persons with disabilities, and the elderly; thus, program participants in these groups may be selected for QC review in the active frame. Additionally, the proposed rule will require State agencies to revise their review procedures, possibly resulting in less onerous reviews for a larger number of cases. The Department finds that the implementation of mitigation strategies and monitoring by the FNS Civil Rights Division and FNS SNAP may lessen these impacts. If necessary, the FNS Civil Rights Division will propose further mitigation and outreach strategies to alleviate impacts that may result from the implementation of the proposed rule.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects 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. This regulation has possible Tribal implications, so consultation is required. FNS attended a Tribal consultation meeting on May 1, 2019, in Washington, DC and virtually to a Nevada meeting on December 6, 2022, where the changes to this rule were explained. No questions or concerns were brought to FNS's attention about this rule by any members of either meeting. If further consultation is requested, the Office of Tribal Relations will work with FNS to ensure quality consultation is provided.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320), requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current, valid OMB control number. We are seeking a new OMB Control Number for these new, existing, and changing provisions in this rule and, once OMB approves the information collection request burden associated with this rulemaking, we will submit a request to merge the burden hours into their respective OMB Control Numbers. Once the merge is approved the newly assigned OMB control number can be discontinued. The current burden inventories for this collection are found in OMB–0584–0074, Expiration Date: 07/30/2025; 0584–0299, Expiration Date: 07/31/2023, and 0584–0303, Expiration Date: 1/31/2024. These changes are contingent upon OMB approval under the Paperwork Reduction Act of 1995. Additionally, when the information collection requirements have been approved, FNS will publish a separate action in the **Federal Register** announcing OMB's approval.

Comments on the information collection in this proposed rule must be received by November 20, 2023.

Send comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC 20503. Please also send a copy of your comments to John McCleskey, Branch Chief, Quality Control Branch, Program Administration and Nutrition Division, 1320 Braddock Place, 5th Floor; Alexandria, Virginia 22314. For further information, or for copies of the information collection requirements, please contact John McCleskey at the address indicated above. Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the Agency's functions, including whether the information will have practical utility; (2) the accuracy of the Agency's estimate of the proposed information collection burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

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

Title: Provisions to Improve the Supplemental Nutrition Assistance Program's Quality Control System.

OMB Number: 0584–NEW.

Expiration Date: Not Yet Determined.

Type of Request: New collection.

Abstract: Section 16 of the Act provides the legislative basis for the operation of the QC system. Part 275, Subpart C, of SNAP regulations implements the legislative mandates found in section 16. Regulations at 7 CFR 275.1, 275.14(d) and 275.21(a) and (b)(1) provide the regulatory basis for the QC reporting requirements. Section 11(a) of the Act provides the legislative basis for the recordkeeping requirements. Existing SNAP regulations at 7 CFR 275.4 specifically address record retention requirements for QC including form FNS–380, FNS–380–1, and the sampling plans found in 7 CFR 275 of the regulations.

Component (1) Form FNS–380 [OMB Control Number: 0584–0074], is a SNAP worksheet used to determine eligibility and benefits for households selected for review in the QC sample of active SNAP cases. This form provides a systematic means of aiding the State's Quality Control Reviewer in analyzing the case record, planning and doing field investigation and gathering, comparing, analyzing and evaluating data. FNS estimates that while this rule will require thirty percent more cases (households) be reviewed for QC, the rule does not change the existing burden on households, and will effectively decrease the ongoing burden for 53 State agencies by 20,151 hours annually. In addition, in order to implement the changes of the rule in the first year, the rule will add 196,915.17 startup burden hours for State agencies. These startup hours include 40 hours of training for 263 State QC reviewers on just the new review procedures for active cases, 64 hours to train 371 reviewers on using both SNAPQCS's automated FNS 380 worksheet and the new review procedures for active cases, and FNS is including 2.75 hours of additional time for State agencies to complete the FNS 380 worksheet for each case review to properly review and document according to the new procedures for the active case review. The revised total ongoing burden associated with this rule for this component is 385,844.12 reporting and recordkeeping burden

hours and the first year's total reporting and recordkeeping burden due to rulemaking including the startup hours is 196,915.17 hours, bringing the total burden in the first year of implementation of the rule to 582,759.29 reporting and recordkeeping hours for this component.

Component (2) FNS 380–1 [OMB Control Number: 0584–0299], is SNAP's QC Review Schedule which collects QC and household characteristics data. The information needed to complete this form is obtained from the SNAP case record and State quality control findings. The information is used to monitor and reduce errors, develop policy strategies, and analyze household characteristic data. FNS estimates this rule will require 53 State agencies a revised total of 63,853.892 ongoing reporting and recordkeeping burden hours annually for this component of this collection. This is an increase of 14,735.33 burden hours. An estimated total of 742 additional startup hours are necessary for the first year's implementation of components within this collection for this rule. This startup includes 2 hours for 371 State QC reviewers to be trained on how to use SNAPQCS's automated FNS 380–1 worksheet. The revised total reporting and recordkeeping ongoing burden hours for the first year 64,595.89 hours.

Component (3) In the 275 regulations [OMB Control Number: 0584–0303], each State agency is required to develop a QC sampling plan that demonstrates the integrity of its case selection procedures. The QC system is designed to measure each State agency's payment error rate based on a statistically valid sample of SNAP cases. A State agency's payment error rate represents the proportion of cases that were reported through a QC review as being ineligible, overissued and underissued as well as the proportion of SNAP allotments that were either overissued or underissued to SNAP households. The FNS 311 Handbook is used by State agencies as a reference tool for creating their sampling plans. The current ongoing reporting and recordkeeping burden for this collection is 2,829 hours. FNS estimates this rule will require 53 State agencies a revised total of 2,829 ongoing reporting and recordkeeping hours and an additional 2,120 startup reporting burden hours for this first year of implementation of components within this rule. These startup hours include 40 hours for 53 State agency statisticians to update their State's sampling procedures to comply with the new sampling requirements of this rule. The first year of implementation for this component of the rule will require a total of 4,949 reporting and recordkeeping burden hours.

In total, FNS estimates this rule will decrease the overall ongoing burden associated with these three collections by 5,416 reporting burden hours. The overall total burden for these three components associated with the rule will require 53 State agencies, a total of 422,951 ongoing reporting and recordkeeping burden hours and 59,146 households 29,573 ongoing reporting burden hours annually. FNS also estimates this rule will require State agencies an additional 199,777.17 startup burden hours to implement the changes in this rule. Therefore, a grand total of 652,302 reporting and recordkeeping burden hours are estimated for this first year of implementation for this rule. This rule affects the three components of the QC process mentioned above, the use of (1) FNS forms 380, (2) FNS 380–1 and (3) the creation of the State QC Sampling plan attestation. The average burden per response and the annual startup and ongoing burden hours are explained below and summarized in the charts that follow.

Ongoing Reporting and Recordkeeping Burden

FNS 380: A SNAP worksheet used to determine eligibility and allotment amounts for households selected for review in the QC sample of active SNAP cases.

Reporting Respondents for this Proposed Rule: 59,199 (59,146 Individuals/Households and 53 State, Local and Tribal Government).

Estimated reporting responses for this Rule: 473,172 responses (59,146 for Individuals/Households and 473,172 for State, Local and Tribal Government).

Estimated hours per reporting response: 6.58 hours (0.5 hours for Individuals/Households and 6.08 hours for State, Local and Tribal Government).

Estimated Responses per Respondent to report for this Rule: 7812.81 (7,811.81 responses per State agency and 1 response per Household).

Estimated Reporting hours for this Rule: 384,449 hours (354,876 hours for State agencies and 29,573 burden hours for Households).

Estimated Records to keep per respondent for this Rule: 59,146 records for State agencies and there is no recordkeeping burden imposed on Individuals/Households.

Estimated hours per recordkeeping response: 0.0236 hour.

Estimated Total Recordkeeping hours for this Rule: 1,396 hours.

Estimated Total Ongoing Annual Reporting and Recordkeeping Burden for this rule: 385,845 hours.

Rule impacting ongoing reporting and recordkeeping burden: −20,151 hours.

FNS 380–1: SNAP's QC Review Schedule which collects QC and household characteristics data.

Respondents for this Proposed Rule: 53 State, Local, and Tribal Government.

Estimated Responses for this Proposed Rule: 59,146 responses.

Estimated Responses per Respondent to report for this Proposed Rule: 1,115.96 responses.

Estimated hours to report each response: 1.056 hours.

Estimated Total Reporting burden for this Rule: 62,458 hours.

Estimated Records to keep for this Proposed Rule: 59,146 responses.

Estimated Number of Records to keep per respondent for this Rule: 1,115.96 records per respondent to keep.

Estimated hours per recordkeeping response: 0.0236 hour.

Estimated Total Recordkeeping burden for this Rule: 1,395.84 hours.

Estimated Annual reporting and recordkeeping Burden on Respondents for this Proposed Rule: 63,853.89 hours.

Rule impacting ongoing reporting and recordkeeping burden: +14,735.33 hours.

FNS 275 Rules: Sampling Plan, 3rd Party Contractors, Arbitration, Good Cause, New Investment

Estimated Respondents for this Proposed Rule: 53 State, Local, and Tribal Government.

Estimated Number of Responses per Respondent to report for this Proposed Rule: 129 responses.

Estimated hours to report for each response: 21.91 hours.

Estimated Total Reporting Burden for this rule: 2826 hours.

Estimated Records to keep for this Rule: 246 records.

Estimated Records to keep per respondent for this Rule: 4.64 records per respondent.

Estimated hours to keep records for each response: 0.118 hours.

Estimated Total Recordkeeping burden for this Rule: 2.7612 hours.

Estimated annual reporting and recordkeeping Burden on Respondents for this Proposed Rule: 545 hours.

Rule impacting ongoing reporting and recordkeeping burden: 0 hours.

Estimated Grand Total Reporting and Recordkeeping Ongoing burden for this rule: 2,828.75 hours.

Estimated Total Rule impacting ongoing reporting and recordkeeping burden: 0 hours.

Startup Reporting and Recordkeeping Burden

FNS 380:

Reporting Respondents for this Proposed Rule: 687 State, Local and Tribal Government (53 State agencies and 634 State QC reviewers).

Estimated Number of startup reporting responses for this Rule: 237,218 responses.

Estimated hours per reporting response: .83 hours.

Estimated Number of annual Reporting hours for this Rule: 196,915 hours.

Estimated Total Recordkeeping startup hours for this Rule: 0 hours.

Estimated Total startup year Burden for this Rule: 196,915 hours.

FNS 380–1:

Reporting Respondents for this Proposed Rule: 371 State QC Reviewers.

Estimated Number of startup reporting responses per respondent for this Rule: 1 response.

Estimated hours per reporting response: 2 hours.

Estimated Number of annual Reporting hours for this Rule: 742 hours for State reviewers.

Estimated Total startup year Reporting and Recordkeeping Burden for this Rule: 742 hours.

FNS 275:

Reporting Respondents for this Proposed Rule: 53 State, Local and Tribal Government.

Estimated Number of startup reporting responses for this Rule: 53 responses.

Estimated hours per reporting response: 40 hours.

Estimated Number of Responses per Respondent to report for this Rule: 1 response.

Estimated Number of annual Reporting hours for this Rule: 2,120 hours.

Estimated Total Recordkeeping startup hours for this Rule: 0 hours.

Estimated Total startup Burden for this component of this Rule: 2,120 hours.

Estimated Grand Total Reporting and Recordkeeping Startup burden for this rule: 452,524.40 hours.

Estimated Grand Total Reporting and Recordkeeping burden for first year for this rule: 652,302 hours.

TABLE A.1—REVISED I/H REPORTING BURDEN

Reporting burden for individuals/households FNS 380, OMB 0584–0074									
Reg. section	Description of activity	Estimated number of respondents	Estimated responses per respondent	Revised total annual responses	Revised number of burden hours per response	Revised estimated total burden hours	Previous submission total hours	Difference due to program changes	Difference due to adjustments
275.12 (c)(1) ..	Personal Interviews—Individuals or Households.	59,146.00	1	59,146.00	0.5	29,573	22,748	.....	+6,825
Individuals & Households Grand Total Reporting Burden Hours.		59,146.00	.....	59,146.00	.....	29,573	.....	.....	+6,825

TABLE A.2—REVISED STATE AGENCY (SA) REPORTING AND RECORDKEEPING BURDEN 0584–0074

Reg. section	Description of activity	Est number of respondents	Estimated responses per respondent	Revised total annual responses	Revised number of burden hours per response	Revised estimated total burden hours	Previous submission total hours	Difference due to program changes	Difference due to adjustments
Reporting Burden for State Agencies FNS 380, OMB 0584–0074									
275.12 (b)	Household Case Record Review.	53	1,115.96	59,146	2	118,292	136,490.37	−18,199	.....
275.12 (c)	Field investigation	53	1,115.96	59,146	2	118,292	159,238.77	−40,947	.....
275.12 (c)(1) ...	Personal interviews	53	1,115.96	59,146	0.5	29,573	22,748.40	6,825	.....
275.12 (d)(1) ...	Variance identification	53	1,115.96	59,146	0.5	29,573	40,947.11	−11,374	.....
275.12 (e)	Error analysis	53	1,115.96	59,146	0.5	29,573	22,748.40	6,825	.....
275.12 (f)	Reporting of review findings	53	1,115.96	59,146	0.25	14,786	n/a	14,786	.....
275.12 (d)(3) ...	Reporting all variances to Local offices.	53	1,115.96	59,146	0.25	14,786	n/a	14,786	.....
Sub Total Reporting Burden		53	7,811.72	414,021	6.08	354,875	382,173	−27,298	0
Recordkeeping Burden for State Agencies FNS 380, OMB 0584–0074									
FNS 380 Recordkeeping									
275.4	Record Retention	53	1,115.96	59,146	0.0236	1,396	1,073.73	322.113568	.....
Grand Total Reporting & Recordkeeping Burden.		53	.....	473,167	0.75295	356,271	383,247	−26,976	0

TABLE A.3—STATE AGENCY (SA) REPORTING STARTUP BURDEN 0584–0074

Reg. section	Description of activity	Estimated number of respondents	Estimated responses per respondent	Startup annual responses	Startup number of burden hours per response	Startup estimated total burden hours
Reporting Burden Hours for State Agencies FNS 380, OMB 0584–0074 STARTUP Hours First Year Only						
275.12 (d)(1)	Variance identification	53	1,115.96	59,146	0.75	44,359.41

TABLE A.3—STATE AGENCY (SA) REPORTING STARTUP BURDEN 0584–0074—Continued

Reg. section	Description of activity	Estimated number of respondents	Estimated responses per respondent	Startup annual responses	Startup number of burden hours per response	Startup estimated total burden hours
275.12 (e)	Error analysis	53	1,115.96	59,146	0.75	44,359.41
275.12 (f)	Reporting of review findings	53	1,115.96	59,146	0.5	29,572.94
275.12 (d)(3)	Reporting findings to Local offices	53	1,115.96	59,146	0.75	44,359.41
275.12	Training State Agency QC reviewers on New Actives Process only.	263	1	263	40	10,520.00
275.12 and 275.21 (b)(1)	Train reviewers on New Actives Process AND train new SNAPQCS users (reviewers) how to use SNAPQCS for 380.	371	1	371	64	23,744.00
Grand Total STARTUP Hours Reporting Burden Only		687	345.294789	237,218	106.75	196,915.17

TABLE A.4—STATE AGENCY (SA) REPORTING REVISED BURDEN 0584–0299

Reg. section	Description of activity	Estimated number of respondents	Estimated responses per respondent	Revised total annual responses	Revised number of burden hours per response	Revised estimated total annual burden hours	Previous submission total hours	Difference due to program changes	Difference due to adjustments
FNS 380–1 Reporting for State Agencies OMB Control Number 0584–0299									
275.12(f)	Reporting of Review Findings.	53	1,115.96	59,146	1.056	62,458.049	48,044.83	14,413.22	
Grand Total Reporting Burden Hours Only.		53	1,115.96	59146	1.056	62,458.049		14,413.22	
Reg. section	Description of activity	Estimated number of respondents	Estimated responses per respondent	Annual responses	Ongoing number of burden hours per response	Number of annual burden hours per response	Previously submission total burden	Differences due to program changes	Differences due to adjustments
FNS 380–1 Recordkeeping Ongoing									
275.4	Record Retention	53	1,115.96	59,146	0.0236	1395.842768	1,073.7292	322.1136	
Grand Total Affected Public		53	2,231.92	118,292	1.08	63,853.892	49,118.56	14,735.33	

TABLE A.5—STATE AGENCY (SA) STARTUP BURDEN 0584–0299

Reg. section	Description of activity	Estimated number of respondents	Estimated responses per respondent	Startup annual responses	Startup number of burden hours per response	Startup number of annual burden hours per response
FNS 380–1 Reporting for State Agencies OMB Control Number 0584–0299 STARTUP First Year Only						
275.21 (b)(1)	Train new State agency reviewers how to use SNAPQCS for 380–1.	371	1	371	2	742
Grand Total STARTUP Hours Reporting Burden Only		371	1	371	2	742

TABLE A.6—STATE AGENCY (SA) REVISED BURDEN 0584–0303

Reg. section	Description of activity	Estimated number of respondents	Estimated responses per respondent	Revised total annual responses	Revised number of burden hours per response	Revised estimated total burden hours	Previous submission total hours	Difference due to program changes	Difference due to adjustments
275 Regs Reporting OMB 0584–0303									
275.11(a)(1)–(a)(2)	Sampling Plan	53	1	53	20	1,060	1,060	0	0
275.2(c)(1)(i)	Use of 3rd Party Contractors—Notification of intent to hire.	3	1	3	0.25	0.75	0.75	0	0
275.2(c)(1)(ii)	Use of 3rd Party Contractors—Submission of signed contract and tasks.	3	1	3	0.5	1.5	1.5	0	0

TABLE A.6—STATE AGENCY (SA) REVISED BURDEN 0584–0303—Continued

Reg. section	Description of activity	Estimated number of respondents	Estimated responses per respondent	Revised total annual responses	Revised number of burden hours per response	Revised estimated total burden hours	Previous submission total hours	Difference due to program changes	Difference due to adjustments
275.2(c)(1)(iii)	Use of 3rd Party Contractors—Submission of completed deliverables.	3	1	3	0.5	1.5	1.5	0	0
275.2(c)(1)(iv)	Use of 3rd Party Contractors—Notification of training sessions.	3	1	3	0.08	0.24	0.24	0	0
275.2(c)(4)	Arbitration Process	12	3	36	34	1,224	1,224	0	0
273.23(f)	Good Cause Process.	1	1	1	160	160	160	0	0
275.23(h)	New Investment Plan Template Form FNS 74 A.	9	1	9	32	288	288	0	0
275.23(h)(4)	New Investment Progress Report Template Form FNS 74 B.	9	2	18	5	90	90	0	0
Sub-Total Reporting Burden		53	2.433962264	129	21.90689922	2,825.99	2,825.99	0	0
275.4	Sampling Plan Record Retention.	53	1	53	0.0236	1.2508	1.2508	0	
275.4	Arbitration Process Record Retention.	12	3	36	0.0236	0.8496	0.8496	0	
275.4	Good Cause Process Record Retention.	1	1	1	0.0236	0.0236	0.0236	0	
275.4	New Investment Plan Template Form FNS 74 A Record Retention.	9	1	9	0.0236	0.2124	0.2124	0	
275.4	New Investment Progress Report Template Form FNS 74 B Record Retention.	9	2	18	0.0236	0.4248	0.4248	0	
Recordkeeping Total		53	2.20754717	117	0.0236	2.7612	2.7612	0	

TABLE A.7—STATE AGENCY (SA) STARTUP BURDEN 0584–0303

Reg. section	Description of activity	Estimated number of respondents	Estimated responses per respondent	Revised total annual responses	Revised number of burden hours per response	Revised estimated total burden hours
275 Regs Reporting STARTUP OMB Control Number 0584–0303						
275.11	Implement new sampling plan	53	1	53	40	2,120
Grand Total Reporting Burden		53		53		2,120

TABLE A.8—SUMMARY OF GRAND TOTAL ANNUAL REPORTING & RECORDKEEPING BURDEN ESTIMATES

Form or citation	Description of activity (ongoing or start up)	Estimated number of respondents	Annual responses	Number of burden hours per response	Estimated total burden hours
380 SA	Ongoing	53	473,172	0.75295	353,272.00
380 I/H	Ongoing	59,146	59,146	0.5	29,573.00
380–1	Ongoing	53	118,292	1.0796	63,854.00
275	Ongoing	53	246	20	2,828
380 SA	Startup	53	236,584	2.75	162,651
380 SA Staff train on Review process	Startup	263	263	40	10,520.00
380 SA Staff train on Review process and SNAPQCS.	Startup	371	371	64	23,744.00
380–1 SA Staff for SNAPQCS	Startup	371	371	2	742
275 Regulations	Startup	53	53	40	2,120
Grand Total Reporting and Recordkeeping Burden for Rule		59,886	888,498	98	649,304.00

TABLE A.8—SUMMARY OF CURRENT AND RULE ASSOCIATED BURDEN

OMB control number 0074		Rule related revised ongoing	Rule related new startup
Estimated Total No. Respondents	45,550	13,649	687
Estimated Average No. Responses per Respondent	6.991833	0.97	345.294
Estimated Total Annual Responses	318,478.00	154,689.00	237,218
Estimated Average Hours per Response	0.00	.....	0.83
Estimated Total Annual Burden Hours Requested	582,759	385,844	196,915.17
Current OMB Inventory	405,997	405,997	.....
Difference Due to Rulemaking	176,762	(−20,152)	196,915.17
OMB control number 0299		Rule related revised ongoing	Rule related new startup
Estimated Total No. Respondents	53.00	53	371
Estimated Average No. Responses per Respondent	2,238.925	2,231.920	1
Estimated Total Annual Responses	118,663.000	118,291.760	371
Estimated Average Hours per Response	0.54654	0.54607	2
Estimated Total Annual Burden Hours Requested	64,854.000	64595.89205	742
Current OMB Inventory	49,119	49,119	.....
Difference Due to Rulemaking	15,477	14,735	742
OMB control number 0303		Rule related revised ongoing	Rule related new startup
Estimated Total No. Respondents	53.00	53	53
Estimated Average No. Responses per Respondent	4.6420	4.642	1
Estimated Total Annual Responses	246	426	1
Estimated Average Hours per Response	11.4989	11.4989	40
Estimated Total Annual Burden Hours Requested	4,949	4,949	2,120
Current OMB Inventory	2,829	2,825	0
Difference Due to Rulemaking	0	10	2120

E-Government Act Compliance

The Department is committed to complying with the E-Government Act, 2002 to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects

7 CFR Part 271

Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 275

Grant programs—social programs, Reporting and recordkeeping requirements.

Accordingly, 7 CFR parts 271 and 275 are proposed to be amended as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

■ 1. The authority citation for part 271 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

■ 2. In § 271.2:

■ a. Revise the definition of ''active case'';

■ b. Remove the definition ''active case error rate'';

■ c. Add in alphabetical order a definition for ''Case and Procedural Error Rate (CAPER)'';

■ d. Revise the definitions of ''error'' and ''negative case'';

■ e. Remove the definition of ''negative case error rate'';

■ f. Revise the last sentence in the definition of ''payment error rate'';

■ g. Revise the definitions ''review date'' and ''sample month'';

■ h. Remove ''INS'' and add in its place ''USCIS'' in the definition of ''Systematic Alien Verification for Entitlements (SAVE)''; and

■ i. Remove the definition ''Underissuance error rate. (See Underpayment error rate.)'',

The revisions and additions read as follows:

§ 271.2 Definitions.

* * * * *

Active case means a case where households experienced an eligibility action during the sample month which resulted in an issuance of benefits. For purposes of this definition, an eligibility action refers to initial certification, recertification, or submission of a required monthly, quarterly, or periodic report in the sample month and a benefit allotment is issued in the following month.

* * * * *

Case and Procedural Error Rate (CAPER) means an estimate of the proportion of denied, suspended, or terminated cases where the household was incorrectly denied, suspended, or terminated or where procedural deficiencies exist. This estimate will be expressed as a percentage of completed negative quality control reviews.

* * * * *

Error for active cases results when a determination is made by a quality control reviewer that a household that experienced an eligibility action—as described in the definition of ''active case'' in this section—was ineligible, received an incorrect allotment, or was determined ''incomplete'' by the QC reviewer. Thus, errors in active cases involve dollar loss to either the participant (underissuance) or the government (overissuance). For negative cases, an ''error'' means that the reviewer determines that the decision or process to deny, suspend, or terminate a household was incorrect.

* * * * *

Negative case means a case where there was an action to deny, suspend, or

terminate a household during the sample month.

* * * * *

Payment error rate * * * Each component error rate is the value of benefits either overissued or underissued expressed as a percentage of all allotments issued to completed active sample cases.

* * * * *

Review date for quality control active cases means the date an eligibility action was taken to authorize the allotment. The ''review date'' for quality control negative cases, depending on the characteristics of individual State systems, could be the date on which the eligibility worker makes the decision to suspend, deny, or terminate the case, the date on which the decision is entered into the eligibility system, or the date of the notice to the client. For no case is the ''review date'' the day the quality control review is conducted. State agencies must consistently apply the same definition for review date to all sampled cases of the same classification.

* * * * *

Sample month means the month of the sample frame from which a case is selected (*e.g.,* the January sample month, for active cases, shall be comprised of a selection of cases where the household was certified in January, recertified in January, or required to have submitted a monthly, quarterly, or periodic report in January resulting in an issuance of benefits in February. The January sample month for negative cases would be comprised of all cases that were denied, terminated, or suspended in January).

* * * * *

PART 275—PERFORMANCE REPORTING SYSTEM

■ 3. The authority citation for part 275 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

■ 4. In § 275.2, revise paragraph (b) and add a sentence to the end of paragraph (d) to read as follows:

§ 275.2 State agency responsibilities.

* * * * *

(b) *Staffing standards.* The State agency shall employ sufficient staff to perform all aspects of the Performance Reporting System as required in this part.

(1) The State agency shall ensure that the staff used to conduct QC reviews operate independently from those responsible for overseeing the eligibility determination process to ensure objective and accurate assessments of the Performance Reporting System.

(2) The staff used to conduct QC reviews shall not have prior knowledge of either the household or the decision under review. Where there is prior knowledge, the reviewer must disqualify themselves. To ensure no prior knowledge on the part of QC or ME reviewers, local project area staff shall not be used to conduct QC or ME reviews; exceptions to this requirement concerning local level staff may be granted with prior approval from FNS. However, local personnel shall not, under any circumstances, participate in ME reviews of their own project areas. Prior knowledge is defined as having:

(i) Taken any part in the eligibility determination that has been made in the case;

(ii) Discussed the case with staff who participated in the decision; or

(iii) Personal knowledge of or acquaintance with persons in the case itself.

(3) Nothing in this part shall preclude a State-level staff person to be used as a collateral contact for purposes of the QC review. Such contact must, however, be limited to those same rules governing all other collateral contacts, including privacy-related rules, found in 7 CFR 273.2(f)(4)(ii).

* * * * *

(d) * * * Non-compliance with this requirement, as determined by the Secretary, may result in the suspension or disallowance of Federal reimbursements for costs of the administration of SNAP for the system(s) found to be out of compliance, pursuant to 7 CFR 277.16.

■ 5. In § 275.3:

■ a. Revise paragraph (d)(1)(i);

■ b. Revise the paragraph (d)(3) heading'

■ c. Remove ''negative case error rate'' and add in its place ''case and procedural error rate'' in paragraph (d)(3) introductory text;

■ d. Add a sentence at the end of paragraph (d)(4)(i)(A);

■ e. Remove the phrase ''appropriate FNS regional office addressed to the attention of the FNS Arbitrator'' and add in its place the phrase ''FNS Arbitrator and copy the appropriate FNS regional office'' in paragraph (d)(4)(iv) introductory text; and

■ f. Remove the word ''may'' and add in its place the word ''must'' in the second sentence of paragraph (d)(4)(iv) introductory text.

The revision and addition read as follows:

§ 275.3 Federal monitoring.

* * * * *

(d) * * *

(1) * * *

(i) FNS will select a subsample of a State agency's active cases, as follows:

(A) The Federal review sample for active cases is determined as follows:

TABLE 1 TO PARAGRAPH (d)(1)(i)(A)

Average monthly reviewable caseload (N)	Federal subsample target (n′)
60,000 and over	n′ = 400.
10,001 to 59,999	n′ = .005 N + 100.
10,000 and under	n′ = 150.

(B) In the above formula, n' is the minimum number of Federal review sample cases which must be selected when conducting a validation review, except that FNS may select a lower number of sample cases if:

(*1*) The State agency does not report a change in sampling procedures associated with a revision in its required sample size within 10 days of effecting the change; or

(*2*) The State agency does not complete the number of case reviews specified in its approved sampling plan.

(C) The reduction in the number of Federal cases selected will be equal to the number of cases that would have been selected had the Federal sampling interval been applied to the State agency's shortfall in its required sample size. This number may not be exact due to random starts and rounding.

(D) In the above formula, N is the State agency's minimum active case sample size as determined in accordance with § 275.11(b)(1).

(E) Once the minimum Federal subsample size n′ is determined, the Federal subsample must be

proportionally allocated across the five strata, defined in § 275.11(g), to the State final weights to ensure there is no loss of precision due to differential sampling probabilities. The Federal subsample size for each stratum shall be determined as follows:

Table 2 to Paragraph (d)(1)(i)(E) Introductory Text

Strata	Sample Universe	Sampling Frame	State Sample Size	State Final Weights	Federal sample size	Federal Sampling Weights
A	N_a	F_a	n_a	$W_a=N_a/ n_a$	$n'_a= n' \times W_a/W$	$W'_a=W_a \times W/W_a$
B	N_b	F_b	n_b	$W_b=N_b/ n_b$	$n'_b= n' \times W_b/W$	$W'_b=W_b \times W/W_b$
C	N_c	F_c	n_c	$W_c=N_c/ n_c$	$n'_c= n' \times W_c/W$	$W'_c=W_c \times W/W_c$
D	N_d	F_d	n_d	$W_d=N_d/ n_d$	$n'_d= n' \times W_d/W$	$W'_d=W_d \times W/W_d$
E	N_e	F_e	n_e	$W_e=N_e/ n_e$	$n'_e= n' \times W_e/W$	$W'_e=W_e \times W/W_e$
Total	$N = \sum_{i=a}^{e} N_i$	$F = \sum_{i=a}^{e} F_i$	$n = \sum_{i=a}^{e} n_i$	$W = \sum_{i=a}^{e} W_i$	$n' = \sum_{i=a}^{e} n'_i$	

(*1*) In the formulas in the table above, N is the sampling universe/monthly caseload; F is the sampling frame; n is the State sampling size; n' is the Federal subsample size; W is the State sampling weights; and W' is the Federal sampling weights.

(*2*) For stratum *i,* the Federal subsample size n'_i shall be proportional to the final State weight for that stratum, W_i, in other words

$$n'_i = n' \times \frac{W_i}{W}.$$

This means that the sampling probability for cases in stratum *i* is W_i/W and the final weight for the cases selected for the Federal subsample from stratum *i,* W'_i, is given by:

$$W'_i = W_i \times \frac{W}{W_i} = W$$

for every *i,* which is a constant across the strata. This makes the Federal subsample self-weighting.

* * * * *

(3) *Case and procedural error rate.*

* * *

* * * * *

(4) * * *

(i) * * *

(A) * * * No other types of disagreement are eligible for arbitration.

* * * * *

■ 6. In § 275.11:

■ a. Revise paragraphs (a) introductory text, (a)(1) through (3), and (b)(1) and (2);

■ b. Remove paragraph (b)(4);

■ c. Revise paragraphs (c)(1) and (2), (e) introductory text, (e)(1), and (f)(1);

■ d. Redesignate paragraph (g) as paragraph (i); and

■ e. Add new paragraph (g) and paragraph (h).

The revisions and additions read as follows

§ 275.11 Sampling.

(a) *Sampling plan.* Each State agency shall develop a quality control sampling plan that is compliant with this section and demonstrates the integrity of its sampling procedures.

(1) *Content.* The sampling plan shall include a complete description of the frame, the method of sample selection, and methods for estimating characteristics of the population and their sampling errors that the State

agency will apply when conducting its quality control procedures. The description of the sample frames shall include: source, availability, accuracy, completeness, components, location, form, frequency of updates, deletion of cases not subject to review, and structure. The description of the methods of sample selection shall include procedures for: estimating caseload size, addressing corrections, computation of sampling intervals and random starts (if any), stratification, identifying sample cases, correcting over-or under sampling, and monitoring sample selection and assignment. The State agency shall provide FNS with a schedule for completion of each step in the sampling procedures contained in this section.

(2) *Criteria.* All sampling plans shall:

(i) Conform to principles of probability sampling; and (ii) Select an overall quality control sample size in accordance with paragraphs (b) through (f) of this section.

(3) *Design.* Each State agency shall, over the course of the annual review period, implement a sample design each month for both active and negative case samples. For the active case sample selection, the State agency shall define the sampling frame as the monthly list of active cases as defined in 7 CFR 271.2. This list reflects a subset of all the active SNAP cases in a given month. This list will then be stratified for sample selection based on action type and the length of the certification or reporting period. Within each of these strata, each month, the State agency may select a systematic sample or use another method of random selection (*e.g.,* sorting the cases in a random order and selecting the first 'm' number of cases required to meet the monthly sample target) of cases to equal the overall sample size required for the year, divided evenly by twelve.

* * * * *

(b) * * *

(1) *Active cases.* (i) All active cases shall be selected in accordance with procedures specified in this section, and the review findings shall be included in the calculation of the State agency's payment error rate. A State agency shall select a sample that is divided equally across 12 months. Sample size is specified as follows:

TABLE 1 TO PARAGRAPH (b)(1)(i)

Average monthly reviewable caseload (N)	Minimum annual sample size (n)
60,000 and over	n = 1,326.
12,942 to 59,999	n = 390 + [0.0199(N − 12,941)].
Under 12,942	n = 390.

(ii) In the formulas in paragraph (b)(1)(i) of this section, n is the required active case sample size. This is the minimum number of active cases subject to review which must be selected during the annual review period. One-twelfth of this value shall be selected each month, rounded to the next whole number (*e.g.,* if the yearly sample size is 1,326 then 111 would be sampled monthly). In the same formulas, N is the average monthly participating caseload subject to quality control review (*i.e.,* cases which are included in the active universe defined in paragraph (e)(1) of this section) during the annual review period.

(2) *Negative cases.* (i) All negative cases shall be selected in accordance with procedures specified in this section, and the review findings shall be included in the calculation of the State agency's case and procedural error rate.

(ii) The minimum number of negative cases to be selected and reviewed by a State agency during each annual review period shall be determined as follows:

TABLE 2 TO PARAGRAPH (B)(2)(II)

Average monthly reviewable negative caseload (N)	Minimum annual sample size (n)
5,000 and over	n = 680
684 to 4,999	n = 150 + [0.1224(N − 683)]
Under 684	n = 150

(iii) In the formulas in paragraph (b)(2)(ii) of this section, n is the required negative sample size. This is the minimum number of negative cases subject to review which must be selected each review period.

(iv) In the formulas in paragraph (b)(2)(ii) of this section, N is the average monthly number of negative cases which are subject to quality control review (*i.e.,* cases which are part of the negative universe defined in paragraph (e)(2) of this section) during the annual review period.

* * * * *

(c) * * *

(1) *Substitutions.* Once a case has been identified for inclusion in the sample by a predesigned sampling procedure, substitutions are not acceptable. An active case must be reviewed each time it is selected for the sample. If a case is selected more than once for the negative sample as the result of separate and distinct instances of denial, suspension, or termination, it must be reviewed each time.

(2) *Corrections.* Under sampling must be corrected during the annual review period. Oversampling may be corrected at the State agency's option. Cases which are dropped to compensate for oversampling shall be reported as not subject to review. Because corrections must not bias the sample results, cases which are dropped to compensate for oversampling must comprise a random subsample of all cases selected (including those completed, not completed, and not subject to review). Cases which are added to the sample to compensate for under sampling must be randomly selected from the entire frame in accordance with the sample size, sample selection, sampling frame, and sample allocation procedures specified in paragraphs (b), (c) (e), and (g) of this section. All sample adjustments must be fully documented and available for review by FNS.

* * * * *

(e) *Sample frame.* The State agency shall select cases for quality control review from a sample frame. Complete

coverage of the sample universes, as defined in paragraph (f) of this section, must be assured so that every case subject to quality control review has an equal or known chance of being selected in the sample. Since the SNAP quality control review process requires an active and negative sample, two corresponding sample frames are also required.

(1) *Active cases.* The sample frame shall consist of all active cases as defined in 7 CFR 271.2. Cases which did not experience any of these eligibility actions in the sample month shall be removed prior to sampling. State agencies must use a list of certified and recertified cases as well as the household's report due date for the following reporting systems: monthly, quarterly, and simplified.

* * * * *

(f) * * *

(1) *Active cases.* The universe for active cases shall include all households in which any of the following eligibility actions occurred in the sample month: initial certification, recertification, or a required monthly, quarterly, or periodic report was due during the sample month and a benefit allotment is issued in the following month. The following shall be excluded from the sampling frame:

(i) A household receiving Disaster-SNAP benefits under the authority of the Food and Nutrition Act of 2008, as amended, and the Robert T. Stafford Disaster Relief and Emergency Assistance Act;

(ii) A household which is under investigation for an intentional Program violation, including a household with a pending administrative disqualification hearing;

(iii) A household appealing an adverse action which was the result of an eligibility action taken during the sample month; or

(iv) Other households excluded from the active case universe during the review process are identified in 7 CFR 275.12(g).

* * * * *

(g) *Active sample allocation.* States shall stratify both the sample universe and the sampling frame specified in paragraphs (e)(1) and (f)(1) of this section according to the five strata described in paragraphs (g)(1)(i) through (v) of this section. If not all 5 strata exist, the State shall allocate the full sample across the existing strata according to the following guidelines:

Table 3 to Paragraph (g) Introductory Text

Strata	Sample Universe of cases	Sampling Frame	Sample Size
a)	N_a	F_a	$n_a = 0.1n$
b)	N_b	F_b	$n_b = 0.1n$
c)	N_c	F_c	$n_c = 0.8n \times [N_c / (N_{c+} N_{d+} N_e)]$
d)	N_d	F_d	$n_d = 0.8n \times [N_d / (N_{c+} N_{d+} N_e)]$
e)	N_e	F_e	$n_e = 0.8n \times [N_e / (N_{c+} N_{d+} N_e)]$
Total	$N = \sum_{i=a}^{e} N_i$	$F = \sum_{i=a}^{e} F_i$	$n = \sum_{i=a}^{e} n_i$

(1) In table 3 to paragraph (g) introductory text, strata a through e have the following action types and reporting periods:

(i) Stratum a—Action type: initial certification or re-certification; Reporting period: less than 6 months;

(ii) Stratum b—Action type: redetermination based on a monthly, quarterly or periodic report; Reporting period: less than 6 months;

(iii) Stratum c—Action type: initial certification or recertification; Reporting period: 6 months;

(iv) *Stratum d—Action type:* redetermination based on a monthly, quarterly or periodic report; Reporting period: 6 months;

(v) *Stratum e—Action type:* all; Reporting period: more than 6 months.

(2) State agencies shall allocate 10 percent of the sample to stratum a and 10 percent of the sample to stratum b. The remaining 80 percent of the sample should be allocated in a manner proportionate to the size of the strata in the sample universe as described in table 3 to paragraph (g) introductory text.

(3) If a State agency does not have stratum a or b or both, it shall allocate the full sample size proportionately to the size of the existing strata in the sample universe.

(4) In the formulas in table 3 to paragraph (g) introductory text, N represents the sample universe (*i.e.,* the total number of eligible SNAP cases) and N_a (for example) represents the number of SNAP cases in the universe that belong to stratum a; F represents the total number of eligible SNAP cases in the sampling frame (*i.e.,* the list of eligible SNAP cases having one of the three actions in the month of selection) and F_a (for example) represents the number of SNAP cases in the frame that belong to stratum a; n represents the total sample size and n_a (for example) represents the number of SNAP cases selected from stratum a meeting the stratum requirements.

(5) Within each stratum the State agency shall select the designated number of cases at random or using a systematic method upon a random sort of the cases. If in any strata the number of cases to be sampled exceeds the actual number in the frame, the State shall select all of the cases in that stratum. For example, if the proposed sample size for stratum *a* is greater than F_a then the State agency shall take all N_a SNAP cases for stratum *a,* hence $n_a = F_a$, and allocate $(n-n_a-n_b)$ to the last three

strata proportionately to the size of these strata in the sample universe (N).

(h) *Weighting.* Given that the active stratified sampling design oversamples some strata and under-samples others, weighting is necessary. The weights for the active cases sample are defined as follows:

$W_i = (N_i/F_i) \times (F_i/n_i) = N_i/n_i$ for i=a,b,c,d,e

State agencies are responsible for providing to FNS the counts N_i, F_i, and n_i (for i=a,b,c,d,e) as part of the sampling plan described at 7 CFR 275.11(a)(4).

* * * * *

■ 7. In § 275.12:
■ a. Revise paragraphs (a) and (b);
■ b. Add a sentence at the end of paragraph (c) introductory text;
■ c. Revise paragraphs (c)(1) introductory text and (c)(1)(iii) ;
■ d. Remove the phrase ''the State'' and add in its place the phrase ''State law'' in the third sentence of paragraph (c)(1)(iv);
■ e. Add the phrase ''or in the case file'' at the end of the first sentence of paragraph (c)(2);
■ f. Remove the phrase ''as of the review date'' and add in its place the phrase ''by the reviewer'' and remove the phrase ''at the most recent certification action)'' and add in its place the phrase ''in the eligibility action under review)'' in paragraph (d) introductory text;
■ g. Remove the phrase ''for the sample month'' in paragraph (d)(2) introductory text;
■ h. Add a sentence after the second sentence and remove the last sentence of paragraph (d)(2)(ii);
■ i. Remove paragraphs (d)(2)(iii) and (ix);
■ j. Redesignate paragraphs (d)(2)(iv) through (viii) as paragraphs (d)(2)(iii) through (d)(2)(vii);
■ k. Remove the phrase ''Immigration and Naturalization Service's (INS)'' and add in its place the phrase ''United States Citizenship and Immigration Services (USCIS)'' in newly redesignated paragraph (d)(2)(v) introductory text;
■ l. Remove ''INS'' and add in its place ''USCIS'' in newly redesignated paragraphs (d)(2)(v)(A) introductory text, (d)(2)(v)(A)(*3*) (two occurrences), (d)(2)(v)(B) introductory text, and (d)(2)(v)(B)(*2*);
■ m. Remove the phrase ''category three and four Policy Memoranda under the Policy Interpretation Response System'' and add in its place the phrase, ''FNS policy memoranda'' in newly redesignated paragraph (d)(2)(vii);
■ n. Revise paragraph (d)(3);
■ o. Remove the phrase ''in the sample month'' and add in its place ''as an error'' in the first sentence of paragraph (f)(1) and revise the last sentence of paragraph (f)(1);
■ p. Remove the phrase ''in the sample month'' in the first sentence of paragraph (f)(2) and revise the last sentence of paragraph (f)(2);
■ q. Add a sentence to the end of paragraph (g)(1) introductory text;
■ r. Revise paragraphs (g)(1)(ii) and (g)(2)(i) and (ii);
■ s. Remove paragraphs (g)(2)(iv), (ix), and (x);
■ t. Redesignate paragraphs(g)(2)(v) through (viii) as paragraphs (g)(2)(iv) through (vii); and
■ u. Revise newly redesignated paragraphs (g)(2)(vi) and (vii).

The revisions and additions read as follows:

§ 275.12 Review of active cases.

(a) *General.* A sample of households that experienced an eligibility action—*i.e.,* certified for SNAP, recertified for SNAP, or required to have submitted a monthly, quarterly, or periodic report in the sample month which resulted in an issuance of benefits in the following month, shall be selected for active case review. These active cases shall be reviewed to determine if the household was eligible and, if eligible, whether the household received the correct allotment. The determination of a household's eligibility shall be based on an examination and verification of all elements of eligibility (*i.e.,* non-financial eligibility requirements, resources, income, and deductions). The verified circumstances and the resulting benefit level determined by the quality control review shall be compared to the benefits authorized by the State agency. The review of active cases shall include: a household case record review; a field investigation; the identification of any variances; an error analysis; and the reporting of review findings.

(b) *Household case record review.* The reviewer shall examine the household case record to identify the facts relating to the household's eligibility and basis of issuance. The case record review shall include all information applicable to the eligibility action under review, including the application and, as applicable, the monthly, quarterly, or periodic report and worksheet in effect as of the review date. Documentation contained in the case record should be used as verification if it was verified using documentary evidence at the time of the certification action. If during the case record review the reviewer can determine and verify the household's ineligibility, the review can be terminated at that point, provided that, if the determination is based on information not obtained from the household, the correctness of that information is confirmed as specified in paragraph (c)(2) of this section. The reviewer shall utilize information obtained through the case record review to complete column (2) of the Form FNS–380, and to tentatively plan the content of the field investigation.

(c) * * * In obtaining documentary evidence and collateral contact verification, the State agency is encouraged to utilize technology to assist in the gathering of documentary evidence, however the State agency shall ensure it preserves the privacy and confidentiality of the household regardless of what technology it uses.

(1) *Personal interviews.* State agencies shall conduct interviews in a manner that respects the rights, privacy, and dignity of the participants. The personal interview shall be a telephone interview unless the household requests a face-to-face interview or indicates they lack access to a telephone. Prior to conducting the personal interview, the reviewer must notify the household that it has been selected, as part of an ongoing review process, for review by quality control, that a personal interview will be conducted in the future, and that the household may request a face-to-face interview in lieu of a telephone interview. For face-to-face interviews, the interview may take place at the participant's home, at an appropriate State agency certification office, by secure video call, or at a mutually agreed upon alternative location. Should a face-to-face interview be warranted, the State agency shall determine the best location for the face-to-face interview, taking into account input from the household, including any hardship conditions or disability needs of the household. If the household meets any of the hardship conditions at 7 CFR 273.2(e)(2), the quality control reviewer shall either conduct the personal interview with the participant's authorized representative, if one has been appointed by the household, or at a place of the participant's choosing. During the personal interview with the participant, the reviewer shall:

* * * * *

(iii) Request and review with the household documentary evidence in the case file, as well as documentary evidence that may be in the household's possession, and secure information about collateral sources of verification; and

* * * * *

(d) * * *

(2) * * *

(ii) * * * For this exclusion to apply, the case record must include documentation specifying the elements of eligibility for which verification was postponed.

(3) *Other findings.* All QC review findings must be reported to the local office by the State agency. However, State agencies may determine if and how to act upon findings made during the review that are pertinent to the case record but do not result in a variance. For example, the State may establish its own procedures for cases when a household member's age is shown incorrectly in the case record, if their age is unrelated to an element of eligibility.

* * * * *

(f) * * *

(1) * * * In addition, the reviewer shall code and report any other variances related to eligibility which were discovered and verified during the course of the review and the State agency shall notify the local office of all variances in elements of eligibility.

(2) * * * The reviewer shall code and report any other variances in the basis of issuance which were discovered and verified during the course of the review and the State agency shall notify local offices of all variances in elements of the basis of issuance.

(g) * * *

(1) * * * The total allotment issued, shall be coded and reported as an error when the case is reported as not complete.

* * * * *

(ii) If a household refuses to cooperate with the quality control reviewer and the State agency has taken other administrative steps to obtain that cooperation without obtaining it, the household shall be notified of the penalties for refusing to cooperate with respect to termination and reapplication and of the possibility that its case will be referred for investigation for willful misrepresentation. If a household refuses to cooperate after such notice, the reviewer must attempt to complete the case and shall report the household's refusal to the State agency for termination of its participation without regard for the outcome of that attempt. For a determination of refusal to be made, the household must be able to cooperate but clearly demonstrate that it will not take actions that it can take and that are required to complete the quality control review process. In certain circumstances, the household may demonstrate that it is unwilling to cooperate by not taking actions after having been given every reasonable opportunity to do so, even though the household or its members do not state that the household refuses to cooperate. Examples of when a household appears to be unwilling to cooperate with a QC review that have the effect of a refusal to cooperate shall include:

(A) The household does not attend an agreed upon interview with the reviewer and then does not contact the reviewer within 10 calendar days of the date of the scheduled interview to reschedule the interview.

(B) The household does not return a signed release of information statement to the reviewer within 10 calendar days of either agreeing to do so or receiving a request from the reviewer sent Certified Mail-Return Receipt Requested.

(C) The household does not respond to any communication sent from the reviewer, and either:

(*1*) The household has not responded to a letter sent to the household's current known address via Certified Mail-Return Receipt requesting a response within 30 calendar days of the date of receipt, or

(*2*) The household has not responded to a written request for quality control contact (RFQCC). The RFQCC, sent by the State agency at the reviewer's request, must have advised the household of the following: that quality control is trying to contact them for a review; the requirement of the household to cooperate with the quality control review; the penalties for not responding to the RFQCC and not cooperating with the quality control review; and the contact information the household must use to get in touch with the quality control reviewer or office. The RFQCC must have afforded the household at least 10, but no more than 15 calendar days to respond from the date on the letter. RFQCC requests from the reviewer must be fulfilled by the State agency.

(*i*) If the household does not respond to the RFQCC by the deadline provided in the request, the reviewer must report the household's failure to respond to the State agency and request the State agency issue a notice of adverse action to suspend the household for one month before a termination becomes effective. The notice of adverse action must include the reason the household's benefits were suspended, an explanation that the consequence for failing to respond to quality control during the suspension period is for their benefits to be terminated for refusal to cooperate with quality control, and the quality control reviewer's or office's contact information.

(*ii*) If the household does not respond to the RFQCC, but does respond during the period of suspension and cooperates with quality control, the reviewer must notify the State agency to reinstate the household without requiring a new application and issue the allotment for the month of suspension.

(D) In these and other situations, if there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household shall not be reported to the State agency for termination.

* * * * *

(2) * * *

(i) Death of all members of a household if they died after the eligibility action but before the review could be undertaken or completed;

(ii) The household moved out of State after the eligibility action but before the review could be undertaken or completed;

* * * * *

(vi) A case incorrectly listed in the active frame; or

(vii) A household appealing the eligibility action under review.

§ 275.13 [Amended]

■ 8. In § 275.13:

■ a. Amend paragraph (c)(2) introductory text by removing the words ''Immigration and Nationalization Services (INS)'' and adding in their place ''USCIS'' and removing the words ''Systematic Alien Verification for Entitlements (SAVE)'' and adding in their place ''SAVE''; and

■ b. Amend paragraph (c)(2)(iii) by removing ''INS'' and adding in its place ''USCIS'' in both occurrences.

§ 275.16 [Amended]

■ 9. In § 275.16:

■ a. Remove the phrase ''of 1 percent or more in negative cases'' and add in its place the phrase ''above the national average CAPER'' in paragraph (b)(2);

■ b. Remove paragraph (b)(4); and

■ c. Redesignate paragraph (b)(5) as paragraph (b)(4).

■ 10. In § 275.21, revise paragraph (b)(1) to read as follows:

§ 275.21 Quality control review reports.

* * * * *

(b) * * *

(1) The State agency shall use SNAP–QCS, FNS's automated, web-based QC System for State agency users, to input, edit, and upload supporting evidence and information necessary to understand the disposition and findings for all active and negative sampled cases.

* * * * *

■ 11. In § 275.23:

■ a. Remove the words ''active case, payment, and negative case error rate''

and add in its place the words ''payment and case and procedural error rates'' in paragraph (b) introductory text;
■ b. Remove the words ''active case error rate, payment error rate, and negative case error rate'' and add in its place the words ''payment and case and procedural error rates'' in paragraph (b)(1);
■ c. Revise paragraphs (b)(2)(i)(A) and (B) and (b)(2)(ii) and (iii);
■ d. Revise the second and third sentences in paragraph (c); and
■ e. Revise the second sentence in paragraph (d)(1).

The revisions read as follows:

§ 275.23 Determination of State agency program performance.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(A) $Y_1' = y_1 + b_1 (X_1 - x_1)$, where Y_1' is the estimated average value of allotments overissued to eligible and ineligible households in the full Quality Control (QC) sample; y_1 is the average value of allotments overissued to eligible and ineligible households in the re-review sample according to the Federal finding; b_1 is the estimated regression coefficient through a regression of the Federal findings of allotments overissued to eligible and ineligible households on the corresponding State agency findings; x_1 is the re-review average value of allotments overissued to eligible and ineligible households according to State agency findings; and X_1 is the weighted average value of allotments overissued to eligible and ineligible households in the full QC sample according to State agency's findings. Based on the sample design, only X_1 is weighted to account for the probability of selection in the full QC sample.

(B) $Y_2' = y_2 + b_2(X_2 - x_2)$, where Y_2' is the estimated average value of allotments underissued to households included in the active error rate; y_2 is the average value of allotments underissued to participating households in the re-review sample according to the Federal finding; b_2 is the estimated regression coefficient obtained through a regression of the Federal findings of allotments underissued to participating households on the corresponding State agency findings; x_2 is the re-review average value of allotments underissued to participating households according to State agency findings; and X_2 is the weighted average value of allotments underissued to participating households in the full QC sample according to the State agency's findings. Based on the sample design, only X_2 is weighted to account for the probability of selection in the full QC sample.

* * * * *

(b) * * *

(2) * * *

(ii) If FNS determines that a State agency has sampled incorrectly, estimated improperly, or has deficiencies in its QC data management system, FNS will correct the State agency's payment error rate and case and procedural error rate based upon a correction to that aspect of the State agency's QC system which is deficient. If FNS cannot accurately correct the State agency's deficiency, FNS will assign the State agency a payment error rate or case and procedural error rate based upon the best information available. After consultation with the State agency, the assigned payment error rate can then be used in a liability determination, if applicable per the rules governing liabilities at 7 CFR 275.23(d). State agencies shall have the right to appeal the assignment of an error rate in this situation in accordance with the procedures of part 283 of this chapter. State agencies assigned error rates that do not result in the determination of a liability amount, as discussed in 7 CFR 275.23(d), are not eligible for appeal.

(iii) Should a State agency fail to sample and disposition its required minimum annual sample size for the fiscal year, FNS shall adjust the State agency's regressed error rate using the following equations:

(A) $r_1'' = r_1' + 5(1 - C)S_1$, where r_1'' is the adjusted regressed overpayment error rate, r_1' is the regressed overpayment error rate computed from the formula in paragraph (b)(2)(i)(C) of this section, C is the State agency's rate of completion of its required sample size expressed as a decimal value, and S_1 is the standard error of the State agency sample overpayment error rate. If a State agency completes all of its required sample size, then $r_1'' = r_1'$.

(B) $r_2'' = r_2' + 5(1 - C)S_2$, where r_2'' is the adjusted regressed underpayment error rate, r_2' is the regressed underpayment error rate computed from the formula in paragraph (b)(2)(i)(C) of this section, C is the State agency's rate of completion of its required sample size expressed as a decimal value, and S_2 is the standard error of the State agency sample underpayment error rate. If a State agency completes all of its required sample size, then $r_2'' = r_2'$.

* * * * *

(c) * * * FNS shall determine and announce the national average payment error rate for the fiscal year by June 30 following the end of the fiscal year and shall determine and announce the national average case and procedural error rate for the fiscal year by September 30 following the end of the fiscal year. At those times, FNS shall notify all State agencies of their individual payment and case and procedural error rates, respectively, and payment error rate liabilities, if any.

* * * * *

(d) * * *

(1) * * * The national performance measure is the sum of the products of each State agency's payment error rate multiplied by that State agency's proportion of the total value of allotments issued for the fiscal year using the most recent issuance data available at the time the State agency is notified of its payment error rate. * * *

■ 12. Revise § 275.24 to read as follows:

§ 275.24 Performance measures.

(a) *Performance measures.* FNS will measure performance for the following categories of performance measures:

(1) *Payment accuracy.* FNS will assess State agencies annually for individual and overall payment accuracy, including measurements for overpayments and underpayments of SNAP benefits issued based on the results of cases reviewed in the actives sampling frame.

(i) *Improvements in payment accuracy.* FNS will assess the percentage point decrease in a State agency's combined payment error rates based on the comparison of the State agency's validated payment error rates for the performance measurement year to those of the previous fiscal year.

(ii) [Reserved]

(2) *Case and procedural errors.* FNS will assess State agencies annually to produce case and procedural error rates based on the results of cases reviewed in the negative sampling frame.

(i) Most improved case and procedural error rate. FNS will assess the percentage point decrease in a State agency's case and procedural error rates, based on the comparison of the State agency's performance measurement year's validated quality control case and procedural error rates for the performance measurement year with to those of the previous fiscal year.

(ii) [Reserved]

(3) *Program access index (PAI).* FNS will annually assess the degree to which each State agency provides low-income people access to SNAP benefits. The PAI is the ratio of participants to persons with incomes below 125 percent of poverty, as calculated in accordance with paragraph (a)(3)(i) of this section.

(i) *Data.* For the number of participants (numerator), FNS will use the administrative annual counts of participants minus the average amount of new participants certified under special disaster program rules by the State agency averaged over the calendar year. For the number of people below 125 percent of poverty (denominator), FNS will use the Census Bureau's American Community Survey (ACS) count of people below 125 percent of poverty for the same calendar year. FNS will reduce the count in each State where a Food Distribution Program on Indian Reservations (FDPIR) program is operated by the administrative counts of the number of individuals who participate in this program averaged over the calendar year.

(ii) [Reserved]

(4) *Application processing timeliness.* FNS will annually assess the timeliness of processed applications for each State agency.

(i) *Data.* FNS will use quality control data to determine each State agency's rate of application processing timeliness.

(ii) *Timely processed applications.* A timely processed application is one that provides an eligible applicant the ''opportunity to participate'' as defined in 7 CFR 274.2, within thirty days for normal processing or 7 days for expedited processing. New applications that are processed outside of this standard are untimely for this measure, except for applications that are properly pended in accordance with 7 CFR 273.2(h)(2) because verification is incomplete and the State agency has taken all the actions described in 7 CFR 273.2(h)(1)(i)(C). Such applications will not be included in this measure. Applications that are denied will not be included in this measure.

(b) [Reserved]

Cynthia Long,

Administrator, Food and Nutrition Service.

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Federal Register

Vol. 88, No. 180

Tuesday, September 19, 2023

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FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

60317–60564 1
60565–60866 5
60867–61462 6
61463–61950 7
61951–62284 8
62285–62440 11
62441–62686 12
62687–62992 13
62993–63512 14
63513–63832 15
63833–64348 18
64349–64790 19

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
10610 60817
10611 60869
10612 60871
10613 60873
10614 60875
10615 60877
10616 60879
10617 61463
10618 62443
10619 62687
10620 62689
10621 62691
10622 62693
10623 64349

Executive Orders:
14107 62441

Adminstrative Orders:
Notices:
Notice of September 7, 2023 62433
Notice of September 7, 2023 62435
Notice of September 7, 2023 62437
Notice of September 7, 2023 62439
Presidential Determinations:
No. 2023–10 of September 13, 2023 64347

5 CFR

302 60317
317 60317
319 60317
330 60317
731 60317
754 60317
920 60317
2424 62445

Proposed Rules:
210 63862
212 63862
213 63862
302 63862
432 63862
451 63862
752 63862

7 CFR

210 63833
215 63833
220 63833
225 63833
226 63833
235 63833
760 62285
3550 60883

Proposed Rules:
271 64756
275 64756
1207 60599
3560 62475

8 CFR

Proposed Rules:
1001 62242
1003 62242
1239 62242
1240 62242

9 CFR

93 62993
201 62695
202 62695
206 62695

10 CFR

72 ..... 63833, 64351
50 62292
52 62292
140 60565
431 64351
1709 64353
1710 64353

Proposed Rules:
50 ..... 61986, 61989
51 61986
52 61989
71 61986
431 60746

12 CFR

24 64358

Proposed Rules:
3 ..... 64028, 64524
6 64028
32 64028
54 64524
208 64028
216 64524
217 ..... 60385, 64524
225 64028
238 ..... 64028, 64524
252 ..... 64028, 64524
324 ..... 64028, 64524
360 64524
374 64524

13 CFR

Proposed Rules:
109 63534
115 63534
120 63534
123 63534

14 CFR

39 ..... 60566, 60570, 60883, 61467, 63004, 63007, 63009, 63011, 63014, 63513, 63834, 64365, 64368
71 ..... 60886, 62460, 63515,

63516, 63836
89.....63518
91.....63519
95.....61951
97.....63837, 63839
Proposed Rules:
39 .....60402, 60406, 60603, 60606, 60896, 60899, 60901, 60904, 60908, 61480, 61482, 61485, 61488, 61990, 62709, 63034, 63036, 63539, 63885, 63888
71 .....60910, 62477, 62479, 63542

15 CFR

734.....63840
922.....60887

17 CFR

240.....61850
275.....63205
Proposed Rules:
37.....61432
38.....61432
40.....61432

18 CFR

35.....61014

19 CFR

12.....62696, 64372

20 CFR

220.....61958
Proposed Rules:
651.....63750
653.....63750
655.....63750
658.....63750
702.....62480

21 CFR

Ch. I.....60333
14.....64379
Proposed Rules:
161.....61492

22 CFR

40.....60574
126.....63016

23 CFR

Proposed Rules:
624.....64388

27 CFR

Proposed Rules:
478.....61993

28 CFR

16.....60583

29 CFR

4044.....62706
Proposed Rules:
501.....63750
541.....62152
1406.....60409

31 CFR

548.....63017
550.....64379
583.....64380
586.....60889
587.....61963
Proposed Rules:
1.....63039

32 CFR

Proposed Rules:
310.....60411

33 CFR

100 .....60336, 60586, 63018, 64381
165 .....60586, 60890, 61963, 62461, 62707, 63018, 63525, 63527, 63841
328.....61964
Proposed Rules:
140.....62491
146.....62491
165.....63042

34 CFR

Proposed Rules:
Ch. II.....63543

36 CFR

1190.....61470

37 CFR

2.....62463
7.....62463
210.....60587
Proposed Rules:
202.....60413

38 CFR

3.....60336
Proposed Rules:
17.....60417
51.....60417

39 CFR

3040.....63843
Proposed Rules:
3050 .....62023, 62024, 63045

40 CFR

2.....63020
52 .....60342, 60591, 60893, 61969, 61971, 62293, 63031, 63529
63.....60344
82.....61977
120.....61964
180.....60594, 62464
300.....61470
Proposed Rules:
2.....63046
51.....63046
52.....60424, 62303
63.....62711, 63047
180 .....62492, 62499, 64398
260.....60609
261.....60609
262.....60609
263.....60609
264.....60609
265.....60609
266.....60609
267.....60609
268.....60609
270.....60609
300.....61492

41 CFR

Ch. 302.....63532

42 CFR

405.....60346
410.....60346
411.....60346
412.....60346
413.....60346
416.....60346
419.....60346
424.....60346
485.....60346
489.....60346
Proposed Rules:
419.....60610
438.....61352
442.....61352
483.....61352

43 CFR

Proposed Rules:
2360.....62025
8360.....62500

45 CFR

Proposed Rules:
84.....63392
1324.....62503

46 CFR

175.....62295
Proposed Rules:
4.....62491
109.....62491

47 CFR

1.....63694, 63850
2.....63850
8.....63853
15.....63850
25.....63850
27.....63850
54.....60347
73.....63533
74.....63850, 64382
76.....62471
78.....63850
101.....63850
Proposed Rules:
1.....63890
2.....63890
15.....63890
25.....63890
27.....63890
73 .....60611, 60612, 63048
74.....63890
78.....63890
101.....63890

48 CFR

Ch. 34.....60540
515.....62472
538.....62472
552.....62472
1812.....64384
1813.....64384
1816.....64384
1819.....64384
1823.....64384
1832.....64384
1852.....64384
Proposed Rules:
Ch. 29.....60612
538.....63892
552.....63892
3015.....61498
3016.....61498, 64399
3052.....61498, 64399

49 CFR

172.....60356
Proposed Rules:
191.....61746
192.....61746
198.....61746
571.....61674
572.....61896
1144.....63917
1145.....63897, 63917

50 CFR

20.....60375
217.....62898
622 .....61475, 61984, 62301
635.....64385
648 .....60597, 61477, 63861
679 .....60383, 60598, 61477
Proposed Rules:
Ch. I.....63547
17 .....62043, 62725, 64399
224.....62522
226.....62522
229.....62748, 63917
622.....62309
635.....62044

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List August 9, 2023

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