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Presidential Documents

Title 3—

The President

Executive Order 14066 of March 8, 2022

Prohibiting Certain Imports and New Investments With Respect to Continued Russian Federation Efforts To Undermine the Sovereignty and Territorial Integrity of Ukraine

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code,

I, JOSEPH R. BIDEN JR., President of the United States of America, hereby expand the scope of the national emergency declared in Executive Order 14024 of April 15, 2021, and relied on for additional steps taken in Executive Order 14039 of August 20, 2021, finding that the Russian Federation's unjustified, unprovoked, unyielding, and unconscionable war against Ukraine, including its recent further invasion in violation of international law, including the United Nations Charter, further threatens the peace, stability, sovereignty, and territorial integrity of Ukraine, and thereby constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States. Accordingly, I hereby order:

Section 1. (a) The following are prohibited:

(i) the importation into the United States of the following products of Russian Federation origin: crude oil; petroleum; petroleum fuels, oils, and products of their distillation; liquefied natural gas; coal; and coal products;

(ii) new investment in the energy sector in the Russian Federation by a United States person, wherever located; and

(iii) any approval, financing, facilitation, or guarantee by a United States person, wherever located, of a transaction by a foreign person where the transaction by that foreign person would be prohibited by this section if performed by a United States person or within the United States.

(b) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or license or permit granted prior to the date of this order.

Sec. 2. (a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 3. Nothing in this order shall prohibit transactions for the conduct of the official business of the Federal Government or the United Nations (including its specialized agencies, programs, funds, and related organizations) by employees, grantees, or contractors thereof.

Sec. 4. For the purposes of this order:

(a) the term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(b) the term ''person'' means an individual or entity; and

(c) the term ''United States person'' means any United States citizen, lawful permanent resident, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Sec. 5. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may, consistent with applicable law, redelegate any of these functions within the Department of the Treasury. All executive departments and agencies of the United States shall take all appropriate measures within their authority to implement this order.

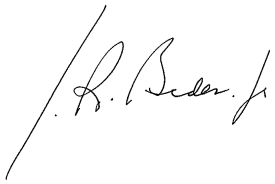
Sec. 6. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
March 8, 2022.

[FR Doc. 2022–05232
Filed 3–9–22; 8:45 am]
Billing code 3395–F2–P

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 746

[Docket No. 220304–0069]

RIN 0694–AI77

Addition to the List of Countries Excluded From Certain License Requirements Under the Export Administration Regulations (EAR)

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: In response to the Russian Federation's (Russia's) further invasion of Ukraine, and to protect U.S. national security and foreign policy interests, the Department of Commerce has added new and highly restrictive license requirements and policies for certain transactions involving Russia and Belarus under the Export Administration Regulations (EAR). In order to recognize partner countries that have committed to implementing substantially similar new export controls on Russia and Belarus in their domestic laws, the Department of Commerce has published a list of countries excluded from portions of these new U.S. export controls. These exclusions apply specifically to certain requirements under the EAR related to foreign-produced items. In this rule, the Department of Commerce adds the Republic of Korea (South Korea) to the list of excluded countries.

DATES: This rule is effective March 4, 2022.

FOR FURTHER INFORMATION CONTACT: For questions on this final rule, contact Eileen Albanese, Director, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–0092, Fax: (202) 482–482–3355, Email: *rpd2@bis.doc.gov.* For emails, include ''Russia'' in the subject line.

SUPPLEMENTARY INFORMATION:

Background

Effective February 24, 2022, in response to Russia's further invasion of Ukraine, the Department of Commerce's Bureau of Industry and Security (BIS) added new Russia license requirements and policies to the Export Administration Regulations (EAR) to protect U.S. national security and foreign policy interests. *See* 87 FR 12226 (March 3, 2022) (Russia Sanctions rule). These new Russia license requirements included new Commerce Control List (CCL)-based license requirements involving exports, reexports, and transfer (in-country) transactions and two new foreign ''direct product'' rules (FDP rules) specific to Russia and to Russian 'military end users.' A subsequent rule, effective March 2, 2022, extended these license requirements to export, reexport, and transfer (in-country) transactions involving Belarus, as a result of Belarus's substantial enabling of Russia's invasion of Ukraine (Belarus Sanctions rule).[1] Both of these rules included a savings clause specific to items controlled by the two FDP rules, stating that such items en route aboard a carrier to a port of export, reexport, or transfer (in-country), on or before March 26, 2022, pursuant to actual orders for reexport, or transfer (in-country) to or within a foreign destination, may proceed to such foreign destination under an applicable authorization that was available prior to the new license requirements, or with no license required, if no license requirements had previously applied to such transactions.

The new Belarus and Russia restrictions set forth in § 746.8 of the EAR refer to a list of countries that have committed to implementing substantially similar export controls on Belarus and Russia under their domestic laws. Pursuant to § 746.8(a)(5), countries that have made such a commitment receive full or partial exclusions, as appropriate, from the FDP rules' license requirements set forth under § 746.8(a)(2) and (3) of the EAR. Similarly, the license requirements in § 746.8(a)(1) are not used to determine controlled U.S.-content under the EAR's *de minimis* rules, as set forth in supplement no. 2 to part 734 of the EAR, provided the criteria in § 746.8(a)(5)(i) and (ii) are met. Countries excluded from these requirements are listed in supplement no. 3 to part 746 (Russia and Belarus Exclusions List). As a result of South Korea's commitment to implement substantially similar export controls on Russia and Belarus under its domestic laws, the Department of Commerce adds South Korea to supplement no. 3 to part 746 in this rule with the designation of ''full.''

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (codified, as amended, at 50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

1. This final rule is not a ''significant regulatory action'' because it ''pertain[s]'' to a ''military or foreign affairs function of the United States'' under sec. 3(d)(2) of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves the following OMB-approved collections of information subject to the PRA: 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 29.6 minutes for a manual or electronic submission; 0694–0096 ''Five Year Records Retention Period,'' which carries a burden hour estimate of less than 1 minute; and 0607–0152 ''Automated Export System (AES) Program,'' which carries a burden hour estimate of 3 minutes per electronic submission. BIS anticipates this rule will result in a slight decrease in the number of estimated license applications because this rule provides

[1] *Imposition of Sanctions Against Belarus Under the Export Administration Regulations (EAR),* FR 2022–04819, scheduled to publish March 8, 2022.

relief from the burden of the new Russia Sanctions rule and Belarus Sanctions rule requirements that would otherwise pertain to items produced in, exported or reexported from South Korea, or transferred (in-country). Thus, this rule does not create a substantive change to OMB Control Numbers 0694–0088, 0694–0096, or 0607–0152.

3. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to section 1762 of the Export Control Reform Act of 2018 (50 U.S.C. 4821) (ECRA), this action is exempt from the Administrative Procedure Act (APA) (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date. While section 1762 of ECRA provides sufficient authority for such an exemption, this action is also independently exempt from these APA requirements because it involves a military or foreign affairs function of the United States (5 U.S.C. 553(a)(1)).

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

List of Subjects in 15 CFR Part 746

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, part 746 of the Export Administration Regulations (15 CFR parts 730 through 774) is amended as follows:

PART 746—EMBARGOES AND OTHER SPECIAL CONTROLS

■ 1. The authority citation for 15 CFR part 746 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 287c; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; 22 U.S.C. 2151 note; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p 168; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Presidential Determination 2007–7, 72 FR 1899, 3 CFR, 2006 Comp., p. 325; Notice of May 6, 2021, 86 FR 26793 (May 10, 2021).

■ 2. Supplement no. 3 to part 746 is amended by adding an entry for ''South Korea'' in alphabetical order to read as follows:

Supplement No. 3 to Part 746—Countries Excluded From Certain License Requirements of § 746.8

* * * * *

Country	Scope	**Federal Register** citation
* * * * * * *		
South Korea	Full	87 FR [INSERT FR PAGE NUMBER] 3/10/2022.
* * * * * * *		

Thea D. Rozman Kendler,

Assistant Secretary for Export Administration.

[FR Doc. 2022–05025 Filed 3–4–22; 4:15 pm]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

31 CFR Part 35

RIN 1505–AC79

State Small Business Credit Initiative; Demographics-Related Reporting Requirements

AGENCY: Department of the Treasury.

ACTION: Interim final rule.

SUMMARY: The Secretary of the Treasury is issuing this interim final rule to institute the reporting requirements related to demographics of those who own or control small businesses that receive a loan, investment, other credit or equity support, or technical assistance under the State Small Business Credit Initiative under the American Rescue Plan Act of 2021.

DATES:

Effective date: This interim final rule is effective March 9, 2022.

Comment date: Comments must be received on or before April 11, 2022.

ADDRESSES: Please submit comments electronically through the Federal eRulemaking Portal: *https://www.regulations.gov.* Comments can be mailed to the Office of Recovery Programs, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Because postal mail may be subject to processing delay, it is recommended that comments be submitted electronically. All comments should be captioned with ''SSBCI Interim Final Rule Comments.'' Please include your name, organization affiliation, address, email address and telephone number in your comment. Where appropriate, a comment should include a short executive summary. In general, comments received will be posted on *https://www.regulations.gov* without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Jeff Stout, Director, Office of Federal Program Finance, at (202) 622–2059 or *ssbci_information@treasury.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The American Rescue Plan Act of 2021 (ARPA) reauthorized and amended the Small Business Jobs Act of 2010 (SBJA) to provide $10 billion to fund the State Small Business Credit Initiative (SSBCI) as a response to the economic effects of the COVID–19 pandemic.[1] SSBCI is a federal program administered by the U.S. Department of the Treasury (Treasury) that was created to strengthen the programs of eligible jurisdictions that support private financing for small businesses. Eligible jurisdictions include states, territories, Tribal governments, and eligible municipalities. SSBCI is expected to, in conjunction with new small business financing, create billions of dollars in lending to, and investments in, small businesses.

[1] ARPA, Public Law 117–2, sec. 3301, codified at 12 U.S.C. 5701 *et seq.* SSBCI was originally established in Title III of the Small Business Jobs Act of 2010.

II. Summary of the Interim Final Rule

A. Authority, Scope, and Purpose

Treasury has authority under the SSBCI statute to issue a rule on collecting demographics-related data of those who own or control small businesses that participate in SSBCI for purposes of implementation, compliance and reporting, and understanding program outcomes.[2] First, issuing this interim final rule is important for the implementation of and compliance with the program requirements regarding allocations related to business enterprises that are owned and controlled by socially and economically disadvantaged individuals (SEDI-owned and controlled businesses). ARPA provides $1.5 billion of capital funding to be allocated based on the needs of SEDI-owned and controlled businesses (SEDI allocation),[3] $1.0 billion of capital funding for an incentive program for jurisdictions that demonstrate robust support for SEDI-owned and controlled businesses in the deployment of previously allocated SSBCI capital funding (SEDI incentive allocation),[4] and $500 million for technical assistance to, in part, SEDI-owned and controlled businesses.[5] ARPA also states that the $1.5 billion SEDI allocation must be expended for SEDI-owned and controlled businesses.[6] The $1.5 billion SEDI allocation and $1.0 billion SEDI incentive allocation are intended to address the widespread challenges that these businesses have faced in light of the COVID–19 pandemic.[7] The technical assistance funding is to help, in part, SEDI-owned and controlled businesses that are applying to receive a loan, investment, or other credit or equity support under the SSBCI. The information reported under this interim final rule will help Treasury determine the extent to which SSBCI funds have been provided to SEDI-owned and controlled businesses.

Second, this interim final rule is being issued to ensure compliance with legal requirements related to nondiscrimination and nondiscriminatory uses of federal funds, where such laws are applicable to a participating jurisdiction and any contracted entity operating SSBCI programs on the jurisdiction's behalf because all SSBCI funds are considered federal financial assistance for purposes of such requirements. These legal requirements include, but are not limited to, Title VI of the Civil Rights Act of 1964 and Treasury's regulations at 31 CFR part 22, which require recipients of SSBCI funding to maintain and submit racial and ethnic data of beneficiaries that receive Federal financial assistance.[8]

Third, issuing this interim final rule is important for SSBCI implementation and compliance because some participating jurisdictions will partner with lenders or other financial entities that are subject to laws that prohibit these entities from inquiring about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction, unless such information is required by a regulation, order, or agreement issued by, or entered into with, an enforcement agency or a court to monitor or enforce compliance with federal or state statutes or regulations. For example, under 12 CFR part 1002 (Regulation B) implementing the Equal Credit Opportunity Act, creditors are generally prohibited from inquiring about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction, unless an exception applies.[9] One exception is for certain required information collection ''to monitor or enforce compliance with the [Equal Credit Opportunity] Act, [Regulation B], or other Federal or state statutes or regulations.'' [10] This interim final rule will facilitate the collection of information that might not otherwise be collected by creditors who will be SSBCI lenders. Treasury expects that, in accordance with this interim final rule, participating jurisdictions will contract with lenders and other financial entities to implement SSBCI programs and collect this information. Lenders and other financial entities participating in SSBCI must request the demographic information described in this interim final rule, and collect and report such information certified by authorized representatives of participating small businesses. Although such lenders and other financial entities must collect and report such information, participating small businesses have the option to choose ''prefer not to respond'' or to not respond by leaving the request blank. This interim final rule does not require verification of responses provided by participating small businesses. Treasury believes that requiring verification of small business-provided responses would greatly increase the operational burden of the interim final rule.

Finally, this interim final rule is important for understanding SSBCI program outcomes. Such information will allow Treasury to analyze and report on the populations that SSBCI funding is benefiting.

B. Definitions and Reporting Requirements

Under this interim final rule, each jurisdiction that participates in SSBCI must submit an annual report to Treasury that includes the following data: Self-certified SEDI demographics-related business status; minority-owned or controlled business status; women-owned or controlled business status; veteran-owned or controlled business status; and the race, ethnicity, gender, sexual orientation, Middle Eastern or North African ancestry, and veteran status with which principal owners identify. For each business that receives a loan, investment, or other credit or equity support under the SSBCI, the reported data must be based on the ownership and control of the business immediately before the consummation of such loan, investment, or other credit or equity support-related transaction. For each business that receives technical assistance under the SSBCI, the reported data must be based on the ownership and control of the business at the time it receives such technical assistance. The self-certified SEDI demographics-related business status variable reflects one group of SEDI-owned and controlled businesses on which jurisdictions may expend their portion of the $1.5 billion SEDI allocation and their portion of technical assistance funding.[11] Loan, investment, or other credit or equity support-related transactions conducted with self-certified SEDI demographics-related businesses may also count toward earning a participating jurisdiction's portion of the $1.0 billion SEDI incentive allocation. The definition of ''owned and controlled,'' which is used in the definition of SEDI demographics-related business, is based on the statutory definition of ''business enterprise owned and controlled by

[2] *See* 12 U.S.C. 5706, 5709.

[3] 12 U.S.C. 5702(d)(2).

[4] 12 U.S.C. 5702(e).

[5] 12 U.S.C. 5708(e).

[6] 12 U.S.C. 5702(d)(1).

[7] *See, e.g.,* Cong. Rec. H1283 (Statement of Rep. Waters) (Mar. 10, 2021) (citing ''the widespread challenges small businesses, especially minority-owned businesses, have faced during the COVID–19 pandemic''); Cong. Rec. H1280 (Statement of Speaker Pelosi) (''The most vulnerable among us have been the most disproportionately affected . . . women and minority-owned businesses forced to shudder [*sic*], communities of color facing rising disparities'' and explaining ''This legislation will, among other steps, address 8 in 10 minority owned businesses on the brink of closure . . . .'').

[8] 31 CFR 22.6(b),

[9] *See* 12 CFR 1002.5(b).

[10] 12 CFR 1002.5(a)(2).

[11] For more information on all eligible groups of businesses on which jurisdictions may expend their SSBCI SEDI allocation funds, please see the SSBCI Capital Program Policy Guidelines published on Treasury's website.

socially and economically disadvantaged individuals,'' which includes prongs for three types of organizations: Private businesses, public businesses, and mutual institutions.[12] For example, 51 percent ownership of a private institution is a sufficient condition to fulfill the ownership-and-control requirement for a business to be a self-certified SEDI demographics-related business.

Under this interim final rule, Treasury will also collect information on whether the business is majority-owned or controlled by minority individuals, females, or veterans. These data elements do not affect the determination of SEDI-owned and controlled business status. The SSBCI statute does not define ''owned or controlled'' for purposes of these categories. Therefore, the definition of ''owned or controlled'' for purposes of these terms are based both on the definition of ''business enterprise owned and controlled by socially and economically disadvantaged individuals'' in the SSBCI statute [13] and also on the control prong of the definition of ''beneficial owner'' in the Financial Crimes Enforcement Network's (FinCEN) customer due diligence (CDD) rule, which requires covered financial institutions to establish and maintain written procedures that are reasonably designed to identify and verify beneficial owners of legal entity customers.[14] In choosing this approach, Treasury considered that the ''beneficial owner'' definition under FinCEN's CDD rule is already widely in use, and that most financial institutions are likely familiar with the standard, because many of them are required to comply with the CDD rule. Accordingly, a business can be a minority-owned or controlled business, women-owned or controlled business, or veteran-owned or controlled business (as applicable) if (1) the applicable prong under the definition of ''owned and controlled'' explained above is met or (2) one or more minority individuals, females, or veterans, respectively, have the power to exercise a controlling influence over the management, direction, or policies of the business.

Under this interim final rule, Treasury will further collect the race, ethnicity, gender, sexual orientation, Middle Eastern or North African ancestry, and veteran status with which the principal owners of all businesses that participate in SSBCI transactions that occurred in the preceding calendar year identify. These data elements also do not affect the determination of SEDI-owned and controlled business status. Treasury defines the term ''principal owner'' based on the ownership prong of the definition of beneficial ownership under FinCEN's CDD rule. Under this interim final rule, an individual is a principal owner if the individual directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity interests of the business.

The categories of responses related to gender under this interim final rule are female, male, non-binary, an option for ''prefer to self-describe'' with a write-in field that allows for identification in a different manner, ''prefer not to respond,'' and that the business did not answer. In considering this approach, Treasury reviewed the following information. The Census Bureau's Household Pulse Survey includes questions on sex and gender identity. One of these questions asks, ''What sex were you assigned at birth, on your original birth certificate?'' with responses including male or female. Another question asks, ''Do you currently describe yourself as male, female, or transgender?'' with responses including male, female, transgender, or none of these.[15] The Department of Defense P1 survey includes a question that asks, ''Are you . . . ?'' with responses that include male or female.[16] The U.S. Department of Agriculture's Farm Producer Study includes a question that asks ''How do you currently describe yourself?'' with responses that include male, female, transgender, and none of these, specify (with a space to write-in). The same study also includes a question that asks, ''Was your sex recorded as male or female at birth?'' with responses that include male or female.[17]

The Consumer Financial Protection Bureau's proposed rule for the collection of small business data asks for information on the sex of the principal owner with the response options of female, male, I prefer to self-identify as (with a space to write in), and I do not wish to provide this information.[18] Treasury's approach is most consistent with the Consumer Financial Protection Bureau's proposed rule for collection of small business data in that Treasury includes response options of female, male, an option for ''prefer to self-describe'' with a write-in field (which is similar to the Consumer Financial Protection Bureau proposed rule's I prefer to self-identify as (with a space to write in)), and an option for ''prefer not to respond.'' Treasury also includes ''non-binary'' as a response in order to provide some consistency with other Treasury coronavirus relief programs, such as the Emergency Rental Assistance Program, which collects data on whether award recipients are female, male, non-binary, declined to answer, or data not collected.[19] As businesses may elect to not choose any of the aforementioned responses by leaving the responses blank, Treasury also provides jurisdictions the option to report ''the business did not answer.''

In addition, Treasury will collect data regarding the sexual orientation status with which principal owners identify with response options of gay or lesbian; bisexual; straight, that is, not gay, lesbian, or bisexual; something else; an option for the business to choose that it prefers not to respond; or that the business did not answer. Treasury is collecting this information related to sexual orientation to better understand the demographics of the principal owners of businesses receiving SSBCI funds. The collection of this information is expected to provide valuable insights on SSBCI program outcomes and small business ecosystems, along with the performance of businesses owned by individuals who identify as lesbian, gay, or bisexual.

In considering this approach, Treasury reviewed the following information. The Census Bureau's Household Pulse Survey includes a question on sexual orientation that asks, ''Which of the following best represents how you think of yourself?'' with responses including gay or lesbian; straight, that is not gay or lesbian; bisexual; something else; or I don't know.[20] The Department of Defense P1 Survey also includes a question on

[12] *See* 12 U.S.C. 5701(15).

[13] *See id.*

[14] *See* 31 CFR 1010.230(d)(1).

[15] U.S. Census Bureau, *Phase 3.3 Household Pulse Survey,* available at *https://www2.census.gov/programs-surveys/demo/technical-documentation/hhp/Phase3-3_Questionnaire_12_01_21_English.pdf.*

[16] Department of Defense, *P1 Survey,* available at *https://www.reginfo.gov/public/do/DownloadDocument?objectID=112827001.*

[17] U.S. Department of Agriculture, 2021 Farm Producer Study, available at *https://omb.report/icr/202109-0535-001/doc/114843800.*

[18] Small Business Lending Data Collection Under the Equal Credit Opportunity Act (Regulation B), 86 FR 56356, 56582 (Oct. 8, 2021).

[19] For example, see the demographics reporting guidance of the Emergency Rental Assistance Program, starting on page 16, available at *https://home.treasury.gov/system/files/136/ERA-Reporting-Guidance-v2.pdf.*

[20] U.S. Census Bureau, *Phase 3.3 Household Pulse Survey,* available at *https://www2.census.gov/programs-surveys/demo/technical-documentation/hhp/Phase3-3_Questionnaire_12_01_21_English.pdf.*

sexual orientation that asks, ''How do you describe your sexual orientation? (Select all that apply.),'' with responses including heterosexual or straight; lesbian or gay; bisexual, pansexual, or queer; questioning, asexual, demisexual; other; and prefer not to answer.[21] The U.S. Department of Agriculture's Farm Producer Study includes a question on sexual orientation that asks, ''Which of the following best represents how you think of yourself?'' with responses including gay or lesbian; straight, that is, not gay or lesbian; bisexual; none of these, specify (with a space to write in); I am not sure yet; and I don't know what this question means.[22] Treasury's approach is generally consistent with these approaches, and most consistent with the Census Bureau's Household Pulse Survey, but Treasury's reporting does not include a response indicating that the individual does not know their sexual orientation, in part because responses from individual small business owners are not required by beneficiaries to receive funding. Treasury's decision to include an option for ''prefer not to respond'' is consistent with the Department of Defense's P1 Survey's option of ''prefer not to answer.'' As businesses may elect to not choose any of the aforementioned responses by leaving the responses blank, Treasury also provides jurisdictions the option to report ''the business did not answer.''

Treasury will collect information about race and ethnicity statuses with which principal owners identify, consistent with the Office of Management and Budget (OMB) Standards for the Classification of Federal Data on Race and Ethnicity, which govern how questions about race and ethnicity should be asked on all federal collections. There are two ethnicity categories (Hispanic or Latino; and Not Hispanic or Latino) and five minimum race categories (American Indian or Alaska Native; Asian; Black or African American; Native Hawaiian or Other Pacific Islander; and White).[23] Further disaggregation is allowable. For example, many Census Bureau surveys, as well as the Department of Health and Human Services' (HHS) approach for collecting data for its population studies, offer checkboxes for selected disaggregated categories for Asian (*i.e.,* Asian Indian; Chinese; Filipino; Japanese; Korean; Vietnamese; and Other Asian) as well as for Native Hawaiian or Other Pacific Islander (*i.e.,* Native Hawaiian; Chamorro; Samoan; and Other Pacific Islander).[24] The 2020 Census offered respondents the opportunity to, under each of the minimum categories, write in additional specifics. Both minimum categories and disaggregated categories of race and ethnicity are used in the data collection under the Home Mortgage Disclosure Act (HMDA).[25] The HMDA data collection also permits individuals to answer with ''I do not wish to provide this information.'' [26]

Treasury believes that collecting only the OMB minimum categories of race may mask the effects of SSBCI funds on businesses in jurisdictions with a large population of one OMB minimum category of race and multiple populations of categories of race, and therefore hinder the understanding of program outcomes in these jurisdictions. Thus, this interim final rule provides for the reporting of information consistent with the OMB data collection standard, using the five minimum race categories, in addition to disaggregating the Asian and Native Hawaiian or Other Pacific Islander categories, which is consistent with the approaches used by HHS and the Census Bureau's American Community Survey. Treasury will collect information on ethnicity consistent with the OMB data collection standard's minimum ethnicity categories. For both the race and ethnicity information collection, Treasury is providing a response option of ''prefer not to respond,'' consistent with the HMDA data collection's ''I do not wish to provide this information.'' As businesses may elect not to respond by leaving the information request blank, Treasury also provides jurisdictions the option to report ''the business did not answer.''

Treasury also believes that it is important to collect information on those that identify as Middle Eastern or North African to understand whether SSBCI funds are reaching businesses principally owned by such individuals. Currently, people of Middle Eastern or North African ancestry are categorized as White under OMB data collection standards. Because Treasury must comply with these standards, Treasury is collecting information about Middle Eastern or North African ancestry through a separate ancestry question. Finally, this interim final rule requires jurisdictions to submit the required information using the format specified on Treasury's website.[27]

We welcome comment on any aspect of this interim final rule.

III. Regulatory Analyses

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This interim final rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. As explained above, this interim final rule institutes reporting requirements to implement, determine compliance with, and understand the program outcomes of SSBCI, as reauthorized and amended by ARPA. As these reporting requirements focus only on data collection, this interim final rule is not economically significant. However, we welcome comments on the economic impact of this interim final rule. Particularly, Treasury welcomes comments and data on how this interim final rule may substantively affect the SSBCI program.

Executive Order 13132

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

[21] Department of Defense, *P1 Survey,* available at *https://www.reginfo.gov/public/do/DownloadDocument?objectID=112827001.*

[22] U.S. Department of Agriculture, 2021 Farm Producer Study, available at *https://omb.report/icr/202109-0535-001/doc/114843800.*

[23] Off. of Mgmt. & Budget, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, 62 FR 58782, 58782–90 (Oct. 30, 1997).

[24] *See* Informational Copy of the U.S. 2020 Census, U.S. Census Bureau, *https://www2.census.gov/programs-surveys/decennial/2020/technical-documentation/questionnaires-and-instructions/questionnaires/2020-informational-questionnaire-english_DI-Q1.pdf.*

[25] *See* 12 CFR part 1003, appendix B (Form and Instructions for Data Collection on Ethnicity, Race, and Sex).

[26] *See id.*

[27] *See* 12 U.S.C. 5706(c).

and Tribal governments or preempt state law within the meaning of the Executive order. The compliance costs are imposed on state, local, and Tribal governments by the Small Business Jobs Act, as amended by ARPA. Notwithstanding the above, Treasury has engaged in efforts to consult with affected state, local, and Tribal government officials and associations in the process of developing this interim final rule. Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, Treasury certifies that it has complied with the requirements of Executive Order 13132.

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

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.

This interim final rule will add annual reporting requirements. These collections will increase total annual burden by 13,050 hours: The requirements are expected to take 500 jurisdictions 26.10 hours to complete for an annual burden of 13,050 hours. Using the standard total compensation for accountants and auditors, the estimated cost of this information collection is $673,902.[28]

The OMB Control Number for the SSBCI information collection is 1505–0227. Comments concerning the collections of information should be directed to the Office of Recovery Programs, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Treasury welcomes comments on the compliance burdens for the information collection under this interim final rule.

Congressional Review Act

The Administrator of OMB's Office of Information and Regulatory Affairs (OIRA) has determined that this is not a major rule for purposes of Subtitle E of the Small Business Regulatory Enforcement and Fairness Act of 1996 (also known as the Congressional Review Act or CRA) (5 U.S.C. 804(2) *et seq.*). Under the CRA, a major rule takes effect 60 days after the rule is published in the **Federal Register**. 5 U.S.C. 801(a)(3).

Administrative Procedure Act

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.,* generally requires public notice and an opportunity for comment before a rule becomes effective. However, the APA provides that the requirements of 5 U.S.C. 553 do not apply ''to the extent that there is involved . . . a matter relating to agency . . . grants . . . or contracts.'' This interim final rule is being issued for purposes of implementation, compliance, and understanding the outcomes of the SSBCI program. While SSBCI capital funds are not considered federal financial assistance for the purposes of 31 U.S.C. subtitle V under the SSBCI statute, the SSBCI program resembles other coronavirus relief programs that Treasury is implementing. SSBCI capital funds will be disbursed to eligible jurisdictions that apply in order to establish small business lending and investment programs. This interim final rule sets forth the ''process necessary to maintain. . . eligibility for federal funds,'' *id.,* as well as the ''method[s] by which [jurisdictions] can . . . qualify for federal aid,'' and other ''integral part[s] of the grant program,'' *Center for Auto Safety* v. *Tiemann,* 414 F. Supp. 215, 222 (D.D.C. 1976). Eligible jurisdictions must submit the annual information required by this interim final rule in Treasury's prescribed format to remain eligible for SSBCI capital funding. Treasury will also use the reported data to determine whether jurisdictions are eligible for the SEDI incentive allocation. As a result, the requirements of 5 U.S.C. 553 do not apply.

The APA also provides an exception to notice-and-comment procedures ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(3)(B); *see also* 5 U.S.C. 553(d)(3) (creating an exception to the requirement of a 30-day delay before the effective date of a rule ''for good cause found and published with the rule''). Even if 5 U.S.C. 553 applied, Treasury would have good cause under sections 553(b)(3)(B) and 553(d)(3) for not complying with these requirements under section 553. ARPA is a law responding to a historic economic and public health emergency; it is ''extraordinary'' legislation about which ''both Congress and the President articulated a profound sense of 'urgency.' '' *Petry* v. *Block,* 737 F.2d 1193, 1200 (D.C. Cir. 1984). In addition, there is an urgent need for jurisdictions to undertake the planning necessary to implement their SSBCI capital programs. Developing these programs requires an understanding of all the program requirements, including the data collection and reporting requirements implemented in this interim final rule. These requirements are immediately effective but may change when the rule is finalized. Without having clarity on how the SSBCI program requirements will interact with existing restrictions on lenders' and other financial entities' availability to collect this data, jurisdictions may have difficulty attracting lenders and other financial entities to implement SSBCI programs, which could hinder their efforts to deploy the allocation for SEDI-owned and controlled businesses as Congress intended. Treasury understands that many jurisdictions require immediate rules on which they can rely in order to develop sound SSBCI programs. The statutory urgency and practical necessity are good cause to forego the ordinary requirements of notice-and-comment rulemaking.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the Administrative Procedure Act or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604. Rules that are exempt from notice and comment under the APA are also exempt from the RFA requirements, including the requirement to conduct a regulatory flexibility analysis. Since this interim final rule is exempt from the notice and comment requirements of the APA, Treasury is not required to conduct a regulatory flexibility analysis.

List of subjects in 31 CFR Part 35

Executive compensation, Public health emergency, State and local governments, Tribal governments.

For the reasons stated in the preamble, the Department of the Treasury amends 31 CFR part 35 as follows:

PART 35—PANDEMIC RELIEF PROGRAMS

■ 1.The authority citation for part 35 is revised to read as follows:

[28] *See* Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, Accountants and Auditors, on the internet at *https://www.bls.gov/oes/current/oes132011.htm.* Base wage of $35.37/hour increased by 46 percent to account for fully loaded employer cost of employee compensation (benefits, etc.) for a fully loaded wage rate of $51.64. 13,050 multiplied by $51.64 equals $673,902.

Authority: 42 U.S.C. 802(f); 42 U.S.C. 803(f); 31 U.S.C. 321; 12 U.S.C. 5701–5710; Division N, Title V, Subtitle B, Pub. L. 116–260, 134 Stat. 1182 (12 U.S.C. 4703a); Section 104A, Pub. L. 103–325, 108 Stat. 2160, as amended (12 U.S.C. 4701 *et seq.*); Pub. L. 117–2, 135 Stat. 4 (42 U.S.C. 802 *et seq.*).

■ 2. Add subpart C to read as follows:

Subpart C—State Small Business Credit Initiative Small Business Owners Demographics Data Collection

Sec.
35.26 Authority, scope, and purpose.
35.27 Definitions.
35.28 Annual report requirements.
35.29 Format.

§ 35.26 Authority, scope, and purpose.

(a) *Authority and scope.* This subpart is issued by the U.S. Department of the Treasury pursuant to Sections 3007 and 3010 of the Small Business Jobs Act of 2010, as amended by the American Rescue Plan Act of 2021 (12 U.S.C. 5706, 5709).

(b) *Purpose.* The U.S. Department of the Treasury is collecting demographics-related data regarding those who own or control businesses that receive a loan, investment, other credit or equity support, or technical assistance under the State Small Business Credit Initiative for purposes of implementation, compliance, and understanding program outcomes.

§ 35.27 Definitions.

In this subpart:

(a) *Controlling influence over a business* means having the power to control, manage, or direct the business. A person is presumed to have a controlling influence over a business if the person is a senior executive officer or senior manager of the business (*e.g.,* Chief Executive Officer, Chief Financial Officer, Chief Operating Officer), or any other individual who regularly performs similar functions.

(b) *Jurisdiction* means:

(1) One of the fifty states of the United States;

(2) The District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of Northern Mariana Islands, Guam, American Samoa, and the United States Virgin Islands;

(3) When designated by one of the fifty states of the United States, a political subdivision of that state that the U.S. Department of the Treasury determines has the capacity to participate in the State Small Business Credit Initiative;

(4) Under the circumstances described in 12 U.S.C. 5703(d), a municipality of one of the fifty states of the United States to which the U.S. Department of the Treasury has given a special permission under 12 U.S.C. 5703(d); and

(5) A Tribal government or a group of Tribal governments that jointly apply to be approved by the U.S. Department of Treasury to participate in the State Small Business Credit Initiative as a single participating jurisdiction.

(c) *Minority individual* means a natural person who identifies as American Indian or Alaska Native; Asian; Black or African American; Native Hawaiian or Other Pacific Islander; or Hispanic or Latino/a; or one or more than one of these groups.

(d) *Minority-owned or controlled business* means a business that:

(1) If privately owned, 51 percent or more is owned by minority individuals;

(2) If publicly owned, 51 percent or more of the stock is owned by minority individuals;

(3) In the case of a mutual institution, a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of minority individuals; or

(4) One or more minority individuals have the power to exercise a controlling influence over the business.

(e) *Participating jurisdiction* means a jurisdiction that has been approved by the U.S. Department of the Treasury for participation in the State Small Business Credit Initiative.

(f) *Principal owner* of a business means a natural person who directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity interests of the business. If a trust owns, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, 25 percent or more of the equity interests of the business, the trustee is a principal owner.

(g) *Socially and economically disadvantaged individual (SEDI) demographics-related business* means a business owned and controlled by individuals who have had their access to credit on reasonable terms diminished compared to others in comparable economic circumstances, due to their:

(1) Membership of a group that has been subjected to racial or ethnic prejudice or cultural bias within American society;

(2) Gender;

(3) Veteran status;

(4) Limited English proficiency;

(5) Disability;

(6) Long-term residence in an environment isolated from the mainstream of American society;

(7) Membership of a federally or state-recognized Indian Tribe;

(8) Long-term residence in a rural community;

(9) Residence in a U.S. territory;

(10) Residence in a community undergoing economic transitions (including communities impacted by the shift towards a net-zero economy or deindustrialization); or

(11) Membership of an *underserved community.*

(i) *Underserved communities* are populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the definition of *equity* in paragraph (g)(11)(ii) of this section; and

(ii) *Equity* is consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders, and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.

(12) For purposes of this paragraph (g), a business is ''owned and controlled'' by applicable individuals:

(i) If privately owned, 51 percent or more is owned by such individuals;

(ii) If publicly owned, 51 percent more or of the stock is owned by such individuals; and

(ii) In the case of a mutual institution, if a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of such individuals.

(h) *Veteran-owned or controlled business* means a business that:

(1) If privately owned, 51 percent or more is owned by veterans;

(2) If publicly owned, 51 percent or more of the stock is owned by veterans;

(3) In the case of a mutual institution, a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of veterans; or

(4) One or more individuals who are veterans have the power to exercise a controlling influence over the business.

(i) *Women-owned or controlled business* means a business that:

(1) If privately owned, 51 percent or more is owned by females;

(2) If publicly owned, 51 percent or more of the stock is owned by females;

(3) In the case of a mutual institution, a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of females; or

(4) One or more individuals who are females have the power to exercise a controlling influence over the business.

§ 35.28 Annual report requirements.

By March 31 of each year beginning March 31, 2023, and ending with the report to be submitted on March 31, 2028, each participating jurisdiction shall submit to the U.S. Department of the Treasury an annual report that includes, with respect to the previous calendar year, the following data for each business that receives a loan, investment, other credit or equity support, or technical assistance as part of the State Small Business Credit Initiative. For each business that receives a loan, investment, or other credit or equity support under the State Small Business Credit Initiative, the reported data shall be based on the ownership and control of the business immediately before the consummation of such loan, investment, or other credit or equity support-related transaction. For each business that receives technical assistance under the State Small Business Credit Initiative, the reported data shall be based on the ownership and control of the business at the time it receives such technical assistance.

(a) *Self-certified SEDI demographics-related business status.* (1) Indicate which one or more of the following categories apply: Self-certified due to membership of a group that has been subjected to racial or ethnic prejudice or cultural bias within American society; self-certified due to gender; self-certified due to veteran status; self-certified due to limited English proficiency; self-certified due to disability; self-certified due to long-term residence in an environment isolated from the mainstream of American society; self-certified due to membership of a federally or state-recognized Indian Tribe; self-certified due to long-term residence in a rural community; self-certified due to residence in a U.S. territory; self-certified due to residence in a community undergoing economic transitions (including communities impacted by the shift towards a net-zero economy or deindustrialization); self-certified due to membership of an ''underserved community'' as defined in § 35.27(g)(11)(i); none of the preceding categories are applicable; prefer not to respond; or the business did not answer.

(2) The participating jurisdiction must permit each business to identify all of the categories that apply in the definition of SEDI demographics-related business, and the participating jurisdiction must report to Treasury all categories identified by the business.

(b) *Minority-owned or controlled business status.* Indicate whether the business is a minority-owned or controlled business. The participating jurisdiction must indicate yes; no; prefer not to respond; or that the business did not answer.

(c) *Women-owned or controlled business status.* Indicate whether the business is a women-owned or controlled business. The participating jurisdiction must indicate yes; no; prefer not to respond; or that the business did not answer.

(d) *Veteran-owned or controlled business status.* Indicate whether the business is a veteran-owned or controlled business. The participating jurisdiction must indicate yes; no; prefer not to respond; or that the business did not answer.

(e) *Race of principal owners.* (1) For each principal owner of the business, indicate which one or more of the following race categories (including the Office of Management and Budget's minimum categories and the relevant disaggregated categories) with which the principal owner identifies: American Indian or Alaska Native; Asian; Asian disaggregated categories: Indian, Chinese, Filipino, Japanese, Korean, Vietnamese, Asian (Other); Black or African American; Native Hawaiian or Other Pacific Islander; Native Hawaiian or Other Pacific Islander disaggregated categories: Guamanian or Chamorro, Native Hawaiian, Samoan, Pacific Islander (Other); White; prefer not to respond; or that the business did not answer.

(2) The participating jurisdiction must permit each business to identify all of the Office of Management and Budget's minimum categories and disaggregated categories in paragraph (e)(1) of this section with which each principal owner of the business identifies, and the participating jurisdiction must report to Treasury all categories identified by the business.

(f) *Ethnicity of principal owners.* For each principal owner of the business, indicate which of the following ethnicity categories the principal owner identifies with: Hispanic or Latino/a; not Hispanic or Latino/a; prefer not to respond; or that the business did not answer.

(g) *Middle Eastern or North African Ancestry of principal owners.* For each principal owner of the business, indicate which of the following ancestry categories the principal owner identifies with: Middle Eastern or North African; not Middle Eastern or North African; prefer not to respond; or that the business did not answer.

(h) *Gender of principal owners.* For each principal owner of the business, indicate which of the following gender categories the principal owner identifies with: Female; male; nonbinary; prefer to self-describe, prefer not to respond; or that the business did not answer. If the ''prefer to self-describe'' option is chosen, the participating jurisdiction must provide an option for the business to write in the gender and must report what the business writes in.

(i) *Sexual orientation of principal owners.* For each principal owner of the business, indicate which of the following sexual orientation categories the principal owner identifies with: Gay or lesbian; bisexual; straight, that is, not gay, lesbian, or bisexual; something else; prefer not to respond; or that the business did not answer.

(j) *Veteran status of principal owners.* For each principal owner of the business, indicate which of the following categories the principal owner identifies with: Veteran; non-veteran; prefer not to respond; or that the business did not answer.

§ 35.29 Format.

Participating jurisdictions must submit the information required under § 35.28 using the formats specified from time to time on the U.S. Department of the Treasury's website.

Jacob Leibenluft,

Chief Recovery Officer.

[FR Doc. 2022–04843 Filed 3–9–22; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2021–0945; FRL–9487–02–R1]

Air Plan Approval; New Hampshire; Conformity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. This submission revises previously approved transportation conformity criteria and procedures

related to interagency consultation and enforceability of certain transportation-related control measures and mitigation measures. In addition, the revision continues to rely on the Federal rule for General Conformity. The intended effect of this action is to approve State criteria and procedures to govern conformity determinations. This action is being taken in accordance with the Clean Air Act.

DATES: This rule is effective April 11, 2022.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2021–0945. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that, if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Eric Rackauskas, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 05–2), Boston, MA 02109–3912, tel. (617) 918–1628, email *rackauskas.eric@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. Background and Purpose

On January 28, 2022 (87 FR 4535), EPA published a notice of proposed rulemaking (NPRM) for the State of New Hampshire.

The NPRM proposed approval of amendments to New Hampshire's Env-A 1500, *Conformity.* This revision consists of minor administrative language changes, updated definitions and references to Federal rules, and clarifications to roles and responsibilities for Federal, state, and municipal partners. The formal SIP revision was submitted by the New Hampshire Air Resources Division (ARD) on September 21, 2021.

Other specific requirements of the New Hampshire *Conformity* SIP revision and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. No public comments were received on the NPRM.

II. Final Action

EPA is approving New Hampshire's Env-A 1500 *Conformity* into the New Hampshire SIP. This revision and approval are consistent with the Clean Air Act.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the New Hampshire Air Resources Division described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other

[1] 62 FR 27968 (May 22, 1997).

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 9, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 4, 2022.

David Cash,

Regional Administrator, EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart EE—New Hampshire

■ 2. In § 52.1520(c), amend the table by revising the entry ''Env-A 1500'' to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED NEW HAMPSHIRE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date [1]	Explanations
*	*	*	* *	* *
Env-A 1500	Conformity	1/18/2020	3/10/2022 [Insert **Federal Register** citation]	Env-A 1500 revision approved entirely.
*	*	*	* *	* *

[1] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

* * * * *

[FR Doc. 2022–05028 Filed 3–9–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2021–0355; FRL–9565–01–OCSPP]

Novaluron; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of novaluron in or on Almond, hulls and the Tree nut group 14–12. Makhteshim Agan of North America (ADAMA) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective March 10, 2022. Objections and requests for hearings must be received on or before May 9, 2022, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2021–0355, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744.

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

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Office of the Federal Register's e-

CFR site at *https://www.ecfr.gov/current/title-40.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2021–0355 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before May 9, 2022. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2021–0355, by one of the following methods:

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

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of June 28, 2021 (86 FR 33922) (FRL–10025–08) EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0F8872) by Makhteshim Agan of North America, Inc. (d/b/a ADAMA), 3120 Highwoods Boulevard, Suite 100, Raleigh, NC 27604. The petition requested to establish tolerances for residues of the insecticide novaluron in or on Tree nuts, nutmeat (Crop Group 14–12) at 0.07 parts per million (ppm) and Almond, hulls at 15.0 ppm. That document referenced a summary of the petition, which is available in the docket, *https://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition and in accordance with its authority under FFDCA section 408(d)(4)(A)(i), EPA is establishing the tolerances at different levels than petitioned for and is modifying the crop group definition to be consistent with Agency terminology. A discussion of these modifications can be found in section IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

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

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

EPA has previously published tolerance rulemakings as well as an interim decision to support registration review for novaluron in which EPA concluded, based on the available information, that there is a reasonable certainty that no harm would result from aggregate exposure to novaluron and established tolerances for residues of that chemical. EPA is incorporating previously published sections from these rulemakings as described further in this rulemaking, as they remain unchanged.

Toxicological profile. For a discussion of the Toxicological Profile of novaluron, see Unit III.A. of the novaluron tolerance rulemaking published in the **Federal Register** of July 22, 2015 (80 FR 43329) (FRL–9929–57), which was not modified by the Novaluron Interim Registration Review Decision (*https://www.regulations.gov/document/EPA-HQ-OPP-2015-0171-0063*).

Toxicological Points of Departure/Levels of Concern. For a summary of the Toxicological Points of Departure/Levels of Concern for novaluron used for human risk assessment, please reference Unit III.B. of the July 22, 2015, rulemaking as well as the Novaluron Interim Registration Review Decision.

Exposure assessment. EPA's dietary exposure assessments have been updated to include the additional exposure from the new uses of novaluron on the tree nut group 14–12 and almond hulls. An acute dietary exposure assessment was not performed as there are no appropriate toxicological effects attributable to a single exposure (dose). A partially refined chronic dietary (food and drinking water) exposure and risk assessment was conducted that incorporated tolerance-level residues for the proposed new uses. The chronic dietary exposure and risk assessment also incorporated average percent crop treated (PCT) data for several registered commodities. For the remaining commodities, 100 PCT was assumed. Anticipated residues for meat, milk, hog, and poultry commodities were incorporated as well. A cancer dietary assessment was not conducted because novaluron is classified as ''not likely to be carcinogenic to humans.''

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

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- *Condition a:* The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- *Condition b:* The exposure estimate does not underestimate exposure for any significant subpopulation group.
- *Condition c:* Data are available on pesticide use and food consumption in a particular area, and the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

Updated average percent crop treated values were used for the following crops that are currently registered for novaluron: Apples (10%), broccoli (<1%), cabbage (5%), cantaloupe (<1%), cauliflower (<1%), cherries (<1%), cotton (5%), dry beans/peas (<1%), peaches (<1%), peanuts (5%), pears (25%), peppers (5%), plums/prunes (<1%), potatoes (5%), pumpkins (<1%), sorghum (<1%), squash (<1%), strawberries (45%), sugarcane (<1%), sweet corn (<1%), tomatoes (<2.5%), and watermelons (<1%).

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and California Department of Pesticide Regulation (CalDPR) Pesticide Use Reporting (PUR) for the chemical/crop combination for the most recent 10 years. EPA uses an average PCT for chronic dietary risk analysis and a maximum PCT for acute dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than 1% or less than 2.5%. In those cases, the Agency would use less than 1% or less than 2.5% as the average PCT value, respectively. The maximum PCT figure is the highest observed maximum value reported within the most recent 10 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%, except where the maximum PCT is less than 2.5%, in which case, the Agency uses less than 2.5% as the maximum PCT.

The Agency believes that Conditions a, b, and c discussed above have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which novaluron may be applied in a particular area.

Drinking water and non-occupational exposures. An updated drinking water assessment (DWA) for the proposed use of novaluron on tree nuts (Crop Group 14–12) was conducted. The maximum screening-level estimated drinking water concentrations (EDWCs) for uses on tree nuts are 9.6 ppb (acute) and 0.89 ppb (chronic) from surface water sources. The calculated EDWCs for these commodities do not supersede the previously used EDWCs of 31 ppb (acute) and 8.4 ppb (chronic). Therefore, the previously recommended EDWCs remain current and are considered protective potential drinking water residue levels anticipated from the proposed tolerance updates to tree nuts. As stated in the August 13, 2020, rulemaking (85 FR 49261) (FRL–10011–78), the chronic dietary exposure and risk assessment incorporate the highest total EDWC of 8.4 parts per billion directly into this dietary assessment. The residential exposure assessment has not changed since the 2015 final rule because there are no proposed new residential uses. For a summary of the residential exposure analysis for novaluron used for the human risk assessment, please reference Unit III.C.3. of the July 22, 2015, rulemaking.

Cumulative exposure. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to novaluron and any other substances and novaluron does not appear to produce a toxic metabolite produced by other substances. For the purposes of this action, therefore, EPA has not assumed that novaluron has a common mechanism of toxicity with other substances.

Safety Factor for Infants and Children. EPA continues to conclude that there are reliable data to support the reduction of the Food Quality Protection Act (FQPA) safety factor from 10X to 1X. See Unit III.D. of the July 22, 2015, rulemaking for a discussion of the Agency's rationale for that determination.

Aggregate risks and determination of safety. EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute population-adjusted dose (aPAD) and chronic population-adjusted dose (cPAD).

Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate points of departure to ensure that an adequate margin of exposure (MOE) exists. For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure.

An acute dietary exposure assessment was not performed as there were no

appropriate toxicological effects attributable to a single exposure (dose) observed in available oral toxicity studies, including maternal toxicity in the developmental toxicity studies. Chronic dietary risks are below the Agency's level of concern of 100% of the cPAD; they are 47% of the cPAD for children 1 to 2 years old, the group with the highest exposure. The combined short- and intermediate-term food, water, and residential exposures result in aggregate MOEs of 3,500 for adults and 250 for children 1 to 2 years old. These MOEs are greater than the level of concern of 100 and are therefore not of concern. Novaluron is classified as ''Not Likely to Be Carcinogenic to Humans''; therefore, EPA does not expect novaluron exposures to pose an aggregate cancer risk.

Therefore, based on the risk assessments and information described above, EPA concludes there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to novaluron residues. More detailed information on this action can be found in the document titled ''Novaluron. Human Health Risk Assessment for Proposed New Uses on Nut, Tree, Group 14–12'' in docket ID EPA–HQ–OPP–2021–0355.

IV. Other Considerations

A. Analytical Enforcement Methodology

For a discussion of the available analytical enforcement method, see Unit IV.A. of the July 22, 2015, rulemaking.

B. International Residue Limits

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

There are no Codex MRLs for either Almond, hulls or the Nut, tree, group 14–12 crop group; therefore, harmonization is not an issue.

C. Revisions to Petitioned-For Tolerances

The Agency is establishing a 0.08 ppm tolerance level for Nut, tree, group 14–12, rather than at 0.07 ppm as proposed by the petitioner. The petitioner used the Organization for Economic Co-operation and Development (OECD) tolerance calculator but combined the almond and pecan data sets. EPA separately input the almond and pecan nutmeat data, which resulted in the higher residue. EPA is therefore using a tolerance level of 0.08 ppm (from almond data) as it is the higher of the two results. The commodity definition for ''Tree nuts, nutmeat (Crop Group 14–12)'' is also being modified to ''Nut, tree, group 14–12'' to be consistent with Agency nomenclature. EPA also revised the tolerance level for Almond, hulls to be consistent with the OECD rounding class practice.

V. Conclusion

Therefore, tolerances are established for residues of novaluron in or on Almond, hulls at 15 ppm and the Nut, tree, group 14–12 at 0.08 ppm.

VI. Statutory and Executive Order Reviews

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

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: March 4, 2022.

Marietta Echeverria,

Acting Director, Registration Division, Office of Pesticide Programs.

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

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

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

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

■ 2. Section 180.598(a) is amended by:

■ a. Adding a table heading; and

■ b. Adding the commodities ''Almond, hulls'' and ''Nut, tree, group 14–12'' to the table in alphabetical order.

The additions read as follows:

§ 180.598 Novaluron; tolerances for residues.

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
Almond, hulls	15
* * * * *	
Nut, tree, group 14–12	0.08
* * * * *	

* * * * *

[FR Doc. 2022–05060 Filed 3–9–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2020–0235; FRL–9067–01–OCSPP]

Buprofezin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of buprofezin in or on multiple commodities which are identified and discussed later in this document. The Interregional Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective March 10, 2022. Objections and requests for hearings must be received on or before May 9, 2022, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2020–0235, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and for the OPP Docket is (202) 566–1744.

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2020–0235 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before May 9, 2022. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2020–0235, by one of the following methods:

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

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

II. Summary of Petitioned-For Tolerance

In the **Federal Registers** of June 24, 2020 (85 FR 37806) (FRL–10010–82), and August 5, 2020 (85 FR 47330) (FRL–10012–32), EPA issued documents pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0E8828) by IR–4, North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606. These petitions requested that 40 CFR 180.511 be amended by establishing tolerances for residues of the insecticide buprofezin, 2-[(1,1 dimethylethyl)imino]tetrahydro-3(1-methylethyl)-5-phenyl-4*H*-1,3,5-thiadiazin-4-one, in or on asparagus bean, edible podded at 0.02 parts per million (ppm); bushberry subgroup 13–07B at 0.08 ppm; catjang bean, edible podded at 0.02 ppm; Chinese longbean, edible podded at 0.02 ppm; cowpea, edible podded at 0.02 ppm; french bean, edible podded at 0.02 ppm; garden bean, edible podded at 0.02 ppm; green bean, edible podded at 0.02 ppm; goa bean, edible podded at 0.02 ppm; guar

bean, edible podded at 0.02 ppm; jackbean, edible podded at 0.02 ppm; kidney bean, edible podded at 0.02 ppm; lablab bean, edible podded at 0.02 ppm; moth bean, edible podded at 0.02 ppm; mung bean, edible podded at 0.02 ppm; navy bean, edible podded at 0.02 ppm; rice bean, edible podded at 0.02 ppm; scarlet runner bean, edible podded at 0.02 ppm; snap bean, edible podded at 0.02 ppm; sword bean, edible podded at 0.02 ppm; urd bean, edible podded at 0.02 ppm; vegetable soybean, edible podded at 0.02 ppm; velvet bean, edible podded at 0.02 ppm; wax bean, edible podded at 0.02 ppm; winged pea, edible podded at 0.02 ppm; and yardlong bean, edible podded at 0.02 ppm.

In addition, IR–4 proposed, upon the approval of the aforementioned tolerances, to remove the established tolerance for the residues of buprofezin, including its metabolites and degradates in or on bean, snap, succulent at 0.02 ppm.

Three comments were received on the notices of filings. EPA's responses to these comments are discussed in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

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

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

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

Toxicological profile. For a discussion of the Toxicological Profile of buprofezin and aniline, a substance that may be formed as a degradate in food from buprofezin and its aniline-containing metabolites as a result of cooking, see Unit III.A. of the August 29, 2019 rulemaking (84 FR 45426) (FRL–9997–41). There is, however, a new discussion of the non-cancer toxicity characterization of aniline in Appendix F of the document titled ''Buprofezin. Human Health Risk Assessment for Proposed New Use on Bushberry Crop Subgroup 13–07B and Proposed Amendments to Expand Use on Succulent Beans to All Members of Proposed Edible Podded Bean Legume Vegetable Subgroup 6–XXA and Use on Greenhouse-Grown Tomatoes and Peppers to All Members of Fruiting Vegetable Crop Group 8–10'' (hereinafter ''Buprofezin Human Health Risk Assessment.'')

Toxicological points of departure/Levels of concern. For a summary of the Toxicological Points of Departure/Levels of Concern used for the risk assessment, see Unit III.B. of the August 29, 2019 rulemaking.

Exposure assessment. Much of the exposure assessment remains the same, although the dietary exposure and risk assessments for buprofezin and buprofezin-derived aniline were updated. These updates are discussed in this section; for a description of the rest of EPA's approach to and assumptions for the exposure assessment, see Unit III.C. of the August 29, 2019 rulemaking.

EPA's dietary exposure assessments have been updated to include the additional exposures for the new uses of buprofezin. The assessment used the same assumptions as the August 29, 2019 final rule concerning tolerance level residues, default and empirical processing factors for all processed commodities assumptions, and a conservative factor to account for the presence of the BF4 Conjugate (2-(2-hydroxy-1,1-dimethylethylimino)-3-isopropyl-5-phenyl-1,3,5-thiadiazinan-4-one). The acute dietary exposure assessment assumed 100 percent crop treated (PCT).

Updated PCT estimates were used in the chronic dietary risk assessment for crops that are currently registered for buprofezin: Almond 1%, apple 2.5%, apricot 5%, broccoli 2.5%, cabbage 2.5%, cantaloupe 15%, cauliflower 5%, celery 1%, cherry 10%, cotton 1%, cucumber 1%, grapefruit 5%, raisin grape 5%, table grape 10%, wine grape 2.5%, honeydew 75%, lemon 2.5%, lettuce 10%, nectarine 15%, olive 1%, orange 2.5%, peach 5%, pear 15%, pepper 1%, pistachio 15%, plum/prune 2.5%, pumpkin 1%, spinach 1%, squash 2.5%, strawberry 15%, tangerine 10%, tomato 1%, walnut 2.5%, and watermelon 1%. These average PCT data were also used to refine the cancer dietary exposure analysis for buprofezin-derived aniline. All other crops assumed 100% crop treated.

A cancer dietary exposure risk assessment for buprofezin was not conducted because the only evidence of carcinogenicity was for benign liver tumors in one sex (males) and one species (mouse); there was no evidence of carcinogenicity in rats of either sex or in female mice. An updated, highly refined cancer dietary exposure (cooked food forms only) and risk assessment for buprofezin-derived aniline residues, including those derived from aniline-containing metabolites of buprofezin, was conducted. This assessment was conducted using (1) buprofezin monitoring data for raw/uncooked agricultural commodities (RACs) provided by the United States Department of Agriculture Pesticide Data Program (PDP) to estimate average residues of buprofezin; (2) buprofezin field trial data; (3) empirical and EPA's 2018 default processing factors; (4) average buprofezin PCT data; and (5) the maximum conversion factor for buprofezin-derived aniline of 18.9%. The conversion factor of 18.9%, the highest found in a previously submitted hydrolysis study, was applied to

estimate residues of buprofezin-derived aniline which may form in food as a result of cooking. The highly refined estimated exposure of the highest exposed adult population (adults 50 to 99 years old) to buprofezin-derived aniline results in an upper bound cancer risk estimate of 3×10^{-7}.

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

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- *Condition a:* The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- *Condition b:* The exposure estimate does not underestimate exposure for any significant subpopulation group.
- *Condition c:* Data are available on pesticide use and food consumption in a particular area, and the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

In most cases, EPA uses available data from the United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the California Department of Pesticide Regulation (CalDPR) Pesticide Use Reporting (PUR) for the chemical/crop combination for the most recent 10 years. EPA uses an average PCT for chronic dietary risk analysis and a maximum PCT for acute dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding up to the nearest 5%, except for those situations in which the average PCT is less than 1% or less than 2.5%. In those cases, the Agency would use less than 1% or less than 2.5% as the average PCT value, respectively. The maximum PCT figure is the highest observed maximum value reported within the most recent 10 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%, except where the maximum PCT is less than 2.5%, in which case, the Agency uses less than 2.5% as the maximum PCT.

The Agency believes that Conditions a, b, and c discussed above have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which buprofezin may be applied in a particular area.

Drinking water, non-occupational, and cumulative exposures. Drinking water and non-occupational exposures are not impacted by the new uses, and thus have not changed since the last assessment. EPA's conclusions concerning cumulative risk remain unchanged from Unit III.C.2. of the August 29, 2019 rulemaking.

Safety factor for infants and children. EPA continues to conclude that a 10X FQPA SF must be retained for repeated exposure scenarios because those assessments are based on a study that did not show a No Observed Adverse Effect Level (NOAEL). EPA also continues to conclude that there is reliable data showing that the safety of infants and children would be adequately protected if the FQPA SF were reduced from 10X to 1X for single exposures. The reasons for these decisions are articulated in Unit III.D. of the August 29, 2019 rulemaking.

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

Acute dietary risks are below the Agency's level of concern of 100% of the aPAD; they are 5.8% of the aPAD for females 13–49 years old, which is the only population subgroup with an acute dietary endpoint. Chronic dietary risks are below the Agency's level of concern of 100% of the cPAD; they are 42% of the cPAD for children 1 to 2 years old, the most highly exposed subpopulation. Buprofezin is classified as ''Suggestive Evidence of Carcinogenicity, but not sufficient to assess human carcinogenic potential.'' EPA has determined that the quantification of risk using a non-linear (*i.e.,* reference dose) approach will adequately account for all chronic toxicity, including carcinogenicity, that could result from exposure to buprofezin. Because the chronic dietary risks are below the Agency's level of concern, buprofezin is not expected to pose a cancer risk to humans.

There are no data to determine an acute endpoint for aniline at this time; hence, an acute dietary risk assessment was not conducted for buprofezin-derived aniline. The highly refined estimated chronic exposure of the most highly exposed adult subpopulation (adults 50 to 99 years old) to buprofezin-derived aniline is 0.000052 mg/kg/day. Estimated chronic exposures to buprofezin-derived aniline are orders of magnitude below any potential chronic non-cancer reference dose for aniline. Therefore, a quantitative chronic non-cancer dietary risk assessment for buprofezin-derived aniline is not necessary to conclude with reasonable certainty that chronic exposures from buprofezin-derived aniline do not pose a non-cancer dietary risk. The highly refined estimated chronic exposure of the most highly exposed adult subpopulation results in an upper bound cancer risk estimate of 3×10^{-7},

which is below the Agency's level of concern of 1×10^{-6}.

There are no residential uses of buprofezin; therefore, the aggregate risk assessment is equivalent to the acute and chronic dietary (food and drinking water) exposure and risk assessments to buprofezin and buprofezin-derived aniline and are not of concern.

Therefore, based on the risk assessments and information described above, EPA concludes there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to buprofezin residues. More detailed information about the Agency's analysis can be found at *https://www.regulations.gov* in the document ''Buprofezin Human Health Risk Assessment'' in docket ID number EPA–HQ–OPP–2020–0235.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methods are available in Pesticide Analytical Manual Volume I (PAM I) and PAM II for enforcement of buprofezin tolerances, including gas chromatography methods with nitrogen phosphorus detection (GC/NPD), and a GC/mass spectrometry (GC/MS) method for confirmation of buprofezin residues in plant and livestock commodities. The GC/MS method used for plant commodities utilizes three ions for identification of buprofezin. The validated limit of quantitation (LOQ) was 0.05 ppm. In addition, method BF/10/97 is an adequate enforcement method for enforcement of buprofezin tolerances in/on bean commodities. The LOQ is 0.02 ppm.

B. International Residue Limits

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

No Codex MRLs have been established for residues of buprofezin in/on the proposed commodities in this action.

C. Response to Comments

Although three comments were submitted to the docket in response to the June 24, 2020, and August 5, 2020 notifications of filings, only one specifically related to this tolerance action. This comment was from a representative from the Republic of Ecuador. The commenter's concern was that the proposed U.S. MRLs for buprofezin on beans at 0.02 ppm would prevent beans from Ecuador from being imported and marketed in the U.S. because of buprofezin residues higher than 0.02 ppm. The commenter was also concerned that the U.S. would reduce the tolerance for residues in/on beans to be more restrictive. The commenter also stated that it is essential for pesticide tolerances to be based on scientific evidence, conclusive data and not under the precautionary principle.

The existing tolerance for residues in/on bean, snap, succulent is based on previously submitted and reviewed field trial residue data that demonstrate that residues of buprofezin in/on snap beans are less than the limit of quantitation, which is 0.02 ppm. The petitioner requested, and EPA agrees that it is appropriate, to extrapolate the field trial data on succulent snap beans to support tolerances for residues in/on the 25 specific edible podded bean commodities. Therefore, this action is based on scientific evidence and conclusive data and actually increases the tolerances for most of the edible podded bean commodities from zero (not existent) to 0.02 ppm. Ecuador has adopted the established European Union (EU) MRL of 0.01 ppm for residues of buprofezin in/on beans (with pods) and beans (without pods). The recommended U.S. tolerance of 0.02 ppm for residues of buprofezin in/on individual edible podded bean commodities is not more restrictive than this MRL. The U.S. tolerances are based on the use pattern that is registered in the U.S. If the use pattern is different in Ecuador, the bean growers or another organization could submit a petition for an import tolerance for residues of buprofezin in/on beans, with supporting field trial residue data based on the alternate use pattern. EPA would review such a petition to determine if it meets the statutory standard that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to buprofezin residues.

D. Revisions to Petitioned-For Tolerances

Most of the proposed commodity definitions have been modified to be consistent with Agency nomenclature.

V. Conclusion

Therefore, tolerances are established for residues of buprofezin, 2-[(1,1-dimethylethyl)imino]tetrahydro-3-(1-methylethyl)-5-phenyl-4*H*-1,3,5-thiadiazin-4-one, in or on Bean, asparagus, edible podded at 0.02 ppm; Bean, catjang, edible podded at 0.02 ppm; Bean, french, edible podded at 0.02 ppm; Bean, garden, edible podded at 0.02 ppm; Bean, goa, edible podded at 0.02 ppm; Bean, green, edible podded at 0.02 ppm; Bean, guar, edible podded at 0.02 ppm; Bean, kidney, edible podded at 0.02 ppm; Bean, lablab, edible podded at 0.02 ppm; Bean, moth, edible podded at 0.02 ppm; Bean, mung, edible podded at 0.02 ppm; Bean, navy, edible podded at 0.02 ppm; Bean, rice, edible podded at 0.02 ppm; Bean, scarlet runner, edible podded at 0.02 ppm; Bean, snap, edible podded at 0.02 ppm; Bean, sword, edible podded at 0.02 ppm; Bean, urd, edible podded at 0.02 ppm; Bean, wax, edible podded at 0.02 ppm; Bean, yardlong, edible podded at 0.02 ppm; Bushberry subgroup 13–07B at 0.08 ppm; Cowpea, edible podded at 0.02 ppm; Jackbean, edible podded at 0.02 ppm; Longbean, chinese, edible podded at 0.02 ppm; Pea, winged, edible podded at 0.02 ppm; Soybean, vegetable, edible podded at 0.02 ppm; and Velvetbean, edible podded at 0.02 ppm.

Upon establishment of the aforementioned tolerances, the established tolerance for the residues of buprofezin, including its metabolites and degradates in or on Bean, snap, succulent at 0.02 ppm will be removed, as it is superseded by the new tolerances on the edible podded bean commodities. In addition, EPA is revising the tolerance expression in paragraph (a) to correct the chemical name of buprofezin.

VI. Statutory and Executive Order Reviews

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

Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: March 4, 2022.

Marietta Echeverria,

Acting Director, Registration Division, Office of Pesticide Programs.

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

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

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

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

■ 2. In § 180.511, amend paragraph (a) by:

■ a. Revising the introductory text.

■ b. Adding in alphabetical order to the table the entries ''Bean, asparagus, edible podded''; ''Bean, catjang, edible podded''; ''Bean, french, edible podded''; ''Bean, garden, edible podded''; ''Bean, goa, edible podded''; ''Bean, green, edible podded''; ''Bean, guar, edible podded''; ''Bean, kidney, edible podded''; ''Bean, lablab, edible podded''; ''Bean, moth, edible podded''; ''Bean, mung, edible podded''; ''Bean, navy, edible podded''; ''Bean, rice, edible podded''; ''Bean, scarlet runner, edible podded''; and ''Bean, snap, edible podded''.

■ c. Removing the entry from the table for ''Bean, snap, succulent''.

■ d. Adding in alphabetical order to the table the entries ''Bean, sword, edible podded''; ''Bean, urd, edible podded''; ''Bean, wax, edible podded''; ''Bean, yardlong, edible podded''; ''Bushberry subgroup 13–07B''; ''Cowpea, edible podded''; ''Jackbean, edible podded''; ''Longbean, chinese, edible podded''; ''Pea, winged, edible podded''; ''Soybean, vegetable, edible podded''; and ''Velvetbean, edible podded''.

The revision and additions read as follows:

§ 180.511 Buprofezin; tolerances for residues.

(a) *General.* Tolerances are established for residues of buprofezin, including its metabolites and degradates in or on the commodities in the table in this paragraph (a). Compliance with the tolerance levels specified in the table in this paragraph (a) is to be determined by measuring only the buprofezin, 2-[(1,1-dimethylethyl)imino]tetrahydro-3-(1-methylethyl)-5-phenyl-4*H*-1,3,5-thiadiazin-4-one, in the commodity.

Commodity	Parts per million
* * * * *	
Bean, asparagus, edible podded	0.02
Bean, catjang, edible podded	0.02
Bean, french, edible podded	0.02
Bean, garden, edible podded	0.02
Bean, goa, edible podded	0.02
Bean, green, edible podded	0.02
Bean, guar, edible podded	0.02
Bean, kidney, edible podded	0.02
Bean, lablab, edible podded	0.02
Bean, moth, edible podded	0.02
Bean, mung, edible podded	0.02
Bean, navy, edible podded	0.02
Bean, rice, edible podded	0.02
Bean, scarlet runner, edible podded	0.02
Bean, snap, edible podded	0.02
* * * * *	
Bean, sword, edible podded	0.02
Bean, urd, edible podded	0.02
Bean, wax, edible podded	0.02
Bean, yardlong, edible podded	0.02
* * * * *	
Bushberry subgroup 13–07B	0.08
* * * * *	
Cowpea, edible podded	0.02
* * * * *	
Jackbean, edible podded	0.02
* * * * *	
Longbean, chinese, edible podded	0.02
* * * * *	
Pea, winged, edible podded	0.02
* * * * *	
Soybean, vegetable, edible podded	0.02
* * * * *	
Velvetbean, edible podded	0.02

* * * * *

[FR Doc. 2022–05065 Filed 3–9–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R10–RCRA–2021–0439; FRL–8853–02–R10]

Oregon: Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final authorization.

SUMMARY: Oregon applied to the Environmental Protection Agency (EPA) for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. EPA has reviewed Oregon's application and has determined that these changes satisfy all requirements needed to qualify for

authorization. EPA sought public comment under Docket #EPA–R10–RCRA–2021–0439 from October 5, 2021, to November 4, 2021, prior to taking this final action to authorize these changes. EPA received five comments, only one of which was adverse. EPA's response to the comment and rationale for this final action are provided below.

DATES: This final authorization is effective April 11, 2022.

FOR FURTHER INFORMATION CONTACT: Margaret Olson, U.S. Environmental Protection Agency, Region 10, Oregon Operations Office, 805 SW Broadway, Suite 500, Portland, Oregon 97205, phone number: (503) 326–5874, email: *olson.margaret@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. Why are revisions to state programs necessary?

States that have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, states must change their programs and ask EPA to authorize the changes. Changes to state programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

Oregon State's hazardous waste management program received final authorization on January 30, 1986 (51 FR 3779), to implement the RCRA hazardous waste management program. As explained in section E of this document, Oregon's program has been revised and reauthorized numerous times since then. On October 16, 2020, Oregon submitted a complete program revision application seeking authorization of changes to its hazardous waste program that correspond to certain Federal rules promulgated between October 22, 1998, and April 17, 2015. The below rules have been adopted by Oregon as of July 12, 2017. The Federal rules adopted by Oregon include the Hazardous Waste Manifest Printing Specifications Correction Rule (76 FR 36363, June 22, 2011), Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities: Post-Closure Permit Requirement; Closure Process (63 FR 56710, October 22, 1998), Used Oil Management Standards (75 FR 76633, September 8, 2005), Standardized Permit for RCRA HW Management Facilities (70 FR 53420, September 8, 2005), NESHAP: Standards for RCRA HW Management Facilities (73 FR 18970, April 8, 2008), Amendment to Hazardous Waste Code F019 (73 FR 31756, June, 4, 2008), Academic Laboratories Generator Standards (73 FR 72911, December 1, 2008), Export Shipments of Lead-Acid Batteries (75 FR 1236, January 9, 2010), Hazardous Waste Technical Corrections and Clarifications Rule (75 FR 12989, March 18, 2010), Withdrawal of the Emissions Comparable Fuel Exclusion (75 FR 33712, June 5, 2010), Removal of Saccharin and its Salt from the Lists of Hazardous Constituents (75 FR 78918, December 17, 2010), Academic Laboratories Generator Standards Technical Corrections (75 FR 79304, December 20, 2010), Revision of the Treatment Standards for Carbamate Wastes (76 FR 34147, June 13, 2011), Hazardous Waste Technical Corrections and Clarifications Rule (77 FR 22229, July 31, 2013), Conditional Exclusions for Solvent-Contaminated Wipes (78 FR 46447, July 31, 2013), Modifications of Hazardous Waste Manifest System: Electronic Manifest (79 FR 7518, February 7, 2014), Revisions to the Export Provisions of the Cathode Ray Tube (78 FR 36220, June 26, 2014), Vacatur of the Comparable Fuels Rule and the Gasification Rule (80 FR 18777, April 8, 2015), and Disposal of Coal Combustion Residues from Electric Utilities (80 FR 21301, April 17, 2015). Of the 19 rules being authorized by this action, some State rules contain more stringent and/or broader in scope provisions. For identification of these provisions refer to the authorization revision application's Attorney General Statement and Checklists found in the docket for this action.

The EPA is authorizing Oregon's revised hazardous waste program in its entirety through July 12, 2017, as described above.

B. What decisions has EPA made in this action?

EPA has reviewed Oregon's application to revise its authorized program and has determined that it meets the statutory and regulatory requirements established by RCRA. Therefore, EPA is granting Oregon final authorization to operate its hazardous waste management program with the changes described in the authorization revision application and supporting materials. Oregon will continue to have responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian country (18 U.S.C. 1151)) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA, and which are not less stringent than existing requirements, take effect in authorized States before the States are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Oregon, including issuing permits, until Oregon is granted authorization to do so.

C. What is the effect of this final authorization decision?

A person in Oregon subject to RCRA must comply with the authorized State requirements in lieu of the corresponding Federal requirements. Additionally, such persons will have to comply with any applicable Federal requirements, such as HSWA regulations issued by EPA for which the State has not received authorization and RCRA requirements that are not supplanted by the authorized State requirements. Oregon will continue to have primary enforcement authority and responsibility for its State hazardous waste program. EPA will maintain its authorities under RCRA sections 3007, 3008, 3013, and 7003, including its authority to:

- Conduct inspections, and require monitoring, tests, analyses and reports;
- Enforce RCRA requirements, including authorized State program requirements;
- Suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action will not impose additional requirements on the regulated community because the regulations which EPA is proposing to authorize in Oregon are already effective under state law and are not changed by the act of authorization.

D. What were the comments received on this authorization action?

The EPA received five comments during the public comment period of this action (86 FR 54894, October 5, 2021), four of which were supportive, and one of which was opposed to this action. All the comments received are included in the docket for this action.

The adverse commenter questioned EPA's authorization of Oregon's rule conditionally excluding solvent-contaminated wipes from RCRA

requirements, stating: ''why is Oregon proposing a more stringent ruling on solvent-contaminated wipes when they can easily be excluded using broad language under the EPA?'' The commenter also raised questions about how solvent-contaminated wipes would be managed under Oregon's rule. According to the commenter, ''[t]he plan for how the wipes will be taken care of now that they are classified as hazardous waste should be addressed before the approval is completed for this proposal.''

RCRA Section 3006 sets forth three criteria EPA must evaluate in determining whether to authorize a State program: Whether the State program is equivalent to the Federal program; whether the State program is consistent with Federal or State programs applicable in other States; and, whether the State program provides adequate enforcement of compliance with RCRA requirements. In addition, under RCRA Section 3009, states may adopt RCRA programs that are more stringent than Federal regulations, and EPA may authorize and enforce such more-stringent regulations. See 40 CFR 271.1(i)(1).

As noted in EPA's proposed action and in this final authorization, EPA has determined that Oregon's changes to its hazardous waste program—including the State's adoption of the conditional exclusion for solvent-contaminated wipes—meet the statutory criteria for authorization under RCRA Sections 3006 and 3009. EPA's exclusion for solvent-contaminated wipes is codified at 40 CFR 261.4(b)(18), and Oregon adopts by reference that provision at OAR 340–100–0002(1), with the exception of changes to the Federal rule identified at OAR 340–101–0004(3) through (5), which eliminate certain disposal options from the exclusion. In other words, Oregon's rules are consistent with EPA's rules with regard to management of excluded solvent-contaminated wipes and are more stringent with regard to their disposal. Thus, EPA has determined that Oregon's requested changes to its hazardous waste program are consistent with RCRA requirements and is finalizing authorization of those changes in this action.

E. What has Oregon previously been authorized for?

Oregon initially received final authorization on January 30, 1986, effective January 31, 1986 (51 FR 3779), to implement the RCRA hazardous waste management program. EPA granted authorization for changes to Oregon's program on March 30, 1990, effective on May 29, 1990 (55 FR 11909); August 5, 1994, effective October 4, 1994 (59 FR 39967); June 16, 1995, effective August 15, 1995 (60 FR 31642); October 10, 1995, effective December 7, 1995 (60 FR 52629); September 10, 2002, effective September 10, 2002 (67 FR 57337); June 26, 2006 effective June 26, 2006 (71 FR 36216); and January 7, 2010, effective January 7, 2010 (75 FR 918).

F. What changes is the EPA authorizing with this action?

EPA is authorizing revisions to Oregon's authorized RCRA program as described in Oregon's official program revision application, submitted to EPA on October 16, 2020, and deemed complete by EPA on November 19, 2020. EPA has determined that Oregon's hazardous waste management program revisions as described in the October 16, 2020 State's authorization revision application satisfy the requirements necessary to quality for final authorization. Oregon's authorized hazardous waste management program, as amended by these provisions remains equivalent to, consistent with, and is no less stringent than the Federal RCRA program. Therefore, EPA is granting Oregon's request for RCRA program authorization revision for the program changes as noted in Section A of this document.

G. Where are the revised State rules different from the Federal rules?

Under RCRA Section 3009, the EPA may not authorize State rules that are less stringent than the Federal program. Any State rules that are less stringent do not supplant the Federal regulations. State rules that are broader in scope than the Federal program requirements are allowed but are not authorized. State rules that are equivalent to, determined functionally equivalent, and State rules that are more stringent than the Federal program may be authorized, in which case those provisions are federally enforceable.

The following Oregon provisions documented in this authorization action are more stringent than the Federal program:

- Oregon is more stringent than the Federal program at OAR 340–102–0041(2) by requiring annual reporting rather than biennial reporting.
- Oregon is more stringent than the Federal program at OAR 340–102–0200(4) which requires when opting-in to Subpart K, an eligible academic entity is required to submit their completed Laboratory Management Plan as defined in 40 CFR 262.214.
- Oregon is more stringent than the Federal program at OAR 340–102–0200(2) which requires container labels be affixed or attached to the container and eliminates the possibility of these labels being associated with the wrong container.
- Oregon is more stringent than the Federal program at OAR 340–101–0004(4) and (5) by requiring containers of solvent contaminated wipes be either laundered or disposed as hazardous waste. Oregon does not allow disposal of solvent contaminated wipes in a municipal landfill or non-hazardous waste incinerator.

Oregon is broader in scope than the Federal program documented in this authorization action by requiring academic laboratories that opt into subpart K to obtain an EPA identification number.

H. Who handles permits after the final authorization takes effect?

Oregon will continue to issue permits for all the provisions for which it is authorized and will administer the permits it issues. Permits issued by EPA prior to authorizing Oregon for these revisions would continue in force until the effective date of the State's issuance or denial of a State hazardous waste management permit, at which time, EPA would modify the existing EPA permit to expire at an earlier date, terminate the existing EPA permit, or allow the existing EPA permit to otherwise expire by its terms, except for those facilities located in Indian Country. EPA will not issue new permits or new portions of permits for provisions for which Oregon is authorized after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Oregon is not yet authorized.

I. How does this action affect Indian country (18 U.S.C. 1151) in Oregon?

Oregon is not authorized to carry out its hazardous waste program in Indian country within the State, which includes:

- All lands within the exterior boundaries of Indian reservations within or abutting the State of Oregon.
- Any land held in trust by the U.S. for an Indian tribe; and
- Any other land, whether on or off an Indian reservation, that qualifies as Indian country.

Therefore, this action has no effect on Indian country. EPA retains jurisdiction over Indian country and will continue to implement and administer the RCRA program on these lands.

J. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action will authorize State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant, and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), the EPA grants a state's application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in authorizing Oregon's updated RCRA program, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of this action in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). ''Burden'' is defined at 5 CFR 1320.3(b).

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this action authorizes pre-existing State rules which are at least equivalent to, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, this action is not subject to Executive Order 12898.

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

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: March 4, 2022.

Michelle Pirzadeh,

Acting Regional Administrator, Region 10.

[FR Doc. 2022–05012 Filed 3–9–22; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 87, No. 47
Thursday, March 10, 2022

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

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[EERE–2019–BT–TP–0024]

RIN 1904–AE51

Energy Conservation Program: Test Procedure for Ceiling Fan Light Kits

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

ACTION: Notice of proposed rulemaking and announcement of public meeting.

SUMMARY: The U.S. Department of Energy (''DOE'') proposes to amend the test procedure for ceiling fan light kits (''CFLKs''). DOE proposes to update references to industry standards to their latest versions and incorporate industry standards necessary for executing the test; to allow for the use of a goniophotometer; to revise definitions regarding CFLKs with solid-state lighting (''SSL'') light sources to clarify the scope and test methods for CFLKs; and to remove obsolete provisions. DOE is seeking comment from interested parties on the proposal.

DATES: DOE will accept comments, data, and information regarding this proposal no later than May 9, 2022. See section V, ''Public Participation,'' for details. DOE will hold a webinar on Monday, April 11, 2022, from 1:00 p.m. to 2:30 p.m. See section V, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants. If no participants register for the webinar, it will be cancelled.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov,* under docket number EERE–2019–BT– TP–0024. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments by email to *CFLK2019TP0024@ee.doe.gov.* Include docket number EERE–2019–BT–TP–0024 in the subject line of the message. No telefacsimiles (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see section V of this document.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing coronavirus 2019 (''COVID–19'') pandemic. DOE is currently suspending receipt of public comments via postal mail and hand delivery/courier. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the COVID–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts (if a public meeting is held), comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *www.regulations.gov/docket?D=EERE-2019-BT-TP-0024.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Dr. Stephanie Johnson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1943. Email *ApplianceStandardsQuestions@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.Whitting@hq.doe.gov.*

For further information on how to submit a comment, review other public comments and the docket, or participate in a public meeting (if one is held), contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE proposes to maintain a previously approved incorporation by reference and to incorporate by reference the following industry standards into 10 CFR part 430:

ANSI/IES LM–9–20—Approved Method: Electrical and Photometric Measurement of Fluorescent Lamps, Approved February 7, 2020 (''IES LM–9–20'').

ANSI/IES LM–54–20—Approved Method: IES Guide to Lamp Seasoning, Approved February 7, 2020 (''IES LM–54–20'').

IESNA LM–75–01/R12—Goniophotometer Types and Photometric Coordinates, Approved August 4, 2001.

IES LM–78–17—Approved Method: Total Flux Measurement of Lamps Using an Integrating Sphere, Approved January 9, 2017.

ANSI/IES LM–78–20—Approved Method: Total Luminous Flux Measurement of Lamps Using an Integrating Sphere Photometer, Approved February 7, 2020 (''IES LM–78–20'').

ANSI/IES LM–79–19—Approved Method: Optical and Electrical Measurements of Solid-State Lighting Products, Approved February 28, 2019 (''IES LM–79–19'').

Copies of IES LM–9–20, IES LM–54–20, IESNA LM–75–01/R12, IES LM–78–17, IES LM–78–20, and IES LM–79–19 can be obtained by going to *https://www.ies.org/store.*

For a further discussion of these standards, see section IV.M.

Table of Contents

I. Authority and Background

DOE's energy conservation standards and test procedures for CFLKs are currently prescribed at title 10 of the Code of Federal Regulations (''CFR''), part 430 section 32(s), 10 CFR part 430, subpart B, appendix V (''Appendix V''), and 10 CFR part 430, subpart B, appendix V1 (''Appendix V1''). The following sections discuss DOE's authority to establish test procedures for CFLKs and relevant background information regarding DOE's consideration of test procedures for this product.

A. Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. These products include CFLKs, the subject of this document. (42 U.S.C. 6291(50), 42 U.S.C. 6293(16)(A)(ii), 42 U.S.C. 6295(ff)(2)–(5))

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making other representations about the efficiency of those consumer products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the products comply with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6297(d))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

EPCA, as codified, directs DOE to establish test procedures for CFLKs based on the test procedures referenced in the Energy Star specifications for Residential Light Fixtures and Compact Fluorescent Light Bulbs, as in effect on August 8, 2005. EPCA also specifies that once established, DOE may review and revise the test procedures. (42 U.S.C. 6293(b)(16))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including CFLKs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(1)(A))

If the Secretary determines, on her own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the **Federal Register** proposed test procedures and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedures. The comment period on a proposed rule to amend a test procedure shall be at least 60 days and may not exceed 270 days. In prescribing or amending a test procedure, the Secretary shall take into account such information as the Secretary determines relevant to such procedure, including technological developments relating to energy use or energy efficiency of the type (or class) of covered products involved. (42 U.S.C. 6293(b)(2)). If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures. (42 U.S.C. 6293(b)(1)(A)(ii))

In addition, EPCA requires that DOE amend its test procedures for all covered products to integrate measures of standby mode and off mode energy consumption. (42 U.S.C. 6295(gg)(2)(A)) Standby mode and off mode energy consumption must be incorporated into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product unless the current test procedures already account for and incorporate standby and off mode energy consumption or such integration is technically infeasible. If an integrated test procedure is technically infeasible, DOE must prescribe a separate standby mode and off mode energy use test procedure for the covered product, if technically feasible. (42 U.S.C. 6295(gg)(2)(A)(ii)) Any such amendment must consider the most current versions of the International Electrotechnical

[1] All references to EPCA in this document refer to the statute as amended through the Infrastructure Investment and Jobs Act, Public Law 117–58 (Nov. 15, 2021).

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

Commission (''IEC'') Standard 62301 [3] and IEC Standard 62087 [4] as applicable. (42 U.S.C. 6295(gg)(2)(A))

DOE is publishing this notice of proposed rulemaking (''NOPR'') in satisfaction of the 7-year review requirement specified in EPCA. (42 U.S.C. 6293(b)(1)(A))

B. Background

DOE's existing test procedure for CFLKs appears at title 10 of the CFR part 430, subpart B, appendix V (''Uniform Test Method for Measuring the Energy Consumption of Ceiling Fan Light Kits With Pin-Based Sockets for Fluorescent Lamps'') and title 10 of the CFR part 430, subpart B, appendix V1 (''Uniform Test Method for Measuring the Energy Consumption of Ceiling Fan Light Kits Packaged With Other Fluorescent Lamps (not Compact Fluorescent Lamps or General Service Fluorescent Lamps), Packaged With Other SSL Lamps (not Integrated LED [light-emitting diode] Lamps), or With Integrated SSL Circuitry'').

On December 24, 2015, DOE published a final rule (''December 2015 Final Rule'') making two key updates to its CFLK test procedure. 80 FR 80209 (Dec. 24, 2015) First, DOE updated the CFLK test procedure to require that representations of efficacy, including certifications of compliance with CFLK standards, be made according to the corresponding DOE lamp test procedures, where they exist (*e.g.,* for a CFLK with medium screw base sockets that is packaged with compact fluorescent lamps (''CFLs''), the CFLK test procedure references the DOE test procedure for CFLs at 10 CFR 430.23(y)). 80 FR 80209, 80211. Second, DOE updated the CFLK test procedure by establishing in a separate appendix, *i.e.,* appendix V1, the test procedure for CFLKs packaged with inseparable light sources that require luminaire efficacy testing (*e.g.,* CFLKs with integrated SSL circuitry) and for CFLKs packaged with lamps for which DOE test procedures did not exist. 80 FR 80209, 80212. With these changes, the December 2015 Final Rule aligned CFLK requirements for measuring efficacy of lamps and/or light sources in CFLKs with current DOE lamp test procedures.

The December 2015 Final Rule also replaced references to superseded ENERGY STAR requirements with the latest versions of industry standards in appendix V, the test procedure for measuring system efficacy of the lamp-and-ballast platform. Additionally, for ease of reference, the final rule replaced references to ENERGY STAR requirements in existing CFLK standards contained in 10 CFR 430.32(s) with the specific requirements. 80 FR 80209, 80211. Further, in that final rule, DOE determined that it accounts for standby mode energy consumption of CFLKs under the efficiency metric for ceiling fans rather than under the CFLK efficiency metric; and therefore, did not specify a standby mode test procedure for CFLKs. 80 FR 80209, 80212. Representations regarding CFLKs subject to the January 21, 2020 standards must be based on the amended test procedure, including appendix V1.[5] *See* 80 FR 80209, 80220; 81 FR 580 (January 6, 2016); 83 FR 22587 (May 16, 2018).

On August 6, 2021, DOE published a NOPR amending the certification requirements for CFLKs (''August 2021 NOPR''). 86 FR 43120 (Aug. 6, 2021) In the August 2021 NOPR, DOE proposed to update the reporting requirements for CFLKs to address the January 21, 2020 standards and remove the reporting requirements for the January 1, 2007 standards. The August 2021 NOPR proposed to align the CFLK certification reporting requirements at 10 CFR 429.33 with the CFLK energy conservation standards relating to: (a) Efficacy for light sources in CFLKs; (b) lumen maintenance, lifetime, and rapid cycle stress testing for medium screw base CFLs in CFLKs; (c) electronic ballasts for pin-based fluorescent lamps in CFLKs; (d) test sample size; and (e) kind of lamp. 86 FR 43126, 43128.

EPCA requires DOE to review test procedures for covered products at least once every 7 years. 42 U.S.C. 6293(b)(1)(A) DOE initiated the first step in the 7 year review process by publishing a request for information (''RFI'') document on May 4, 2021 (''May 2021 RFI''), which identified specific issues on which DOE seeks input to aid in its analysis of whether an amended test procedure for CFLKs would more accurately or fully comply with the requirement that the test procedure produces results that measure energy use during a representative average use cycle for the product, and not be unduly burdensome to conduct. 86 FR 23635.

DOE received comments in response to the May 2021 RFI from the interested parties listed in Table I.1.

TABLE I.1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE MAY 2021 RFI

Commenter(s)	Reference in this NOPR	Commenter type
kecaph	kecaph	Private Citizen.
American Lighting Association	ALA	Trade Association.
California Investor-Owned Utilities	CA IOUs	Utilities.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[6]

C. Deviation From Appendix A

In accordance with section 3(a) of 10 CFR part 430, subpart C, appendix A (''appendix A''), DOE notes that it is deviating from the provision in appendix A regarding publication of an additional pre-NOPR rulemaking document. Section 8(b) of appendix A. DOE is opting to deviate from this step because, as discussed in the following section DOE's proposal is limited to updating the referenced version of the applicable industry standard, proposing certain terminology changes, and deleting an obsolete reference. DOE has tentatively determined the proposals do not require consideration of test data or market data that would typically be requested through an additional pre-

[3] IEC 62301, *Household electrical appliances—Measurement of standby power* (Edition 2.0, 2011–01).

[4] IEC 62087, *Audio, video and related equipment—Methods of measurement for power consumption* (Edition 1.0, Parts 1–6: 2015, Part 7: 2018). 1–04).

[5] DOE published a final rule that changed the compliance date from January 7, 2019 to January 21, 2020 to comply with Public Law 115–161, ''Ceiling Fan Energy Conservation Harmonization Act'' (the ''Act''), which was signed into law on April 3, 2018. 83 FR 22587 (May 16, 2018). The Act amended the compliance date for CFLK standards to establish a single compliance date for the energy conservation standards for both CFLKs and ceiling fans. *Id.*

[6] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for CFLKs. (Docket No. EERE–2019–BT–TP–0024, which is maintained at *www.regulations.gov*). The references are arranged as follows: (Commenter name, comment docket ID number at page of that document).

NOPR rulemaking document, such as an RFI or notice of data availability.

II. Synopsis of the Notice of Proposed Rulemaking

In this NOPR, DOE proposes to update 10 CFR 430.23(x), appendix V, and appendix V1 as follows: (1) Update references to industry standards to their latest versions and incorporate industry standards necessary for executing the test; (2) modify appendix V1 to allow for the use of a goniophotometer; (3) revise definitions regarding CFLKs with SSL light sources in appendix V1 to clarify the scope and test methods for CFLKs; and (4) remove appendix V, the test procedure that must be used for CFLKs with pin-based sockets that are manufactured on or after January 1, 2007, and prior to January 21, 2020 and rename appendix V1 as appendix V.

DOE's proposed actions are summarized in Table II.1 compared to the current test procedure as well as the reason for the proposed change.

TABLE II.1—SUMMARY OF CHANGES IN PROPOSED TEST PROCEDURE RELATIVE TO CURRENT TEST PROCEDURE

Current DOE test procedure	Proposed test procedure	Attribution
References the 2009 version of IES LM–9 for taking electrical and photometric measurement of fluorescent lamps in appendix V1.	Adopts the latest version, *i.e.,* 2020, of the referenced industry standard.	Harmonize with updated industry standards.
References the 2008 version of IES LM–79, which provides methods for taking electrical and photometric measurements of SSL products in appendix V1.	Adopts the latest version, *i.e.,* 2019, of the referenced industry standard.	Harmonize with updated industry standards.
Does not incorporate IES LM–54, the industry standard for lamp seasoning, in appendix V1.	Adopts IES LM–54 which is referenced for lamp seasoning in IES LM–9.	Industry standard addition in test procedure.
Does not incorporate IES LM–78, the industry standard for measurements in an integrating sphere, in appendix V1.	Adopts IES LM–78–20 which is referenced for integrating sphere measurements in IES LM–9 and adopts IES LM–78–17 which is referenced for integrating sphere measurements in IES LM–79.	Industry standard addition in test procedure.
Defines ''CFLK with integrated SSL circuitry'' and ''other SSL products'' in appendix V1.	Updates the term names and definitions for ''CFLK with integrated SSL circuitry'' and ''other SSL products,'' to ''CFLK with non-consumer-replaceable SSL circuitry'' and ''CFLK with consumer-replaceable SSL circuitry,'' respectively. Updates the definitions for these terms.	Clarifies the categories CFLK products fall into, and thereby the test methods (*i.e.,* luminaire or lamp efficacy) to which they are subject.
References appendix V and appendix V1	Removes appendix V	Removes a section of the test procedure that is no longer applicable.
Does not allow the use of a goniophotometer	Allows the use of a goniophotometer and adopts IESNA LM–75, which is referenced for goniophotometer measurements in IES LM–79.	Allows manufacturers flexibility in testing.

DOE has tentatively determined that the proposed amendments described in section III of this NOPR would not alter the measured efficiency of CFLKs or require retesting or recertification solely as a result of DOE's adoption of the proposed amendments to the test procedures, if made final. DOE has tentatively determined that the proposed amendments described in section III of this NOPR are reasonably designed to more accurately measure energy efficiency for CFLKs during a representative average use cycle and are not overly burdensome to conduct. Additionally, DOE has tentatively determined that the proposed amendments, if made final, would not increase the cost of testing. Discussion of DOE's proposed actions are addressed in detail in section III of this NOPR.

III. Discussion

Although the May 2021 RFI requested comments, information and data regarding several specific issues, DOE welcomed written comments from the public on any subject within the scope of the document (including topics not raised in the RFI). In response to the May 2021 RFI, DOE received several general comments. Kecaph stated that ceiling fan lights need to be inspected and that the public is not going to pay for light fixtures that are not working properly. (kecaph, No. 2 at p. 1) Regarding early assessment RFIs, the CA IOUs reiterated their recent comments to DOE's NOPR on Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment (''Process Rule''). The CA IOUs generally supported DOE's proposal to remove inactive components of the test procedure and update references to industry resources, but the CA IOUs believed that early assessment RFIs are largely unnecessary. Instead, the CA IOUs recommended that DOE return to the publication of a RFI as the first step of a rulemaking. (CA IOUs, No. 3 at pp. 1–2)

As stated in section I.A, DOE is publishing this NOPR to satisfy the 7-year review requirement specified in EPCA to review test procedures for CFLKs. The scope of this NOPR does not cover inspection of installed ceiling fan lights, but rather addresses how to measure their energy efficiency. The scope of this notice also does not cover changes to the Process Rule. More information regarding updates to the Process Rule can be found on *www.regulations.gov* under docket number EERE–2021–BT–STD–0003–0044.

ALA stated that it strongly supported that all assessments of standby power continue to be calculated with the ceiling fan's standby power. (ALA, No. 4 at p. 2) As discussed in section I.B of this document, DOE determined in the December 2015 Final Rule that standby mode energy consumption of CFLKs is accounted for under the efficiency metric for ceiling fans, rather than under the CFLK efficiency metric; and therefore did not specify a standby mode test procedure for CFLKs. 80 FR 80209, 80212. DOE continues to find this determination valid and therefore is not proposing a standby mode test procedure for CFLKs in this NOPR.

A. Scope of Applicability

This rulemaking addresses the DOE test procedure for CFLKs. DOE defines CFLKs as follows:

Ceiling fan light kit means equipment designed to provide light from a ceiling fan that can be—(1) Integral, such that the equipment is attached to the ceiling fan prior to the time of retail sale; or (2) Attachable, such that at the time of retail sale the equipment is not physically attached to the ceiling fan, but may be included inside the ceiling fan at the time of sale or sold separately for subsequent attachment to the fan.

10 CFR 430.2

The scope of the test procedure in appendix V1 covers fluorescent lamps other than compact fluorescent lamps or general service fluorescent lamps, SSL products other than integrated LED lamps, or integrated SSL circuitry packaged with CFLKs. To support the test procedure for CFLKs the following terms are defined in appendix V1: ''CFLK with integrated SSL circuitry,'' ''Covers,'' ''Other (non-CFL and non-GSFL) fluorescent lamp,'' ''Other SSL products,'' and ''Solid-State Lighting (SSL).'' In the definitions of ''Other SSL products'' and ''SSL'', DOE cites organic light-emitting diode (''OLEDs'') as an example of a type of light source that uses SSL technology.

ALA stated that no manufacturers have any plans to use OLEDs in CFLKs. (ALA, No. 4 at p. 2) DOE has included OLEDs as an example of SSL technology because it is a type of light source that may be used in CFLKs, even if it is not at present. Therefore, DOE maintains the use of OLEDs as examples of an SSL product, to ensure there is an applicable test procedure for these products.

B. Updates to Industry Standards

The current DOE test procedure for CFLKs in appendix V1 specifies instructions for measuring the lamp efficacy or luminaire efficacy, as applicable. Appendix V1 incorporates by reference the 2009 version of Illuminating Engineering Society (''IES'') Lighting Measurement and Testing (''LM'')–9 (''IES LM–9–09'' [7]) for testing ''other fluorescent lamps'' (*i.e.,* not CFLs or general service fluorescent lamps (''GSFLs'')) and the 2008 version of IES LM–79 (''IES LM–79–08'' [8]) for testing ''other SSL products'' (*i.e.,* not integrated LED lamps) and CFLKs with integrated SSL circuitry. Appendix V1 references these industry standards for test conditions and measurements. These referenced industry test standards have been updated by industry since DOE last amended its test procedures. IES LM–9–09 has been updated with a 2020 version [9] (IES LM–9–20) and IES LM–79–08 has been updated with a 2019 version [10] (IES LM–79–19). In addition, DOE is proposing to incorporate by reference IES LM–54-20, [11] IESNA LM–75–01/R12,[12] IES LM–78–20,[13] and IES LM–78–17 [14] for appendix V1. DOE received several comments on how the changes in the updated versions of these standards would impact DOE's test procedure for CFLKs.

The CA IOUs suggested, regarding IES LM–9, LM–54, LM–78, LM–79, and any other lighting industry test procedures referenced in the DOE test procedure, that DOE communicate directly with the sponsoring bodies to obtain information regarding the impacts of the proposed changes to the referenced industry standards. The CA IOUs suggested that, in the absence of such information, DOE commission testing of CFLKs using currently referenced industry standards and proposed updates to referenced industry standards to make an independent determination. (CA IOUs, No. 3 at p. 2)

ALA stated that all the LM methods identified in the May 2021 RFI are simply updated American National Standards Institute (''ANSI'') accredited versions of LMs currently used. ALA further stated that it typically supports updating standards that are backed by ANSI and have no initial concerns with making these updates as long as there is no meaningful difference in the measured value. (ALA, No. 4 at p. 1) ALA stated that ALA's CFLK manufacturers do not have data to share that shows the difference between current LMs and updated LMs since their members focus their testing on what is currently required under regulations. (ALA, No. 4 at p. 1) ALA stated that their members have heard from other fixture and light source manufacturers that the measurable differences are insignificant. ALA stated that if pre-rulemaking testing proves otherwise and results in excessive retesting, ALA CFLK manufacturers will oppose updates to the LMs as it will be costly and time consuming. (ALA, No. 4 at pp. 1–2)

DOE has tentatively concluded that the proposed updates to industry test standard references do not involve substantive changes to the test setup and methodology and therefore do not pose additional test burden and will have no impact on test costs. Further, DOE has tentatively determined that incorporation by reference of the latest versions will not change measured values, better aligns DOE test procedures with industry practice, and further increases the clarity of the test methods. DOE requests comment on its assessments of the impacts of incorporating by reference IES LM–9–20, IES LM–54–20, IESNA LM–75–01/R12, IES LM–79–19, IES LM–78–20, and IES LM–78–17 for appendix V1. Each proposed industry test standard is discussed in the following sections.

1. IES LM–9

IES LM–9 provides methods for taking electrical and photometric measurements of fluorescent lamps. DOE's initial review indicates no major changes in IES LM–9–20 compared to IES LM–9–09, except for updates to certain relevant references. Firstly, section 6.2 of IES LM–9–20 updates its reference of IES LM–54, the industry standard for lamp seasoning, from the 1999 version [15] (''IESNA LM–54–99'') to the 2020 version (IES LM–54–20). Secondly, section 7.0 of IES LM–9–20 updates its references of IES LM–78, the industry standard for measurements in an integrating sphere, from the 2007 version [16] (''IESNA LM–78–07'') to the 2020 version (IES LM–78–20). DOE has tentatively concluded that updates in IES LM–9–20 would not change final measured values and proposes to update references from the 2009 version of IES LM–9 to the 2020 version in appendix

[7] Illuminating Engineering Society, *IES LM–9–09 IES Approved Method: Electrical and Photometric Measurement of Fluorescent Lamps.* Approved January 31, 2009.

[8] Illuminated Engineering Society, IES *LM–79–08 Approved Method: Electrical and Photometric Measurements of Solid-State Lighting Products.* Approved December 31, 2007.

[9] Illuminating Engineering Society, *ANSI/IES LM–9–20 Approved Method: Electrical and Photometric Measurement of Fluorescent Lamps.* Approved February 7, 2020.

[10] Illuminating Engineering Society, *ANSI/IES LM–79–19 Approved Method: Optical and Electrical Measurements of Solid-State Lighting Products.* Approved February 28, 2019.

[11] Illuminating Engineering Society, *ANSI/IES LM–54–20 Approved Method: IES Guide to Lamp Seasoning,* Approved February 7, 2020.

[12] Illuminated Engineering Society of North America, IESNA *LM–75–01/R12 Goniophotometer Types and Photometric Coordinates.* Approved August 4, 2001.

[13] Illuminating Engineering Society, *ANSI/IES LM–78–20 Approved Method: Total Luminous Flux Measurement of Lamps Using an Integrating Sphere Photometer.* Approved February 7, 2020.

[14] Illuminating Engineering Society of North America, *IES LM–78–17 IES Approved Method for Total Flux Measurement of Lamps Using an Integrating Sphere.* Approved January 9, 2017.

[15] Illuminating Engineering Society of North America, *LM–54–99 IESNA Guide to Lamp Seasoning,* Approved May 10, 1999.

[16] Illuminating Engineering Society of North America, *IESNA LM–78–07 IESNA Approved Method for Total Luminous Flux Measurement of Lamps Using an Integrating Sphere Photometer.* Approved January 28, 2007.

V1. These updates are discussed in detail in the following sections.

Because lamp seasoning is a necessary part of testing fluorescent lamps in CFLKs, DOE is proposing to incorporate by reference IES LM–54–20 for appendix V1 and to reference it when referencing IES LM–9–20 in appendix V1. Because an integrating sphere is a method used to make necessary photometric measurements of fluorescent lamps in CFLKs, DOE is proposing to incorporate by reference IES LM–78–20 for appendix V1 and to reference it when referencing IES LM–9–20 directly in appendix V1.

(a) IES LM–54

IES LM–54 is the industry standard for lamp seasoning. Appendix V1 currently references sections of IES LM–9–09, which reference IESNA LM–54–99. The 2020 version of IES LM–9, proposed for incorporation by reference for appendix V1 in this notice, updated this reference to IES LM–54–20. The 2020 version of IES LM–54 adds numerous new sections, which codify best practices, that labs are likely already following. Specifically, IES LM–54–20 adds section 4.0 on physical environment test conditions that covers topics such as keeping labs clean and within the ambient temperature range; not subjecting lamps to excessive vibration/shock; and using airflow to cool the seasoning area. IES LM–54–20 also adds section 5.0 on electrical test conditions, which includes instructions on frequency, voltage wave shape, and voltage regulation; basic lamp connection protocols; and setting up an adjacent ground for fluorescent lamps. Additionally, IES LM–54–20 includes new section 6.1 on test preparation which addresses how to handle and mark lamps. Finally, IES LM–54–20 adds a statement in section 6.2.1.1 expressly stating that the orientation of the lamp during seasoning should be maintained for the entire test.

Based on DOE's knowledge of third party labs, DOE understands that the added instructions in IES LM–54–20 regarding the appropriate physical conditions of the lab, test setup for taking electrical measurements, and marking and handling the lamps physical environment conditions are basic steps followed by labs when conducting testing. These basic instructions are also included in most up to date industry standards. Therefore, DOE has tentatively determined that the additions in IES LM–54–20 are industry best practices for taking lamp measurements, and therefore likely are already being followed by laboratories. DOE has tentatively concluded that the changes in IES LM–54–20 will allow for further accuracy in testing but will not impact final measured values of efficacy.

(b) IES LM–78

IES LM–78 is the industry standard for taking measurements in an integrating sphere. Appendix V1 currently references sections of IES LM–9–09 which reference IESNA LM–78–07. The 2020 version of IES LM–9, proposed for incorporation by reference for appendix V1 in this NOPR, has updated this reference to IES LM–78–20.

DOE identified several changes in the 2020 version of IES LM–78 compared to the 2007 version, including additions in the 2020 version that are not in 2007 version. The 2020 version includes a discussion of spectral measurements, in new sections 7.1.2 and 7.2.2, on taking measurements with a spectroradiometer within a sphere. Section 5.1 and 5.2 of IES LM–78–20 also provides specific sections on 2π and 4π geometry, respectively. For 4π geometry, the 2020 version adds the specification that the total surface area of the lamp should be less than 2 percent of the total area of the sphere wall. Section 5.3 of IES LM–78–20 adds an explanation on using sphere angular response distribution function (''SRDF'') to assess sphere responsivity. Further, in Section 7.2 of IES LM–78–20 the equation to compute luminous flux now includes subtraction of dark/stray light, a ratio of spectral mismatch correction factor to self-absorption factor, and the sphere angular non-uniformity correction factor.

These additions do not change the existing method of taking lumen measurements with an integrating sphere and only add additional techniques that manufacturers could use if they choose to do so, such as using a spectroradiometer, 4π geometry, 2π geometry, or the SRDF function to determine sphere responsivity. Further, Section 6.2.1 and Section 6.3.2 of IESNA LM–78–07 also directed that stray light and spectral mismatch correction, respectively should be accounted for in taking lumen measurements. Section 7.0 of IES LM–78–20 only explicitly incorporates these factors into the total luminous flux equation. DOE has tentatively concluded that the additional information in IES LM–78–20 is reflective of industry learning and making more accurate and consistent measurements using the integrating sphere, but will not impact final measured values of efficacy.

DOE also identified updates to specifications in IESNA LM–78–07. Section 5.1 of IES LM–78–20 states the sphere diameter shall be 1.5 times the length of a linear lamp, whereas it was specified as 2 times the length in Section 6.3.7 of IESNA LM–78–07. Section 5.6 of IES LM–78–20 also states for the degree of the spectral match to the $V(\lambda)$ function, it is preferable that the value of the photometer be less than 3 percent, whereas it was less than 5 percent in Section 3.5 of IESNA LM–78–07. Throughout IES LM–78–20, the term ''spatial luminous intensity'' is replaced with ''angular luminous intensity''. The updated standard has replaced ''spatial'' with ''angular'' to more clearly describe that light is being measured by angles.[17] Finally, in Section 8.0 of IES LM–78–20, the uncertainty analysis section has been condensed to a list of potential sources of errors and references to other industry standards for guidance.

The change in sphere diameter will have a minimal impact on the size of the sphere used and subsequently on the test setup inside the sphere and measurements. The change in the degree of spectral match to the $V(\lambda)$ function is a minor adjustment to a correction factor in measurement and as such will result in more accurate testing, but will not change the final measured value. Finally, the reorganization of the uncertainty analysis section has minimal impact. DOE has tentatively concluded that the updates to sphere diameter and spectral match tolerance will allow for further accuracy in testing and will not impact final measured values of efficacy.

2. IES LM–79

IES LM–79 provides methods for taking electrical and photometric measurements of SSL products. DOE's initial review indicates several changes in IES LM–79–19 compared to IES LM–79–08. Regarding testing conditions, Section 4.2.1 of IES LM–79–19 changes the tolerance of ambient temperature to $+/-1.2$ degrees Celsius measured not more than 1.5 meters from the test lamp, whereas in IES LM–79–08, it specified $+/-1$ degree Celsius measured from not more than 1 meter. DOE has tentatively concluded that the change in ambient temperature and distance is minor and will not impact final measured values of efficacy.

For instrumentation, Section 5.3.3 of IES LM–79–19 adds specifications that the alternating current (''AC'') power analyzer to have a frequency range from

[17] The term ''spatial luminous intensity'' and ''angular luminous intensity'' have the same meaning in the industry standard.

direct current (''DC'') to at least 100 kilohertz (''kHz'') and for products with high-frequency components a frequency range of at least 1 megahertz (''MHz''). Section 5.1.2 of IES LM–79–19 also adds current crest factor capability requirements for the AC power supply. Regarding power supply tolerances, Section 5.1 of IES LM–79–19 adds the following: (1) The supplied frequency to have a tolerance of +/− 2 hertz (''Hz'') from the prescribed frequency; and (2) the AC voltage component of the DC regulated voltage to be less than 0.5 percent root mean square (''RMS'') of the DC regulated voltage.

Additionally, Section 3.2 of IES LM–79–08 required that the calibration uncertainties of instruments for AC voltage and current be a minimum of 0.2 percent and for the AC power meter be a minimum of 0.5 percent. Section 5.3 of IES LM–79–19 replaces these specifications with expanded uncertainty minimums of: (1) 0.4 percent for RMS AC voltage for 60 Hz sinusoidal waveform measurements; (2) 0.6 percent for RMS AC current for 0.5 Hz to 1 kHz range and 2 percent for 1 kHz to 100 kHz range; and (3) 1 percent for active AC power in the 0.5 Hz to 1 kHz range and 2 percent in the 1 kHz to 100 kHz range. DOE has tentatively concluded that the additions regarding tolerances of the test instruments and power supply measurements and updates to calibration uncertainties will allow for further accuracy in testing, but will not impact final measured values of efficacy.

For test circuits, Section 5.0 of IES LM–79–19 adds the following specifications: (1) Use of separate sense leads to avoid voltage drops; (2) resistance and capacitance of test circuit (excluding power supply) to be less than respectively 0.5 ohms and 1.5 nanofarads; and (3) the internal impedance of voltage measurement circuits (excluding the power meter) to be at least 1 megaohm. DOE has tentatively concluded that the additions regarding the leads, resistance, capacitance and impedance will allow for more stable test circuits and will not impact final measured values of efficacy.

For electrical measurements, Section 5.4 of IES LM–79–19 adds tolerances intervals of +/− 0.5 percent for AC RMS voltage, +/− 0.2 percent for DC voltage and current. It also states optical and electrical waveforms should be analyzed to ensure measurement equipment is appropriate. Section 5.4 of IES LM–79–19 adds a discussion for testing low voltage products, stating that measurements can be taken with a combination of a voltages above and below set value and interpolated to get the required measurement. Section 5.4 of IES LM–79–19 also addresses inrush currents, stating that the AC power supply should begin applying current at zero-phase or, if the product is not capable of a zero-phase start, the AC voltage should be ramped up from 0 volts over a few seconds.[18] DOE has tentatively concluded that the additions regarding the tolerances of voltages and analyzing waveforms will allow for further accuracy in testing, but will not impact final measured values of efficacy.

Regarding stability, Section 6.4 of IES LM–79–19 states that to determine stability three readings of light output and electrical power must be taken at 10-minute intervals over 20 minutes. Section 5.0 of IES LM–79–08 required three readings taken at 15-minute intervals over 30 minutes. Section 6.4 of IES LM–79–19 also clarifies that it is the average of the three measurements taken chronologically that should be used to determine the stabilization threshold. Additionally, unlike IES LM–79–08, IES LM–79–19 no longer allows the use of alternative stabilization methods for measurements of a number of products of the same model. Determining an alternative stabilization method that results in total lumens being within 0.5 percent of the value when the normal stabilization method is used would require considerable testing and may need to be reassessed with each basic model. Therefore, DOE has tentatively concluded that disallowing an alternative stabilization method does not change the overall test burden. DOE has tentatively concluded that the changes to the stabilization method will still result in a stabilized lamp and will not impact final measured values of efficacy.

Further, section 7.2 of IES LM–79–19 updates its references of IES LM–78, the industry standard for measurements in an integrating sphere, from the 2007 version (''IESNA LM–78–07'') to the 2017 version (IES LM–78–17). Because an integrating sphere is a method used to make necessary photometric measurements of light sources used in CFLKs, DOE is proposing to incorporate by reference IES LM–78–17 for appendix V1 and to reference it when referencing IES LM–79–19 in appendix V1. Although IES LM–78–17 has been updated to IES LM–78–20, DOE is proposing to incorporate by reference IES LM–78–17 for appendix V1, as it is the version directly referenced by IES LM–79–19. DOE has tentatively determined that updating IESNA LM–78–07 to IES LM–78–20 will not impact final measured values (see section III.B.1). DOE has also tentatively determined that changes in IES LM–78–20 compared to IES LM–78–17 are minor and do not impact final measured values. Therefore, DOE has tentatively concluded that since updating to IESNA LM–78–07 to IES LM–78–20 does not impact final measured values, updating IESNA LM–78–07 to IES LM–78–17 will also not impact final measured values.

Finally, Section 7.2.2 of IES LM–79–19 adds that the spectroradiometer system have a wavelength uncertainty within 0.5 nanometers. Section 7.3.2 of IES LM–79–19 also adds that for 2π geometry the total surface area of the test lamp internal to the sphere should be no more than 1 percent of the total surface area of the sphere. DOE has tentatively concluded that the additional specifications regarding the spectroradiometer will allow for further accuracy in testing, but will not impact final measured values of efficacy.

In summary, DOE has tentatively concluded that updates in IES LM–79–19 would not change final measured values and proposes to update references from the 2008 version of IES LM–79 to the 2019 version in appendix V1. DOE notes that the sections of IES LM–79–08 were reorganized in the 2019 version. Currently, appendix V1 references section 2 through 9.2 of IES LM–79–08, which correspond to sections 4 through 6 and 7.2 of IES LM–79–19. DOE proposes to change the section references of IES LM–79–19 from section 2 through 9.2 to corresponding sections 4 through 6 and 7.2. In addition, because DOE is proposing to allow the use of the goniophotometer method (see section III.C.2 of this document), DOE is also proposing to reference all of section 7.0 of IES LM–79–19 to include sub-sections addressing the goniophotometer method. Section 7.2 of IES LM–79–19 references IESNA LM–75–01/R12 for general recommendations and requirements on making measurements with goniophotometers. Therefore, DOE is proposing to incorporate by reference IESNA LM–75–01/R12 for appendix V1 and to reference it when referencing IES LM–79–19 in appendix V1.

C. Proposed Amendments to Appendix V1

DOE proposes changes to appendix V1 to clarify definitions regarding CFLKs with SSL light sources and allow for the use of the goniophotometer method to make photometric

[18] Some SSL products may experience inrush currents, which are high instantaneous currents that occur when the power supply is turned on.

measurements. DOE also proposes to arrange the definitions in appendix V1 in alphabetical order. Note that the proposed section references of industry test standards are based on the version of the standard proposed for adoption (see section III.B of this document).

1. Revising Definitions for CFLKs With SSL Light Sources

DOE proposes to revise certain existing terms in appendix V1. Specifically, DOE proposes to replace the terms ''CFLK with integrated SSL circuitry'' and ''other SSL products'' respectively, with ''CFLK with non-consumer-replaceable SSL circuitry'' and ''CFLK with consumer-replaceable SSL circuitry'' throughout appendix V1; and provide further clarifications in the definitions of these terms.

DOE initiated an analysis of CFLK energy conservation standards by publishing an RFI on June 4, 2021 (''June 2021 RFI''). 86 FR 29954. In response to the June 2021 RFI, ALA recommended that DOE revise the two product classes for standards to align with the current CFLK test procedure that differentiate between LED lamps with an ANSI approved base that are tested individually, and a light kit that incorporates an integrated LED light source that is tested as a complete unit. (ALA, No. 3 at p. 2 [19]) This comment indicates that it is not clear that DOE's CFLK test procedure directs CFLKs with consumer replaceable SSL light sources without ANSI bases to be tested individually using lamp efficacy, similar to the required efficacy measurement for CFLKs with ANSI base lamps. Additionally, information collected in manufacturer interviews as part of the ongoing CFLK standards analysis also indicated that this part of the test procedure may need further clarification. DOE tentatively concluded that that the current definitions for ''CFLK with integrated circuitry'' and ''other SSL products'' were not clear and could lead to confusion when manufacturers classify products and determine the required efficacy measurement.

Under the current Appendix V1, CFLKs that use SSL circuitry are separated as either a ''CFLK with integrated SSL circuitry'' or ''other SSL products,'' and have different methods to measure efficacy. A CFLK with integrated SSL circuitry is defined as a CFLK that has SSL light sources, drivers, heat sinks, or intermediate circuitry (such as wiring between a replaceable driver and a replaceable light source) that are not consumer replaceable. Section 2.1 of 10 CFR Part 430, Subpart B, Appendix V1. Because the SSL light source in a CFLK with integrated circuitry will require cutting of wires or similar methods to remove and test the light source, it cannot be restored to the same condition it was prior to testing. Hence, DOE directs manufacturers to test and report the efficacy with the light source in the CFLK, *i.e.,* luminaire efficacy. In this NOPR, to further clarify which CFLKs fall into this category, DOE proposes to change the term ''CFLK with integrated SSL circuitry'' to ''CFLK with non-consumer-replaceable SSL circuitry.'' Further, DOE proposes to modify the definition by specifying that the light sources and all necessary components in these CFLKs cannot be replaced without permanently altering the product; and specifying that the light sources in these CFLKs do not have an ANSI base. DOE will continue to require the measurement of luminaire efficacy for these CFLKs. DOE proposes the following definition for ''CFLK with non-consumer-replaceable SSL circuitry'':

CFLK with non-consumer-replaceable SSL circuitry means a CFLK with a non-ANSI-standard base that has an SSL light source, driver, heat sink, and intermediate circuitry (such as wiring between a driver and light source), that are not consumer replaceable, *i.e.,* a consumer cannot replace the light source and all components necessary for the starting and stable operation of the light source, without permanently altering the product, and must replace the entire CFLK upon failure.

Under section 2.4 of 10 CFR part 430, subpart B, Appendix V1, ''other SSL products'' are defined as an integrated unit consisting of a light source, driver, heat sink, and intermediate circuitry that uses SSL technology (such as light-emitting diodes or organic light-emitting diodes) and is consumer replaceable in a CFLK. The term does not include LED lamps with ANSI-standard bases. Examples of other SSL products include OLED lamps, LED lamps with non-ANSI-standard bases, such as Zhaga interfaces, and LED light engines. Hence, the SSL light source is an integrated unit that can be removed, tested, and placed back into the CFLK so it is the same product as it was when sold, *i.e.,* consumer replaceable. Therefore, DOE directs manufacturers to remove the SSL light source and test and report its efficacy, *i.e.,* lamp efficacy. In this NOPR to further clarify which CFLKs fall into this category, DOE proposes to change the term ''other SSL products'' to ''CFLK with consumer-replaceable SSL circuitry.'' Further, DOE proposes to modify the definition by specifying that the light sources and all necessary components in these CFLKs can be replaced without permanently altering the product; and specifying that the light sources in these CFLKs do not have an ANSI base. DOE will continue to require the measurement of lamp efficacy of the light sources in these CFLKs. DOE proposes the following definition for ''CFLK with consumer-replaceable SSL circuitry:''

CFLK with consumer-replaceable SSL circuitry means a CFLK with a non-ANSI-standard base that has an SSL light source, driver, heat sink, and intermediate circuitry (such as wiring between a driver and light source) that are consumer replaceable, *i.e.,* a consumer can replace the light source and all components necessary for the starting and stable operation of the light source as one integrated unit, without permanently altering the product. Examples of CFLKs with consumer-replaceable SSL circuitry include CFLKs that use OLED lamps with non-ANSI-standard bases, LED lamps with non-ANSI-standard bases, such as Zhaga interfaces, and LED light engines.

DOE proposes to continue to allow the luminaire efficacy of CFLKs with non-consumer-replaceable SSL circuitry to be measured without a cover if that cover is consumer replaceable. As such, DOE proposes to also replace the reference of ''CFLKs with integrated SSL circuitry'' with ''CFLKs with non-consumer-replaceable SSL circuitry'' in the definition of ''cover.'' Additionally, in the scope section of appendix V1, DOE proposes to replace the reference of ''SSL products other than integrated LED lamps'' with ''consumer-replaceable SSL circuitry other than integrated LED lamps'' and replace the reference of ''integrated SSL circuitry'' with ''non-consumer-replaceable SSL circuitry.''

As noted previously, to clarify the definitions of CFLKs with SSL circuitry, DOE is proposing to specify that CFLKs with non-consumer-replaceable SSL circuitry and CFLKs with consumer-replaceable SSL circuitry have non-ANSI standard bases. Further, to clarify that other SSL light sources with ANSI bases (not integrated LED lamps) must be tested for lamp efficacy, DOE is proposing to specify the efficacy measurement and referenced test procedure for these lamps in the table in appendix V1.

DOE is also proposing to reflect these clarifications in the title of appendix V1. DOE has tentatively concluded that clarifying the terminology and definitions of CFLKs with SSL light sources will not require a manufacturer

[19] This comment is in response to the June 2021 RFI and can be found on *www.regulations.gov* under Docket ID: EERE–2019–BT–STD–0040.

to change their method of testing and therefore will have no impact on test costs. DOE requests comment on the proposed definitions for ''CFLK with consumer-replaceable SSL circuitry'' and ''CFLK with non-consumer-replaceable SSL circuitry.''

2. Photometric Measurements

In this NOPR, DOE is proposing to allow for the use of a goniophotometer to test the lamp efficacy or luminaire efficacy of CFLKs, as applicable.

ALA stated that informal testing conducted by ALA manufacturers indicated that the difference in the measured efficacy using a goniophotometer versus an integrated sphere was inconsequential. ALA further stated that since efficacy differences are negligible, it preferred the use of an integrated sphere because of time efficiency and ease of use. (ALA, No. 4 at p. 2)

DOE has tentatively concluded that difference in measured efficacy using a goniophotometer versus an integrated sphere is not significant and allowing both the methods would allow manufacturers flexibility in testing. Further, allowing manufacturers to test the performance of CFLKs with either an integrated sphere or goniophotometer aligns the CFLK test procedure with the DOE test procedures for GSFLs, incandescent reflector lamps (''IRLs''), and general service incandescent lamps (''GSILs''). Therefore, DOE is proposing to allow the use of a goniophotometer in appendix V1. DOE has tentatively concluded that allowing the use of both integrating sphere and goniophotometer for photometric measurements will not require a manufacturer to change their method of testing and therefore will have no impact on test costs. DOE requests comment on the allowance of both goniophotometer and integrating sphere methods and any data on the difference in efficacy measurements when testing the same lamp with goniophotometer versus integrating sphere.

D. Proposed Amendments to Appendix V

DOE proposes to remove appendix V as it is no longer needed. All CFLKs manufactured as of January 21, 2020, must be tested according to current appendix V1. See 80 FR 80209, 80220 and 81 FR 580. Therefore, appendix V is no longer applicable, and removal of this appendix would not result in any change to the currently applicable test procedure.

The CA IOUs and ALA both stated their support for removal of appendix V. (CA IOUs, No. 3 at p.1; ALA, No. 4 at p.1) The CA IOUs stated that under the current energy conservation standards, all CFLKs manufactured as of January 21, 2020, must be tested in accordance with appendix V1, and therefore appendix V is no longer applicable. (CA IOUs, No. 3 at p. 1) ALA suggested DOE replace the language in appendix V with the language in appendix V1. ALA stated that DOE could then eliminate appendix V1 and update any cross references. (ALA, No. 4 at p. 1) Because appendix V is no longer applicable for the test procedure, DOE is proposing to remove appendix V. DOE also proposes to rename appendix V1 as appendix V. DOE has tentatively concluded that removing an unused appendix will have no impact on test costs.

E. Proposed Amendments to 10 CFR 429.33, 10 CFR 430.23, and 10 CFR 430.32.

As specified in section III.C, in the current appendix V1 (proposed to be renamed appendix V), DOE is replacing ''other SSL products'' and ''integrated SSL circuitry'' respectively, with ''consumer-replaceable SSL circuitry'' and ''non-consumer-replaceable SSL circuitry.'' The terms ''other SSL products'' and ''integrated SSL circuitry'' are used in 10 CFR 429.33 which specifies the CFLK sampling plan, represented values, and certification; 10 CFR 430.23(x) which provides references to DOE test procedures for lamps in CFLKs not within the scope of appendix V1; and 10 CFR 430.32(s)(6) which specifies CFLK energy conservation standards. To align with the revised terms in appendix V1, in 10 CFR 429.33, 10 CFR 430.23(x) and 10 CFR 430.32(s)(6), DOE is proposing to replace the terms ''other SSL products'' and ''integrated SSL circuitry'' respectively, with ''consumer-replaceable SSL circuitry'' and ''non-consumer-replaceable SSL circuitry.'' DOE is also proposing to explicitly state the term ''other SSL light sources with ANSI bases (not integrated LED lamps)'' in 10 CFR 429.33 and 10 CFR 430.23(x) to clarify instructions for these lamps.

F. Reporting

Manufacturers, including importers, must use product-specific certification templates to certify compliance to DOE. For CFLKs, the certification template reflects the general certification requirements specified at 10 CFR 429.12 and the product-specific requirements specified at 10 CFR 429.33. As discussed in the previous paragraphs, DOE is not proposing to amend the product-specific certification requirements for these products.

G. Test Procedure Costs and Harmonization

1. Test Procedure Costs and Impact

In this NOPR, DOE proposes to amend the existing test procedure for CFLKs by (1) updating references to industry standards to their latest versions and incorporating industry standards necessary for executing the test; (2) modifying appendix V1 to allow for the use of a goniophotometer; (3) revising definitions regarding CFLKs with SSL light sources in appendix V1 to clarify the scope and test methods for CFLKs; and (4) removing appendix V, the test procedure that must be used for CFLKs with pin-based sockets that are manufactured on or after January 1, 2007, and prior to January 21, 2020 and renaming appendix V1 as appendix V.

The proposed updates and incorporation of industry standards do not change the method of testing CFLKs, but only make minor changes to certain testing specifications. The changes do not require the purchase of additional equipment or increase test burden, and subsequently do not impact testing costs. The proposed change to allow the use a goniophotometer method is optional and does not require manufacturers to change their current testing methodology, and therefore does not impact testing costs. The proposed revision to definitions regarding CFLKs with SSL light sources only clarifies the scope and test methodology, and therefore does not impact testing costs. Finally, DOE is proposing to remove appendix V because it is obsolete and therefore, its removal does not impact testing costs. DOE has tentatively determined that the amendments proposed in this NOPR would not impact testing costs.

2. Harmonization

DOE's established practice is to adopt relevant industry standards as DOE test procedures, unless such methodology would be unduly burdensome to conduct or would not produce test results that reflect the energy efficiency, energy use, water use (as specified in EPCA) or estimated operating costs of that product during a representative average use cycle or period of use. Section 8(c) of appendix A of 10 CFR part 430, subpart C. In cases where the industry standard does not meet EPCA statutory criteria for test procedures, DOE will make modifications through the rulemaking process to these standards as the DOE test procedure.

DOE is proposing to update the latest version of several industry test standards referenced in appendix V1. For the electrical and photometric

measurement of CFLKs, DOE is proposing to incorporate by reference IES LM–9–20 and IES LM–79–19. For seasoning instructions for CFLKs, DOE is proposing to incorporate IES LM–54–20. For integrated sphere measurements for CFLKs, DOE is proposing to incorporate IES LM–78–20.

The industry standards DOE proposes to incorporate by reference via amendments described in this NOPR are discussed in further detail in section III.B of this document. DOE requests comment on the benefits and burdens of the proposed updates and additions to industry standards referenced in the test procedure for CFLKs.

H. Compliance Date

EPCA prescribes that, if DOE amends a test procedure, all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with that amended test procedure, beginning 180 days after publication of such a test procedure final rule in the **Federal Register**. (42 U.S.C. 6293(c)(2))

If DOE were to publish an amended test procedure EPCA provides an allowance for individual manufacturers to petition DOE for an extension of the 180-day period if the manufacturer may experience undue hardship in meeting the deadline. (42 U.S.C. 6293(c)(3)) To receive such an extension, petitions must be filed with DOE no later than 60 days before the end of the 180-day period and must detail how the manufacturer will experience undue hardship. (*Id.*)

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (''OMB'') has determined that this test procedure rulemaking does not constitute ''significant regulatory actions'' under section 3(f) of Executive Order (''E.O.'') 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive order by the Office of Information and Regulatory Affairs (''OIRA'') in OMB.

B. Review Under the Regulatory Flexibility Act

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

For manufacturers of CFLKs, the Small Business Association (''SBA'') has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. *See* 13 CFR part 121. The size standards are listed by the North American Industry Classification System (''NAICS'') code and industry description and are available at *www.sba.gov/document/support--table-size-standards.* Manufacturing of CFLKs is classified under NAICS 335210, ''Small Electrical Appliance Manufacturing.'' The SBA sets a threshold of 1,500 employees or less for an entity to be considered as a small business for this category.

To estimate the number of companies that could be small businesses that manufacture CFLKs impacted by this rulemaking, DOE conducted a survey using information from DOE's Compliance Certification Database and previous rulemakings. DOE used information from these sources to create a list of companies that potentially manufacture or sell CFLKs. DOE screened out companies that do not offer products covered by this rulemaking, do not meet the definition of a ''small business,'' or are foreign owned and operated. DOE determined that 31 companies are small businesses that manufacture CFLKs covered by this rulemaking.

DOE has tentatively concluded that the proposed updates to DOE's test procedure for CFLKs do not involve substantive changes to the test setup and methodology and will not pose any additional test burden or additional test costs for any CFLK manufacturers, large or small.

Therefore, DOE initially concludes that the impacts of the proposed test procedure amendments proposed in this NOPR would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of an IRFA is not warranted. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of CFLKs must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including CFLKs. (*See generally* 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours 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.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this NOPR, DOE proposes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for CFLKs. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

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

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *www.energy.gov/gc/office-general-counsel.* DOE examined this proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

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

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

I. Review Under Executive Order 12630

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

J. Review Under Treasury and General Government Appropriations Act, 2001

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

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed

statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

The proposed regulatory action to amend the test procedure for measuring the energy efficiency of CFLKs is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; ''FEAA'') Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (''FTC'') concerning the impact of the commercial or industry standards on competition.

The proposed modifications to the test procedure for CFLKs would incorporate testing methods contained in certain sections of the following commercial standards:

(1) ANSI/IES LM–9–20—Approved Method: Electrical and Photometric Measurement of Fluorescent Lamps, Approved February 7, 2020;

(2) ANSI/IES LM–54–20—Approved Method: IES Guide to Lamp Seasoning, Approved February 7, 2020;

(3) IESNA LM–75–01/R12—Goniophotometer Types and Photometric Coordinates, Approved August 4, 2001;

(4) IES LM–78–17—Approved Method: Total Flux Measurement of Lamps Using an Integrating Sphere, Approved January 9, 2017;

(5) ANSI/IES LM–78–20—Approved Method: Total Luminous Flux Measurement of Lamps Using an Integrating Sphere Photometer, Approved February 7, 2020; and

(6) ANSI/IES LM–79–19—Approved Method: Optical and Electrical Measurements of Solid-State Lighting Products, Approved February 28, 2019.

DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review). DOE will consult with both the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

M. Description of Materials Incorporated by Reference

In this NOPR, DOE proposes to incorporate by reference the test standard published by IES, ''ANSI/IES LM–9–20—Approved Method: Electrical and Photometric Measurement of Fluorescent Lamps. IES LM–9–20 is an industry accepted standard that describes methods for taking electrical and photometric measurement of fluorescent lamps. The test procedure proposed in this NOPR references IES LM–9 for testing the performance of fluorescent lamps. IES LM–9 is readily available on IES's website at *https://www.ies.org/store.*

In this NOPR, DOE proposes to incorporate by reference the test standard published by IES, ANSI/IES LM–79–19—Approved Method: Optical and Electrical Measurements of Solid-State Lighting Products. IES LM–79–19 is an industry accepted standard that describes methods for taking electrical and photometric measurements of SSL products. The test procedure proposed in this NOPR references IES LM–79 for testing of CFLKs with SSL circuitry. IES LM–79 is readily available on IES's website at *https://www.ies.org/store.*

In this NOPR, DOE proposes to incorporate by reference the test standard published by IES, ANSI/IES LM–54–20—Approved Method: IES Guide to Lamp Seasoning. IES LM–54–20 is an industry accepted test standard that specifies a method for seasoning lamps. The test procedure proposed in this NOPR references IES LM–9 for testing the fluorescent lamps, which in turn references IES LM–54 for seasoning lamps. IES LM–54 is readily available on IES's website at *https://www.ies.org/store.*

In this NOPR, DOE proposes to incorporate by reference the test standard published by IES, IESNA LM–75–01/R12—Goniophotometer Types and Photometric Coordinates. IESNA LM–75–01/R12 is an industry accepted test standard that specifies goniophotometer types and photometric coordinates. The test procedure proposed in this NOPR references IES LM–79 for testing CFLKs with SSL circuitry, which in turn references IESNA LM–75–01/R12 for general recommendations and requirements on making measurement with goniophotometers. IESNA LM–75–01/R12 is available with the purchase of the lighting library subscription on IES's website at *https://www.ies.org/store.*

In this NOPR, DOE proposes to incorporate by reference the test standard published by IES, ANSI/IES LM–78–20—Approved Method: Total Luminous Flux Measurement of Lamps Using an Integrating Sphere Photometer. IES LM–78–20 is an industry accepted test standard that specifies a method for measuring lumen output in an integrating sphere. The test procedure proposed in this NOPR references IES LM–9 for testing the performance of fluorescent lamps, which in turn references IES LM–78–20 for integrating sphere photometer calibration and measurements. IES LM–78–20 is readily available on IES's website at *https://www.ies.org/store.*

In this NOPR, DOE proposes to incorporate by reference the test standard published by IES, IES LM–78–17—Approved Method: Total Flux Measurement of Lamps Using an Integrating Sphere. IES LM–78–17 is an industry accepted test standard that specifies a method for measuring lumen output in an integrating sphere. The test procedure proposed in this NOPR references IES LM–79 for testing CFLKs with SSL circuitry, which in turn references IES LM–78–17 for integrating sphere photometer calibration and measurements. IES LM–78–17 is readily available on IES's website at *https://www.ies.org/store.*

V. Public Participation

A. Participation in the Webinar

The time and date of the webinar meeting are listed in the **DATES** section at the beginning of this document. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=10.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this document, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to

make an oral presentation at the webinar. Such persons may submit to *ApplianceStandardsQuestions@ee.doe.gov.* Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

Persons requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least two weeks before the webinar. At its discretion, DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Office. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

C. Conduct of the Webinar

DOE will designate a DOE official to preside at the webinar/public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar/public meeting. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar/public meeting and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The webinar/public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the webinar/public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the webinar/public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the webinar/public meeting.

A transcript of the webinar/public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this document. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule.[20] Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

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

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

Submitting comments via email. Comments and documents submitted via email also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments

Include contact information each time you submit comments, data, documents, and other information to DOE. No faxes will be accepted.

[20] DOE has historically provided a 75-day comment period for test procedure NOPRs pursuant to the North American Free Trade Agreement, U.S.-Canada-Mexico (''NAFTA''), Dec. 17, 1992, 32 I.L.M. 289 (1993); the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057 (1993) (codified as amended at 10 U.S.C.A. § 2576) (1993) (''NAFTA Implementation Act''); and Executive Order 12889, ''Implementation of the North American Free Trade Agreement,'' 58 FR 69681 (Dec. 30, 1993). However, on July 1, 2020, the Agreement between the United States of America, the United Mexican States, and the United Canadian States (''USMCA''), Nov. 30, 2018, 134 Stat. 11 (*i.e.,* the successor to NAFTA), went into effect, and Congress's action in replacing NAFTA through the USMCA Implementation Act, 19 U.S.C. 4501 *et seq.* (2020), implies the repeal of E.O. 12889 and its 75-day comment period requirement for technical regulations. Thus, the controlling laws are EPCA and the USMCA Implementation Act. Consistent with EPCA's public comment period requirements for consumer products, the USMCA only requires a minimum comment period of 60 days. Consequently, DOE now provides a 60-day public comment period for test procedure NOPRs.

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

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

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

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

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

(1) DOE requests comment on its assessments of the impacts of incorporating by reference IES LM–9–20, IES LM–54–20, IESNA LM–75–01/R12, IES LM–79–19, IES LM–78–20, and IES LM–78–17 for appendix V1. See section III.B of this document.

(2) DOE requests comment on the proposed definitions for ''CFLK with consumer-replaceable SSL circuitry'' and ''CFLK with non-consumer-replaceable SSL circuitry.'' See section III.C.1 of this document.

(3) DOE requests comment on the allowance of both goniophotometer and integrating sphere methods and any data on the difference in efficacy measurements when testing the same lamp with a goniophotometer versus an integrating sphere. See section III.C.2 of this document.

(4) DOE requests comment on the benefits and burdens of the proposed updates and additions to industry standards referenced in the test procedure for CFLKs. See section III.G of this document.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking and announcement of public meeting.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Reporting and recordkeeping requirements, Small businesses.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Signing Authority

This document of the Department of Energy was signed on March 1, 2022, by Kelly J. Speakes-Backman, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on March 2, 2022.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE is proposing to amend parts 429 and 430 of chapter II of title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

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

§ 429.33 [Amended]

■ 2. Amend § 429.33 by:

■ a. Removing ''other SSL lamps (not integrated LED lamps)'' and adding in its place ''consumer-replaceable SSL circuitry (not integrated LED lamps) and other SSL lamps that have an ANSI standard base and are not integrated LED lamps'' in paragraph (a)(3)(i)(F); and

■ b. Removing ''integrated SSL circuitry'' and adding in its place ''non-consumer-replaceable SSL circuitry'' in paragraph (a)(3)(ii).

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 3. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 4. Amend § 430.3 by:

■ a. Revising paragraph (a);

■ b. In paragraph (p)(2), removing the text ''appendices R, V, and V1'' and adding in its place, ''appendix R'';

■ c. Removing paragraph (p)(13);

■ d. Redesignating paragraphs (p)(4) through (20) as follows:

Old	New
paragraphs (p)(4) through (10).	paragraphs (p)(5) through (11).
paragraphs (p)(11) and (12).	paragraphs (p)(13) and (14).
paragraph (p)(14)	paragraph (p)(15).
paragraph (p)(15)	paragraph (p)(17).
paragraph (p)(16)	paragraph (p)(20).
paragraph (p)(17)	paragraph (p)(21).
paragraphs (p)(18) through (20).	paragraphs (p)(23) through (25).

■ e. Adding new paragraphs (p)(4), (12), (16), (18), and (19);

■ f. In newly redesignated paragraph (p)(20), removing the text ''appendices V1 and BB'' and adding, in its place, ''appendix BB''; and

■ g. Adding new paragraph (p)(22).

The revision and additions read as follows:

§ 430.3 Materials incorporated by reference.

(a) Certain material is incorporated by reference into this part with the

approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the U.S. Department of Energy (DOE) must publish a document in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the DOE and at the National Archives and Records Administration (NARA). Contact DOE at: The U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza SW, Washington, DC 20024, (202) 586–9127, *Buildings@ee.doe.gov, https://www.energy.gov/eere/buildings/appliance-and-equipment-standards-program.* 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.* The material may be obtained from the sources in the following paragraphs of this section.

* * * * *

(p) * * *

(4) ANSI/IES LM–9–20 (''IES LM–9–20''), Approved Method: Electrical and Photometric Measurements of Fluorescent Lamps, approved February 7, 2020; IBR approved for appendix V to subpart B.

* * * * *

(12) ANSI/IES LM–54–20 (''IES LM–54–20''), Approved Method: IES Guide to Lamp Seasoning, approved February 7, 2020; IBR approved for appendix V to subpart B.

* * * * *

(16) IESNA LM–75–2001/R12, Goniophotometer Types and Photometric Coordinates, approved August 4, 2001; IBR approved for appendix V to subpart B.

* * * * *

(18) IES LM–78–17, Approved Method: Total Flux Measurement of Lamps Using an Integrating Sphere,'' approved January 9, 2017; IBR approved for appendix V to subpart B.

(19) ANSI/IES LM–78–20 (''IES LM–78–20''), Approved Method: Total Luminous Flux Measurement of Lamps Using an Integrating Sphere Photometer, approved February 7, 2020; IBR approved for appendix V to subpart B.

* * * * *

(22) ANSI/IES LM–79–019 (''IES LM–79–19''), Approved Method: Optical and Electrical Measurements of Solid-State Lighting Products, approved February 28, 2019; IBR approved for appendix V to subpart B.

* * * * *

■ 5. Amend § 430.23 by:
■ a. Removing paragraph (x)(1);
■ b. Redesignating paragraph (x)(2) as paragraph (x)(1);
■ c. Revising newly designated paragraph (x)(1)(v); and
■ d. Reserving paragraph (x)(2).

The revision reads as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(x) * * *

(1) * * *

(v) For a ceiling fan light kit packaged with other fluorescent lamps (not compact fluorescent lamps or general service fluorescent lamps), packaged with consumer-replaceable SSL circuitry (not integrated LED lamps), packaged with non-consumer-replaceable SSL circuitry, or packaged with other SSL lamps that have an ANSI standard base (not integrated LED lamps), measure efficacy in accordance with section 3 of appendix V of this subpart for each lamp basic model, consumer-replaceable SSL circuitry basic model, or non-consumer-replaceable SSL circuitry basic model.

* * * * *

Appendix V to Subpart B of Part 430 [Removed]

■ 6. Remove appendix V to subpart B of part 430.

Appendix V1 to Subpart B of Part 430 [Redesignated]

■ 7. Redesignate appendix V1 to subpart B of part 430 as appendix V to subpart B of part 430.
■ 8. Revise newly redesignated appendix V to subpart B of part 430 to read as follows:

Appendix V to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Ceiling Fan Light Kits Packaged With Other Fluorescent Lamps (not Compact Fluorescent Lamps or General Service Fluorescent Lamps), Packaged With Consumer-Replaceable SSL Circuitry (not Integrated LED Lamps), Packaged With Non-Consumer-Replaceable SSL Circuitry, or Packaged With Other SSL Lamps That Have an ANSI Standard Base (not Integrated LED Lamps)

Any representations about the energy use or efficiency of any ceiling fan light kit packaged with fluorescent lamps other than compact fluorescent lamps or general service fluorescent lamps, packaged with consumer-replaceable SSL circuitry other than integrated LED lamps, or packaged with non-consumer-replaceable SSL circuitry, or packaged with SSL lamps that have an ANSI standard base (not integrated LED lamps) made on or after the compliance date of any amended energy conservation standards must be based on testing pursuant to this appendix. Manufacturers may make representations based on testing in accordance with this appendix prior to the compliance date of any amended energy conservation standards, provided that such representations demonstrate compliance with the amended energy conservation standards.

0. Incorporation by Reference. DOE incorporated by reference in § 430.3, the entire standard for: IES LM–9–20, IES LM–54–20, IES LM–75–01/R12, IES LM–78–17, IES LM–78–20, and IES LM–79–19; however, only enumerated provisions of IES LM–9–20 and IES LM–79–19 are applicable to this appendix as follows:

(1) IES LM–9–20 as referenced by section 3 of this appendix

(i) Section 4.0 ''Ambient and Physical Conditions''.

(ii) Section 5.0 ''Electrical Conditions''.

(iii) Section 6.0 ''Lamp Test Procedures''.

(iv) Section 7.0 ''Photometric Test Procedures''.

(2) IES LM–79–19 as referenced by section 3 of this appendix

(i) Section 4.0 ''Physical and Environmental Test Conditions''.

(ii) Section 5.0 ''Electrical Test Conditions''.

(iii) Section 6.0 ''Test Preparation''.

(iv) Section 7.0 ''Total Luminous Flux and Integrated Optical Measurements''.

1. Scope: This appendix establishes the test requirements to measure the energy efficiency of all ceiling fan light kits (CFLKs) packaged with fluorescent lamps other than compact fluorescent lamps (CFLs) or general service fluorescent lamps (GSFLs), packaged with consumer-replaceable solid-state lighting (SSL) circuitry (not integrated light-emitting diode [LED] lamps), packaged with non-consumer-replaceable SSL circuitry, or packaged with SSL lamps that have an American National Standards Institute (ANSI) standard base (not integrated LED lamps).

2. Definitions

2.1. *CFLK with non-consumer-replaceable SSL circuitry* means a CFLK with a non-ANSI-standard base that has an SSL light source, driver, heat sink, and intermediate circuitry (such as wiring between a driver and light source), that are not consumer replaceable, *i.e.,* a consumer cannot replace the light source and all components necessary for the starting and stable operation of the light source, without permanently altering the product, and must replace the entire CFLK upon failure.

2.2. *CFLK with consumer-replaceable SSL circuitry* means a CFLK with a non-ANSI-standard base that has an SSL light source, driver, heat sink, and intermediate circuitry (such as wiring between a driver and light source) that are consumer replaceable, *i.e.,* a consumer can replace the light source and all components necessary for the starting and stable operation of the light source as one integrated unit, without permanently altering the product. Examples of CFLKs with consumer-replaceable SSL circuitry include CFLKs that use OLED lamps with non-ANSI-standard bases, LED lamps with non-ANSI-

standard bases, such as Zhaga interfaces, and LED light engines.

2.3. *Covers* means materials used to diffuse or redirect light produced by an SSL light source in CFLKs with non-consumer-replaceable SSL circuitry.

2.4. *Other (non-CFL and non-GSFL) fluorescent lamp* means a low-pressure mercury electric-discharge lamp in which a fluorescing coating transforms some of the ultraviolet energy generated by the mercury discharge into light, including but not limited to circline fluorescent lamps, and excluding any compact fluorescent lamp and any general service fluorescent lamp.

2.5. *Solid-State Lighting (SSL)* means technology where light is emitted from a solid object—a block of semiconductor—rather than from a filament or plasma, as in the case of incandescent and fluorescent lighting. This includes inorganic light-emitting diodes (LEDs) and organic light-emitting diodes (OLEDs).

3. Test Conditions and Measurements

For any CFLK that utilizes consumer replaceable lamps or consumer-replaceable SSL circuitry, measure the lamp efficacy of each basic model of lamp or SSL light source packaged with the CFLK. For any CFLK only with non-consumer-replaceable SSL circuitry, measure the luminaire efficacy of the CFLK. For any CFLK that includes consumer replaceable lamps or consumer-replaceable SSL circuitry and non-consumer-replaceable SSL circuitry, measure both the lamp efficacy of each basic model of lamp or consumer-replaceable SSL light source packaged with the CFLK and the luminaire efficacy of the CFLK with all consumer replaceable lamps or consumer-replaceable SSL light sources removed. Take measurements at full light output. For each test, use the test procedures in the table in this section. CFLKs with non-consumer-replaceable SSL circuitry and consumer replaceable covers may be measured with their covers removed but must otherwise be measured according to the table in this section.

Lighting technology	Lamp or luminaire efficacy measured	Referenced test procedure
Other (non-CFL and non-GSFL) fluorescent lamps.	Lamp Efficacy	IES LM–9–20, sections 4–7 and corresponding subsections including references to IES LM–54–20 (lamp seasoning); IES–LM–78–20 (integrating sphere measurements).
CFLKs with consumer-replaceable SSL circuitry.	Lamp Efficacy	IES LM–79–19, sections 4–7 and corresponding subsections including references to IES–LM–78–17 (integrating sphere measurements); IES LM–75–01/R12 (goniophotometer measurements).
CFLKs with non-consumer-replaceable SSL circuitry.	Luminaire Efficacy	IES LM–79–19, sections 4–7 and corresponding subsections including references to IES–LM–78–17 (integrating sphere measurements); IES LM–75–01/R12 (goniophotometer measurements).
Other SSL lamps that have an ANSI standard base and are not integrated LED lamps.	Lamp Efficacy	IES LM–79–19, sections 4–7 and corresponding subsections including references to IES–LM–78–17 (integrating sphere measurements); IES LM–75–01/R12 (goniophotometer measurements).

■ 9. Amend § 430.32 by revising paragraph (s)(6).

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(s) * * *

(6) Ceiling fan light kits manufactured on or after January 21, 2020 must be packaged with lamps to fill all sockets, and each basic model of lamp packaged with the basic model of CFLK, each basic model of consumer-replaceable SSL circuitry packaged with the basic model of CFLK, and each basic model of non-consumer-replaceable SSL circuitry in the CFLK basic model shall meet the requirements shown in paragraphs (s)(6)(i) and (ii) of this section:

Lumens [1]	Minimum required efficacy (lm/W)
(i) <120	50.
(ii) ≥120	$(74.0 - 29.42 \times 0.9983^{lumens})$.

[1] Use the lumen output for each basic model of lamp packaged with the basic model of CFLK, each basic model of consumer-replaceable SSL circuitry packaged with the basic model of CFLK, or each basic model of non-consumer-replaceable SSL in the CFLK basic model to determine the applicable standard.

* * * * *

[FR Doc. 2022–04764 Filed 3–9–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0186; Airspace Docket No. 22–AAL–6]

RIN 2120–AA66

Proposed Revocation of Colored Federal Airways Blue 7 (B–7) and Green 9 (G–9); Bethel, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revoke Colored Federal airways Blue 7 (B–7) and Green 9 (G–9) in the vicinity of Bethel, AK due to the pending decommissioning of the Oscarville, AK, (OSE) Non-directional Beacon (NDB).

DATES: Comments must be received on or before April 25, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–0186; Airspace Docket No. 22–AAL–6 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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

FOR FURTHER INFORMATION CONTACT: Christopher McMullin, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the

agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2022–0186; Airspace Docket No. 22–AAL–6) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–0186; Airspace Docket No. 22–AAL–6.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Western Service Center, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

The aviation industry/users have indicated a desire for the FAA to transition the Alaskan en route navigation structure away from the dependency on NDBs. The advances in technology have allowed for alternate navigation methods to support decommissioning of high cost ground navigation equipment. The FAA has included OSE on their schedule to be decommissioned. A non-rulemaking study was conducted in accordance with FAA Order JO 7400.2, Procedures for Handling Airspace Matters. As a result, the FAA received no objections to its removal.

Colored Federal airways B–7 and G–9 are dependent on OSE and will result in the airways being unusable once decommissioning occurs. Therefore, the FAA is proposing to revoke B–7 and G–9. The proposed revocation of B–7 can be mitigated currently by utilizing VHF Omnidirectional Radar (VOR) Federal airways V–462 and V–350 and in the future the FAA will propose a United States Area Navigation (RNAV) route to overlay the current B–7. The proposed revocation of G–9 is mitigated by VOR Federal airway V–319 and RNAV route T–269 that currently overlay the route.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to revoke Colored Federal airways B–7 and G–9 in the vicinity of Bethel, AK due to the decommissioning of OSE.

B–7: B–7 currently navigates between the Cape Newenham, AK, NDB and OSE. The FAA proposes to revoke the route in its entirety.

G–9: G–9 currently navigates between OSE and the Cairn Mountain, AK, NDB. The FAA proposes to revoke the route in its entirety.

Colored Federal airways are published in paragraph 6009(a) and 6009(d) of FAA Order JO 7400.11F dated August 10, 2021 and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Colored Federal airways listed in this document would be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6009(a) Colored Federal Airways

* * * * *

G–9 [Remove]

* * * * *

Paragraph 6009(d) Colored Federal Airways

* * * * *

B–7 [Remove]

* * * * *

Issued in Washington, DC, on March 3, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–05036 Filed 3–9–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0172; Airspace Docket No. 22–AAL–3]

RIN 2120–AA66

Proposed Revocation of Colored Federal Airways Amber 5 (A–5) and Blue 4 (B–4); Bettles, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revoke Colored Federal airways Amber 5 (A–5) and Blue 4 (B–4) in the vicinity of Bettles, AK due to the pending decommissioning of Evansville, AK, (EAV) Non-directional Beacon (NDB).

DATES: Comments must be received on or before April 25, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–0172; Airspace Docket No. 22–AAL–3 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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

FOR FURTHER INFORMATION CONTACT: Christopher McMullin, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, part A, subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2022–0172; Airspace Docket No. 22–AAL–3) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–0172; Airspace Docket No. 22–AAL–3.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Western Service Center, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed

in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

The aviation industry/users have indicated a desire for the FAA to transition the Alaskan en route navigation structure away from the dependency on NDBs. The advances in technology have allowed for alternate navigation methods to support decommissioning of high cost ground navigation equipment. The FAA has included EAV on their schedule to be decommissioned effective February 23, 2023. A non-rulemaking study was conducted in accordance with FAA Order JO 7400.2, Procedures for Handling Airspace Matters. As a result, the FAA received no objections to its removal.

Colored Federal airways A–5 and B–4 are dependent upon EAV and will result in the airways being unusable once the decommissioning occurs. The FAA is proposing to revoke A–5 and B–4 as a result. The revocation of A–5 is mitigated by United States Area Navigation (RNAV) route T–233 that currently overlays the route. To mitigate the loss of B–4, the FAA has a planned RNAV route T–374.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to revoke Colored Federal airways A–5 and B–4 due to the decommissioning of EAV.

A–5: A–5 currently navigates between the Ambler, AK, NDB and the Evansville, AK, NDB. The FAA proposes to revoke the route in its entirety.

B–4: B–4 currently navigates between the Utopia Creek, AK, NDB via the Evansville, AK, NDB to the Yukon River, AK, NDB. The FAA proposes to revoke the route in its entirety.

Colored Federal airways are published in paragraph 6009(c) and 6009(d) of FAA Order JO 7400.11F dated August 10, 2021 and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Colored Federal airways listed in this document would be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6009(c) Colored Federal Airways

* * * * *

A–5 [Remove]

* * * * *

Paragraph 6009(d) Colored Federal Airways

* * * * *

B–4 [Remove]

* * * * *

Issued in Washington, DC, on March 7, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–05035 Filed 3–9–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0197; Airspace Docket No. 21–AAL–17]

RIN 2120–AA66

Proposed Amendment of United States Area Navigation (RNAV) Route T–226; Central, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend United States Area Navigation (RNAV) route T–226 in the vicinity of Central, AK in support of a large and comprehensive T-route modernization project for the state of Alaska.

DATES: Comments must be received on or before April 25, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–0197; Airspace Docket No. 21–AAL–17 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov*.

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

FOR FURTHER INFORMATION CONTACT: Christopher McMullin, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800

Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, part A, subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would expand the availability of RNAV in Alaska and improve the efficient flow of air traffic within the National Airspace System (NAS) by lessoning the dependency on ground based navigation.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2022–0197; Airspace Docket No. 21–AAL–17) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–0197; Airspace Docket No. 21–AAL–17.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Western Service Center, Operations Support Group, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

In 2003, Congress enacted the Vision 100—Century of Aviation Reauthorization Act (Pub L. 108–176), which established a joint planning and development office in the FAA to manage the work related to the Next Generation Air Transportation System (NextGen). Today, NextGen is an ongoing FAA-led modernization of the nation's air transportation system to make flying safer, more efficient, and more predictable.

In support of NextGen, this proposal is part of a larger and comprehensive T-route modernization project in the state of Alaska. The project mission statement states: ''To modernize Alaska's Air Traffic Service route structure using satellite based navigation Development of new T-routes and optimization of existing T-routes will enhance safety, increase efficiency and access, and will provide enroute continuity that is not subject to the restrictions associated with ground based airway navigation.'' As part of this project, the FAA evaluated the existing Colored airway structure for: (a) Direct replacement (*i.e.,* overlay) with a T-route that offers a similar or lower Minimum Enroute Altitude (MEA) or Global Navigation Satellite System Minimum Enroute Altitude (GNSS MEA); (b) the replacement of the Colored airway with a T-route in an optimized but similar geographic area, while retaining similar or lower MEA; or (c) removal with no route structure (T-route) restored in that area because the value was determined to be insignificant.

The aviation industry/users have indicated a desire for the FAA to transition the Alaskan en route navigation structure away from dependency on Non-Directional Beacons (NDB), and move to develop and improve the RNAV route structure. To ensure proper connectivity to associated routes, the FAA has been developing waypoints (WP) to allow a smoother transition between airways. RNAV route T–226 requires WUTGA, AK, WP, to connect it to a future proposed route, T–386. While reviewing T–226, the FAA determined that the legal description contained in the FAA Order JO 7400.11F included WPs, FIDAL; ROBES; KLUNG; DOZEY; PAXON; DONEL; and HEXAX, that were not required since they are not considered turn points. In order to provide consistency throughout the Order, the FAA proposes to correct the legal description to follow the format provided in FAA Order JO 7400.2N, Procedures for Handling Airspace Matters. The proposal would also omit the connection point WUTGA, AK, WP, since it is not a turn point.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend RNAV route T–226 in the vicinity of Central, AK in support of a large comprehensive T-route modernization project for the state of Alaska. The proposed amendment is described below.

T–226: The FAA proposes to correct the legal description contained in the FAA Order JO 7400.11F by removing the Fixes that are not considered turn points. Those include: FIDAL; ROBES; KLUNG; DOZEY; PAXON; DONEL; and HEXAX. The rest of the route would remain unchanged.

United States Area Navigation Routes are published in paragraph 6011 of FAA Order JO 7400.11F dated August 10, 2021 and effective September 15, 2021,

which is incorporated by reference in 14 CFR 71.1. The RNAV route listed in this document would be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–226 Johnstone Point, AK (JOH) to Fort Yukon, AK (FYU) [Amended]		
Johnstone Point, AK (JOH)	VOR/DME	(Lat. 60°28′51.43″ N, long. 146°35′57.61″ W)
Gulkana, AK (GKN)	VOR/DME	(Lat. 62°09′13.51″ N, long. 145°26′50.51″ W)
Big Delta, AK (BIG)	VORTAC	(Lat. 64°00′16.06″ N, long. 145°43′02.09″ W)
Fort Yukon, AK (FYU)	VORTAC	(Lat. 66°34′27.31″ N, long. 145°16′35.97″ W)

* * * * *

Issued in Washington, DC, on March 3, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–05034 Filed 3–9–22; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

[File No. R207009]

16 CFR Part 4

Petition for Rulemaking of NetChoice et al.; Correction

AGENCY: Federal Trade Commission.

ACTION: Receipt of petition; correction.

SUMMARY: The Federal Trade Commission (''Commission'') published a document in the **Federal Register** of March 3, 2022, concerning the receipt from and request for comments on a petition for rulemaking by NetChoice, Americans for Prosperity, Hispanic Leadership Fund, Innovation Economy Institute, Institute for Policy Innovation, James Madison Institute, National Taxpayers Union, R Street Institute, and Young Voices. The document contained an incorrect subject heading. The Commission is issuing this correction to provide the correct subject heading.

FOR FURTHER INFORMATION CONTACT: Daniel Freer (phone: 202–326–2663, email: *dfreer@ftc.gov*), Office of the Secretary, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Correction

In FR Doc. 2022–04489 appearing at 87 FR 12003 in the **Federal Register** of Thursday, March 3, 2022, on page 12003, at the top of the second column, change the subject heading to read [Petition for Rulemaking of NetChoice et al.] as set forth above. The initial subject heading of [Petition for Rulemaking of Institute for Policy Integrity] was incorrect.

Dated: March 4, 2022.

April J. Tabor,

Secretary.

[FR Doc. 2022–04986 Filed 3–9–22; 8:45 am]

BILLING CODE 6750–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2022–0137; FRL–9604–01–R5]

Air Plan Approval; Illinois; Redesignation of the Illinois Portion of the Chicago-Naperville, Illinois-Indiana-Wisconsin Area to Attainment of the 2008 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to find that the Illinois portion of the Chicago-Naperville, IL-IN-WI area (Chicago area) is attaining the 2008 ozone National Ambient Air Quality Standard (NAAQS or standard) and to act in accordance with a request from Illinois submitted on January 25, 2022 to redesignate the Illinois portion of the Chicago area to attainment for the 2008 ozone NAAQS because the request meets the statutory requirements for redesignation under the Clean Air Act (CAA). EPA is proposing to approve, as a revision to the Illinois State Implementation Plan (SIP), the State's plan for maintaining the 2008 ozone NAAQS through 2035 in the Illinois portion of the Chicago area. EPA finds adequate and is proposing to approve the 2035 volatile organic

compound (VOC) and oxides of nitrogen (NO_X) Motor Vehicle Emission Budgets (Budgets) for the Illinois portion of the Chicago area. Pursuant to section 110 and part D of the CAA, EPA is proposing to approve the VOC reasonably available control technology (RACT), enhanced motor vehicle inspection and maintenance (I/M), clean-fuel vehicle programs (CFVP), and the enhanced monitoring of ozone and ozone precursors (EMP) SIP revisions submitted by Illinois, because they satisfy serious SIP requirements of the CAA for the Illinois portion of the Chicago area. Finally, EPA is proposing to approve a CAA section 182(f) waiver from NO_X RACT requirements for the Illinois portion of the Chicago area under the 2008 ozone NAAQS.

DATES: Comments must be received on or before April 11, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2022–0137 at *https://www.regulations.gov* or via email to *blakley.pamela@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Leslie, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR 18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6680, *leslie.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is EPA proposing?

EPA is proposing to take several related actions. First, EPA is proposing to determine that the Illinois portion of the Chicago nonattainment area is attaining the 2008 ozone NAAQS, based on quality-assured and certified monitoring data for the 2019–2021 period. The Illinois portion of the Chicago area consists of Cook, DuPage, Kane, Lake, McHenry, and Will Counties and portions of Grundy (Aux Sable and Goose Lake Townships) and Kendall (Oswego Township) Counties in Illinois; the portions of the Chicago area outside of Illinois are Lake and Porter Counties in Indiana, and the portion of Kenosha County, Wisconsin east of Interstate 94. The Illinois portion of the Chicago area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to change the legal designation of the Illinois portion of the Chicago area from nonattainment to attainment for the 2008 ozone NAAQS. EPA is proposing to approve, as a revision to the Illinois SIP, the State's maintenance plan (such approval being one of the CAA criteria for redesignation to attainment status) for the area. The maintenance plan is designed to keep the Chicago area in attainment of the 2008 ozone NAAQS through 2035. As part of the maintenance plan, EPA is proposing to approve the 2035 VOC and NO_X Budgets for the Illinois portion of the Chicago area. EPA is also proposing to approve several elements which meet section 110 and part D of the CAA and EPA's regulations for an area which is classified as serious nonattainment for the 2008 ozone NAAQS. These elements include VOC RACT which includes the Stepan Co. construction permit, Enhanced I/M certification, the CFVP, and the EMP SIP revisions submitted by Illinois. Finally, EPA is proposing to approve a CAA section 182(f) waiver from NO_X RACT requirements for the Illinois portion of the Chicago area under the 2008 ozone NAAQS. This NO_X RACT waiver is based on the most recent three years of complete, certified ozone monitoring data, which show attainment of the 2008 ozone NAAQS in the Chicago area and demonstrate that additional reduction of NO_X emissions in the area would not contribute to attainment of the 2008 ozone NAAQS.

II. What is the background for these actions?

EPA has determined that ground-level ozone is detrimental to human health. On March 27, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm). See 73 FR 16436 (March 27, 2008). Under EPA's regulations at 40 CFR part 50, the 2008 ozone NAAQS is attained in an area when the 3-year average of the annual fourth highest daily maximum 8-hour average concentration is equal to or less than 0.075 ppm, when truncated after the thousandth decimal place, at all of the ozone monitoring sites in the area. *See* 40 CFR 50.15 and appendix P to 40 CFR part 50.

Upon promulgation of a new or revised NAAQS, section 107(d)(1)(B) of the CAA requires EPA to designate as nonattainment any areas that are violating the NAAQS, based on the most recent three years of quality assured ozone monitoring data. The Chicago area was originally designated as a marginal nonattainment area for the 2008 ozone NAAQS on June 11, 2012 (77 FR 34221), effective July 20, 2012. EPA reclassified the Chicago area from marginal to moderate nonattainment on May 4, 2016 (81 FR 26697), effective June 3, 2016. The Chicago area was again reclassified to serious on August 23, 2019 (84 FR 44238), effective September 23, 2019.

III. What are the criteria for redesignation?

Section 107(d)(3)(E) of the CAA allows redesignation of an area to attainment of the NAAQS provided that: (1) The Administrator (EPA) determines that the area has attained the NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP, applicable Federal air pollutant control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and (5) the state containing the area has met all

requirements applicable to the area for the purposes of redesignation under section 110 and part D of the CAA.

On April 16, 1992, EPA provided guidance on redesignations in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 (57 FR 13498) (the ''General Preamble'') and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. ''Ozone and Carbon Monoxide Design Value Calculations,'' Memorandum from Bill Laxton, Director, Technical Support Division, June 18, 1990;
2. ''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
3. ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
4. ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (the ''Calcagni Memorandum'');
5. ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
6. ''Technical Support Documents (TSDs) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
7. ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
8. ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;
9. ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
10. ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. What is EPA's analysis of Illinois' redesignation request?

A. Has the Chicago area attained the 2008 ozone NAAQS?

For redesignation of a nonattainment area to attainment, the CAA requires EPA to determine that the Illinois portion of Chicago area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). An area is attaining the 2008 ozone NAAQS if it meets the 2008 ozone NAAQS, as determined in accordance with 40 CFR 50.15 and appendix U of part 50, based on three complete, consecutive calendar years of quality-assured air quality data for all monitoring sites in the area. To attain the NAAQS, the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations (ozone design values) at each monitor must not exceed 0.075 ppm. The air quality data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA's Air Quality System (AQS). Ambient air quality monitoring data for the 3-year period must also meet data completeness requirements. An ozone design value is valid if daily maximum 8-hour average concentrations are available for at least 90 percent of the days within the ozone monitoring seasons,[1] on average, for the 3-year period, with a minimum data completeness of 75 percent during the ozone monitoring season of any year during the 3-year period. *See* section 4 of appendix P to 40 CFR part 50.

EPA has reviewed the available ozone monitoring data from monitoring sites in the Chicago area for the 2019–2021 period. These data have been quality assured, are recorded in the Air Quality System (AQS), and have been certified. These data demonstrate that the Chicago area is attaining the 2008 ozone NAAQS. The annual fourth-highest 8-hour ozone concentrations and the 3-year average of these concentrations (monitoring site ozone design values) for each monitoring site are summarized in Table 1.

TABLE 1—ANNUAL FOURTH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS (ppm) AND 3-YEAR AVERAGE OF THE FOURTH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS FOR THE CHICAGO AREA

State/county	Monitoring site (AQS site ID)	2019	2020	2021	3-Year average 2019–2021
Illinois:					
Cook	Alsip (17–031–0001)	0.070	0.076	0.068	0.071
Cook	Chicago—SWFP (17–031–0032)	0.071	0.077	0.077	0.075
Cook	Chicago—ComED (17–031–0076)	0.065	0.063	0.070	0.067
Cook	Chicago—Taft (17–031–1003)	0.069	0.076	0.068	0.071
Cook	Lemont (17–031–1601)	0.068	0.078	0.072	0.072
Cook	Shiller Park (17–031–3103)	0.064	0.068	0.060	0.064
Cook	Cicero (17–031–4002)	0.064	0.079	0.067	0.070
Cook	Des Plaines (17–031–4007)	0.066	0.072	0.069	0.069
Cook	Northbrook (17–031–4201)	0.069	0.079	0.075	0.074
Cook	Evanston (17–031–7002)	0.069	0.074	0.078	0.073
DuPage	Lisle (17–043–6001)	0.066	0.073	0.069	0.070
Kane	Elgin (17–089–0005)	0.071	0.073	0.068	0.070
Lake	Zion (17–097–1007)	0.066	0.076	0.077	0.073
McHenry	Cary (17–111–0001)	0.070	0.076	0.069	0.071
Will	Braidwood (17–197–1011)	0.060	0.067	0.065	0.064
Indiana:					
Lake	Gary (18–089–0022)	0.066	0.074	0.070	0.069
Lake	Hammond (18–089–2008)	0.065	0.071	0.068	0.068
Porter	Ogden Dunes (18–127–0024)	0.068	0.076	0.072	0.072

[1] The ozone season is defined by state in 40 CFR 58 appendix D. The ozone season for Illinois is March–October. *See* 80 FR 65292, 65466–67 (October 26, 2015).

TABLE 1—ANNUAL FOURTH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS (ppm) AND 3-YEAR AVERAGE OF THE FOURTH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS FOR THE CHICAGO AREA—Continued

State/county	Monitoring site (AQS site ID)	2019	2020	2021	3-Year average 2019–2021
Porter	Valparaiso (18–127–0026)	0.071	0.067	0.066	0.068
Wisconsin:					
Kenosha	Chiwaukee (55–059–0019)	0.067	0.078	0.079	0.074
Kenosha	Kenosha (55–059–0025)	0.066	0.078	0.072	0.072

The Chicago area's 3-year ozone design value for 2019–2021 is 0.075 ppm,[2] which meets the 2008 ozone NAAQS. Therefore, in today's action, EPA proposes to determine that the Illinois portion of the Chicago area is attaining the 2008 ozone NAAQS.

EPA will not take final action to determine that the Illinois portion of the Chicago area is attaining the NAAQS, nor to approve the redesignation of the Illinois portion of the Chicago area, if the design value of a monitoring site in the area violates the NAAQS after proposal but prior to final approval of the redesignation. As discussed in section IV.D.3. below, Illinois has committed to continue monitoring ozone in this area to verify maintenance of the 2008 ozone NAAQS.

B. Has Illinois met all applicable requirements of section 110 and part D of the CAA for the Illinois portion of the Chicago area, and does Illinois have a fully approved SIP for the area under section 110(k) of the CAA?

As criteria for redesignation of an area from nonattainment to attainment of a NAAQS, the CAA requires EPA to determine that the state has met all applicable requirements under section 110 and part D of the CAA (*see* section 107(d)(3)(E)(v) of the CAA) and that the state has a fully approved SIP under section 110(k) of the CAA (*see* section 107(d)(3)(E)(ii) of the CAA). EPA finds that Illinois has met all applicable SIP requirements, for purposes of redesignation, under section 110 and part D of the CAA (requirements specific to nonattainment areas for the 2008 ozone NAAQS). The Illinois submittal included several nonattainment plan elements to address the serious nonattainment area requirements for the Illinois portion of the Chicago area for the 2008 ozone NAAQS. These include VOC RACT, CFVP, EMP, Enhanced I/M, and a 182(f) waiver from NO_X RACT. As discussed in sections VI through X below, EPA is proposing to approve these elements as meeting the requirements of section 182(c) of the CAA for the Illinois portion of the Chicago area under the 2008 ozone NAAQS. With the exception of those SIP elements, EPA finds that all applicable requirements of the Illinois SIP for the Chicago area, for purposes of redesignation, have been fully approved under section 110(k) of the CAA.

Recognizing that the serious VOC RACT, CFVP, EMP, enhanced I/M, and 182(f) waiver from NO_X RACT must be approved on or before we complete final rulemaking redesignating the area, we determine here that, assuming that this occurs, Illinois will have met all applicable section 110 and part D SIP requirements of the CAA for purposes of redesignation. In making these determinations, EPA ascertained which CAA requirements are applicable to the Illinois portion of the Chicago area and the Illinois SIP and, if applicable, whether the required Illinois SIP elements are fully approved under section 110(k) and part D of the CAA. As discussed more fully below, SIPs must be fully approved only with respect to currently applicable requirements of the CAA.

The September 4, 1992 Calcagni memorandum describes EPA's interpretation of section 107(d)(3)(E) of the CAA. Under this interpretation, a state and the area it wishes to redesignate must meet the relevant CAA requirements that are due prior to the state's submittal of a complete redesignation request for the area. *See also* the September 17, 1993, Michael Shapiro memorandum and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due subsequent to the state's submittal of a complete request remain applicable until a redesignation to attainment is approved, but are not required as a prerequisite to redesignation. *See* section 175A(c) of the CAA and *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). *See also* 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

Since EPA is proposing here to determine that the area has attained the 2008 standard, under 40 CFR 51.918, if that determination is finalized, the requirements to submit certain planning SIPs related to attainment, including attainment demonstration requirements (the reasonably available control measures (RACM) requirement of section 172(c)(1) of the CAA, the reasonable further progress (RFP) and attainment demonstration requirements of sections 172(c)(2) and (6) and 182(b)(1) of the CAA, and the requirement for contingency measures of section 172(c)(9) of the CAA) would not be applicable to the area as long as it continues to attain the NAAQS and would cease to apply upon redesignation. In addition, in the context of redesignations, EPA has interpreted requirements related to attainment as not applicable for purposes of redesignation. For example, in the General Preamble, EPA stated that:

''The section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas.'' (General Preamble, 57 FR at 13564).

See also Calcagni memorandum at 6 (''The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard'').

a. Section 110 General Requirements for Implementation Plans

Section 110(a)(2) of the CAA delineates the general requirements for a SIP. Section 110(a)(2) provides that the SIP must have been adopted by the state after reasonable public notice and hearing, and that, among other things, it

[2] The monitor ozone design value for the monitor with the highest 3-year averaged concentration.

must: (1) Include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; (2) provide for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; (3) provide for implementation of a source permit program to regulate the modification and construction of stationary sources within the areas covered by the plan; (4) include provisions for the implementation of part C prevention of significant deterioration (PSD) and part D new source review (NSR) permit programs; (5) include provisions for stationary source emission control measures, monitoring, and reporting; (6) include provisions for air quality modeling; and, (7) provide for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires SIPs to contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of certain air pollutants, *e.g.,* NO_X SIP call, the Clean Air Interstate Rule (CAIR), Cross State Air Pollution Rule (CSAPR). However, like many of the 110(a)(2) requirements, the section 110(a)(2)(D) SIP requirements are not linked with a particular area's ozone designation and classification. EPA concludes that the SIP requirements linked with the area's ozone designation and classification are the relevant measures to evaluate when reviewing a redesignation request for the area. The section 110(a)(2)(D) requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area within the state. Thus, we believe these requirements are not applicable requirements for purposes of redesignation. *See* 65 FR 37890 (June 15, 2000), 66 FR 50399 (October 19, 2001), 68 FR 25418, 25426–27 (May 13, 2003).

In addition, EPA believes that other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's ozone attainment status are not applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated to attainment of the 2008 ozone NAAQS. The section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (*i.e.,* for redesignations) of conformity requirements, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania proposed and final rulemakings, 61 FR 53174–53176 (October 10, 1996) and 62 FR 24826 (May 7, 1997); Cleveland-Akron-Loraine, Wisconsin final rulemaking, 61 FR 20458 (May 7, 1996); and Tampa, Florida final rulemaking, 60 FR 62748 (December 7, 1995). *See also* the discussion of this issue in the Cincinnati, Ohio ozone redesignation, 65 FR 37890 (June 19, 2000), and the Pittsburgh, Pennsylvania ozone redesignation, 66 FR 50399 (October 19, 2001).

We have reviewed the Illinois SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA, to the extent those requirements are applicable for purposes of redesignation.[3]

b. Part D Requirements

Section 172(c) of the CAA sets forth the basic requirements of air quality plans for states with nonattainment areas that are required to submit them pursuant to section 172(b). Subpart 2 of part D, which includes section 182 of the CAA, establishes specific requirements for ozone nonattainment areas depending on the areas' nonattainment classifications.

The Chicago area is classified as serious under subpart 2 for the 2008 ozone NAAQS. As such, the area is subject to the subpart 1 requirements contained in section 172(c) and section 176 as well as the subpart 2 requirements contained in sections 182(a), (b), and (c) (marginal, moderate, and serious nonattainment area requirements). A thorough discussion of the requirements contained in section 172(c) and 182 can be found in the General Preamble.

i. Subpart 1 Section 172 Requirements

Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all RACM as expeditiously as practicable and to provide for attainment of the primary NAAQS. Under this requirement, a state must consider all available control measures, including reductions that are available from adopting RACT on existing sources, for a nonattainment area and adopt and implement such measures as are reasonably available in the area as components of the area's attainment demonstration. Illinois submitted an attainment demonstration for the Illinois portion of the Chicago 2008 ozone NAAQS moderate nonattainment area on January 10, 2019. Because attainment has been reached in the Illinois portion of the Chicago area, no additional measures are needed to provide for attainment, and section 172(c)(1) requirements are no longer considered to be applicable as long as the area continues to attain the standard until redesignation. *See* 40 CFR 51.918. If EPA finalizes the redesignation of the area, EPA will take no further action on the attainment demonstration submitted by Illinois.

The RFP requirement under section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant for purposes of redesignation because the Chicago area has monitored attainment of the 2008 ozone NAAQS. *See* General Preamble, 57 FR at 13564.

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. This requirement was superseded by the inventory requirement in section 182(a)(1) discussed below.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. On February 6, 2019 (84 FR 2063), EPA approved Illinois' certification that its existing SIP approved NSR regulations fully satisfy the NSR requirements set forth in 40 CFR 51.165 for both marginal and moderate ozone nonattainment areas for the 2008 ozone NAAQS. Nonetheless, EPA has determined that, since PSD requirements will apply after redesignation, an area being redesignated need not comply with the requirement that the NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' Illinois has demonstrated that the Illinois portion of the Chicago area will be able to maintain the 2008 ozone NAAQS without part D NSR in effect; therefore,

[3] EPA has previously approved provisions of the Illinois SIP addressing section 110 elements under the 2008 ozone NAAQS. *See* 79 FR 62042 (Oct. 16, 2014) and 84 FR 49671 (Sept. 23, 2019).

EPA concludes that the state need not have a fully approved part D NSR program prior to approval of the redesignation request. *See* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996). The Illinois PSD program will become effective in the Illinois portion of the Chicago area upon redesignation to attainment. EPA approved Illinois' PSD program on September 9, 2021 (86 FR 50459).

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we believe the Illinois SIP meets the requirements of section 110(a)(2) for purposes of redesignation.

Section 172(c)(9) requires the SIP to provide for the implementation of contingency measures if the area fails to make reasonably further progress or to attain the NAAQS by the attainment deadline. Because the Illinois portion of the Chicago area has attained the ozone NAAQS and is no longer subject to an RFP requirement, the section 172(c)(9) contingency measures are not applicable for purposes of redesignation. (General Preamble, 57 FR at 13564). See also 40 CFR 51.918.

ii. Section 176 Conformity Requirements

Section 176(c) of the CAA requires that federally supported or funded projects conform to the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects that are developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA interprets the conformity SIP requirements [4] as not applying for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state conformity rules have not been approved. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation); *see also* 60 FR 62748 (December 7, 1995) (redesignation of Tampa, Florida).

EPA approved Illinois' general conformity SIP on December 23, 1997 (62 FR 67000). Illinois does not have a federally approved transportation conformity SIP. However, Illinois performs conformity analyses pursuant to EPA's Federal conformity rules. Illinois has also submitted 2035 VOC and NO_X Budgets for the Illinois portion of the Chicago area. The metropolitan planning organization that covers the Illinois portion of this area must use these Budgets in any conformity determination that is effective on or after the effective date of the maintenance plan approval.

iii. Subpart 2 Section 182(a), (b), and (c) Requirements

Section 182(a)(1) requires states to submit a comprehensive, accurate, and current inventory of actual emissions from sources of VOC and NO_X emitted within the boundaries of the ozone nonattainment area. EPA approved Illinois' base year emissions inventory for the Illinois portion of the Chicago area on March 7, 2016 (81 FR 11671) and August 19, 2020 (85 FR 50955).

Under section 182(a)(2)(A), states with ozone nonattainment areas that were designated prior to the enactment of the 1990 CAA amendments were required to submit, within six months of classification, all rules and corrections to existing VOC RACT rules that were required under section 172(b)(3) prior to the 1990 CAA amendments. The Illinois portion of the Chicago area is not subject to the section 182(a)(2) RACT ''fix up'' requirement for the 2008 ozone NAAQS because it was designated as nonattainment for this standard after the enactment of the 1990 CAA amendments and because Illinois complied with this requirement for the Illinois portion of the Chicago area under the prior 1-hour ozone NAAQS. *See* February 21, 1980 (45 FR 11472); November 21, 1987 (52 FR 45333); and September 9, 1994 (59 FR 46562).

Section 182(a)(2)(B) requires each state with a marginal ozone nonattainment area that implemented or was required to implement a vehicle I/M program prior to the 1990 CAA Amendments to submit a SIP revision for an I/M program no less stringent than that required prior to the 1990 CAA Amendments or already in the SIP at the time of the CAA Amendments, whichever is more stringent. For the purposes of the 2008 ozone standard and the consideration of Illinois' redesignation request for this standard, the Illinois portion of the Chicago area is not subject to the section 182(a)(2)(B) requirement because the area was designated as nonattainment for the 2008 ozone standard after the enactment of the 1990 CAA Amendments and because Illinois complied with this requirement for the Illinois portion of the Chicago area under the prior 1-hour ozone NAAQS.

Section 182(a)(3) requires states to submit periodic emission inventories and a revision to the SIP to require the owners or operators of stationary sources to annually submit emission statements documenting actual VOC and NO_X emissions. As discussed below in section IV.D.4. of this proposed rule, Illinois will continue to update its emissions inventory at least once every three years. EPA approved Illinois' emission statement SIP for the Illinois portion of the Chicago area for the 2008 ozone NAAQS on July 11, 2017 (82 FR 31913).

Section 182(b)(1) requires the submission of an attainment demonstration and RFP plan. Illinois submitted an attainment demonstration and RFP plan for the Illinois portion of the Chicago 2008 ozone NAAQS moderate nonattainment area on January 10, 2019. Because attainment has been reached, section 182(b)(1) requirements are no longer considered to be applicable if the area continues to attain the standard. If EPA finalizes approval of the redesignation of the area, EPA will take no further action on the attainment demonstration submitted by Illinois.

Section 182(b)(2) requires states with moderate nonattainment areas to implement VOC RACT with respect to each of the following: (1) All sources covered by a Control Technology Guideline (CTG) document issued between November 15, 1990, and the date of attainment; (2) all sources covered by a CTG issued prior to November 15, 1990; and (3) all other major non-CTG stationary sources. EPA approved Illinois' moderate VOC RACT SIP for the Illinois portion of the Chicago area on August 13, 2021 (86 FR 44616). Illinois submitted VOC RACT at the serious major source threshold on

[4] CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from SIPs requiring the development of Motor Vehicle Emission Budgets, such as control strategy SIPs and maintenance plans.

January 25, 2022. As discussed in section VI., below, EPA is proposing to approve these submittals as meeting the serious VOC RACT requirements of section 182(b)(2) of the CAA. EPA will not finalize this redesignation until we have fully approved Illinois' VOC RACT SIP.

Section 182(b)(3) requires states to adopt Stage II gasoline vapor recovery regulations. On May 16, 2012 (77 FR 28772), EPA determined that the use of onboard vapor recovery technology for capturing gasoline vapor when gasoline-powered vehicles are refueled is in widespread use throughout the highway motor vehicle fleet and waived the requirement that current and former ozone nonattainment areas implement Stage II vapor recovery systems on gasoline pumps.

Section 182(b)(4) requires a basic vehicle I/M program in each state with a moderate ozone nonattainment area. EPA approved Illinois' enhanced I/M program on February 22, 1999 (64 FR 8517) and on August 13, 2014 (79 FR 47377). EPA approved Illinois' I/M program certification for the Illinois portion of the Chicago area for the moderate classification of the 2008 ozone NAAQS on August 19, 2020 (85 FR 50955).

Regarding the source permitting and offset requirements of sections 182(a)(2)(C), 182(a)(4), and 182(b)(5), Illinois currently has a fully approved part D NSR program in place. EPA approved Illinois' NSR SIP on May 13, 2003 (68 FR 25504), September 27, 1995 (60 FR 49778), December 17, 1992 (57 FR 59928), March 31, 1986 (51 FR 10837), September 25, 1985 (50 FR 38803), September 3, 1981 (46 FR 44172), and February 21, 1980 (45 FR 11470). Further, EPA approved Illinois' SIP revision addressing the NSR requirements for the 2008 ozone NAAQS on February 6, 2019 (84 FR 2063). In addition, EPA approved Illinois' PSD program on September 9, 2021 (86 FR 50459), which will become effective in the Illinois portion of the Chicago area upon redesignation to attainment.

Section 182(c) contains the requirements for areas classified as serious. On August 23, 2019 (84 FR 44238), EPA reclassified the Chicago area from moderate to serious and established August 3, 2020 and March 23, 2021 as the due dates for serious area SIP revisions.

Section 182(c)(1) of the CAA requires states with nonattainment areas classified serious or higher to adopt and implement a program to improve air monitoring for ambient concentrations of ozone, NO_X and VOC. EPA initiated the Photochemical Assessment Monitoring Stations (PAMS) program in February 1993. The PAMS program required the establishment of an enhanced monitoring network in all ozone nonattainment areas classified as serious, severe, or extreme. On February 25, 1994 (59 FR 9091), EPA approved Illinois' SIP revision establishing an EMP. For the reasons discussed in section IX, EPA is proposing to approve the Illinois' EMP certification for the 2008 ozone NAAQS. EPA will not finalize this redesignation until it has approved the EMP program certification.

CAA section 182(c)(3) requires states with ozone nonattainment areas classified as serious or higher to adopt and implement a program for an Enhanced I/M program. Illinois submitted an Enhanced I/M performance modeling analysis on January 25, 2022 to support the I/M program certification. For the reasons discussed in section VII, below, EPA is proposing to approve the Illinois I/M certification as meeting the section 182(c)(3) serious enhanced I/M requirements for the Illinois portion under the 2008 ozone NAAQS. EPA will not finalize this redesignation until it has approved the I/M program certification.

CAA section 182(c)(4) requires states with ozone nonattainment areas classified as serious or higher to submit a SIP revision describing implementation of a CFVP, as described in CAA title II part C (40 CFR 88). EPA approved Illinois' CFVP on March 19, 1996 (61 FR 11139). CAA section 182(c)(4) included numerical standards for the CFVP that were intended to encourage innovation and reduce emissions for fleets of motor vehicles in certain nonattainment areas as compared to conventionally fueled vehicles available at the time. As originally adopted, those Clean Fuel Fleet standards were substantially more stringent than the standards that applied to vehicles and engines generally. Now that EPA has begun implementing Tier 3 emission standards in 40 CFR part 86, subpart S, the Clean Fuel Fleet standards are either less stringent than or equivalent to the standards that apply to vehicles and engines generally. On July 29, 2021 (86 FR 34308), EPA published a final rule in which EPA determined that vehicles and engines certified to current emission standards under 40 CFR part 86 or 1036 are deemed to also meet the Clean Fuel Fleet standards as Ultra Low-Emission Vehicles.

For the reasons discussed in section VIII., EPA is proposing to approve the Illinois' certification that its current CFVP meets the serious CFVP requirements for the Illinois portion for the 2008 ozone NAAQS. EPA will not finalize this redesignation until it has approved the CFVP program.

The remaining section 182(c) requirements for areas classified as serious include: An attainment demonstration, RFP, RFP contingency measures, and a transportation control demonstration. These elements are not needed to redesignate the Illinois portion because the area has attained the 2008 ozone NAAQS. This rationale is outlined in 40 CFR 51.918, the General Preamble, and the Calcagni memorandum at 6 (''The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.''). EPA believes that it is reasonable to interpret these provisions so as not to require areas that are meeting the ozone standard to make the SIP submissions to EPA described in the provisions as long as the areas continue to meet the standard. (If such an area were to monitor a violation of the standard prior to being redesignated to attainment, however, the area would have to address the pertinent requirements and submit the SIP revisions described in those provisions to EPA.)

Thus, as discussed above, with approval of Illinois' VOC RACT, enhanced I/M certification, the CFVP certification, the EMP SIP section, and the 182(f) waiver from NO_X RACT, EPA finds that the Illinois portion will satisfy all applicable requirements for purposes of redesignation under section 110 and part D of the CAA.

Section 182(f) of the CAA establishes NO_X requirements for ozone nonattainment areas. Section 182(f)(1) generally requires major sources of NO_X to be covered by the same levels of emission controls as required for major sources of VOC. Since moderate (or above) ozone nonattainment areas are required to be covered by RACT rules for major VOC sources, these ozone nonattainment areas are also required to have NO_X RACT rules. Section 182(f)(1) of the CAA, however, also provides that the requirement for such NO_X emission controls does not apply (can be waived) in an area if the Administrator determines that net air quality benefits are greater in the absence of the NO_X emission reductions. The NO_X emission control requirements can also be waived if the Administrator determines that additional reductions of NO_X emissions would not contribute to attainment of the ozone NAAQS.

On January 25, 2022, Illinois requested a waiver from NO_X RACT requirements for the Illinois portion of the Chicago area based on the fact that the 2008 ozone standard had been attained in the Chicago area and additional NO_X emission reductions in this area are not needed to attain the 2008 ozone NAAQS. As discussed in section X below, EPA is proposing to grant Illinois a waiver from NO_X RACT for the Illinois portion of the Chicago area for the 2008 ozone NAAQS.

The Illinois portion has a fully approved SIP for purposes of redesignation under section 110(k) of the CAA. At various times, Illinois has adopted and submitted, and EPA has approved, provisions addressing the various SIP elements applicable for the ozone NAAQS. As discussed above, if EPA finalizes approval of Illinois' VOC RACT submissions, enhanced I/M certification, CFVP certification, EMP certification, and 182(f) waiver from NO_X RACT, EPA will have fully approved the Illinois SIP for the Illinois portion of the Chicago area under section 110(k) for all requirements applicable for purposes of redesignation under the 2008 ozone NAAQS. EPA may rely on prior SIP approvals in approving a redesignation request (see the Calcagni memorandum at page 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–990 (6th Cir. 1998); *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001)). Additional measures may also be approved in conjunction with a redesignation action (see 68 FR 25426 (May 12, 2003) and citations therein).

C. Are the air quality improvements in the Chicago area due to permanent and enforceable emission reductions?

To redesignate an area from nonattainment to attainment, section 107(d)(3)(E)(iii) of the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from the implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable emission reductions. EPA has determined that Illinois has demonstrated that that the observed ozone air quality improvement in the Illinois portion of the Chicago area is due to permanent and enforceable reductions in VOC and NO_X emissions resulting from state measures adopted into the SIP and Federal measures.

In making this demonstration, the state has calculated the change in emissions between 2011 and 2019. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to several regulatory control measures that the Chicago area and upwind areas have implemented in recent years. In addition, Illinois provided an analysis to demonstrate the improvement in air quality was not due to unusually favorable meteorology. Based on the information summarized below, EPA finds that Illinois has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

1. Permanent and Enforceable Emission Controls Implemented

a. Regional NO_X Controls

Clean Air Interstate Rule (CAIR)/Cross State Air Pollution Rule (CSAPR). Under the ''good neighbor provision'' of CAA section 110(a)(2)(D)(i)(I), states are required to address interstate transport of air pollution. Specifically, the good neighbor provision provides that each state's SIP must contain provisions prohibiting emissions from within that state which will contribute significantly to nonattainment of the NAAQS, or interfere with maintenance of the NAAQS, in any other state.

On May 12, 2005, EPA published CAIR, which required eastern states, including Illinois, to prohibit emissions consistent with annual and ozone season NO_X budgets and annual sulfur dioxide (SO_2) budgets (70 FR 25152). CAIR addressed the good neighbor provision for the 1997 ozone NAAQS and 1997 fine particulate matter ($PM_{2.5}$) NAAQS and was designed to mitigate the impact of transported NO_X emissions, a precursor of both ozone and $PM_{2.5}$, as well as transported SO_2 emissions, another precursor of $PM_{2.5}$. The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded CAIR to EPA for replacement in 2008. *North Carolina* v. *EPA,* 531 F.3d 896, modified, 550 F.3d 1176 (2008). While EPA worked on developing a replacement rule, implementation of the CAIR program continued as planned with the NO_X annual and ozone season programs beginning in 2009 and the SO_2 annual program beginning in 2010.

On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit's remand, EPA published CSAPR to replace CAIR and to address the good neighbor provision for the 1997 ozone NAAQS, the 1997 $PM_{2.5}$ NAAQS, and the 2006 $PM_{2.5}$ NAAQS. Through Federal Implementation Plans, CSAPR required electric generating units (EGUs) in eastern states, including Illinois, to meet annual and ozone season NO_X budgets and annual SO_2 budgets implemented through new trading programs. After delays caused by litigation, EPA started implementing the CSAPR trading programs in 2015, simultaneously discontinuing administration of the CAIR trading programs. On October 26, 2016, EPA published the CSAPR Update, which established, starting in 2017, a new ozone season NO_X trading program for EGUs in eastern states, including Illinois, to address the good neighbor provision for the 2008 ozone NAAQS (81 FR 74504). The CSAPR Update is estimated to result in a 20 percent reduction in ozone season NO_X emissions from EGUs in the eastern United States, a reduction of 80,000 tons in 2017 compared to 2015 levels. The reduction in NO_X emissions from the implementation of CAIR and then CSAPR occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

b. Illinois Point Source Reductions

Illinois has implemented several programs to control emissions for point sources. Illinois has RACT for all major emissions sources and for all sources covered by a CTG. A CTG is a document issued by EPA which establishes a ''presumptive norm'' for RACT for a specific VOC source category. Illinois has adopted New Source Performance Standards (NSPS) for three source categories: Reciprocating Internal Combustion Engine Standards; Industrial/Commercial/Institutional Steam Generating Units; and Crude Oil and Natural Gas Production, Transmission and Distribution. National Emission Standards for Hazardous Air Pollutants (NESHAP)/Maximum Achievable Control Technology (''MACT'') Standards that cover the Reciprocating Internal Combustion Engines, Industrial/Commercial/Institutional Boilers and Process Heaters source categories are also being implemented in the Illinois portion.

c. Federal Emission Control Measures

Reductions in VOC and NO_X emissions have occurred statewide and in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include the following:

Tier 3 Emission Standards for Vehicles and Gasoline Sulfur Standards. On April 28, 2014 (79 FR 23414), EPA promulgated Tier 3 motor vehicle emission and fuel standards to reduce both tailpipe and evaporative emissions and to further reduce the sulfur content

in fuels. The rule is being phased in between 2017 and 2025. Tier 3 sets new tailpipe standards for the sum of VOC and NO_X and for particulate matter (PM). The VOC and NO_X tailpipe standards for light-duty vehicles represent approximately an 80 percent reduction from today's fleet average and a 70 percent reduction in per-vehicle PM standards. Heavy-duty tailpipe standards represent about a 60 percent reduction in both fleet average VOC and NO_X and per-vehicle PM standards. The evaporative emissions requirements in the rule will result in approximately a 50 percent reduction from current standards and apply to all light-duty and on-road gasoline-powered heavy-duty vehicles. Finally, the rule lowered the sulfur content of gasoline to an annual average of 10 ppm by January 2017. As projected by these estimates and demonstrated in the on-road emission modeling for the Illinois portion, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period, as older vehicles are replaced with newer, compliant model years.

Heavy-Duty Diesel Engine Rules. In July 2000, EPA issued a rule for on-road heavy-duty diesel engines that includes standards limiting the sulfur content of diesel fuel. Emissions standards for NO_X, VOC, and PM were phased in between model years 2007 and 2010. In addition, the rule reduced the highway diesel fuel sulfur content to 15 parts per million by 2007, leading to additional reductions in combustion NO_X and VOC emissions. EPA has estimated future year emission reductions due to implementation of this rule. Nationally, EPA estimated that by 2015 NO_X and VOC emissions would decrease by 1,260,000 tons and 54,000 tons, respectively. Nationally, EPA estimated that by 2030 NO_X and VOC emissions will decrease by 2,570,000 tons and 115,000 tons, respectively. As projected by these estimates and demonstrated in the on-road emission modeling for the Illinois portion, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period, as older vehicles are replaced with newer, compliant model years.

Non-road Diesel Rule. On June 29, 2004 (69 FR 38958), EPA issued a rule adopting emissions standards for non-road diesel engines and sulfur reductions in non-road diesel fuel. This rule applies to diesel engines used primarily in construction, agricultural, and industrial applications. Emission standards were phased in for the 2008 through 2015 model years based on engine size. The sulfur limits for non-road diesel fuels were phased in from 2007 through 2012. EPA estimated that compliance with this rule will cut NO_X emissions from these non-road diesel engines by approximately 90 percent. As projected by these estimates and demonstrated in the non-road emission modeling for the Illinois portion, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

Non-road Spark-Ignition Engines and Recreational Engine Standards. On November 8, 2002 (67 FR 68242), EPA adopted emission standards for large spark-ignition engines such as those used in forklifts and airport ground-service equipment; recreational vehicles such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and recreational marine diesel engines. These emission standards were phased in from model year 2004 through 2012. EPA estimated an overall 72 percent reduction in VOC emissions from these engines and an 80 percent reduction in NO_X emissions. As projected by these estimates and demonstrated in the non-road emission modeling for the Illinois portion, as shown in tables 2 and 3 below, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

Category 3 Marine Diesel Engine Standards. On April 30, 2010 (75 FR 22896), EPA issued emission standards for marine compression-ignition engines at or above 30 liters per cylinder. Tier 2 emission standards applied beginning in 2011 and are expected to result in a 15 to 25 percent reduction in NO_X emissions from these engines. Final Tier 3 emission standards applied beginning in 2016 and are expected to result in approximately an 80 percent reduction in NO_X from these engines. As projected by these estimates and demonstrated in the non-road emission modeling for the Illinois portion, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

2. Emission Reductions

Illinois is using a 2011 emissions inventory as the nonattainment year. This is appropriate because it was one of the years used to designate the Chicago area as nonattainment. Illinois is using 2019 as the attainment year, which is appropriate because it is one of the years in the 2019–2021 period used to demonstrate attainment.

The 2011 emissions inventory was derived from an emissions inventory for the Chicago area approved by EPA as meeting the requirements of CAA section 182(a)(1). *See* 81 FR 11671 (March 7, 2016).

Point source information was compiled from 2019 annual emissions reports submitted to the Illinois Environmental Protection Agency (Illinois EPA) by emission sources. Area source emissions were calculated primarily using an emission factor multiplied by an activity rate (*e.g.,* population, employment, amount of fuel burned, etc.).

On-road mobile source emissions were calculated using EPA's MOVES3 emissions model with vehicle miles traveled (VMT) data provided by the Illinois Department of Transportation (IDOT). Non-road mobile source emissions were also calculated using EPA's MOVES3 emissions model. Aircraft emissions were developed using the Federal Aviation Administration's data from the 2017 Terminal Area Forecast for the Illinois portion of the Chicago area. Emissions from locomotives were developed from 2017 values using existing work from other rail projects. Commercial marine vessel emissions were developed from 2019 values using the Army Corps of Engineers 2019 report of Waterborne Commerce of the United States.

Illinois has projected NO_X and VOC emissions for the Illinois portion of the Chicago area for 2035. Illinois has also projected 2030 emissions to represent a midpoint during the maintenance period. Emissions for these two projection years are compared to emission levels in 2019 to determine whether the maintenance plan is adequate to maintain the NAAQS during this period. Point and area source categories, along with non-road categories not calculated by the MOVES model, were calculated using EPA's 2011 Version 6.2 emissions modeling platform, also known as the NODA. This data set projects 2011 emissions to 2017 and 2025. To account for a base year of 2019 and projected years of 2030 and 2035, additional manipulation had to be performed to obtain appropriate growth factors. In this case, the Excel TREND function was used to extrapolate data from the individual years of 2017 to 2025 in order to obtain 2030 emissions.

Emissions presented in the NODA are expressed in tons/year. Growth factors for the applicable year (2030 or 2035) were calculated by taking the ratio of the future year to the base year. Illinois had already calculated daily emissions

for the 2019 inventory, so calculating emissions for the future years was a simple multiplication of the applicable growth factor to obtain the future year emissions.

Illinois EPA's 2019 inventory included some point sources that began operation after the 2011 NODA base year. These emissions were grown using growth factors already calculated using the NODA for the same source classification codes (SCC). Illinois modified the projections in the NODA point source portion of the inventory in certain cases where fuel switching and/or shutdowns occurred. Two large combustion sources were also included in the 2030 and 2035 point source inventories. These sources obtained a construction permit but have not yet been constructed. Daily emissions for these sources were calculated by dividing the allowable emissions by 365.

On-road and non-road emissions for 2030 and 2035 were calculated using the MOVES3 model. The inputs assume the continued phase-in of the Tier 3 standards beginning in 2017, and continued operation of Illinois' vehicle I/M program, and all existing fuel programs.

As part of common practice when projecting non-road emissions, emissions from a proposed third airport for the Chicago area have been included in this inventory.

Emissions for the Indiana and Wisconsin portions of the Chicago area were based on inventories developed by those states in an earlier round of redesignation requests. For the current document, 2011 and 2030 emissions are directly taken from these earlier inventories, whereas 2019 and 2035 emissions were determined by interpolation and extrapolation from these inventories.

Using the inventories described above, Illinois' submittal documents the changes in VOC and NO_X emissions from 2011 to 2019 for the Illinois portion area. Emissions data are shown in Tables 2 and 3.

TABLE 2—EMISSIONS REDUCTION OF NO_X EMISSIONS FOR THE ILLINOIS, INDIANA, AND ILLINOIS PORTIONS OF THE CHICAGO NONATTAINMENT AREA 2011–2019

[tons/day]

Sector	2011 Nonattainment year	2019 Attainment year	Emissions reduction 2011–2019
Illinois:			
Point	119.99	82.78	37.21
Area	32.03	34.63	−2.60
On-Road	285.34	134.37	150.97
Non-road	176.60	121.65	54.95
Total	613.96	373.43	240.53
Indiana:			
Point	94.81	64.20	30.61
Area	9.39	0.91	8.48
On-road	24.70	14.91	9.79
Non-road	15.84	13.43	2.41
Total	144.74	93.45	51.29
Wisconsin:			
Point	8.80	0.08	8.72
Area	1.20	1.13	0.07
On-Road	4.82	1.81	3.01
Non-road	2.25	1.64	0.61
Total	17.07	4.66	12.41
Chicago-Naperville, IL-IN-WI 2008 ozone area:			
Illinois	613.96	373.43	240.53
Indiana	144.74	93.45	51.29
Wisconsin	17.07	4.66	12.41
Total	775.77	471.54	304.23

TABLE 3—EMISSIONS REDUCTION OF VOC EMISSIONS FOR THE ILLINOIS, INDIANA, AND WISCONSIN PORTIONS OF THE CHICAGO NONATTAINMENT AREA 2011–2019

[tons/day]

Sector	2011	2019	Emissions reduction 2011–2019
Illinois:			
Point	48.25	46.32	1.93
Area	215.14	232.00	−16.86
On-Road	72.43	66.45	5.98
Non-road	101.83	67.67	34.16

TABLE 3—EMISSIONS REDUCTION OF VOC EMISSIONS FOR THE ILLINOIS, INDIANA, AND WISCONSIN PORTIONS OF THE CHICAGO NONATTAINMENT AREA 2011–2019—Continued

[tons/day]

Sector	2011	2019	Emissions reduction 2011–2019
Total	437.65	412.44	25.21
Indiana:			
Point	17.76	11.30	6.46
Area	18.26	17.00	1.26
On-road	9.58	6.80	2.78
Non-road	21.43	5.53	15.90
Total	67.03	40.63	26.40
Wisconsin:			
Point	0.64	0.19	0.45
Area	4.10	3.58	0.52
On-Road	1.90	0.89	1.01
Non-road	1.14	0.70	0.44
Total	7.78	5.36	2.42
Chicago-Naperville, IL-IN-WI 2008 ozone area:			
Illinois	437.65	412.44	25.21
Indiana	67.03	40.63	26.40
Wisconsin	7.78	5.36	2.42
Total	512.46	458.43	54.03

As shown in Table 2 and 3, NO_X and VOC emissions in the Illinois portion declined by 240.53 tons/day and 25.21 tons/day, respectively, between 2011 and 2019. NO_X and VOC emissions throughout the entire Chicago area declined by 304.23 tons/day and 54.03 tons/day, respectively, between 2011 and 2019.

3. Meteorology

To further support Illinois' demonstration that the improvement in air quality between the year violations occurred and the year attainment was achieved is due to permanent and enforceable emission reductions, and not unusually favorable meteorology, Illinois submitted a classification and regression tree (CART) analysis completed by the Lake Michigan Air Directors Consortium (LADCO). A CART analysis is a statistical analysis that constructs ozone concentration trends for high ozone days having similar meteorological characteristics. The purpose of this analysis is to minimize the effect of meteorological variability on the trend in ozone concentrations. The resulting trend in ozone concentrations is due to reductions of anthropogenic emissions.

The CART analysis used ozone concentrations from the Zion and Chiwaukee monitors for the 2005–2020 period. These two monitors were chosen because the Chiwaukee monitor is the design value monitor for the Chicago area and the Zion monitor is very near the location of the Chiwaukee monitor. Both monitors are north of the urban center, as well as being near the Lake Michigan shoreline. The CART analysis shows that days with high ozone as well as high temperatures and southerly winds show a marked decrease in ozone concentrations over the 16-year period. The analysis supports the conclusion that the decrease in ozone concentrations leading to attainment of the ozone standard in the Chicago area is caused by actual reductions in emissions, not by favorable meteorological conditions.

As discussed above, Illinois identified numerous permanent and enforceable control measures that resulted in the reduction of VOC and NO_X emissions from 2011 to 2019. In addition, LADCO's CART analyses of meteorological variables associated with ozone formation demonstrate that the improvement in air quality in the Chicago area between the year violations occurred and the year attainment was achieved is not due to unusually favorable meteorology. Therefore, EPA finds that Illinois has shown that the air quality improvements in the Illinois portion of the Chicago area are due to permanent and enforceable emissions reductions.

D. Does Illinois have a fully approvable ozone maintenance plan for the Chicago area?

As one of the criteria for redesignation to attainment section 107(d)(3)(E)(iv) of the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the maintenance plan must demonstrate continued attainment of the NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates that attainment of the NAAQS will continue for an additional 10 years beyond the initial 10-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, as EPA deems necessary, to ensure prompt correction of the future NAAQS violation.

The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five elements: (1) An attainment emission inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) a

process for verification of continued attainment; and (5) a contingency plan. In conjunction with its request to redesignate the Illinois portion of the Chicago area to attainment for the 2008 ozone NAAQS, Illinois submitted a SIP revision to provide for maintenance of the 2008 ozone NAAQS through 2035, more than 10 years after the expected effective date of the redesignation to attainment. As discussed below, EPA proposes to find that Illinois' ozone maintenance plan includes the necessary components and to approve the maintenance plan as a revision of the Illinois SIP.

1. Attainment Inventory

EPA is proposing to determine that the Illinois portion of the Chicago area has attained the 2008 ozone NAAQS based on monitoring data for the 2019–2021 period. Illinois selected 2019 as the attainment emissions inventory year to establish attainment emission levels for VOC and NO_X. The attainment emissions inventory identifies the levels of emissions in the Chicago area that are sufficient to attain the 2008 ozone NAAQS. The derivation of the attainment year emissions was discussed above in section IV.C.2 of this proposed rule. The attainment level emissions, by source category, are summarized in Tables 2 and 3 above.

2. Has the state documented maintenance of the ozone standard in the Chicago area?

Illinois has demonstrated maintenance of the 2008 ozone NAAQS through 2035 by ensuring that current and future emissions of VOC and NO_X for the Illinois portion of the Chicago area remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling.[5] *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA,* 375 F. 3d 537 (7th Cir. 2004). *See also* 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25413, 25430–25432 (May 12, 2003).

Illinois is using emissions inventories for the years 2030 and 2035 to demonstrate maintenance. 2035 is more than 10 years after the expected effective date of the redesignation to attainment and 2030 was selected to demonstrate that emissions are not expected to spike in the interim between the attainment year and the final maintenance year. The emissions inventories were developed as described below.

Illinois calculated emissions for point and area source categories, along with non-road categories not calculated by the MOVES model, using the NODA. This data set projects 2011 emissions to 2019 and 2035.

Emissions presented in the NODA are expressed in tons/year. Growth factors for the applicable year (2030 or 2035) were calculated by taking the ratio of the future year to the base year. Illinois had already calculated daily emissions for the 2019 attainment inventory, so to calculate emissions for the future years, Illinois multiplied the 2019 emissions by the applicable growth factor. Illinois' 2019 inventory included some point sources that began operation after the 2011 NODA base year. These emissions were developed using growth factors already calculated using the NODA for the same SCC. Illinois EPA notes that the projections in the NODA calculated by the IPM model do not agree in certain cases with what Illinois believes will actually happen with fuel switching and/or shutdowns. In those cases, Illinois modified the NODA projections in the point source portion of the inventory. In the 2030 and 2035 point source inventories, Illinois also included two large combustion sources that have obtained construction permits but have not yet been constructed. Daily emissions for these sources were calculated by dividing the allowable emissions by 365.

On-road and non-road emissions for 2030 and 2035 were calculated using the MOVES3 model. The inputs assume the continued phase-in of the phase-in of the Tier 3 standards beginning in 2017, continued operation of Illinois' vehicle I/M program, and reformulated gasoline program). Total VMT for 2030 and 2035 were assumed to increase at a rate of 1.5 percent per year from 2019. As part of common practice when projecting non-road emissions, emissions from a proposed third airport for the Chicago area have been included in this inventory.

Projected emissions data are shown in Tables 4 and 5 below.

TABLE 4—PROJECTED EMISSIONS OF NO_X EMISSIONS FOR THE ILLINOIS, INDIANA, AND WISCONSIN PORTIONS OF THE CHICAGO NONATTAINMENT AREA 2030 AND 2035

[tons/day]

Sector	2019 Attainment year	2030 Interim year	2035 Maintenance year	Emissions reduction 2019–2035
Illinois:				
Point	82.78	97.92	101.13	−18.35
Area	34.63	34.98	35.15	−0.52
On-Road	134.37	55.93	48.80	85.57
Non-road	121.65	106.10	108.27	13.38
Total	373.43	294.93	293.35	80.08
Indiana:				
Point	64.20	62.23	61.93	2.27
Area	0.91	0.88	0.87	0.04
On-road	14.91	6.62	5.51	9.40
Non-road	13.43	10.25	8.49	4.94

[5] While modeling is not required, Illinois cited photochemical modeling performed by EPA and LADCO in support of the interstate transport ''Good Neighbor'' provision of the CAA for the 2015 ozone NAAQS. These modeling results project the highest 2023 average design values to be 0.0662 and 0.0668, well below the 2008 ozone NAAQS. Compared to actual monitored 2009–2013 average design values, both sets of 2023 modeling results show large decreases in ozone concentrations, especially on in the heart of the urban area and at the critical monitors at the north of the nonattainment area along the shore of Lake Michigan. These results provide evidence that ozone concentrations will continue to decrease across the entire nonattainment area.

TABLE 4—PROJECTED EMISSIONS OF NO_X EMISSIONS FOR THE ILLINOIS, INDIANA, AND WISCONSIN PORTIONS OF THE CHICAGO NONATTAINMENT AREA 2030 AND 2035—Continued

[tons/day]

Sector	2019 Attainment year	2030 Interim year	2035 Maintenance year	Emissions reduction 2019–2035
Total	93.45	79.98	76.80	16.65
Wisconsin:				
Point	0.08	0.12	0.12	−0.04
Area	1.13	0.95	0.96	0.17
On-Road	1.81	0.85	0.70	1.11
Non-road	1.64	1.21	1.21	0.43
EGU Emission credit	.....	7.22	7.22	7.22
Total	4.66	3.13	2.99	1.67
Chicago-Naperville, IL-IN-WI 2008 ozone area:				
Illinois	373.43	294.93	293.35	80.08
Indiana	93.45	79.98	76.80	16.65
Wisconsin	4.66	3.13	2.99	1.67
Total	471.54	378.04	373.14	98.40

TABLE 5—PROJECTED EMISSIONS OF VOC EMISSIONS FOR THE ILLINOIS, INDIANA, AND WISCONSIN PORTIONS OF THE CHICAGO NONATTAINMENT AREA 2030 AND 2035

[tons/day]

Sector	2019 Attainment year	2030 Interim year	2035 Maintenance year	Emissions reduction 2019–2035
Illinois:				
Point	46.32	44.61	46.56	−0.24
Area	232.00	225.11	221.67	10.33
On-Road	66.45	37.43	34.26	32.19
Non-road	67.67	66.39	67.35	0.32
Total	412.44	373.54	369.84	42.60
Indiana:				
Point	11.30	11.40	11.57	−0.27
Area	17.00	17.58	17.85	−0.85
On-road	6.80	3.77	2.93	3.87
Non-road	5.53	4.80	4.35	1.18
Total	40.63	37.55	36.70	3.93
Wisconsin:				
Point	0.19	0.26	0.26	−0.07
Area	3.58	3.49	3.56	0.02
On-Road	0.89	0.54	0.47	0.42
Non-road	0.70	0.63	0.62	0.08
EGU Emission credit	.....	0.37	0.37	0.37
Total	5.36	4.92	4.91	0.45
Chicago-Naperville, IL-IN-WI 2008 ozone area:				
Illinois	412.44	373.54	369.84	42.60
Indiana	40.63	37.55	36.70	3.93
Wisconsin	5.36	4.92	4.91	0.45
Total	458.43	416.01	411.45	46.98

In summary, Illinois' maintenance demonstration for the Chicago area shows maintenance of the 2008 ozone NAAQS by providing emissions information to support the demonstration that future emissions of NO_X and VOC will remain at or below 2019 emission levels when considering both future source growth and implementation of future controls. The NO_X and VOC emissions in the Illinois portion of the Chicago area are projected to decrease by 80.08 tons/day and 42.60 tons/day, respectively, between 2019 and 2035. NO_X and VOC emissions in the entire Chicago area are projected to decrease by 98.40 tons/day and 46.98

tons/day respectively between 2019 and 2035.

3. Continued Air Quality Monitoring

Illinois has committed to continue monitoring ozone levels according to an EPA approved monitoring plan, as required to ensure maintenance of the ozone NAAQS. Should changes in the location of an ozone monitor become necessary, Illinois has committed to work with EPA to ensure the adequacy of the monitoring network. Illinois remains obligated to meet monitoring requirements and continue to quality assure monitoring data in accordance with 40 CFR part 58, and to enter all data into EPA's Air Quality System (AQS) in accordance with Federal guidelines.

4. Verification of Continued Attainment

The State of Illinois has confirmed that it has the legal authority to implement and enforce the measures relied upon to attain and maintain the NAAQS pursuant to the Illinois Environmental Protection Act. This includes the authority to adopt, implement, and enforce any subsequent emission control measures determined to be necessary to correct future ozone attainment problems in the Illinois portion of the Chicago area.

Verification of continued attainment is accomplished through operation of the ambient ozone monitoring network and the periodic update of the area's emissions inventory. Illinois will continue to operate an EPA approved ozone monitoring network. In addition, to track future levels of emissions, Illinois will continue to develop and submit to EPA updated emission inventories for all source categories at least once every 3 years, consistent with the requirements of 40 CFR part 51, subpart A, and in 40 CFR 51.122. The Consolidated Emissions Reporting Rule (CERR) was promulgated by EPA on June 10, 2002 (67 FR 39602). The CERR was replaced by the Annual Emissions Reporting Requirements (AERR) on December 17, 2008 (73 FR 76539). The most recent triennial inventory for Illinois was compiled for 2014.

5. What is the contingency plan for the Illinois portion of the Chicago area?

Section 175A of the CAA requires that the state must adopt a maintenance plan, as a SIP revision, that includes such contingency measures as EPA deems necessary to ensure that the state will promptly correct a violation of the NAAQS that occurs after redesignation of the area to attainment of the NAAQS. The maintenance plan must identify: The contingency measures to be considered and, if needed for maintenance, adopted and implemented; a schedule and procedure for adoption and implementation; and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be considered, adopted, and implemented. The maintenance plan must include a commitment that the state will implement all measures with respect to the control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d) of the CAA.

As required by section 175A of the CAA, Illinois has adopted a contingency plan for the Illinois portion to address possible future ozone air quality problems. The contingency plan adopted by Illinois has two levels of response, a Level I response and a Level II response.

In Illinois' plan, a Level I response will be triggered in the event that: (1) The fourth highest ozone concentration at any monitoring site in the Chicago area exceeds 0.075 ppm in any year or (2) the maintenance area's NO_X or VOC emissions inventories increase more than 5 percent above the levels included in the 2019 attainment year inventories. Illinois committed to compiling VOC and NO_X emissions inventories every three years for the duration of the Maintenance Plan to facilitate the emissions trends analysis. If a Level I response is triggered, Illinois will coordinate with LADCO and other Lake Michigan states to evaluate the causes of high ozone levels or the emissions trends and to determine if control measures are needed to ensure continued attainment of ozone NAAQS. Under Level I, measures that could be implemented in a short time would be selected, if any are deemed necessary, to be in place quickly after the Illinois EPA becomes aware that corrective measures have been triggered. Control measures selected under Level I will be adopted in most cases within 18 months after a determination is made, and implemented, generally, within 24 months of adoption.

A Level II response would be triggered if a violation of the ozone NAAQS occurs at a monitoring site within the Chicago maintenance area. In order to select appropriate corrective measures, Illinois will work with LADCO and other Lake Michigan states to conduct a comprehensive study to determine the causes of the violation and the control measures necessary to mitigate the problem. The analysis will examine the following factors: The number, location, and severity of the ambient ozone concentrations; the weather patterns contributing to ozone levels; potential contributing emissions sources; the geographic applicability of possible contingency measures; emissions trends, including timeliness of implementation of scheduled control measures; current and recently identified control technologies; and air quality contributions from outside the maintenance area. Implementation of necessary controls in response to a Level II trigger will take place as expeditiously as possible, but no later than 18 months after Illinois determines, based on quality-assured ambient data, that a violation of the NAAQS has occurred. Illinois will select contingency measures from the following list, or Illinois will implement other measures deemed appropriate and effective at the time the selection is made. However, Illinois is not limited to the measures on this list:

Point Source Measures—Broader geographic applicability of existing measures, if determined to be an issue;

- Oil and Gas Sector Emission Guidelines, once finalized by EPA;
- Revisions to Illinois NO_X state rules for boilers and engines.
- Implementation of OTC model rules for above ground storage tanks;

Mobile Source Measures

- Regulations on the Sale of Aftermarket Catalytic Converters

Area Source Measures

- Current California Commercial and Consumer Products—Aerosol Adhesive Coatings, Dual Purpose Air Freshener/Disinfectant, etc.
- Regulations on Small Off-Road Engines (''SORE'').

To qualify as a contingency measure, emissions reductions from that measure must not be factored into the emissions projections used in the maintenance plan.

EPA has concluded that Illinois' maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. In addition, as required by section 175A(b) of the CAA, Illinois has committed to submit to EPA an updated ozone maintenance plan eight years after redesignation of the Illinois portion of the Chicago area to cover an additional ten years beyond the initial 10-year maintenance period. Thus, EPA finds that the maintenance plan SIP revision submitted by Illinois for the Chicago area meets the

requirements of section 175A of the CAA and EPA proposes to approve it as a revision to the Illinois SIP.

V. Has the state adopted approvable motor vehicle emission budgets?

A. Motor Vehicle Emission Budgets

Under section 176(c) of the CAA, new transportation plans, programs, or projects that receive Federal funding or support, such as the construction of new highways, must ''conform'' to (*i.e.,* be consistent with) the SIP. Conformity to the SIP means that transportation activities will not cause or contribute to any new air quality violations, increase the frequency or severity of any existing air quality problems, or delay timely attainment or any required interim emissions reductions or any other milestones. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of transportation activities to a SIP. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS, but that have been redesignated to attainment with an approved CAA section 175A maintenance plan for the NAAQS.

Under the CAA, states are required to submit, at various times, control strategy SIPs for nonattainment areas and maintenance plans for areas seeking redesignations to attainment of the ozone standard and maintenance areas. *See* the SIP requirements for the 2008 ozone NAAQS in EPA's December 6, 2018 implementation rule (83 FR 62998). These control strategy SIPs (including reasonable further progress plans and attainment plans) and maintenance plans must include the Budgets for criteria pollutants, including ozone, and their precursor pollutants (VOC and NO_X for ozone) to address pollution from on-road transportation sources. The Budgets are the portion of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance. *See* 40 CFR 93.101.

Under 40 CFR part 93, a Budget for an area seeking a redesignation to attainment must be established, at minimum, for the last year of the maintenance plan. A state may adopt Budgets for other years as well. The Budgets serve as a ceiling on emissions from an area's planned transportation system. The Budget concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the Budget(s) in the SIP and how to revise the Budget, if needed, after initially establishing a Budget in the SIP.

As discussed earlier, Illinois' maintenance plan includes NO_X and VOC Budgets for the Illinois portion for 2035, the last year of the maintenance period. The Budgets were developed as part of an interagency consultation process which includes Federal, state, and local agencies. The Budgets were clearly identified and precisely quantified. These Budgets, when considered together with all other emissions sources, are consistent with maintenance of the 2008 ozone NAAQS. These Budgets represent the projected 2035 on-road emissions plus a safety margin, which is described below.

TABLE 6—2035 BUDGETS FOR THE ILLINOIS PORTION FOR THE 2008 OZONE NAAQS MAINTENANCE PLAN

[tons/day]

Pollutant	2035 Budget
NO_X	110.00
VOC	65.00

EPA is proposing to approve the Budgets for use to determine transportation conformity in the Illinois portion of the Chicago-Naperville, IL-IN-WI area, because EPA has determined that the area can maintain attainment of the 2008 ozone NAAQS for the relevant maintenance period with mobile source emissions at the levels of the budgets. Also, EPA is reviewing the budgets to determine if the submitted budgets meet the adequacy criteria in the transportation conformity regulations (40 CFR 93.118(e)(4)). Additionally, as required by the transportation conformity rule (40 CFR 93.118(f)(2)), EPA is using this proposal to notify the public that EPA is beginning a 30-day comment period on the adequacy of the submitted motor vehicle emissions budgets. Comments on the adequacy of the budgets should be submitted to the docket for this proposal. EPA will make a final determination on the adequacy of the submitted budgets either in a final action on this proposal or notifying the State in writing, notifying the public by publishing a **Federal Register** notice and announcing the determination on EPA's adequacy web page.[6]

[6] See *www.epa.gov/state-and-local-transportation/adequacy-review-state-implementation-plan-sip-submissions-conformity.*

B. What is a safety margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. As noted in Tables 4 and 5, the emissions in the Illinois portion of the Chicago area are projected to have safety margins of 80.08 tons/day for NO_X and 42.60 tons/day for VOC in 2035 (the difference between the attainment year, 2019, emissions and the projected 2035 emissions for all sources in the Illinois portion). Even if emissions exceeded projected levels by the full amount of the safety margin, the counties would still demonstrate maintenance since emission levels would equal those in the attainment year.

The transportation conformity regulations allow states to allocate all or a portion of a documented safety margin to the motor vehicle emissions budgets for an area (40 CFR 93.124(a)). Illinois is allocating a portion of the safety margin, 61.20 tons/day of NO_X and 30.74 tons/day of VOC, to the mobile sector for the 2035 Budgets. Since only a part of the safety margin is being used, maintenance requirements are still easily met. Illinois can request an allocation to the Budgets of the available safety margins reflected in the demonstration of maintenance in a future SIP revision.

VI. VOC RACT

Sections 172(c)(1) and 182(b)(2) of the CAA require states to implement RACT in ozone nonattainment areas classified as moderate (and higher). Specifically, these areas are required to implement RACT for all major VOC and NO_X emissions sources and for all sources covered by a CTG. A CTG is a document issued by EPA which establishes a ''presumptive norm'' for RACT for a specific VOC source category. States must submit rules, or negative declarations when no such sources exist for CTG source categories.

EPA's SIP Requirements Rule for the 2008 ozone NAAQS indicates that states may meet RACT through the establishment of new or more stringent requirements that meet RACT control levels, through a certification that previously adopted RACT controls in their SIPs approved by EPA for a prior ozone NAAQS also represent adequate RACT control levels for attainment of the 2008 ozone NAAQS, or with a combination of these two approaches. In addition, a state may submit a negative declaration in instances where there are no CTG sources.

Illinois' VOC RACT demonstration under the 2008 moderate classification was fully approved into the SIP by EPA on August 13, 2021 (86 FR 44616). Illinois certifies that the Illinois portion of the Chicago area's moderate area VOC RACT program also satisfies serious area VOC RACT requirements.

Illinois has previously adopted RACT rules for VOC emission sources in the Chicago area under 35 Ill. Adm. Code Part 218. Illinois certifies that these regulations still satisfy the serious area VOC RACT requirements for the Illinois portion of the Chicago area under the 2008 8-hour ozone NAAQS. Major non-CTG VOC sources, which are subject to RACT, are major VOC sources which are not subject to the applicability criteria in a CTG. Many major sources of ozone precursors located in the ozone nonattainment area that are not subject to specific RACT rules are subject to generic RACT rules. The serious major source threshold of 50 tons per year is addressed for non-CTG VOC major sources under 35 Ill. Adm. Code Part 218 Subparts PP, QQ, RR, and TT.

Illinois has previously submitted several Negative Declarations for CTG categories for which there were no applicable sources found in Illinois that meet the applicability criteria for those CTGs and which did not have appropriate controls due to other state requirements. In those cases, it was unnecessary to adopt new state rules and submit SIP revisions to address those CTG categories. Illinois certifies that the negative declarations for the CTGs for the Ship Building and Ship Repair Industry, Natural Gas/Gasoline Processing Plants, Aerospace Manufacturing and Rework Facilities, High-Density Polyethylene, Polypropylene Manufacturing, Vegetable Oil Processing, and Oil and Natural Gas Industry, approved by EPA on August 13, 2021, are still valid (86 FR 44616).

Illinois evaluated whether its VOC sources under the Industrial Wastewater category meet the serious level RACT requirements through RACT equivalence or RACT applicability of potential VOC emissions being below the 50 tons/year major source threshold. Illinois' analysis of its industrial wastewater VOC sources is detailed below.

Industrial Wastewater

EPA issued a draft CTG for the industrial wastewater category in September 1992. However, because this CTG was never finalized, industrial wastewater sources are considered to be non-CTG sources. Industrial wastewater is a category that is not covered by the Illinois non-CTG RACT rule.

On December 23, 1999, Illinois submitted to EPA a Negative Declaration Letter for the Chicago area covering the Industrial Wastewater sources. At that time, Illinois determined that all sources in the Chicago area to which the draft CTG would be applicable were covered by other regulations that were as stringent or more stringent than the draft CTG. Those sources were two refineries and one chemical plant that were subject to Federal regulations covering waste operations that were equally or more stringent than the CTG.

Illinois reviewed its most recent inventory to determine if any sources fall under the industrial wastewater category, including organic chemicals, plastics, and synthetic fibers; pharmaceuticals; pesticides manufacturing; petroleum refining; pulp, paper, and paperboard mills; and hazardous waste treatment, storage, and disposal facilities. Illinois found 54 sources that required further review. Illinois examined each unit at these sources and the operating permits of those sources to determine whether any source was a significant source of wastewater or if the draft CTG was potentially applicable to a source or unit. Of those 54 sources, it was determined that the draft CTG would be applicable to only six sources. It was found that all subject sources were covered under the NESHAP at 40 CFR 63 subpart G, the NESHAP at 40 CFR 63 subpart FFFF, or by 35 Ill. Adm. Code Section 218 Subpart C.

Illinois requested additional information for twelve industrial wastewater sources that were identified as potentially being subject to non-CTG RACT based on historical emissions. On January 25, 2022, Illinois submitted supplementary information demonstrating that these twelve sources were below the 50 tons/year non-CTG major source threshold for serious areas or demonstrated RACT equivalence. The twelve sources that Illinois evaluated include the following refineries and chemical plants: Ester Solutions, Hexion Inc., INEOS Styrolution America LLC, INEOS Joliet, Polynt Composites USA, AKZO Nobel, AbbVie, LyondellBasell, Exxon Mobil Oil Corp., Citgo Petroleum, Koppers Inc., and Stepan Co.

Ester in Cook County, Hexion in Bedford Park, INEOS Styrolution America LLC in Channahon, and Polynt in Carpentersville were not subject to RACT because their potential to emit (PTE) VOC from wastewater was less than 50 tons/year. Ester has a permitted VOC level of 7.71 tons/year. Hexion has a permitted VOC level of 10.82 tons/year. INEOS Joliet has a permitted VOC level of 9.27 tons/year. The reported VOC emissions from wastewater at INEOS Styrolution is less than 1 ton/year and the VOC PTE from wastewater is well below 50 tons/year. Wastewater is not a significant source of VOC emissions at Polynt as there is no mention of wastewater or wastewater treatment in Polynt's operating permit.

Although Akzo in Morris had a VOC PTE of over 50 tons/year, it was subject to various control measures. Akzo sent its VOC emissions to an afterburner to achieve at least 85 percent control. After considering these controls, the total VOC PTE from wastewater at Akzo was determined to be less than 1 ton/year.

AbbVie in North Chicago demonstrated RACT equivalence. Most of its wastewater was taken off site for treatment. The remaining VOC containing wastewater streams were well controlled at the on-site wastewater treatment plant. The requirements to conduct pretreatment were federally enforceable through its Discharge Control Document, which was issued by the publicly owned treatment works and Illinois. The estimates that AbbVie gave for controlled and uncontrolled emissions resulted in about 98 percent control of VOC from their wastewater operations. Illinois concluded that AbbVie was well controlled and that this level of control represented RACT.

LyondellBasell is subject to the Miscellaneous Organic Chemical Manufacturing NESHAP and Benzene Waste Operations (BWON) NESHAP (40 CFR part 61, subpart FF). After considering these applicable NESHAPs, EPA calculated the total VOC PTE to be 20.38 tons/year, which was below the 50 tons/year non-CTG threshold.

Both Exxon Mobil Oil Corporation's Joliet Refinery and Citgo Petroleum's Lemont Refinery demonstrated that they had achieved RACT equivalence for their VOC wastewater emissions. Both refineries are subject to the requirements of 40 CFR part 63, subpart CC ''National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries'' (MACT CC) and 40 CFR part 61, subpart FF ''National Emission Standard for Benzene Waste Operations'' (BWON). Under these programs, Exxon Mobil has a control efficiency of 98 percent for wastewater VOC emissions and Citgo has a control efficiency of 99.4 percent for wastewater VOC emissions. The control efficiencies are calculated using the pre-control and post-control VOC emissions from the wastewater at each refinery. Exxon Mobil's pre-control VOC emissions are calculated site-wide for all streams at point of generation and includes

maintenance and spills. Exxon Mobil's post-control VOC emissions are also calculated site-wide and accounts for the uncontrolled wastewater streams, effluent from the waste treatment unit, and the uncontrolled maintenance and spills. Citgo's pre-control VOC emissions are calculated site-wide for all streams at point of generation and includes maintenance and spills in the wastewater system. Citgo's post-control VOC emissions are also calculated site-wide and accounts for the uncontrolled VOC emissions from the wastewater system.

Koppers submitted its supporting data for VOC emissions from the wastewater system at the plant. Environmental Resources Management, Inc. performed the modeling of the wastewater treatment plant using a Toxchem model to predict the annual potential VOC emissions. The total VOC PTE at Koppers was 2.25 tons/year, which was far below the 50 tons/year non-CTG threshold.

Illinois issued a construction permit for Stepan Co. (I.D. No.: 197800AAE, issued June 8, 2021) that limits the throughput from upstream processes into the wastewater stream. This results in a potential to emit of 17.70 tons/year, which is below the 50 tons/year non-CTG threshold. This limit is due to new controls, which include an additional air stripper system for the wastewater treatment plant, that were installed in 2020. Illinois has submitted this construction permit as a revision to the Illinois SIP. EPA is proposing to approve this construction permit as a revision to the Illinois SIP, making the throughput limits federally enforceable.

Based on the information that Illinois provided, we agree that that these sources are below 50 tons/year non-CTG threshold for moderate areas or have demonstrated RACT equivalence. Therefore, EPA is proposing to find that these VOC RACT submittals for the Illinois portion of the Chicago area meet the serious VOC RACT requirements for the 2008 ozone NAAQS under the CAA.

VII. Enhanced I/M Program

CAA section 182(c)(3) requires states with ozone nonattainment areas classified as serious or higher to implement an enhanced vehicle I/M program. The general purpose of motor vehicle I/M programs is to reduce emissions from in-use motor vehicles in need of repairs and thereby contribute to state and local efforts to improve air quality and to attain the NAAQS. The Illinois I/M program has been in operation since 1984. It was originally implemented in accordance with the 1977 CAA Amendments and operated in the eight counties of Cook, Lake, DuPage, McHenry, Kane, Will, Grundy (2 townships), and Kendall (1 township). Vehicles were originally tested by measuring tailpipe emissions using a steady-state idle test. Tampering inspections were added in 1989.

The 1990 CAA Amendments set additional requirements for I/M programs. For moderate areas, a ''basic'' program was required under section 182(b)(4). For serious or worse areas, an ''enhanced'' program was required under section 182(c)(3). EPA's requirements for basic and enhanced I/M programs are found in 40 CFR part 51, subpart S.

Illinois' I/M program transitioned to an enhanced program in December 1995. The major enhancement involved adding new test procedures to more effectively identify high-emitting vehicles. These new test procedures included a transient emissions test in which tailpipe emissions were measured while the vehicle was driven on a dynamometer (a treadmill-type device). Improving repairs and public convenience were also major focuses of the enhancement effort.

Since July of 2001, all model year (MY) 1996 and later cars and light trucks have been inspected by scanning the vehicle's computerized second-generation on-board diagnostic (OBD) system instead of measuring tailpipe emissions. As of July 2008, the program dropped tailpipe testing entirely and has inspected all vehicles by scanning the OBD system. This change was the result of statutory changes in the State's 2007–2009 biennial budget which exempted model years of vehicles not federally required to be equipped with this OBD technology (MY 1995 and earlier cars and light trucks and MY 2006 and earlier heavy trucks).

EPA fully approved the Illinois enhanced I/M program on February 22, 1999 (64 FR 8517) and on August 13, 2014 (79 FR 47377). Illinois' I/M program was revised and approved on August 13, 2014 (79 FR 47377). The revisions to Illinois' I/M program included a demonstration under section 110(l) of the CAA addressing lost emission reductions associated with the program changes.

The legal authority and administrative requirements for the Illinois I/M program are found in 625 ILCS 5/13C (Illinois Vehicle Emission Inspection Law of 2005); 35 Ill. Adm. Code 240 (Emissions Standard and Limitations for Mobile Source); and 35 Ill. Adm. Code 276 (Procedures to be followed in the performance of inspections of Motor Vehicle Emissions).

To support their certification of the enhanced I/M program, Illinois submitted a modeling demonstration with EPA's enhanced performance standard for areas designated and classified under the 8-hour ozone standard, as specified in 40 CFR 51.351(i). Illinois used the most recent version of EPA's mobile source emissions model, MOVES3.0.2 (released in September 2021), for the analysis. This modeling was conducted in accordance with EPA's technical guidance: Performance Standard Modeling for New and Existing Vehicle Inspection and Maintenance (I/M) Programs Using the MOVES Mobile Source Emissions Model, EPA–420–B–14–006, January 2014, and MOVES3 Technical Guidance: Using MOVES to Prepare Emission Inventories for State Implementation Plans and Transportation Conformity, EPA–420–B–20–052, November 2020.

The performance standard modeling analysis involves a comparison of emission reductions from EPA's model program specified in 40 CFR 51.351(i) and Illinois' actual program in the eight counties of Cook, Lake, DuPage, McHenry, Kane, Will, Grundy (2 townships), and Kendall (1 township).

To demonstrate that an enhanced I/M program meets the performance standard, the actual I/M program must obtain the same or lower emissions levels as the EPA model program within ±0.02 gram per mile. Illinois' I/M performance analysis shows that Illinois' I/M program achieves emission reductions at least as great as this criterion. Illinois' demonstration supports its certification that the current I/M program meets the applicable enhanced I/M performance standard requirements in 40 CFR part 51, subpart S in all areas in which the program is implemented for the 2008 ozone NAAQS.

VIII. Clean Fuels Vehicles Program

CAA section 182(c)(4) requires states with ozone nonattainment areas classified as serious or higher to submit a SIP revision describing implementation of a CFVP, as described in CAA Title II Part C (40 CFR 88). EPA approved Illinois' CFVP on March 19, 1996 (61 FR 11139). CAA section 182(c)(4) included numerical standards for the CFVP that were intended to encourage innovation and reduce emissions for fleets of motor vehicles in certain nonattainment areas as compared to conventionally fueled vehicles available at the time. As originally adopted, those Clean Fuel Fleet standards were substantially more stringent than the standards that applied

to vehicles and engines generally. Now that EPA has begun implementing Tier 3 emission standards in 40 CFR part 86, subpart S, the Clean Fuel Fleet standards are either less stringent than or equivalent to the standards that apply to vehicles and engines generally. On July 29, 2021 (86 FR 34308), EPA published a final rule in which EPA determined that vehicles and engines certified to current emission standards under 40 CFR part 86 or 1036 are deemed to also meet the Clean Fuel Fleet standards as Ultra Low-Emission Vehicles. Since vehicle emission standards have only become more stringent since Illinois' program was approved, the CAA section 182(c)(4) CFVP requirement remains satisfied without the need for further action by the state.

IX. Enhanced Monitoring Plan

Section 182(c)(1) of the CAA requires States with nonattainment areas classified serious or higher adopt and implement a program to improve air monitoring for ambient concentrations of ozone, NO_X, and VOC. EPA initiated the PAMS program in February 1993. The PAMS program required the establishment of an enhanced monitoring network in all ozone nonattainment areas classified as serious, severe, or extreme. On February 25, 1995 (59 FR 9091), EPA approved Illinois' SIP revision establishing an enhanced monitoring program.

Since that time, EPA concluded that requiring enhanced monitoring for ozone nonattainment areas classified as moderate or above is appropriate for the purposes of monitoring ambient air quality and better understanding ozone pollution. In EPA's revision to the ozone standard on October 1, 2015, EPA relied on the authority provided in sections 103(c), 110(a)(2)(B), 114(a) and 301(a)(1) of the CAA to expand the PAMS applicability to areas other than those that are serious or above ozone nonattainment and substantially revise the PAMS requirements in 40 CFR part 58 appendix D (80 FR 65292). Specifically, this rule required states with moderate and above ozone nonattainment areas to develop and implement an EMP. These plans should detail enhanced ozone and ozone precursor monitoring activities to be performed to better understand area-specific ozone issues.

To meet this requirement, Illinois submitted its updated EMP as part of the Illinois Ambient Air Monitoring 2019 Network Plan, which has been approved by EPA. Illinois will continue to meet its CAA section 182(c)(1) EMP requirements by maintaining an air monitoring network in the Illinois portion of the Chicago area. Illinois will work with EPA through the air monitoring network review process, as required by 40 CFR part 58, to determine the adequacy of the ozone monitoring network, additional monitoring needs, and recommended monitor decommissions. Air monitoring data from these monitors will continue to be quality assured, reported, and certified according to 40 CFR part 58.

Illinois will continue to meet its CAA section 182(c)(1) EMP requirements by including its EMP in Illinois' Air Monitoring Network Plan, which is subject to EPA review and approval on an annual basis. Therefore, EPA is proposing to find that Illinois has met the EMP requirements for its portion of the Chicago area for the 2008 ozone NAAQS.

X. NO_X RACT Waiver

In some cases, an ozone nonattainment area might attain the ozone standard, as demonstrated by three consecutive years of adequate monitoring data, without having implemented the section 182(f) NO_X provisions over that 3-year period. Where the NO_X requirements were not implemented over that 3-year period, the section 182(f) language is met since ''additional'' reductions of NO_X would not contribute to attainment. That is, since attainment has already occurred, additional NO_X reductions could not improve the area's attainment status and, therefore, the NO_X exemption request could be approved.

EPA's approval of the exemption, if warranted, would be granted on a contingent basis (*i.e.,* the exemption would last for only if the area's monitoring data continue to demonstrate attainment). The State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The air quality data relied on for the above determinations must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance. If it is subsequently determined by EPA that the area has violated the standard, EPA would conduct notice and comment rulemaking to remove the NO_X exemption.

Specifically, Illinois requested to exempt major stationary sources of NO_X (as defined in section 302 and subsections 182(c) and (d) of the CAA from the RACT requirements of section 182(b)(2)), based on the fact that the entire nonattainment area, as the result of permanent and enforceable emission control measures, has recorded three years of complete, quality assured ambient air quality monitoring data for the years 2019–2021 demonstrating attainment of the 2008 ozone standard, as shown in Table 1. As such, the area is eligible for a waiver of NO_X RACT requirements, as specified in section 182(f)(1)(A) of the CAA. Upon final approval of the NO_X waiver, Illinois will not be required to adopt and implement NO_X emission control regulations pursuant section 182(f) for the Illinois portion of the Chicago area to qualify for redesignation. If the Chicago area violates before redesignation, then EPA would not be able to finalize approval of a NO_X waiver.

XI. Proposed Actions

EPA is proposing to determine that the Illinois portion of the Chicago area is attaining the 2008 ozone NAAQS, based on quality-assured and certified monitoring data for the 2019–2021 period. EPA is proposing to approve the VOC RACT, enhanced I/M, CFVP, and EMP SIP revisions included in Illinois' January 25, 2022 submittal because they satisfy the serious requirements of the CAA for the Illinois portion of the Chicago area. EPA is proposing to approve a CAA section 182(f) waiver from NO_X RACT requirements for the Illinois portion of the Chicago area under the 2008 ozone NAAQS because it satisfies the requirements of the CAA. EPA is proposing to determine that, if and when EPA approves Illinois' VOC RACT, enhanced I/M, CFVP, EMP, and NO_X RACT Exemption SIP submittals, the Illinois portion of the Chicago area will have met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to change the legal designation for the Illinois portion of the Chicago-Naperville, IL-IN-WI area from nonattainment to attainment for the 2008 ozone NAAQS. EPA is also proposing to approve, as a revision to the Illinois SIP, the state's maintenance plan for the area. The maintenance plan is designed to keep the Illinois portion of the Chicago area in attainment of the 2008 ozone NAAQS through 2035. Finally, EPA is proposing to find adequate and approve the newly-established 2035 Budgets for the Illinois portion of the Chicago area.

XII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not

impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, Administrative practice and procedure, Designations and classifications, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 3, 2022.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2022–05020 Filed 3–9–22; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 87, No. 47
Thursday, March 10, 2022

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

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections

AGENCY: U.S. Agency for International Development.

ACTION: Notice of public information collections.

SUMMARY: The U.S. Agency for International Development (USAID) seeks Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, USAID requests public comment on this collection from all interested individuals and organizations. This proposed information collection was published in the **Federal Register** on September 27, 2021, allowing for a 60-day public comment period. The purpose of this notice is to allow an additional 30 days for public comment. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of functions of the agency, including the practical utility of the information; the accuracy of USAID's estimate of the burden of the proposed collection of information; ways to enhance the quality, utility, and clarity of the information collected; and ways to minimize the burden of the collection of information on respondents.

DATES: 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.

ADDRESSES: Interested persons are invited to submit comments regarding the proposed information collection to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USAID.

FOR FURTHER INFORMATION CONTACT: Kristen Rancourt, at (202) 921–5119, or via email at *krancourt@usaid.gov.*

SUPPLEMENTARY INFORMATION: Notice regarding this proposed information collection was previously published at 86 FR 53264. No comments were received. The Agency did not address comments unrelated to, or outside the scope of, the notice at *86 FR 53264.*

Overview of Information Collection

(1) Title of Information Collection: Training and Exchanges Automated Management System (TEAMS).

(2) Type of Review: New Information Collection.

(3) Purpose: USAID must collect information for reporting purposes to the Interagency Working Group (IAWG); Student and Exchange Visitor Information System (SEVIS) batch processing; and internal reporting and portfolio management.

(4) Method of Collection: Electronic.

(5) Respondents: Exchange Visitors as defined in ADS Chapter 252, Visa Compliance for Exchange Visitors.

(6) Estimated Number of Annual Responses: 1,500–2,000.

(7) Average Time per Response: 15 minutes.

(8) Estimated Annual Burden: 375–500 hours.

(9) Frequency: On occasion.

(10) Obligation to Respond: Required to obtain a benefit.

Susan C. Radford,

Management and Program Analyst, Bureau for Management, Office of Management Policy, Budget, and Performance, U.S. Agency for International Development.

[FR Doc. 2022–05032 Filed 3–9–22; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2022–0005]

Notice of Request To Renew an Approved Information Collection: Importation and Transportation of Meat, Poultry, and Egg Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) FSIS is announcing its intention to revise the approved information collection regarding the importation and transportation of meat, poultry, and egg products. The approval for this information collection will expire on July 31, 2022. FSIS is reducing the total burden estimate by 349 hours due to updated information.

DATES: Submit comments on or before May 9, 2022.

ADDRESSES: FSIS invites interested persons to submit comments on this **Federal Register** notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides commenters the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Go to *https://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to 1400 Independence Avenue SW, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2022–0005. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *https://www.regulations.gov.*

Docket: For access to background documents or comments received, call (202) 205–0495 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop

3758, South Building, Washington, DC 20250–3700; (202) 720–5627.

SUPPLEMENTARY INFORMATION:

Title: Importation and Transportation of Meat, Poultry, and Egg Products.

OMB Number: 0583–0094.

Expiration Date: 07/31/2022.

Type of Request: Revision of an approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18, 2.53), as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged.

FSIS is requesting a revision of the information collection regarding the importation and transportation of certain meat, poultry, and egg products. The approval for this information collection will expire on July 31, 2022. FSIS is reducing the total burden estimate by 349 hours due to updated information.

This information collection includes (1) foreign inspection certificates from foreign countries required by FSIS to export meat, poultry, and egg products to the United States (9 CFR 327.2 and 381.196); (2) documentation required by FSIS from official import establishments to pre-stamp imported product with the inspection legend before reinspection is complete (9 CFR 327.10(d) and 381.204(f)); and (3) documentation required from official establishments to transport meat and poultry shipments under seal (FSIS Form 7350–1, Request and Notice of Shipment of Sealed Meat and Poultry) (9 CFR 325.5).

(1) Foreign countries that wish to export meat, poultry, and egg products to the United States must establish eligibility to do so by putting in place inspection systems that are ''equivalent to'' the U.S. inspection system (9 CFR 327.2 and 381.196) and by annually certifying that they continue to do so. Meat, poultry, and egg products intended for importation into the U.S. must be accompanied by an inspection certificate signed by an official of the foreign government responsible for the inspection and certification of the product (9 CFR 327.4, 381.197, and 590.915).

(2) Import establishments that wish to pre-stamp imported product with the inspection legend before FSIS inspection is complete must submit a letter to FSIS that explains and requests approval for the establishment's pre-stamping procedure (9 CFR 327.10(d) and 381.204(f)).

(3) Unless accounted for in an establishment's HACCP plan, meat and poultry products that do not bear the mark of inspection and that are to be shipped from one official establishment to another for further processing must be transported under USDA seal to prevent such unmarked product from entering into commerce (9 CFR 325.5). To track product shipped under seal, FSIS requires the shipping establishment to complete FSIS Form 7350–1, which identifies the type, amount, and weight of the product.

FSIS has made the following estimates based on an information collection assessment.

Respondents: Importers, establishments, foreign governments.

Estimate of Burden: FSIS estimates that it takes each respondent an average of 54.07 hours per year to complete the foreign inspection certificates, pre-stamp documentation, and documentation required to transport meat and poultry shipments.

Estimated Number of Respondents: 68.

Estimated Total Annual Burden on Respondents: 3,677 hours.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250–3700; (202) 720–5627.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS' functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of the method and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20253.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: *https://www.fsis.usda.gov/federal-register.*

FSIS will also announce and provide a link to this **Federal Register** publication through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *https://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may

be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at 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 of 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: 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.*

USDA is an equal opportunity provider, employer, and lender.

Paul Kiecker,

Administrator.

[FR Doc. 2022–05039 Filed 3–9–22; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Office of Partnerships and Public Engagement

[FOA No.: OPPE–017]

Catalog of Federal Domestic Assistance (CFDA) No.: 10.443—Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers and Veteran Farmers and Ranchers

AGENCY: Office of Partnerships and Public Engagement (OPPE), Agriculture (USDA).

ACTION: Funding Opportunity Announcement (FOA) for Fiscal Year 2022.

SUMMARY: This notice announces the availability of funds for fiscal year (FY) 2022 and solicits applications from community-based and non-profit organizations, institutions of higher education, and Tribal entities to compete for financial assistance through the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers and Veteran Farmers and Ranchers Program (hereinafter referred to as the ''2501 Program'').

DATES: Only one project proposal may be submitted per eligible entity. Proposals must be submitted through *Grants.gov* (*www.grants.gov*) and received by June 8, 2022, at 11:59 p.m. EDT. Proposals submitted after this deadline will *not* be considered for funding.

The OPPE will host two (2) webinars during the open period of this announcement as provided below. Sessions will be recorded. Additional sessions may be necessary to answer questions and clarify requirements. There is no registration required to participate.

Session 1: March 31, 2022, at 2:00 p.m. EDT—To join the conference, click: https://www.zoomgov.com/webinar/register/WN_deGz0uf9TIyNPkkuvRfxUA.

Session 2: May 4, 2022, at 2:00 p.m. EDT—To register for the conference, click: https://www.zoomgov.com/webinar/register/WN_29_qm0hxTbeYw2I9e2QAfw.

After registering, you will receive a confirmation email containing information about joining the webinar, including call-in instructions.

ADDRESSES:

Filing a Complaint of Discrimination

To file a program discrimination complaint, you may obtain a complaint form by sending an email to *OAC@usda.gov.* You or your authorized representative must sign the complaint form. You are not required to use the complaint form. You may write a letter instead. If you write a letter, it must contain all the information requested in the form and be signed by you or your authorized representative. Incomplete information will delay the processing of your complaint. Employment civil rights complaints will not be accepted through this email address.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Center for Civil Rights Enforcement, 1400 Independence Avenue SW, Washington, DC 20250–9410.

Fax: (202) 690–7442.

Email: program.intake@usda.gov.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Agriculture, Office of Partnerships and Public Engagement, Attn: Director, Grant Programs, Jamie L. Whitten Building, Room 524–A, 1400 Independence Avenue SW, Washington, DC 20250, Phone: (202) 720–6350, Fax: (202) 720–7704, Email: *2501Grants@usda.gov.*

Persons with Disabilities: Persons who require alternative means for communication (Braille large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). Additionally, alternative means for submissions due to disability status will be approved on a case-by-case basis.

SUPPLEMENTARY INFORMATION: The overall goal of the 2501 Program is to encourage and assist socially disadvantaged farmers and ranchers, veteran farmers and ranchers, and beginning farmers and ranchers with owning and operating farms and ranches and in participating equitably in the full range of agricultural, forestry, and related programs offered by USDA. It also includes projects that develop socially disadvantaged youths' interest in agriculture. In partnership with the OPPE, eligible entities may compete for funding on projects that provide education and training in agriculture, agribusiness, forestry, agricultural-related services, and USDA programs, and to conduct outreach initiatives designed to accomplish those goals. This partnership includes working closely with OPPE, attend OPPE-led events in your proposed service territory, and collaborate with USDA Service Centers located in your state (Farm Service Agency, Natural Resources Conservation Service, and Rural Development).

Funding/Awards: The total funding provided for this competitive grant program is approximately $35 million. This includes approximately $18 million as provided in the 2018 Farm Bill and funding from Section 754 of Division N, Additional Coronavirus Response and Relief, of the Consolidated Appropriations Act, 2021, Public Law 116–260, in the amount of $17 million.

The OPPE will award grants from this announcement, subject to availability of funds and the quality of applications received. All applicants will compete based on their organization's entity type (*e.g.,* nonprofit organization, tribal entity, or higher education institution), as described below. *The project period must be three (3) years for all proposals.* The maximum amount of requested federal funding for projects shall not exceed $750,000 over the 3-year period. Additionally, the maximum award per year is $250,000. Projects will be funded in accordance with the approved statement of work and the OPPE Guidelines to maximize outreach, education and technical assistance ensuring geographical distribution of funds as required in section 7 U.S.C. 2279(c)(4)(G).

Funds will be awarded to eligible entities that have at least three (3) years of documented experience, preceding the submission of an application, in working with socially disadvantaged farmers and ranchers or veteran farmers and ranchers to improve their ability to start and maintain successful forestry and/or agricultural-related operations. The Secretary shall give priority to nongovernmental and community-based organizations with demonstrated history

of serving socially disadvantaged and veteran farmers and ranchers (see Section V. Application Review Information). OPPE will check several sources, including the System of Award Management (*SAM.gov*) to help determine the minimum of 3 years of documented experience in working with either socially disadvantaged or veteran farmers and ranchers. Entries in SAM take precedence when determining experience.

An applicant MUST be an entity or organization. Individuals and for-profit organizations do not meet the eligibility criteria.

Unallowable use of 2501 Grant Program funds:

1. Funds may not be used for the planning, repair, rehabilitation, acquisition, or construction of a building or facility.

2. Funds may not be used to pay hourly wages as in a jobs creation program for individual farmers or ranchers.

3. Funds may not be used as small agricultural loans for individual farmers or ranchers or used to incentivize individuals to attend events, workshops, or training.

4. Funds may not be used to purchase farming supplies for individual farmers or ranchers or to enhance individual farmers' or ranchers' farms or production capabilities.

5. Funds may not be used to reward individual farmers or ranchers for outstanding effort or achievement in training.

6. Funds may not be used to pay for scholarships for individual farmers or ranchers to attend college courses, certificate courses, or other ''for fee'' based courses.

7. Funds may not be used for start-up or financing costs for businesses or for an organization's capacity building, which is defined as the development of organizational competencies, strategies, or systems and structures in order to improve organizational efficiency and effectiveness.

8. Funds may not be used for large equipment purchases such as vehicles, semi-tractors, or refrigeration systems.

Eligible entities may receive subsequent years funding provided that:

(a) Activities and associated costs do not overlap with projects awarded in previous years; and

(b) Recipients are current and compliant with financial and performance reporting. The progress of existing projects, along with the percentage of funds used to date, may impact funding decisions.

Funding will be awarded based on ranked scores comprised of the three categories described below. The OPPE has discretion to allocate funding among the three categories based upon the number and quality of applications received. There is *no commitment* by the OPPE to fund any particular application nor is there a minimum number of recipients within each category.

Category #1: Eligible entities described in Sections III.A.2, III.A.3, and III.A.4 (1890 Land-Grant colleges and universities, 1994 Tribal Land-Grant, Alaska Native and American Indian Tribal colleges and universities, and Hispanic-Serving Institutions of higher education).

Category #2: Eligible entities described in Sections III.A.1 and III.A.6 (*i.e.,* nonprofit organizations, community-based organizations, including a network or a coalition of community-based organizations, Federally-recognized Indian Tribes (as defined in 25 U.S.C. 5131), and National Tribal organizations).

Category #3: Eligible entities described in Sections III.A.5 and III.A.7 (*i.e.,* all other institutions of higher education including 1862 colleges, nonprofit organizations without a 501(c)(3) status certification from the IRS, and an organization or institution that received funding under this program before January 1, 1996).

Contents of This Announcement

I. Funding Opportunity Description

A. Background

The OPPE is committed to ensuring underserved communities can equitably participate in USDA programs. Differences in demographics, culture, economics, language, and other factors preclude a single approach to identifying solutions that can benefit underserved farmers and ranchers. Grants are provided to community-based and non-profit organizations, higher education institutions, eligible Tribal entities and other eligible entities with *at least three (3) years of documented experience,* preceding the submission of an application. Eligible entities working with socially disadvantaged farmers and ranchers or veteran farmers and ranchers can improve their ability to start and maintain successful forestry and/or agricultural-related operations. With 2501 Program funding, organizations can provide education, training, and technical assistance and extend outreach and education efforts to connect with and assist socially disadvantaged and veteran farmers and ranchers to provide them with information on available USDA resources.

1. The 2501 Program was authorized by the Food, Agriculture, Conservation, and Trade Act of 1990. The Food, Conservation, and Energy Act of 2008 expanded the authority of the Secretary of Agriculture (the Secretary) to provide awards under the program and transferred the administrative authority to the OPPE. The Agricultural Act of 2014 further expanded the program to include outreach and technical assistance to veterans. The 2501 Program extends USDA's capacity to work with members of farming and ranching communities by funding projects that enhance the equitable participation of socially disadvantaged and veteran farmers and ranchers in USDA programs. It is the OPPE's intention to build lasting relationships among USDA, recipient organizations, and underserved communities to maximize the availability of outreach and technical assistance in targeted communities.

2. Only one proposal will be accepted from each organization. This does not apply to applicants in the State of Massachusetts. The State fiscal transfer agent may submit multiple proposals ensuring that only one proposal is submitted on behalf of each of its individual fiscally sponsored organizations.

B. Scope of Work

The 2501 Program provides funding to eligible organizations with *at least 3 years of documented experience,* preceding the submission of an application, in working with socially disadvantaged farmers and ranchers or veteran farmers and ranchers to improve their ability to start and maintain successful forestry and/or agricultural-related operations. Proposals must be consistent with requirements stated in 7 U.S.C. 2279(c)(3). Under this statute, the outreach and technical assistance program funds shall be used exclusively:

1. To enhance coordination of the outreach, technical assistance, education, and training efforts authorized under USDA agriculture programs;

2. To assist the Secretary of Agriculture in:

a. Reaching current and prospective socially disadvantaged farmers or ranchers, veteran farmers or ranchers, or beginning farmers and ranchers in a linguistically appropriate manner; and

b. improving the participation of those farmers and ranchers in USDA programs.

There are five programmatic mission areas that support the goals of the 2501 Program. Proposals from eligible entities must address *at least two* of the five following programmatic mission areas as they develop their goals:

i. Assist socially disadvantaged, veteran farmers and ranchers, including beginning farmers and ranchers in owning and operating successful farms and ranches;

ii. Improve participation among socially disadvantaged or veteran farmers and ranchers in USDA programs;

iii. Build relationships between current and prospective farmers and ranchers who are socially disadvantaged or veterans and USDA's local, state, regional, and National offices;

iv. Assist in reaching current and prospective socially disadvantaged farmers, ranchers, or forest landowners in a linguistically appropriate manner; and

v. Assist with identifying problems and barriers socially disadvantaged farmers experience and working towards minimizing or alleviating those issues to enable their equitable participation in USDA programs.

The OPPE shall seek input from eligible entities providing technical assistance under this subsection not less than once each year to ensure that the program is responsive to the eligible entities providing that technical assistance (7 U.S.C. 2279(c)(4)(J)). The OPPE may require Project Directors to attend an Annual Meeting that can be expensed with awarded grant funds not to exceed $1,800 per award year. The Annual Meeting will allow participants, USDA officials, and other agriculture-related industry participants to network, encourage partnerships, share best practices (including COVID-related strategies used to assist targeted communities), discuss programmatic requirements, share information on new and enhanced USDA programs and services, and obtain programmatic feedback. Stakeholder input will also be accepted by those unable to attend the Annual Meeting in person by September 30th of each fiscal year at: *2501Grants@usda.gov.*

C. Anticipated Outputs (Activities), Performance Measures, and Outcomes (Results)

1. *Outputs (Activities).* The term ''output'' describes the volume accomplished, produced, or put into action. Outputs indicate the extent of project activity and generally address the question of ''how much?'' An example of an output is ''number of training sessions conducted,'' ''number of individuals receiving training,'' or ''number of educational materials developed.'' Other examples may include:

a. Conduct 12 workshops annually, either virtually or in-person, on how to write a business plan;

b. Assist 100 new farmers/ranchers annually on what is required to be able to process and accept SNAP payments;

c. Within the 3-year period of award, create 10 step-by-step videos in 3 languages on implementing new irrigation techniques.

2. *Performance Measures.* Performance Measures evaluate an organization's progress in meeting their objective which should be based on at least two of the five programmatic mission areas mentioned above; compare actual results to expected results; and evaluate their project's effectiveness in delivering expected results. Organizations should develop outcome-based performance measures to ensure their project is progressing to meet their goals. Applicants must develop performance measure targets for each of their proposed activities. These targets will be used as a mechanism to track the progress and success of the project. Quantitative data is expressed in quantities, amounts, or a range and can be used to measure outputs and outcomes. Qualitative data is information that cannot be measured such as a change in perceptions. Baselines must be established in order to determine whether an organization is meeting their goals. An example of a Performance Measure is a comparison of how many farmers and ranchers know about available USDA programs before an organization conducts their workshops on USDA programs compared to the number of farmers and ranchers that know about available USDA programs after training is conducted.

3. *Outcomes (Results).* The term ''outcome'' means the final impact, difference or effect that has occurred as a result from carrying out an activity, workshop, meeting, or from delivery of services related to a 2501 programmatic goal or objective. Results may be agricultural, behavioral, social, or economic in nature. Outcomes may reflect an increase in knowledge or skills, a greater awareness of available resources or programs, or actions taken by stakeholders as a result of learning. Specifically, outcomes must be quantitative as it relates to the project goals and objectives. Project Managers will be required to document anticipated outcomes that are funded under this announcement. Some examples include, but are not limited to the following:

a. Documenting the actual number of new farmers/ranchers as a result of your project and the type of assistance (*i.e.,* number of new farms or ranches started) documenting higher profitability or economic stability of existing socially disadvantaged or veteran farmers/ranchers; documenting increased access to marketing and sales opportunities for their products;

b. Documenting race, sex, national origin, disability (if provided) and number of socially disadvantaged and/or veteran farmers or ranchers with an increase in awareness in and *applying* for USDA programs;

c. Documenting race, sex, national origin, disability (if provided) and number of socially disadvantaged or veteran farmers/ranchers that have better access to USDA programs and have applications *approved* for funding.

II. Award Information

A. Statutory Authority

The statutory authority for this action is 7 U.S.C. 2279(c), which authorizes award funding for projects designed to provide outreach and technical assistance to socially disadvantaged or veteran farmers or ranchers.

B. Expected Amount of Funding

The total estimated funding expected to be available for awards under this

competitive opportunity is approximately $35 million. The maximum amount of requested federal funding shall not exceed $750,000.

C. Project Period

The performance period for projects selected from this solicitation will not begin prior to the effective award date listed in the grant agreement. The project period must be *three (3) years.*

D. Award Type

Funding for selected projects will be in the form of a grant agreement which must be fully executed no later than September 30 annually. The anticipated Federal involvement will include, but not limited to, the following activities:

1. Approval of recipients' final budget and Project Narrative or statement of work accompanying the grant agreement;

2. Monitoring of recipients' performance through semi-annual and final financial and performance reports; and

3. Conducting on-site monitoring visits to review compliance, use of Federal funds and fidelity in implementing the project.

All award notifications will be ''conditionally approved'' pending final validation of all selected applicants' submission documentation and/or application package. OPPE reserves the right not to fund any ''conditionally approved'' application(s) found to be ineligible after final validation.

III. Eligibility Information

A. Eligible Entities

1. Any non-profit, community-based organizations, tribal entity, networks, or a coalition of community-based organizations with at *least 3 years of documented expertise* in working with socially disadvantaged farmers or ranchers or veteran farmers or ranchers that:

- Demonstrates experience in providing agricultural education or other agriculturally related services on USDA programs and services to socially disadvantaged or veteran farmers or ranchers;
- provides documentary evidence of work with, and on behalf of, socially disadvantaged or veteran farmers or ranchers, or beginning farmers and ranchers during the 3-year period preceding the submission of a proposal for assistance under this program (the lead applicant and/or any organization(s) comprising of a coalition or network must meet the 3-year period preceding the submission criteria); and
- does not or has not engaged in activities prohibited under Section 501(c)(3) of the Internal Revenue Code of 1986.2.

2. An 1890 or 1994 land-grant institution of higher education (as defined in 7 U.S.C. 7601 and in Section 533 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note)).

3. An American Indian Tribal community college or university or an Alaska Native cooperative college.

4. A Hispanic-Serving Institution of higher education (as defined in 7 U.S.C. 3103).

5. Any other institution of higher education (as defined in 20 U.S.C. 1001) that has demonstrated experience in providing agricultural education or other agricultural-related services to socially disadvantaged or veteran farmers or ranchers.

6. Any Federally-recognized Indian Tribe (as defined in 25 U.S.C. 5131) or a national tribal organization that has demonstrated experience in providing agricultural education or other agriculturally related services to socially disadvantaged or veteran farmers or ranchers.

7. All other organizations or institutions that received funding under this program before January 1, 1996, but only with respect to projects that the Secretary considers similar to projects previously carried out by the entity under this program.

B. Cost-Sharing or Matching

There are no cost-sharing nor matching requirements associated with this program. Applicants may charge their negotiated indirect cost rate or 10 percent, whichever is lower. *Indirect cost rates exceeding 10 percent will not be permitted.*

C. Threshold Eligibility Criteria

Applications from eligible entities that meet all criteria will be evaluated as follows:

1. Proposals must comply with the submission instructions and requirements set forth in Section IV of this announcement. Pages greater than the page limitation will not be considered.

2. Proposals must be received through *Grants.gov* (*www.grants.gov*) as specified in Section IV of this announcement on or before the proposal submission deadline. Applicants will receive an electronic confirmation receipt of their proposal from *Grants.gov*.

3. Proposals received after the submission deadline will not be considered. *Note that in order to submit proposals, organizations must create an account in Grants.gov and in the System for Awards Management (www.SAM.gov; both of which could take several weeks.* Therefore, it is strongly suggested that organizations begin this process immediately. Registering early could prevent unforeseen delays in submitting your proposal.

4. Proposals must address a minimum of two programmatic mission areas listed in Section I, Part B, (i–v) to provide outreach, education, and/or technical assistance to socially disadvantaged or veteran farmers or ranchers.

5. Recipients of a 2501 Grant with a Period of Performance that extends beyond 90 days of the current fiscal year are not eligible to apply (this does not apply to grantees with a no-cost extension). For example, current 2501 Grant recipients must complete their projects by the end of the current calendar year to be eligible to apply.

6. Incomplete or partial applications will not be eligible for consideration. Any required documents missing from an applicant's application will render that applicant ineligible and the application will not be forwarded to the Review Panel (the Panel) for review. Additionally, applications may not be accepted for review if they exceed the maximum allowable pages for the Project Narrative, exceed the maximum federal budget request, or propose objectives that do not adhere to the specific goals of the 2501 Program. See Section IV. Content of Proposal Package Submission, subparagraph C, for required documents.

IV. Proposal and Submission Information

A. System for Award Management (SAM)

SAM.gov streamlines the application process and reduces applicant burden by enabling applicants to complete the required Financial Assistance Representations and Certifications in *SAM.gov* when applying for any Federal financial assistance.

It is a requirement to register for SAM (*www.sam.gov*). *There is NO fee to register for this site. This registration must be maintained and updated annually.* Applicants can register or update their profile, at no cost, by visiting the SAM website at *www.sam.gov.* This is a requirement to registering for *Grants.gov* where all organizations must submit their application.

The *Financial Assistance Representations and Certifications Report must be completed.* Grant applicants are essentially applying for

Federal financial assistance. Therefore, in order to complete the Financial Assistance Representations and Certifications Report, you must respond ''yes'' to the question in *SAM.gov* that asks, ''Does XYZ Organization wish to apply for a Federal Financial assistance project or program?'' Completing this report certifies that your organization is in compliance with all relevant provisions of Federal laws, executive orders, regulations, and public policies governing financial assistance awards.

Per 2 CFR part 200, applicants are required to: (1) Be registered in SAM *prior to* submitting an application; (2) provide a valid unique entity identifier in the application; and (3) continue to maintain an active SAM registration with current information at all times during which the organization has an active Federal award or an application or plan under consideration by a Federal awarding agency. The OPPE may not make a Federal award to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements. If an applicant has not fully complied with the requirements by the time the OPPE is ready to make a Federal award, the OPPE may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant. Additionally, organizations found to have unresolved key personnel exclusions *will not* be awarded.

SAM contains the publicly available data for all active exclusion records entered by the Federal Government identifying those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits. All applicant organizations and their key personnel will be vetted through SAM to ensure compliance with this Federal requirement. Organizations identified as having delinquent Federal debt may contact the Treasury Offset Program for instructions on resolution at (800) 304–3107. In the meantime, organizations will not be awarded a grant prior to resolution.

Should an applicant be awarded a grant, ezFedGrants (USDA's financial grants management system) is linked with SAM to ensure funding payments are directed properly; therefore, entities must enter their banking information through SAM. Federal agencies cannot award funding to any organization not properly/fully registered is SAM.

B. Obtain Proposal Package From Grants.gov (www.grants.gov)

Federal agencies post competitive funding opportunities on *Grants.gov* and applicants must submit their application or proposal to apply for Federal financial assistance through *Grants.gov.* Applicants can learn about grants by visiting *Grants.gov* (*www.grants.gov*), clicking on the *Learn Grants* tab and search for funding opportunities by clicking on the *Search Grants* tab on this site.

All Applicants will be required to register with *Grants.gov* in order to begin the proposal submission process. We strongly suggest you initiate this process immediately to avoid processing delays due to registration requirements. There is no cost for registration. This website is managed by the Department of Health and Human Services, not the OPPE. Many Federal agencies use this website to post Funding Opportunity Announcements (FOA). Click on the ''Support'' tab to contact their customer support personnel if you need help with submitting your application.

Applicants may download individual grant proposal forms from *Grants.gov*. For assistance with *Grants.gov*, consult the Applicant User Guide at *http://grants.gov/assets/ApplicantUserGuide.pdf.*

Federal funding agencies post funding opportunities on *Grants.gov*. The OPPE is not responsible for submission issues associated with *Grants.gov*. If you experience submission issues, contact *Grants.gov* support staff for assistance.

Proposals must be submitted by June 8, 2022, via *Grants.gov* at 11:59 p.m. EDT. Proposals submitted after this deadline *will not* be considered.

C. Content of Proposal Package Submission

All submissions must contain completed and electronically signed original application forms, as well as a Project Narrative and a Budget Narrative as described below:

1. *Required forms, documents, and attachments.* The forms listed below can be found in the proposal package at *Grants.gov* and must be submitted with all applications. Required forms are provided in the package as fillable forms. Applicants must download and complete these forms and submit them in the application submission portal at *Grants.gov*. PDF documents listed below are documents the applicant must create and submit in PDF format. Use the checklist of *required* documents below to submit your application through *Grants.gov:*

- ✓ Standard Form (SF) 424, Application for Federal Assistance
- ✓ Project/Performance Site Location(s)
- ✓ Project Abstract Summary
- ✓ Project Narrative (in PDF format)
- ✓ Standard Form (SF) 424A, Budget Information—Non-Construction Programs
- ✓ Budget Narrative (in PDF format)
- ✓ Key Contacts (list names of *all* key personnel)
- ✓ *Grants.gov* Lobbying Form
- ✓ Articles of Incorporation for non-profit organizations & community-based organizations; attach under ''Attachments Form'' —see last bullet)
- ✓ 501(c)3 Certificate/letter from the IRS (for non-profit organizations; attach under ''Attachments Form'' —see last bullet)
- ✓ Resumes of all key personnel working on your project
- ✓ Attachments Form (*where you may place all your appendices, i.e.,* Letters of Partnership, Letters of Intent, Resumes, Articles of Incorporation, other supporting documents, etc.)

Do not include lengthy or unnecessary organizational documents such as your organization's business plans, Annual Reports, or full course or training curriculums in your application. Excessively large documents in applications are cumbersome and increase downloading errors from *Grants.gov* and in forwarding to the Review Panel.

Below is further guidance, where needed, for completing the required forms, documents, and attachment forms listed above.

SF–424, Application for Federal Assistance

Complete all highlighted areas on this form. Pay particular attention to block 18a of the SF–424. This is the total amount of Federal funding you are requesting under the 2501 Program. This form is the official requesting document and the amount that will be considered if you should have any discrepancies between this form and your Budget Information Form, SF–424A. Ensure this form is completed with accuracy, particularly email addresses and phone numbers. The OPPE may not be able to reach you if your information is incorrect.

Project/Performance Site Location(s)

Complete all highlighted areas on this form. Add additional locations if your project will be carried out at additional sites.

Project Abstract Summary

A Project Abstract Summary is a concise summary about your project. No

points will be given or subtracted for the Project Summary Page as it will be used only for informational purposes. It may be used in its entirety or in part for media purposes to include in press releases, informational emails to potential stakeholders or partners, to provide upper echelons of government with a snapshot of an organization, and for demographic purposes. *Do not restate the objectives of the 2501 Program* (*i.e.,* ''to provide outreach and technical assistance for socially disadvantaged farmers and ranchers and veterans farmers and ranchers''); the Project Abstract Summary should reflect the goal of your specific project. Limit your Project Abstract Summary to 250 words and include the following:

- Your organization's name;
- Name of your project;
- Three or four sentences describing your project;
- The primary populations/communities you serve;
- The project's geographic service area (counties, state(s), etc.); and
- Project Director's name, email address, and telephone number.

Project Narrative (Not To Exceed 30 Double-Spaced Pages)

The Project Narrative is a document that you create. It must *include a timeline of proposed activities.* Formatting requirements for Project Narratives are 1-inch margins and 12-point font, and double-spaced. Number each page of the Project Narrative to indicate the total number of pages (*i.e.,* 1 of 30, 2 of 30, etc.). *To ensure fairness and uniformity for all applicants, Project Narratives not conforming to this stipulation may not be considered.*

Project proposals should include a well-conceived strategy for addressing the programmatic mission areas stated in Section I, Part B, Scope of Work. Organizations should state which programmatic mission areas will be addressed. Additionally, proposals must: (1) Define and establish the existence of the needs of socially disadvantaged farmers or ranchers or veteran farmers or ranchers, or both; (2) identify the geographic area of service; and (3) discuss the potential impact of the project; (4) clearly state their 3-years of experience in delivering agriculture related services to socially disadvantaged or veteran farmers and ranchers and provide documented proof; and (5) clearly document how you plan to fulfill the requirement to coordinate efforts in partnership with the OPPE and USDA Service Centers in your state to maximize outreach and training in your service territory.

- *Programmatic Capability:* Project proposals must: (1) Identify the experience of the organization(s) and key personnel taking part in the project (past successes); (2) identify the names of organizations that will be your partners in the project if any; (3) identify the qualifications, relevant experience, education, and publications of each Project Manager or partners; and (4) specifically address the work to be completed by key personnel and their roles and responsibilities within the scope of the proposed project. This includes partnering scenarios whereas each partners' roles and responsibilities must be defined.
- *Financial Management Experience:* Document a demonstrated ability to successfully manage and complete your project by including details of successfully completed past projects and financial management experiences.
- *Tracking and Measuring:* Clearly document a detailed plan for tracking and measuring project progress including the results of the project in terms of achieving expected project outputs and outcomes as stated in Section I, Part C, Performance Measures. Address both quantitative and qualitative data. A mitigation or contingency plan should also be addressed.
- Timelines are an integral part of your project and must be included in your Project Narrative. In an organized format, create a timeline for each task to be accomplished during the entire proposed period of performance. Relate each task to one of the five programmatic mission areas in Section I, Part B. The timeline is part of the 30-page limit and should be detailed enough to show your activities, start and end dates, assigned personnel, milestones, and deliverables in a chronological order. The timeline may be in a table format and does not have to be double-spaced.

Attach your Project Narrative in PDF format to the Mandatory Project Narrative form in your *Grants.gov* package.

SF–424A, Budget Information—Non-Construction Programs

Provide as much information as possible on the SF–424A for each year of your project. For example, on page 1 of SF–424A, line 1 across may indicate year one of your project, line 2 across may indicate year two of your project, and line 3 across may indicate year three of your project. On page 1A of SF–424A, columns 1 through 3 may represent each year of your project. All cost categories on page 1A of this form are considered direct costs. Remember that your indirect cost rate *may not exceed the 10 percent statutory limitation* based upon modified direct costs found in 7 U.S.C. 2279(l)(7).

Budget Narrative (Not To Exceed 5 Pages)

The Budget Narrative is a document that you create. It must be no more than five pages. It does NOT have to be double spaced. You may use tables. While the OPPE understands that your proposed budget is an estimation of costs, your Budget Narrative should be based on financial forecasting assumptions. The Budget Narrative should identify and describe the costs associated with the proposed project, including sub-awards or contracts and indirect costs. These costs should be very detailed and descriptive as to their purpose. Review 2 CFR part 200 Subpart E—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to ensure your project is not planned with unallowable costs. Applicants may charge their negotiated indirect cost rate or 10 percent, whichever is lower. *Indirect cost rates exceeding 10 percent will not be permitted.* Each cost indicated must be reasonable, allocable, necessary, and allowable under 2 CFR part 200, subpart E in order to be funded.

- Cost categories, also called Object Class Categories, include costs for Personnel, Fringe Benefits, Travel, Equipment, Supplies, Contractual, Construction, and Other costs.
  - *Personnel costs:* For each key staff person, provide the name (if known), title, time commitment to the project as a percentage of a full-time equivalent (FTE), annual salary, and grant funded salary. You may refer to the prevailing wage rates established by the Department of Labor by occupation and geographical area. Compensation for personnel services (whether classified as personnel, contractual services, or any other form) may not exceed the pro-rated equivalent of Step III of the Executive Schedule for Federal Employees.
  - Costs of consultants, subgrants, or contractors should be included in the ''Contractual'' cost category.
  - *Fringe Benefits:* Provide a break-down of amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement, etc.
  - *Travel costs:* Provide specifics on purpose of travel, number of travelers, destination, and estimates on costs for airfare, lodging, meals, car rentals, and incidentals. The Federal Travel Regulations should be used as a guide.

▪ *Equipment*: Any article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition costs which equals or exceeds the lesser of (a) the capitalization level established by the organization for financial statement purposes, or (b) $5,000. For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. The Recipient shall maintain an annual inventory, which will include a brief description of the item, serial number, and amount of purchase for equipment purchased with grant funds, or received under a grant, and having a $5,000 or more per unit cost. The inventory must also identify the sub-award under which the equipment was purchased. Maintenance and insurance will be the responsibility of the Recipient. Title of equipment will remain with the Recipient until closeout when disposition will be provided in writing by OPPE within 120 days of submission of final reports.

▪ *Supplies:* Specify general categories of supplies and their costs (less than $5,000). Show computations and provide other information which supports the amount requested.

▪ *Contractual costs:* Costs should entail all contracts for services and goods that further the work of the project only.

• Include third party evaluation contracts (if applicable) and contracts with secondary recipient organizations. Demonstrate that all procurement transactions will be conducted in a manner to provide, to the maximum extent practical, free, fair, and open competition. Identify proposed sub-contractor work and the cost of each sub-contractor. Provide a detailed budget for each sub-contractor that is expected to perform work estimated to be $30,000 or more, or 50% of the total work effort, whichever is less.

• Identify each planned subcontractor and its total proposed budget. Each subcontractor's budget and supporting detail should be included as part of the applicant's budget narrative.

• Provide the following information for each planned subcontract: A brief description of the work to be subcontracted; the number of quotes solicited and received, if applicable; the cost or price analysis performed by the applicant; names and addresses of the subcontractors tentatively selected and the basis for their selection; *e.g.,* unique capabilities (for sole source subcontracts), low bidder, delivery schedule, technical competence; type of contract and estimated cost and fee or profit; and, affiliation with the applicant, if any.

• Include all Subawards under Contractual Costs. Per 2 CFR part 200.1, Subaward—refers to an award provided by a pass-through entity (your organization) to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

Subaward budgets: Roles and responsibilities must be defined to determine the level of involvement and efforts to increase training and outreach to socially disadvantaged farmers and ranchers. If applicable, identify each planned subaward and its total proposed budget. Include a brief description of the work to be performed.

▪ *Other costs:* Identify and describe in detail any other costs not identified in the above cost categories. Costs associated with an organization's day-to-day operations such as custodial workers would be an example of ''Other'' costs. Provide an itemized list with costs and state the basis for each proposed item.

Special notes when creating your budget:

1. *Review Unallowable Use of 2501 Grant Program Funds under the* **SUPPLEMENTARY INFORMATION** *section of this announcement.*

2. Costs must be deemed reasonable. This includes salaries for key personnel which may not exceed the prevailing wage rates established by the Department of Labor by occupation and geographical area (see 2 CFR part 200.404 and Appendix II(D)).

3. Food for attendees of conferences may not exceed $10 per person per meal, not to exceed two meals per day. Additionally, animals acquired and used for demonstration projects only, may not exceed $4,000, which includes any transportation costs, feed/feeding lot, etc. Grant funds may NOT be used to pay attendees as an incentive for participation in conferences nor be advertised as such. For a list of unallowable costs, see 2 CFR part 200, subpart E.

Attach your Budget Narrative in PDF format to the Mandatory Budget Narrative form in your *Grants.gov* package.

Key Contacts Form

All key personnel should be listed on your Key Contact Form. At a minimum, the names of at least two key personnel should be provided to ensure that we are able to contact your organization. Provide first, middle, and last names of all key personnel that will be working on the proposed project. All organizations should submit at least a Project Director or Manager and a Financial Representative. Additional Key Contacts Forms may be used as necessary. *Ensure this form is completed with accuracy. Individuals not listed on an applicants' Key Contacts Form will not receive information about or access to data that concerns the applicant organization.*

Attachments Form for Appendices

Non-profit organizations must submit abbreviated Articles of Incorporation (must have been established at least *3 years* prior to application submission) and their 501(c)3 Certificate/Letter from the IRS. All applicants should submit résumés for key personnel and subaward key personnel; Letters of Commitment; Letters of Intent, Partnership Agreements, or Memoranda of Understanding with partner organizations; Letters of Support; or other supporting documentation which is encouraged but not required. Using this form in your *Grants.gov* application package, applicants can consolidate all supplemental materials into one attachment or attach appendices documents individually. Do *not* include documents from other sections as an Appendix.

DO NOT PASSWORD PROTECT ANY OF YOUR SUBMITTED DOCUMENTS OR FORMS. Password protected documents cannot be viewed by the OPPE or the Review Panel.

D. Sub-Awards and Partnerships

Funding may be used to provide subawards, which includes using subawards to fund partnerships; however, the lead recipient must utilize at least 50 percent of the total funds awarded, and no more than three sub-awards will be permitted. Subawardees and partners are generally responsible for carrying out grant activities as assigned. All subawardees—and partners are subject to the requirements and responsibilities on the grant and must be a nonprofit or institution of higher education. This does *not* apply to contractors as they support the grant activities by providing goods and services. All applicants, including the lead or prime applicant if applying as a coalition of nonprofits, are responsible

for ensuring that all sub-awardees comply with applicable requirements for subawards and are subject to the Terms and Conditions of the Agreement, if awarded. Applicants must provide documentation of a competitive bidding process for services, contracts, and products, including consultants and contractors, and conduct cost and price analyses to the extent required by applicable procurement regulations.

The OPPE awards funds to *one eligible applicant* as the lead or prime award recipient. The lead or prime applicant must be indicated as the responsible party, if other organizations are named as partners or co-applicants or members of a coalition or consortium. The lead or prime award recipient will be held accountable to the OPPE for the proper administrative requirements and expenditure of all funds.

Per OMB guidance, Federal awarding agencies are required to check the SAM Exclusions list of persons and entities ineligible for Federal awards. This requirement flows down to Federal Award recipients who are required to check SAM Exclusions for all subawards and contracts. Lead or prime recipients must obtain prior written approval from the awarding agency for all proposed subawards, regardless of size, for all subawards not included in the original proposal (see 2 CFR 200.308(c)(6)). For all subawards, prime recipients must confirm that they have conducted a risk-assessment of each of the proposed subrecipient(s) by name; and verify that each subrecipient does not have active exclusions in SAM and does not appear on the Suspension and Debarment List.

E. Submission Dates and Times

The closing date and time for receipt of proposal submissions is June 8, 2022, at 11:59 p.m., EDT, via *Grants.gov* (*www.grants.gov).* Proposals received after the submission deadline will be considered late without further consideration. Proposals must be submitted through *Grants.gov* without exception. Additionally, organizations must also be registered in the System of Awards Management (SAM) at: *www.sam.gov.* Creating an account for both websites can take several weeks to receive account verification and/or PIN numbers. Allow sufficient time to complete access requirements for these websites. *Grants.gov* supports many Federal granting agencies and their applicants. Delaying the submission of your application until the last day could be result in your application not being received on time due to issues pertaining to a high volume of users, system maintenance, issues with registration, having a pending registration because of a backlogged system, and expired *SAM.gov* registrations.*The proposal submission deadline is firm.*

F. Confidential Information

In accordance with 2 CFR part 200, the names of entities submitting proposals, as well as proposal contents and evaluations, will be kept confidential to the extent permissible by law. Any information that the applicant wishes to have considered as confidential, privileged, or proprietary should be clearly marked as such in the proposal. If an applicant chooses to include confidential or proprietary information in the proposal, it will be kept confidential to the extent permitted by law.

G. Pre-Submission Proposal Assistance

1. *The OPPE may not assist individual applicants by reviewing draft proposals or providing advice on how to respond to evaluation criteria.* However, the OPPE will respond to questions from individual applicants regarding eligibility criteria, administrative issues related to the submission of the proposal, and requests for clarification regarding the announcement. Any questions should be submitted to *2501Grants@usda.gov.* Additionally, the OPPE will host public teleconferences to address questions and clarify requirements during the open period of this solicitation. Dates, time, and phone numbers are provided on Page 1 of this announcement.

2. The OPPE will post questions and answers relating to this funding opportunity during its open period on the Frequently Asked Questions (FAQs) section of our website: *www.partnerships.usda.gov/socially-disadvantaged-farmers-and-ranchers.* Reviewing this section of our website will likely save you valuable time. The OPPE will update the FAQs on a weekly basis and conduct teleconferences on an as-needed basis.

3. *Terms and Conditions of the Award.* Visit our website at: *https://www.usda.gov/partnerships/socially-disadvantaged-farmers-and-ranchers* to review the most recent Terms and Conditions for administering our grants. This version is subject to change upon new program requirements.

4. Applicants selected for funding must inform their participants that USDA, or any of its third-party representatives, may contact them for quality assurance.

V. Application Review Information

A. Evaluation Criteria

Only eligible entities whose proposals meet the threshold criteria in Section III of this announcement will be reviewed according to the evaluation criteria set forth below. Applicants should explicitly and fully address these criteria as part of their proposal package. Each proposal will be evaluated under the regulations established under 2 CFR part 200.

The Panel will use a point system to rate each proposal, awarding a maximum of 105 points for nonprofit and community-based organizations (70 points, plus an additional 35 priority points for secretarial priorities) and 100 points for all other applicants (70 points, plus an additional 30 discretionary points for secretarial priorities). Each proposal will be reviewed by at least two members of the Panel. Panel members will review and score all applications that meet the initial eligibility review. The Panel will numerically score and rank each application. Funding decisions will be based on the Panel's rank score. Final funding decisions will be made by the designated approving official and are not appealable.

Please be patient as processing all submitted applications, vetting organizations, proposal reviews, approval process, and agreement creation is a lengthy process. All applicants will be notified electronically of their application status when final selections have been made and will be provided an opportunity for application feedback as provided within the correspondence.

EVALUATION CRITERIA FOR NEW GRANTS PROPOSALS

Criteria	Points
1. *Project Narrative (up to 30 points):* Under this criterion, your proposal must address at least two of the five programmatic mission areas identified in Section I, Part B, Scope of Work and will be evaluated to the extent to which the narrative includes a well-conceived strategy for addressing those requirements and objectives (see Section IV, Part D Project Narrative for additional information).	Up to 30 points.

EVALUATION CRITERIA FOR NEW GRANTS PROPOSALS—Continued

Criteria	Points
Note: Applicants may assist either socially disadvantaged farmers and ranchers or veteran farmers and ranchers, or both groups. There are no additional points for addressing both of these group. Conversely, there are no points deducted if your proposal addresses only one of these groups.	
2. T*he Secretary of Agriculture shall give priority to nongovernmental and community-based organizations* with an expertise in working with socially disadvantaged farmers and ranchers or veteran farmers or ranchers. If the applicant is a nongovernmental or community-based organization; they will automatically receive five (5) additional points (per the 2018 Farm Bill).	5 points for CBOs and non-profit organizations.
3. *The Secretary of Agriculture places a priority for funding on projects* that present problem-solving strategies that help socially disadvantaged or veteran farmers and ranchers in resolving heirs' property issues/resolutions (including tribal fractionated land, and land title issues); financial literacy and business planning; and how to recoup losses resulting from COVID–19.	5 points.
Note: Applicants will receive 5 points for addressing any single issue within this bullet.	
4. *The Secretary of Agriculture places a priority for funding on projects* that align with the implementation of the American Rescue Plan including: Increasing access to land and to credit; advancing education and career pathways related to farming/ranching/forestry and agriculture; providing avenues that help producers strengthen the food supply chain and building a food system that is fair, resilient, and equitable that helps socially disadvantaged and veteran producers' ability to make a living; promoting use of multiple USDA programs as well as local, state, tribal, and other resources; and generate rural business opportunities and other development efforts to advance the health, economic, and social welfare of socially disadvantaged and veteran farmers/ranchers.	5 points.
Note: Applicants will receive 5 points for addressing any single issue within this bullet.	
5. *The Secretary of Agriculture places a priority for funding on projects* that address climate change with climate smart ag and forestry solutions including but not limited to: building resilience to climate change and increasing agricultural productivity; efficient and renewable energy practices; indigenous regenerative practices, and soil, land, and water conservation practices that preserve natural and agricultural ecosystems.	5 points.
Note: Applicants will receive 5 points for addressing any single issue within this bullet.	
6. *The Secretary of Agriculture places a priority for funding on projects* that present problem-solving strategies that focus on removing systemic barriers and increasing equitable participation in USDA's programs and services, especially projects located in rural and urban communities in persistent poverty census tracts and/or counties.	5 points.
7. *The Secretary of Agriculture places a priority for funding on projects* that are designed to address at least one of the following: • Create new and fair market opportunities to assist socially disadvantaged, veteran, and beginning farmers or ranchers or youth • Provide relief for socially disadvantaged, veteran, and beginning farmers or ranchers or youth that experienced adverse impacts due to the pandemic • Assist with climate change and climate-smart agriculture • Rural community and economic development impacting socially disadvantaged, veteran, and beginning farmers or ranchers or youth • Assist socially disadvantaged, veteran, and beginning farmers or ranchers or youth with farm and financial planning with a goal to increase sustainability of farming operations.	5 points.
8. *Programmatic Capability:* Under this criterion, applicants will be evaluated based on their ability to successfully complete and manage the proposed project considering the applicant's organizational experience, staff expertise and qualifications, and the organization's resources (see Section IV, Part D Programmatic Capability). The organization must clearly document its historical successes and future plans to continue assisting socially disadvantaged or veteran farmers and ranchers beyond the life of their project.	Up to 10 points.
9. *Financial Management Experience:* Under this criterion, applicants will be evaluated based on their demonstrated ability to successfully complete and manage their proposed project considering their past performance in successfully completing and managing prior funding agreements (see Section IV, Part D Financial Management Experience). Past performance documentation on successfully completed projects may be at the Federal, state, or local community level. Per 2 CFR 200.205, if an applicant is a prior Federal award recipient, their record in managing that award will be reviewed, including timeliness in Progress and Financial Reporting and compliance with the Terms and Conditions of previous Federal awards.	Up to 5 points.
10. *Tracking and Measuring:* Under this criterion, the applicant's proposal will be evaluated based upon presenting a clear and detailed plan for tracking and measuring their progress toward accomplishing outputs and completing the expected outcomes (see Section I, Part C Outputs, Performance Measures, and Outcomes). Applicants should indicate clear thresholds or benchmarks in relation to stated goals and objectives. Applicants must address how they intend to ensure a timely and successful completion of their project. Address both quantitative and qualitative data. A mitigation or contingency plan should also be addressed.	Up to 15 points.
11. *Budget:* Under this criterion, your proposed project budget will be evaluated to determine whether costs are reasonable, allowable, allocable, and necessary to accomplish the proposed project goals and objectives (see 2 CFR part 200.404 and Appendix II–D). The proposed budget must provide a detailed breakdown of the approximate funding used for each major activity (see Section IV, Part D. Budget Narrative). Additionally, indirect costs (10 percent maximum) must be appropriately applied. For a list of unallowable costs, see 2 CFR Part 200, subpart E.	Up to 10 points.

C. Selection of Panel Members

All eligible applications will be reviewed by the Panel. Panel members are selected based upon training and experience in assisting socially disadvantaged and veteran farmers and ranchers. This assistance includes, but is not limited to, bringing increased awareness of USDA's programs and services in underserved communities, outreach, technical assistance, cooperative extension services, civil rights, education, statistical and ethnographic data collection and analysis, and agricultural programs, and

are drawn from a diverse group of experts, including USDA Program Managers and/or Grants Specialists and applicant peers, to create a balanced panel.

VI. Award Administration Information

A. Award Notices

Proposal Notifications and Feedback

1. Successful applicants will be notified by the OPPE via telephone, email, and/or postal mail that its proposed project has been recommended for award. The notification will be sent to the *Project Manager* listed on the SF–424, Application for Federal Assistance. Project Managers should be the Authorized Organizational Representative (AOR) and authorized to sign on behalf of the organization. It is imperative that this individual is responsive to notifications by the OPPE. If the individual is no longer in the position, notify the OPPE immediately to submit the new contact for the application by updating your organization's Key Contacts form and forwarding a résumé of the new key personnel. The grant agreement will be forwarded to the recipient for execution and must be returned to the OPPE Director, who is the authorizing official. Once grant documents are executed by all parties, authorization to begin work will be given. At a minimum, this process can take up to 30 days from the date of notification.

2. *Within 10 days of award status notification, unsuccessful applicants may request feedback on their application.* Feedback will be provided as expeditiously as possible. Feedback sessions will be scheduled contingent upon the number of requests and in accordance with 7 CFR 2500.026.

B. Administrative and National Policy Requirements

All awards resulting from this solicitation will be administered in accordance with the Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards codified at 2 CFR part 200, as supplemented by USDA implementing regulations at 2 CFR parts 400 and 415, and the OPPE Federal Financial Assistance Programs—General Award Administrative Procedures, 7 CFR part 2500. In compliance with its obligations under Title VI of the Civil Rights Act of 1964 and Executive Order 13166, it is the policy of the OPPE to provide timely and meaningful access for persons with Limited English Proficiency (LEP) to projects, programs, and activities administered by Federal grant recipients. Recipient organizations must comply with these obligations upon acceptance of grant agreements as written in the OPPE's Terms and Conditions. Following these guidelines is essential to the success of our mission to improve access to USDA programs for socially disadvantaged and veteran farmers and ranchers.

C. Reporting Requirement

Your approved statement of work, timeline, and budget are your guiding documents in carrying out the activities of your project and for your reporting requirements. Familiarize yourself with USDA's grants management system called ezFedGrants: *https://www.nfc.usda.gov/FSS/ClientServices/ezFedGrants/.* In accordance with 2 CFR part 200, the following reporting requirements will apply to awards provided under this FOA. The OPPE reserves the right to revise the schedule and format of reporting requirements as necessary in the award agreement.

1. Semi-annual Progress Reports and Financial Reports will be required as follows:

- *Semi-annual Progress Reports.* The recipient is required to provide a detailed narrative of project performance and activities as described in the award agreement. Semi-annual progress reports must be submitted to the designated OPPE official via ezFedGrants within 30 days after the end of each reporting period. This includes, but is not limited to, activities completed, events held, and the release of sign-in sheets with participants' contact information.
- *Semi-annual Financial Reports.* The recipient must submit SF 425, Federal Financial Report to the designated OPPE official via ezFedGrants within 30 days after the end of each reporting period.

Note: OPPE has the discretion to require quarterly reports based upon non-federal entities' performance progress and administration of grant funds.

2. Final Progress and Financial Reports will be required upon project completion. The Final Progress Report must include a summary of the project or activity throughout the funding period, achievements of the project or activity, and a discussion of overall successes and issues experienced in conducting the project or project activities. It should convey the impact your project had on the communities you served and discuss the project's accomplishments in achieving expected outcomes. This requirement includes, but is not limited to, the number of new USDA applicants as a result of your award, the number of approved applicants for USDA programs and services, increased awareness of USDA programs and services, etc.

3. The final Financial Report should consist of a complete SF–425 indicating the total costs of the project. Final Progress and Financial Reports must be submitted to the designated OPPE official via ezFedGrants within 120 days after the completion of the award period as follows:

Report	Performance period	Due date	Grace period
Form SF–425, Federal Financial Report & Performance Progress Report (*Due semi-annually*).	1 October thru 31 March, 1 April thru 30 September	March 31 ..... September 30	30 days until 30 April. 30 days until 30 October.
Final Financial and Progress Reports	120 days after project completion.		

* Dates subject to change at the discretion of OPPE.

Lisa R. Ramírez,

Director, Office of Partnerships and Public Engagement.

[FR Doc. 2022–05066 Filed 3–9–22; 8:45 am]

BILLING CODE 3412–89–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Nebraska Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that

the Nebraska Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a meeting on Tuesday, March 22, 2022 at 12:00 p.m.–1:00 p.m. Central time. The purpose is to orient Nebraska Advisory Committee members about the work of the state advisory committees, discuss leadership roles, and to begin brainstorming potential civil rights topics for their first study of the 2021–2025 term.

DATES: The meeting will take place on Tuesday, March 22, 2022, from 12:00 p.m.–1:00 p.m. Central time.

Online Regisration (Audio/Visual): https://civilrights.webex.com/civilrights/j.php?MTID=meb369f4559aa98f88c83634a5d0c87fa.

Telephone (Audio Only): Dial 800–360–9505 USA Toll Free; Access code: 2761 736 3015.

FOR FURTHER INFORMATION CONTACT: Victoria Moreno at *vmoreno@usccr.gov* or by phone at 434–515–0204.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through WebEx link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines and the Commission will not refund any incurred charges.

Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Victoria Moreno at *vmoreno@usccr.gov.* All written comments received will be available to the public.

Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618. Records and documents discussed during the meeting will be available for public viewing as they become available at *www.facadatabase.gov* . Persons interested in the work of this Committee are advised to go to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or email address.

Agenda

I. Welcome from Nebraska Advisory Committee Chair
II. Chair's Comments and Introductions
III. Short Orientation Presentation
IV. Nominate Vice Chair
V. Discuss Civil Rights Topics
VI. Next Steps
VII. Public Comment
VIII. Adjournment

Dated: March 7, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–05082 Filed 3–9–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Mississippi Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Mississippi Advisory Committee (Committee) will hold a meeting on Monday, March 14, 2022 at 11:00 a.m. Central time. The Committee will continue orientation and begin identifying potential civil rights topics for their first study of the 2021–2025 term.

DATES: The meeting will take place on Monday, March 14, 2022 at 11:00 a.m. Central Time.

Public Call Information: Dial: 800–360–9505, Confirmation Code: 2762 011 5614.

Web Access: https://civilrights.webex.com/civilrights/j.php?MTID=med467e8a01f63571e46c6428a9a39a37.

FOR FURTHER INFORMATION CONTACT: David Barreras, DFO, at *dbarreras@usccr.gov* or (312) 353–8311.

SUPPLEMENTARY INFORMATION: Members of the public may listen to this discussion through the above call in number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individual who is deaf, deafblind and hard of hear hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and confirmation code.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 230 S Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Mississippi Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and roll call
II. Discuss Civil Rights Topics
III. Public comment
IV. Next Steps
V. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given fewer than 15 calendar days prior to the meeting because of the exceptional circumstances of pending expiration of Committee member appointment terms.

Dated: March 7, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–05083 Filed 3–9–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–72–2021]

Foreign-Trade Zone (FTZ) 93—Raleigh-Durham, North Carolina; Authorization of Production Activity; BrightView Technologies, Inc. (Plastic Film), Durham, North Carolina

On November 5, 2021, the Triangle J Council of Governments, grantee of FTZ 93, submitted a notification of proposed production activity to the FTZ Board on behalf of BrightView Technologies, Inc.,

within FTZ 93, in Durham, North Carolina.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (86 FR 62985, November 15, 2021). On March 7, 2022, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: March 7, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–05074 Filed 3–9–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–853]

Certain Crystalline Silicon Photovoltaic Products From Taiwan: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2020–2021

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

SUMMARY: On November 5, 2021, the Department of Commerce (Commerce) published the preliminary results of the administrative review of the antidumping duty order on certain crystalline silicon photovoltaic products (solar products) from Taiwan during the period of review (POR), February 1, 2020, to January 31, 2021. We received no comments or requests for a hearing. We continue to find that 16 of the companies under review made no shipments of solar products from Taiwan during the POR. Moreover, with respect to the companies that did not submit no-shipment certifications and were not selected as mandatory respondents, we have determined to apply a rate of 7.89 percent, *i.e.,* the non-selected rate from the prior (fifth) administrative review under this antidumping duty order.

DATES: Applicable March 10, 2022.

FOR FURTHER INFORMATION CONTACT: Thomas Martin or Zachary Shaykin, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3936 or (202) 482–2638, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 5, 2021, Commerce published the *Preliminary Results* and invited interested parties to comment.[1] We received no comments on the *Preliminary Results* from any interested parties. Commerce conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise covered by the *Order* is solar products from Taiwan.[2] Imports of subject merchandise are classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 8501.71.0000, 8501.72.1000, 8501.72.2000, 8501.72.3000, 8501.72.9000, 8501.80.1000, 8501.80.2000, 8501.80.3000, 8501.80.9000, 8507.20.8010, 8507.20.8031, 8507.20.8041, 8507.20.8061, 8507.20.8091, 8541.42.0010, 8541.43.0010. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of the *Order* is dispositive.[3]

Final Determination of No Shipments

As noted in the *Preliminary Results,* we received claims of no shipments from 16 producers and/or exporters under review, and we preliminarily determined that these 16 companies had no shipments of subject merchandise during the POR.[4] We received no comments from interested parties with respect to these claims. Therefore, because we have not received any information to contradict our preliminary no-shipment determination, nor any comment in opposition to our preliminary finding or to record evidence indicating that these 16 companies had no entries of subject merchandise to the United States during the POR, we continue to find that these 16 companies had no shipments during the POR.[5] We will issue appropriate instructions to U.S. Customs and Border Protection (CBP) based on our final results.

Final Rate for Non-Examined Companies

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a less-than-fair-value (LTFV) investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.'' However, in this administrative review, there are no individually investigated companies receiving calculated dumping margins. Accordingly, because we have no companies in the instant review for which we are calculating a rate that can be applied to the non-selected companies,[6] for the final results of review, we have determined to apply a rate of 7.89 percent to the non-selected respondents, which is the weighted-average dumping margin determined and assigned to the non-selected respondents in the previous (fifth) administrative review of the *Order.*[7]

[1] *See Certain Crystalline Silicon Photovoltaic Products from Taiwan: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2020–2021,* 86 FR 61131 (November 5, 2021).

[2] *See Certain Crystalline Silicon Photovoltaic Products from Taiwan: Antidumping Duty Order,* 80 FR 8596 (February 18, 2015) (*Order*).

[3] *Id.*

[4] *See Preliminary Results,* 86 FR at 61131–32. These companies are: (1) AU Optronics Corporation (AU); (2) Canadian Solar Inc.; (3) Canadian Solar International Limited; (4) Canadian Solar Manufacturing (Changshu), Inc.; (5) Canadian Solar Manufacturing (Luoyang), Inc.; (6) Canadian Solar Solutions Inc.; (7) Vina Solar Technology Co., Ltd.; (8) Baoding Tianwei Yingli New Energy Resources Co., Ltd.; (9) Beijing Tianneng Yingli New Energy Resources Co., Ltd.; (10) Hainan Yingli New Energy Resources Co., Ltd.; (11) Hengshui Yingli New Energy Resources Co., Ltd.; (12) Lixian Yingli New Energy Resources Co., Ltd.; (13) Shenzhen Yingli New Energy Resources Co., Ltd.; (14) Tianjin Yingli New Energy Resources Co., Ltd.; (15) Yingli Energy (China) Co., Ltd.; and (16) Yingli Green Energy International Trading Company Limited.

[5] *See Preliminary Results,* 86 FR at 61131–32.

[6] In the *Preliminary Results,* Commerce rescinded the review with respect to eleven companies that had reviewable entries of subject merchandise during the POR, including the mandatory respondents, in response to timely withdrawn review requests from all parties that requested a review of these eleven companies. *See Preliminary Results,* 86 FR at 61131.

[7] *See Certain Crystalline Silicon Photovoltaic Products from Taiwan: Final Results of Antidumping Duty Administrative Review; Partial Rescission of Antidumping Duty Administrative Review; Final Determination of No Shipments; 2019–2020,* 86 FR 49509, 49510–11 (September 3,

Final Results of Review

We determine that the following weighted-average dumping margins exist for the non-selected respondents for the POR, February 1, 2020, through January 31, 2021:

Producer/exporter	Weighted-average dumping margin (percent)
Baoding Jiasheng Photovoltaic Technology Co. Ltd	7.89
Boviet Solar Technology Co., Ltd	7.89
Kyocera Mexicana S.A. de C.V	7.89
Sunrise Energy Co. Ltd	7.89

Disclosure

As noted above, no party commented on the *Preliminary Results*. As a result, we have not modified our analysis from the *Preliminary Results* and will not issue a decision memorandum to accompany this **Federal Register** notice. We are adopting the *Preliminary Results* as the final results of this review. Further, because we have not changed our calculations since the *Preliminary Results,* there are no new calculations to disclose in accordance with 19 CFR 351.224(b) for these final results.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), Commerce has determined, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. In accordance with the *Preliminary Results,* we determined that no companies in this review had reviewable entries of subject merchandise upon which to calculate a dumping margin.[8]

For the companies which were not selected for individual review, we will instruct CBP to assess antidumping duties at an *ad valorem* rate equal to the non-selected rate determined in the previous administrative review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[9]

For entries of subject merchandise produced during the POR by the 16 companies that had no shipments during the POR, we will instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate company(-ies) involved in the transaction.[10]

Commerce intends to issue appropriate assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for all remaining companies in this review will be equal to the weighted-average dumping margin of 7.89 percent that was established in the final results of the previous administrative review; (2) for previously reviewed or investigated companies not covered in this review, including the companies which Commerce has determined had no shipments in these final results, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the companies participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the producer is, then the cash deposit rate will be the cash deposit rate established for the most recently completed segment for the producer of the subject merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the LTFV investigation, the cash deposit rate for all other producers or exporters will continue to be 19.50 percent, the all-others rate established in the LTFV investigation.[11] The cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as the final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5) and 19 CFR 351.213(h).

Dated: March 3, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–05070 Filed 3–9–22; 8:45 am]

BILLING CODE 3510–DS–P

2021), and accompanying Issues and Decision Memorandum.

[8] *See Preliminary Results,* 86 FR at 61132.

[9] *See* section 751(a)(2)(C) of the Act.

[10] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[11] *See Certain Crystalline Silicon Photovoltaic Products from Taiwan: Final Determination of Sales at Less Than Fair Value,* 79 FR 76966, 76969 (December 23, 2014).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–871]

Finished Carbon Steel Flanges From India: Final Results of Antidumping Duty Administrative Review; 2019–2020

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

SUMMARY: The Department of Commerce (Commerce) determines that producers and/or exporters subject to this administrative review did not make sales of finished carbon steel flanges from India at prices below normal value during the period of review (POR), August 1, 2019, through July 31, 2020.

DATES: Applicable March 10, 2022.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Preston Cox, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2924 or (202) 482–5041, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 2021, Commerce published the *Preliminary Results* of this administrative review and invited interested parties to comment.[1] This administrative review covers 41 producers and/or exporters of the subject merchandise. Commerce selected R.N. Gupta & Co. Ltd. (RNG) and the Norma Group [2] for individual examination. The producers/exporters not selected for individual examination are listed in the ''Final Results of the Review'' section of this notice.[3]

On October 7, 2021, the Norma Group and RNG submitted case briefs.[4] On October 14, 2021, Weldbend Corporation and Boltex Manufacturing Co., L.P. (collectively, the petitioners), submitted a rebuttal brief with respect to Norma Group.[5] On February 24, 2022, we rejected Norma Group's case brief because it contained untimely filed new factual information.[6] Norma Group filed a redacted version of its case brief on February 28, 2022.[7] No other party submitted case or rebuttal briefs. For a description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[8] On December 9, 2021, we extended the deadline for the final results by 58 days, until March 4, 2022.[9]

Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [10]

The scope of the *Order* covers finished carbon steel flanges. Finished carbon steel flanges are currently classified under subheadings 7307.91.5010 and 7307.91.5050 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

For a full description of the scope of the *Order, see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised by the parties in their case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of the issues which parties raised, and to which we responded in the Issues and Decision Memorandum, is attached in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on a review of the record and our analysis of the comments received, Commerce made certain changes to the *Preliminary Results.* For detailed information, *see* the Issues and Decision Memorandum.

Final Results of Administrative Review

For these final results, we determine that the following weighted-average dumping margins exist for the period August 1, 2019, through July 31, 2020:

Producers/exporters	Weighted-average dumping margin (percent)
R.N. Gupta & Co., Ltd	0.00
Norma (India) Limited/USK Exports Private Limited/Uma Shanker Khandelwal & Co./Bansidhar Chiranjilal [11] Chiranjilal	0.00
Non-Selected Companies [12]	0.00

[1] *See Finished Carbon Steel Flanges from India: Preliminary Results of Antidumping Duty Administrative Review; 2019–2020,* 86 FR 50048 (September 7, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] In prior segments of this proceeding, Commerce determined that Norma (India) Limited, USK Exports Private Limited, Uma Shanker Khandelwal & Co., and Bansidhar Chiranjilal should be collapsed and treated as a single entity (Norma Group). *See Finished Carbon Steel Flanges from India: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 82 FR 9719 (February 8, 2017), and accompanying PDM at 4–5, unchanged in *Finished Carbon Steel Flanges from India: Final Determination of Sales at Less Than Fair Value,* 82 FR 29483 (June 29, 2017); *see also Finished Carbon Steel Flanges from India: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 57848, 57849 (October 29, 2019), unchanged in *Finished Carbon Steel Flanges from India: Final Results of Antidumping Duty Administrative Review; 2017–2018,* 85 FR 21391 (April 17, 2020); *Finished Carbon Steel Flanges from India: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2018–2019,* 85 FR 83051, 83052 (December 21, 2020), unchanged in *Finished Carbon Steel Flanges from India: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018–2019,* 86 FR 33226 (June 24, 2021). In this administrative review, Norma Group has presented evidence that the factual basis on which Commerce made its prior determination has not changed. *See* Norma Group's Letter, ''Finished Carbon Steel Flanges from India: Response to Section A–D of Antidumping Duty Supplemental Questionnaire,'' dated August 11, 2021, at S1–2 through S1–8. Therefore, in this administrative review, Commerce continues to collapse these four entities and treat them as a single entity.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 63081 (October 6, 2020).

[4] *See* Norma Group's Letter, ''Finished Carbon Steel Flanges from India: Case Brief of Norma India Limited, USK Exports Private Limited, Umashanker Khandelwal & Co and Bansidhar Chiranjilal, together constituting Norma Group,'' dated October 7, 2021; *see also* RNG's Letter, ''Finished Carbon Steel Flanges from India: Case Brief of R.N. Gupta & Company Limited,'' dated October 7, 2021.

[5] *See* Petitioners' Letter, ''Finished Carbon Steel Flanges from India: Petitioners' Rebuttal Brief,'' dated October 14, 2021.

[6] *See* Commerce's Letter, ''Rejection of Case Brief Previously Filed and Request for Resubmission of Its Case Brief in the 2019–2020 Administrative Review of the Antidumping Duty Order on Finished Carbon Steel Flanges from India,'' dated February 24, 2022.

[7] *See* Norma Group's Case Brief, ''Finished Carbon Steel Flanges from India: Case brief (Revised) of Norma India Limited, USK Exports Private Limited, Umashanker Khandelwal & Co and Bansidhar Chiranjilal, together constituting Norma Group,'' dated February 28, 2022 (Norma Group's Case Brief).

[8] *See* Memorandum, ''Issues and Decisions Memorandum for the Final Results of Administrative Review: Finished Carbon Steel Flanges from India; 2019–2020,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[9] *See* Memorandum, ''Finished Carbon Steel Flanges from India: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,'' dated December 9, 2021.

[10] *See Finished Carbon Steel Flanges from India and Italy: Antidumping Duty* Orders, 82 FR 40136 (August 24, 2017) (*Order*).

Rate for Non-Selected Respondents

The Act and Commerce's regulations do not address the establishment of a weighted-average dumping margin to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a less-than-fair-value (LTFV) investigation, for guidance when calculating the weighted-average dumping margin for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding rates that are zero, *de minimis* (*i.e.,* less than 0.5 percent), or determined entirely on the basis of facts available.

Consistent with section 735(c)(5)(A) of the Act, for the companies that were not selected for individual review, we assigned a rate based on the rates for the respondents that were selected for individual examination. Consistent with the U.S. Court of Appeals for the Federal Circuit's decision in *Albemarle,* we are applying to the 36 companies not selected for individual examination the zero percent rates calculated for the mandatory respondents, RNG and the Norma Group.[13] These are the only rates determined in this review for individual respondents and, thus, should be applied to the 36 firms not selected for individual examination under section 735(c)(5)(B) of the Act.

Disclosure

Commerce intends to disclose the calculations performed for these final results to parties in this proceeding within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Pursuant to 19 CFR 351.212(b)(1), Commerce calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of those sales. Where the respondent's weighted-average dumping margin is either zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. Because the weighted-average dumping margins of RNG, the Norma Group, and the 36 firms not selected for individual examination have been determined to be zero percent within the meaning of 19 CFR 351.106(c), we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. In accordance with Commerce's practice, for entries of subject merchandise during the POR for which RNG and the Norma Group did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate if there is no company-specific rate for the intermediate company(ies) involved in the transaction.[14]

Consistent with its recent notice,[15] Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the producer has been covered in a prior complete segment of this proceeding, then the cash deposit rate will be the rate established for the most recent segment of this proceeding for the producer of the subject merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 8.91 percent, the all-others rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h) and 351.221(b)(5).

Dated: March 3, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

[11] *See* footnote 2, *supra.*

[12] *See* Appendix II for a full list of non-selected companies.

[13] *See Albemarle Corp.* v. *United States,* 821 F.3d 1345 (Fed. Cir. 2016) (*Albemarle*).

[14] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[15] *See Notice of Discontinuation of Policy to Issue Liquidation Instructions After 15 Days in Applicable Antidumping and Countervailing Duly Administrative Proceedings,* 86 FR 3995 (January 15, 2021).

Appendix II

Companies Not Selected for Individual Examination

1. Adinath International
2. Aditya Forge Limited
3. Allena Group
4. Alloyed Steel
5. Balkrishna Steel Forge Pvt. Ltd.
6. Bebitz Flanges Works Private Limited
7. C. D. Industries
8. CHW Forge
9. CHW Forge Pvt. Ltd.
10. Citizen Metal Depot
11. Corum Flange
12. DN Forge Industries
13. Echjay Forgings Limited
14. Falcon Valves and Flanges Private Limited
15. Heubach International
16. Hindon Forge Pvt. Ltd.
17. Jai Auto Pvt. Ltd.
18. Kinnari Steel Corporation
19. Mascot Metal Manufacturers
20. M F Rings and Bearing Races Ltd.
21. Munish Forge Private Limited
22. OM Exports
23. Punjab Steel Works
24. Raaj Sagar Steels
25. Ravi Ratan Metal Industries
26. R. D. Forge
27. Rolex Fittings India Pvt. Ltd.
28. Rollwell Forge Engineering Components and Flanges
29. Rollwell Forge Pvt. Ltd.
30. SHM (ShinHeung Machinery)
31. Siddhagiri Metal & Tubes
32. Sizer India
33. Steel Shape India
34. Sudhir Forgings Pvt. Ltd.
35. Tirupati Forge Pvt. Ltd.
36. Umashanker Khandelwal Forging Limited

[FR Doc. 2022–05071 Filed 3–9–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–017]

Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Final Results of Countervailing Duty Administrative Review and Rescission of Review, in Part; 2019

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

SUMMARY: The Department of Commerce (Commerce) determines that certain producers/exporters of certain passenger vehicle and light truck tires from the People's Republic of China (China) received countervailable subsidies during the period of review (POR), January 1, 2019, through December 31, 2019. Additionally, we are rescinding the review for eight companies with no shipments of subject merchandise to the United States during the POR.

DATES: Applicable March 10, 2022.

FOR FURTHER INFORMATION CONTACT: Nicholas Czajkowski or Richard Roberts, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1395 and (202) 482–3463, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 2021, Commerce published the *Preliminary Results* of this review and invited comments from interested parties.[1] On December 6, 2021, Commerce extended the deadline for the final results of this administrative review until March 4, 2022.[2] For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[3]

Scope of the Order

The products covered by the order are passenger vehicle and light truck tires from China. For a complete description of the scope of this order, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised by the interested parties in their case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of these issues is provided in the Appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and CVD Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov*. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx*.

Changes Since the Preliminary Results

Based on the comments received from interested parties, we revised the calculation of the net countervailable subsidy rates for Sumitomo Rubber (Hunan) Co., Ltd. (SRH), Triangle Tyre Co., Ltd., and the non-selected respondents. For a discussion of these issues, *see* the Issues and Decision Memorandum.

Methodology

Commerce conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, we determine that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[4] The Issues and Decision Memorandum contains a full description of the methodology underlying Commerce's conclusions, including any determination that relied upon the use of facts otherwise available, including, adverse facts available, pursuant to sections 776(a) and (b) of the Act.

Rescission of Administrative Review, in Part

It is Commerce's practice to rescind an administrative review of a countervailing duty order, pursuant to 19 CFR 351.213(d)(3), when there are no reviewable entries of subject merchandise during the POR for which liquidation is suspended.[5] Normally, upon completion of an administrative review, the suspended entries are liquidated at the countervailing duty assessment rate calculated for the review period.[6] Therefore, for an administrative review of a company to be conducted, there must be a reviewable, suspended entry that Commerce can instruct U.S. Customs and Border Protection (CBP) to liquidate at the calculated countervailing duty assessment rate calculated for the review period.[7]

[1] *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review Rescission in Part, and Intent To Rescind in Part; 2019,* 86 FR 50027 (September 7, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Passenger Vehicles and Light Truck Tires from the People's Republic of China: Extension of Deadline for Final Results of Countervailing Duty Administrative Review; 2019,'' dated December 6, 2021.

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China; 2019,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[5] See, *e.g.,* Lightweight Thermal Paper from the People's Republic of China: Notice of Rescission of Countervailing Duty Administrative Review; 2015, 82 FR 14349 (March 20, 2017); and Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2017, 84 FR 14650 (April 11, 2019).

[6] *See* 19 CFR 351.212(b)(2).

[7] *See* 19 CFR 351.213(d)(3).

According to the CBP import data, eight companies subject to this review did not have reviewable entries of subject merchandise during the POR for which liquidation is suspended.[8] Further, in response to the *Preliminary Results,* no party submitted information to contradict the information on the record. Therefore, because there is no evidence on the record of this segment of the proceeding to indicate that these companies had entries, exports, or sales of subject merchandise to the United States during the POR, we are rescinding the administrative review with respect to these companies, consistent with 19 CFR 351.213(d)(3).

Rate for Non-Selected Companies Under Review

There are three companies for which a review was requested and not rescinded, and which were not selected as mandatory respondents. For these companies, we are applying the rate calculated for the sole mandatory respondent, Sumitomo Rubber (Hunan) Co., Ltd. (Sumitomo Rubber), which is above *de minimis* and not based entirely on facts available. This methodology to establish the non-selected subsidy rate is consistent with our practice and uses section 705(c)(5)(A) of the Act, which governs the calculation of the all-others rate in investigations, as guidance.

Final Results of Review

We determine the following net countervailable subsidy rates for the POR January 1, 2019, through December 31, 2019:

Producer/exporter	Subsidy rate (percent *ad valorem*)
Sumitomo Rubber (Hunan) Co., Ltd. and its cross-owned affiliates.[9]	24.79
Triangle Tyre Co., Ltd.[10]	124.53
Review-Specific Average Rate Applicable to the Following Companies	
Jiangsu Hankook Tire Co., Ltd	24.79
Qingdao Landwinner Tyre Co., Ltd	24.79
Shandong Province Sanli Tire Manufacture Co., Ltd	24.79

Disclosure

We intend to disclose to interested parties the calculations and analysis performed for these final results of this review within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

Assessment

In accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), Commerce shall determine, and CBP shall assess, countervailing duties on all appropriate entries covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of this publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

With respect to the companies for which this administrative review is rescinded, countervailing duties shall be assessed at rates equal to the cash deposit rate required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2019, through December 31, 2019, in accordance with 19 CFR 351.212(c)(1)(i).

Cash Deposit Requirements

In accordance with section 751(a)(1) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown above for the above-listed companies with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of review. For all non-reviewed firms, CBP will continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Order

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

Notification to Interested Parties

These final results are issued and published in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(5).

Dated: March 3, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2022–05068 Filed 3–9–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–830]

Carbon and Certain Alloy Steel Wire Rod From Mexico: Final Results of Antidumping Duty Administrative Review; 2019–2020

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

[8] These companies are: Hankook Tire China Co., Ltd.; Prinx Chengshan (Shandong) Tire Company Ltd.; Qingdao Fullrun Tyre Tech Corp., Ltd.; Qingdao Honghuasheng Trade Co., Ltd; Qingdao Kapsen Trade Co.; Shandong Habilead Rubber Co., Ltd.; Shandong Hongsheng Rubber Technology Co., Ltd.; and Shandong Qilun Rubber Co., Ltd.

[9] Commerce finds the following companies to be cross owned with Sumitomo Rubber (Hunan) Co., Ltd.: Sumitomo Rubber (China) Co., Ltd. and Sumitomo Rubber (Changshu) Co. Ltd.

[10] This rate is based on the rates for the respondents that were selected for individual review, excluding rates that are zero, *de minimis,* or based entirely on facts available. *See* section 705(c)(5)(A) of the Act.

SUMMARY: The Department of Commerce (Commerce) determines that sales of carbon and certain alloy steel wire rod (wire rod) from Mexico were made at less than normal value (NV) during the period of review (POR), October 1, 2019, through September 30, 2020.

DATES: Applicable March 10, 2022.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Smith, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2181.

SUPPLEMENTARY INFORMATION:

Background

On November 4, 2021, Commerce published the *Preliminary Results* of this review in the **Federal Register**.[1] We invited interested parties to comment on the *Preliminary Results.* This review covers one mandatory respondent selected for individual examination, Deacero S.A.P.I de C.V. (Deacero). We received case briefs from Deacero and Nucor Corporation (Nucor, or the petitioner).[2] Subsequently, we received a rebuttal brief from Deacero.[3] A complete summary of the events that occurred since publication of the *Preliminary Results* is found in the Issues and Decision Memorandum.[4] Commerce conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [5]

The merchandise subject to the *Order* is wire rod, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

A full description of the scope of the *Order* is contained in the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the Issues and Decision Memorandum. The issues are identified in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on our analysis of the comments received from parties, we have made certain revisions to the margin calculation for Deacero.[6] For detailed information, *see* the Issues and Decision Memorandum.

Rate for Respondent Not Selected for Individual Examination

Commerce did not select Ternium Mexico S.A. de C.V. (Ternium) for individual examination. Further, Ternium was not the subject of a withdrawal of request for review; did not request to participate as a voluntary respondent; did not submit a claim of no shipments; and was not otherwise collapsed with a mandatory respondent. Therefore, Ternium remains a respondent not selected for individual examination. As explained in the Issues and Decision Memorandum, we have assigned to Ternium the weighted-average dumping margin calculated for Deacero.

Final Results of the Review

Commerce determines that the following weighted-average dumping margins exist for the period October 1, 2019, through September 30, 2020:

Producers/exporters	Weighted-average dumping margins (percent)
Deacero S.A.P.I de C.V	4.64
Ternium Mexico S.A. de C.V	4.64

Disclosure

We intend to disclose the calculations performed to parties in this proceeding within five days after publication of these final results in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act, and 19 CFR 351.212(b)(1), Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

For Deacero, Commerce has calculated importer-specific antidumping duty assessment rates by aggregating the total amount of dumping calculated for the examined sales of each importer and dividing each of these amounts by the total entered value associated with those sales in accordance with 19 CFR 351.212(b)(1). Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the importer-specific assessment rate is zero or *de minimis.* For entries of subject merchandise during the POR produced by Deacero for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For the companies not selected for individual examination, we will instruct CBP to apply an assessment rate to all entries produced and/or exported by those companies equal to the dumping margin indicated above. Commerce intends to issue assessment instructions to CBP 41 days after the date of publication of these final results of review.[7]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2) of the Act: (1) For producers or exporters covered in this administrative review, the cash deposit rates will be the rates established in the final results of this administrative review; (2) for producers or exporters not covered in this administrative review but covered in a prior segment

[1] *See Carbon and Certain Alloy Steel Wire Rod from Mexico: Preliminary Results of Antidumping Duty Administrative Review and Partial Recission of Antidumping Duty Administrative Review; 2019–2020,* 86 FR 60799 (November 4, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Deacero's Letter, ''Carbon and Certain Alloy Steel Wire Rod from Mexico—Case Brief,'' dated December 6, 2021; *see also* Nucor's Letter, ''Carbon and Certain Alloy Steel Wire Rod from Mexico: Case Brief,'' dated December 6, 2021.

[3] *See* Deacero's Letter, ''Carbon and Certain Alloy Steel Wire Rod from Mexico—Rebuttal Brief,'' dated December 13, 2021.

[4] *See* Memorandum, ''Decision Memorandum for the Final Results of the 2019–2020 Administrative Review of the Antidumping Duty Order on Carbon and Certain Alloy Steel Wire Rod from Mexico,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[5] *See Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine,* 67 FR 65945 (October 29, 2002) (*Order*).

[6] *See* Issues and Decision Memorandum.

[7] *See* 19 CFR 351.356.8(a).

of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, then the cash deposit rate will be the rate established for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 20.11 percent, the all-others rate established in the investigation.[8] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

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

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h).

Dated: March 3, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Final Decision Memorandum

[FR Doc. 2022–05069 Filed 3–9–22; 8:45 am]

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[8] *See Order,* 67 FR at 65947.

DEPARTMENT OF COMMERCE

International Trade Administration

United States-Mexico-Canada Agreement (USMCA), Article 10.12: Binational Panel Review: Notice of Request for Panel Review

AGENCY: United States Section, USMCA Secretariat, International Trade Administration, Department of Commerce.

ACTION: Notice of USMCA Request for Panel Review.

SUMMARY: A Request for Panel Review was filed on behalf of Evraz, Inc. NA with the United States Section of the USMCA Secretariat on March 4, 2022, pursuant to USMCA Article 10.12. Panel Review was requested of the U.S. Department of Commerce's Final Results of the Antidumping Duty Administrative Review (2018–2020) in Large Diameter Welded Pipe from Canada, which was published in the **Federal Register** on February 4, 2022. The USMCA Secretariat has assigned case number USA–CDA–2022–10.12–01 to this request.

FOR FURTHER INFORMATION CONTACT: Vidya Desai, Acting United States Secretary, USMCA Secretariat, Room 2061, 1401 Constitution Avenue NW, Washington, DC 20230, 202–482–5438.

SUPPLEMENTARY INFORMATION: Article 10.12 of Chapter 10 of USMCA provides a dispute settlement mechanism involving trade remedy determinations issued by the Government of the United States, the Government of Canada, and the Government of Mexico. Following a Request for Panel Review, a Binational Panel is composed to review the trade remedy determination being challenged and issue a binding Panel Decision. There are established USMCA *Rules of Procedure for Article 10.12 (Binational Panel Reviews),* which were adopted by the three governments for panels requested pursuant to Article 10.12(2) of USMCA which requires Requests for Panel Review to be published in accordance with Rule 40. For the complete Rules, please see *https://can-mex-usa-sec.org/secretariat/agreement-accord-acuerdo/usmca-aceum-tmec/rules-regles-reglas/article-article-articulo_10_12.aspx?lang=eng.*

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 44 no later than 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is April 4, 2022);

(b) A Party, an investigating authority or other interested person who does not file a Complaint but who intends to participate in the panel review shall file a Notice of Appearance in accordance with Rule 45 no later than 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is April 18, 2022);

(c) The panel review will be limited to the allegations of error of fact or law, including challenges to the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and to the procedural and substantive defenses raised in the panel review.

Dated: March 4, 2022.

Garrett Peterson,

International Trade Specialist, USMCA Secretariat.

[FR Doc. 2022–05016 Filed 3–9–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–928]

Uncovered Innerspring Units From the People's Republic of China: Final Determination of No Shipments; 2020–2021

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

SUMMARY: The Department of Commerce (Commerce) determines that Comfort Coil Technology Sdn. Bhd. (Comfort Coil), the only company subject to review, had no shipments of subject merchandise during the period of review (POR), February 1, 2020, through January 31, 2021.

DATES: Applicable March 10, 2022.

FOR FURTHER INFORMATION CONTACT: Christopher Maciuba, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue

NW, Washington, DC 20230; telephone: (202) 482–0413.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* of this administrative review on November 5, 2021.[1] No party commented on our *Preliminary Results.* Commerce conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [2]

The merchandise subject to the *Order* is uncovered innerspring units composed of a series of individual metal springs joined together in sizes corresponding to the sizes of adult mattresses (*e.g.,* twin, twin long, full, full long, queen, California king and king) and units used in smaller constructions, such as crib and youth mattresses. All uncovered innerspring units are included in the scope regardless of width and length. Included within this definition are innersprings typically ranging from 30.5 inches to 76 inches in width and 68 inches to 84 inches in length. Innersprings for crib mattresses typically range from 25 inches to 27 inches in width and 50 inches to 52 inches in length.

Uncovered innerspring units are suitable for use as the innerspring component in the manufacture of innerspring mattresses, including mattresses that incorporate a foam encasement around the innerspring.

Pocketed and non-pocketed innerspring units are included in this definition. Non-pocketed innersprings are typically joined together with helical wire and border rods. Non-pocketed innersprings are included in this definition regardless of whether they have border rods attached to the perimeter of the innerspring. Pocketed innersprings are individual coils covered by a ''pocket'' or ''sock'' of a nonwoven synthetic material or woven material and then glued together in a linear fashion.

Uncovered innersprings are classified under subheading 9404.29.9010 and have also been classified under subheadings 9404.10.0000, 9404.29.9005, 9404.29.9011, 7326.20.0070, 7326.20.0090, 7320.20.5010, 7320.90.5010, or 7326.20.0071 of the Harmonized Tariff Schedule of the United States (HTSUS).[3] The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of the *Order* is dispositive.

Final Determination of No Shipments

In the *Preliminary Results,* Commerce determined that Comfort Coil had no shipments of subject merchandise during the POR. As we have not received any information to contradict that determination, we continue to find that Comfort Coil had no shipments during the POR.

China-Wide Entity

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[4] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity, and we did not self-initiate a review, the China-wide entity rate (*i.e.,* 234.51 percent) is not subject to change as a result of this review.[5] Aside from Comfort Coil, we did not receive a review request for any other company.

Assessment Rates

As we have determined that Comfort Coil had no shipments of the subject merchandise in this review, any suspended entries during the POR attributable to Comfort Coil will be liquidated at the China-wide entity rate.[6]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of review, as provided for by section 751(a)(2)(C) of the Act: (1) For Comfort Coil, the cash deposit rate will continue to be the existing rate for the most recent period, *i.e.,* the China-wide rate of 234.51 percent; (2) for previously investigated or reviewed Chinese and non-Chinese exporters who are not under review in this segment of the proceeding but who have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the China-wide rate of 234.51 percent; and (4) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to Chinese exporter(s) that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

[1] *See Uncovered Innerspring Units from the People's Republic of China: Preliminary Determination of No Shipments; 2020–2021,* 86 FR 61133 (November 5, 2021) (*Preliminary Results*).

[2] *See Uncovered Innerspring Units from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 7661 (February 19, 2009) (*Order*).

[3] Based on a recommendation by Customs and Border Protection (CBP), on September 6, 2017, Commerce added HTS 7326.20.0090 to the scope. *See* Memorandum, ''Request from Customs and Border Protection to Updated the ACE AD/CVD Case Reference File, Uncovered Innersprings from the People's Republic of China (A–570–928) and South Africa (A–791–821),'' dated September 6, 2017.

[4] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[5] *See Order.*

[6] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

Notification to Interested Parties

We are issuing and publishing these final results of administrative review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h).

Dated: March 3, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–05072 Filed 3–9–22; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Review of Nomination for Mariana Trench National Marine Sanctuary

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice; reopening of public comment period.

SUMMARY: On January 21, 2022, NOAA published a notice in the **Federal Register** requesting written and oral comments to facilitate ONMS' five-year review of the nomination for the Mariana Trench National Marine Sanctuary (NMS) at the five-year interval. In that notice, NOAA requested relevant information as it pertains to its 11 evaluation criteria for inclusion in the inventory. During the public comment period, NOAA received requests for an extension to the comment period. This notice reopens the public comment period by an additional 45 days.

DATES: Written comments must be received by April 25, 2022. Comments submitted through the Federal eRulemaking Portal must be received by 11:59 p.m. Eastern Time on the closing date. NOAA will conduct a virtual meeting on Thursday, March 31, 2022, from 12 p.m.–3 p.m. ChST (Guam/Commonwealth of the Northern Mariana Islands)/Wednesday, March 30, 2022, from 4 p.m.–7 p.m. HST (Hawai'i). NOAA may end the meeting before the time noted above if all those participating have completed their oral comments.

ADDRESSES: Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Submit electronic comments via the Federal eRulemaking Portal and search for Docket Number NOAA–NOS–2022–0005.
- *Mail:* Kristina Kekuewa, Pacific Islands Regional Director, NOAA Office of National Marine Sanctuaries, 1845 Wasp Blvd., Honolulu, Hawaii 96818.
- *Email: Kristina.Kekuewa@noaa.gov.*
- *Public Scoping Meeting:* Provide oral comments during a virtual public scoping meeting, as described under **DATES**. Webinar registration details and additional information about how to participate in the public scoping meeting is available at *https://nominate.noaa.gov/5-year-review.html.*

Instructions: All comments received are a part of the public record. All personal identifying 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. NOAA will accept anonymous comments (enter N/A in the required fields to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Kristina Kekuewa, Pacific Islands Regional Director, NOAA Office of National Marine Sanctuaries, 1845 Wasp Blvd., Honolulu, Hawaii 96818, or at *kristina.kekuewa@noaa.gov,* or at 808–725–5252.

SUPPLEMENTARY INFORMATION:

Background Information

In 2014, NOAA issued a final rule re-establishing the sanctuary nomination process (SNP), which details how communities may submit nominations of areas of the marine and Great Lakes environment for NOAA to consider for designation as national marine sanctuaries (79 FR 33851). NOAA moves successful nominations to an inventory of areas that could be considered for national marine sanctuary designation. The final rule re-establishing the SNP included a five-year limit on any nomination added to the inventory that NOAA does not advance for designation.

In November 2019, NOAA issued a **Federal Register** notice (84 FR 61546) to clarify procedures for evaluating and updating a successful nomination as it approaches the five-year mark in the inventory of areas that could be considered for national marine sanctuary designation. This notice explained that if a nomination remains responsive to the evaluation criteria for inclusion in the inventory, it may be appropriate to allow the nomination to remain in the inventory for another five years. The notice also established a process for NOAA to consider the continuing viability of nominations nearing the five-year expiration mark.

The nomination for Mariana Trench NMS was accepted to the national inventory on March 13, 2017, and is therefore scheduled to expire on March 13, 2022. This notice re-opens the comment period for 45 days. In combination with the previous 30-day public comment period and this 45-day public comment period, NOAA is providing 75 days for communities to organize comments on the nomination. Re-opening the comment period will not allow for a decision whether to keep the nomination in the inventory to be made by March 13, 2022, but NOAA believes it is important to give the community ample time to submit information on whether the nomination continues to meet the criteria to remain in the inventory. The Mariana Trench NMS will remain in the inventory until NOAA makes a determination, following the extended comment period, whether to retain this nomination in the inventory. The full nomination can be found at *https://nominate.noaa.gov/nominations/.*

NOAA is not proposing to designate the Mariana Trench NMS with this action. Instead, NOAA is seeking public comment on ONMS' five-year review of the nomination for Mariana Trench NMS. Accordingly, written comments submitted as part of this request should not focus on whether NOAA should initiate the designation process for a Mariana Trench NMS. Rather, comments should address the relevance of the nomination towards NOAA's 11 evaluation criteria and any new information NOAA should consider about the nominated area (these criteria are detailed at *https://nominate.noaa.gov/guide.html*). Comments that do not pertain to the evaluation criteria, or present new information on the Mariana Trench NMS nomination, will not be considered in NOAA's decision on whether to retain this nomination in the inventory.

Whether removing or maintaining the nomination for Mariana Trench NMS, NOAA would follow the same procedure for notifying the public NOAA followed when the nomination was submitted, including a letter to the nominator, a notice in the **Federal Register**, and posting information on ''*nominate.noaa.gov*''.

(Authority: 16 U.S.C. 1431 *et seq.*)

John Armor,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB809]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Weapons Testing at Vandenberg Space Force Base, California

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

ACTION: Notice; issuance of two incidental harassment authorizations.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued two consecutive IHAs to the United States Department of the Air Force (DAF) to incidentally harass, by Level B harassment only, marine mammals during two years of testing of the Long Range Cannon (LRC) system at Vandenberg Space Force Base (VSFB), California. The DAF's activities are considered military readiness activities pursuant to the MMPA, as amended by the National Defense Authorization Act for Fiscal Year 2004 (2004 NDAA).

DATES: The Year 1 Authorization is effective from October 1, 2023 to September 30, 2024. The Year 2 Authorization is effective from October 1, 2024 to September 30, 2025.

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act*. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed incidental harassment authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

The 2004 NDAA (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations indicated above and amended the definition of ''harassment'' as applied to a ''military readiness activity.'' The activity for which incidental take of marine mammals is being requested addressed here qualifies as a military readiness activity. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On July 15, 2021, NMFS received a request from the DAF for two consecutive IHAs to take marine mammals incidental to LRC testing at VSFB, California. The application was deemed adequate and complete on November 19, 2021. The DAF's request is for take of California sea lions, Steller sea lions, harbor seals, and northern elephant seals by Level B harassment. Neither the DAF nor NMFS expects serious injury or mortality to result from these activities and, therefore, IHAs are appropriate. The issued IHAs would each cover one year of the two-year project.

Description of Activities

Overview

The DAF is planning to conduct test activities of the LRC system at VSFB over 2 years and requested the issuance of two consecutive one-year IHAs. The LRC system is a multi-element, multi-phase test program of the U.S. Army's (Army's) next-generation artillery systems. Major components of the artillery system include the cannon, gun mount, artillery projectile, and propelling charges. These components would be sited at the existing deactivated Launch Facility (LF)-05 site on VSFB. The proposed activities would include testing of the LRC by firing non-explosive projectiles over the Pacific Ocean from the VSFB shoreline onto and beyond the Point Mugu Sea Range (PMSR). A total of 77 projectiles are proposed to be fired over 51 test event days (39 events in year 1 and 12 events in year 2).

A detailed description of the planned testing activities is provided in the **Federal Register** notice of the proposed IHAs (87 FR 762; January 6, 2022). Since that time, no changes have been made to the project activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specified activities.

Comments and Responses

A notice of NMFS's proposal to issue IHAs to DAF was published in the **Federal Register** on January 6, 2022 (87 FR 762). That notice described, in detail, DAF's activities, the marine mammal species that may be affected by the activities and the anticipated effects on marine mammals. During this period, NMFS received an informal comment from the Marine Mammal Commission (MMC) suggesting that we revise text in the **Federal Register** notice of issuance and the final issued IHAs to match language from VSFB final rule (84 FR 14314; April 10, 2019), condition in § 217.65(b)(3)(i) to (iv) pertaining to required reporting measures. We agreed to make this change.

Changes From the Proposed IHAs to Final IHAs

NMFS notes that changes were made from the notice of proposed IHAs (87 FR 762; January 6, 2022) and draft IHAs to this **Federal Register** notice of issuance and both issued IHAs in response to an informal comment from the MMC. In the Proposed Monitoring and Reporting section of the notice of proposed IHAs (87 FR 762; January 6, 2022) as well as 6(c)(iii) and (iv) in both draft IHAs, the following language pertaining to monitoring report content was removed:

- Number, species, and any other relevant information regarding marine mammals observed and estimated exposed/taken during activities; and
- Description of the observed behaviors (in both presence and absence of test activities).

The text below has been included in this **Federal Register** notice of issuance

and in 6(c)(iii) through 6(c)(vii) of both issued IHAs:

- Number and species of pinnipeds present on the haulout prior to commencement of cannon testing;
- Description of pinniped behavior in the absence of cannon testing (before and after);
- Number and species of pinnipeds that may have been harassed as noted by the number of pinnipeds estimated to have moved in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degree, or, entered the water as a result of cannon testing;
- For any pinnipeds that entered the water, the length of time they remained off the haulout; and
- Description of behavioral modifications by pinnipeds that were likely the result of cannon testing.

No other changes have been made to this notice or either of the IHAs that were issued to the DAF.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all species or stocks for which take is expected and proposed to be authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2021). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no serious injury or mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. SARs (*e.g.,* Carretta *et al.,* 2021a). All values presented in Table 2 are the most recent available at the time of publication and are available in the 2020 U.S. Pacific SARs (Carretta *et al.,* 2021a) and 2021 draft Pacific and Alaska SARs (Carretta *et al.,* 2021b, Muto *et al.,* 2021) available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports.*

TABLE 1—MARINE MAMMAL SPECIES POTENTIALLY PRESENT IN THE PROJECT AREA THAT MAY BE AFFECTED BY THE PROPOSED ACTIVITIES

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California sea lion	*Zalophus californianus*	U.S	-, -, N	257,606 (n/a, 233,515, 2014).	14,011	>320
Steller sea lion	*Eumetopias jubatus*	Eastern U.S	-, -, N	43,201 (43,201, 2017)	2,592	112
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina richardsi*	California	-, -, N	30,968 (N/A, 27,348, 2012).	1,641	43
Northern Elephant seal	*Mirounga angustirostris*	California Breeding	-, -, N	187,386 (N/A, 85,369, 2013).	5,122	13.7

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range.

A detailed description of the species likely to be affected by the LRC activities, including brief information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (87 FR 762; January 6, 2022). Since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for those descriptions. Please also refer to NMFS's website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate

that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999). To reflect this, Southall *et al.,* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). A functional group for pinnipeds exposed to sounds out of water was established with a hearing range shown in Table 2. This is based on behavioral measurements of hearing for several pinniped species.

TABLE 2—MARINE MAMMAL FUNCTIONAL HEARING GROUP FOR PINNIPEDS (IN AIR) AND ITS GENERALIZED HEARING RANGE

Hearing group	Generalized hearing range *
Pinnipeds (in air)	75 Hz to 30 kHz.

* Southall *et al.,* 2007.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of testing activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the study area. The **Federal Register** notice for the proposed IHAs (87 FR 762; January 6, 2022) included a discussion of the effects of anthropogenic noise on marine mammals and their habitat, therefore that information is not repeated here; please refer to the **Federal Register** notice (87 FR 762; January 6, 2022) for that information.

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which will inform NMFS' negligible impact analysis and determination.

Harassment is the only type of take expected to result from these activities. For this military readiness activity, the MMPA defines ''harassment'' as (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where the behavioral patterns are abandoned or significantly altered (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to airborne sounds from cannon fire and sonic booms. Based on the nature of the activity, Level A harassment and Level B harassment in the form of TTS are neither anticipated nor proposed to be authorized.

As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. Generally, for in-air sounds, NMFS predicts that harbor seals exposed above received levels of 90 dB re 20 micropascal (μPa) root mean square (rms) will be behaviorally harassed, and other pinnipeds will be harassed when exposed above 100 dB re 20 μPa (rms). However, more recent data suggest that pinnipeds will be harassed when exposure is above 100 dB Sound Exposure Level (SEL) (unweighted) (*Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III) Technical Report* (U.S. Department of the Navy, 2017)) as shown in Table 3. NMFS helped develop the Phase III criteria and previously used this threshold for the SNI, PMSR incidental harassment authorization (84 FR 28,462; June 19, 2019). Therefore, NMFS is using 100 dB re 20 μPa2s SEL (unweighted) here.

TABLE 3—BEHAVIORAL THRESHOLD FOR IMPULSIVE SOUND FOR PINNIPEDS

Species	Level B harassment by behavior disturbance threshold
All pinniped species (in-air).	100 dB re 20 μPa2s SEL (unweighted).

Each time the LRC is fired it would generate blast noise from the cannon firing and a nearly simultaneous sonic boom from the projectile as it travels along its flight path. The blast noise can be described as an overpressure, and would be highest in the immediate vicinity of the cannon and dissipate with distance from the LF–05 site. The sound from the cannon fire and blast and the sonic boom would reach the beach nearly simultaneously, and the two sounds would be indistinguishable to pinnipeds on the beach or just offshore.

TABLE 4—TTS/PTS IN-AIR THRESHOLDS FOR PINNIPEDS IN-AIR

Group	Impulsive			
	TTS threshold SEL (weighted)	TTS threshold peak SPL (unweighted)	PTS threshold SEL (weighted)	PTS threshold peak SPL (unweighted)
All other Pinnipeds	146	170	161	176

TABLE 4—TTS/PTS IN-AIR THRESHOLDS FOR PINNIPEDS IN-AIR—Continued

Group	Impulsive			
	TTS threshold SEL (weighted)	TTS threshold peak SPL (unweighted)	PTS threshold SEL (weighted)	PTS threshold peak SPL (unweighted)
Harbor seals	123	155	138	161

The in-air Sound Pressure Level (SPL) generated by the combined cannon blast and sonic boom is likely only to exceed the temporary threshold shift (TTS) threshold (155 dB re 20 µPa) shown in Table 4 onshore directly west of LF–05. The 155 dB re 20 µPa threshold only applies to harbor seals. The TTS threshold for all other pinnipeds is 170 dB re 20 µPa as shown in Table 4 which is well above calculated in-air sound levels. This area consists of approximately 0.15 km of rocky shoreline and 0.20 km of narrow sandy beach, with an approximate maximum of 150 feet (46 meters) of dry sand at low tides, comprising the northern tip of Minuteman Beach. Three pinniped species (California sea lion, northern elephant seal, and Pacific harbor seal) could potentially utilize this location. However, observations of live pinnipeds on Minuteman Beach are very infrequent and have been limited to only California sea lions, and appear coincident with elevated concentrations of domoic acid (red tide) in nearshore waters (Evans 2020). Harbor seals have never been observed at this location. Because of their rare occurrence on Minuteman Beach and the lack of documented use of the coastal strand area between LF–05 and Minuteman Beach, it is very unlikely that any marine mammals, including harbor seals, would be present in that portion of the Project Area. In summary, and based on this analysis, TTS effects would be very unlikely for harbor seals and discountable for all other pinniped species. In addition, no PTS or other direct injury to pinnipeds is anticipated from in-air noise caused by LRC testing activities.

The nearest pinniped haulout from LF–05 is Lion's Head, which is approximately 0.5 km distant and is used by harbor seals. California sea lions could also use this location but have not been observed in the past 6 years of monthly counts performed by the DAF (U.S. Air Force 2020; Evans 2020). The maximum in-air SPL received at Lion's Head from the cannon blast is predicted to be 148 dB re 20 µPa (See Figure 6–1 in application), and the SPL from the sonic boom is predicted to be 8.5 psf (146.2 dB re 20 µPa; Figure 6–2 in application). The combined SPL received on the beach at Lion's Head, assuming noise from both sources arrived simultaneously, would be 150.2 dB re 20 µPa (calculated as described in the previous section).This total SPL is less than the TTS threshold for all pinniped hearing groups.

Marine Mammal Occurrence and Take Estimation

To conservatively estimate the number of pinnipeds that would potentially be exposed to noise levels above the Level B harassment behavioral threshold during test events, the analysis considered the maximum number of pinnipeds observed at haulouts within the predicted 100 dB re 20 μPa^2sec or greater SEL. The furthest haulout within this area is Lion Rock. Therefore, pinnipeds observed at the Lion Rock haulout were included to estimate the numbers of pinnipeds exposed during each test event day. During Test 1, the cannon will be fired multiple times per day. Because the analysis assumes all hauled-out pinnipeds would react to the initial noise by either an alert reaction, reorienting their position on land, or leaving the haulout and returning to the water, multiple cannon blasts in succession would result in only one take for each individual on a given day. A total of 35 firing events would occur during the test event which uses only Projectile A. Ten tests would occur during the weeks 1 and 2 and the remaining 25 tests would occur over the course of 13 test days during weeks 3 through 5. Similarly, for Test 2 one Projectile A and one Projectile B would be fired on each of 3 days during a 2-week period. For Tests 1, 2, and 3 one Projectile A and one Projectile C would be fired on each of 6 test days over a 2-week period. Over the entire testing period (from calendar year 2023 through 2025) there will be a total of 51 days when test events would produce in-air noise at levels that could potentially result in take of pinnipeds by Level B harassment.

Estimated take of California sea lions by Level B harassment was calculated by taking the highest number of individuals (n = 883) observed on a single day during the three most recent aerial surveys (2013, 2016, 2017) of Lion Rock multiplied by the number of days (39 for year 1 and 12 for year 2) over which each test event would occur. Surveys were performed by NMFS (NMFS 2020b). The total number of exposures to in-air noise from the proposed testing would result in an estimated 34,437 takes by Level B harassment during Year 1 and 10,596 takes by Level B harassment during Year 2 (Table 6, Table 7). Therefore the DAF requested, and NMFS has authorized this amount of Level B harassment by behavioral disruption for the Year 1 and Year 2 IHAs, respectively.

The DAF estimated take by Level B harassment by assuming that the number of Steller sea lions (n = 3) observed once at Lion Rock in October 2017 could occur during each day of testing. The total number of exposures to in-air noise from the proposed testing would result in an estimated 117 takes by Level B harassment in Year 1 and 36 takes by Level B harassment in Year 2. The DAF requested and NMFS has authorized 117 takes during Year 1 and 36 takes during Year 2 by Level B harassment from behavioral disruption, as shown in Table 5 and Table 6.

Take of harbor seals was calculated by taking the highest number observed hauled out at Little Sal (n = 10) and Lion's Head (n = 9) during monthly counts in 2019 and 2020 (U.S. Air Force 2020, In Prep.), resulting in a total of 19 harbor seals for each test event. This resulted in an estimate of 741 takes in Year 1 and 228 takes in Year 2 by Level B harassment. Therefore, the DAF requested and NMFS has authorized 741 takes during Year 1 and 228 takes during Year 2 by Level B harassment from behavioral disruption (Table 5, Table 6).

Northern elephant seals have not been observed hauled out at any locations within the project area in which Level B harassment could occur. However, overall numbers have been increasing on VSFB over the past decade (U.S. Air Force 2020), and it is possible that northern elephant seals may begin to occupy areas where they have not previously been observed. The DAF conservatively assumed that one

northern elephant seal may be exposed to in-air noise resulting in behavioral disturbance during each test event. Therefore, NMFS has authorized 39 takes during Year 1 and 12 takes during Year 2 by Level B harassment from behavioral disruption (Table 5, Table 6).

TABLE 5—ESTIMATED TAKES BY LEVEL B HARASSMENT BY TEST EVENT AND TEST SCHEDULE

Test dates	IHA year 1			IHA year 2	
Test event	1	2	3	4	5
California sea lion	26,490	2,649	5,298	5,298	5,298
Steller sea lion	90	9	18	18	18
Harbor seal	570	57	114	114	114
Northern elephant seal	30	3	6	6	6
All	27,180	2,718	5,436	5,436	5,436

TABLE 6—LEVEL B HARASSMENT TAKE ESTIMATES BY YEAR

Species	Estimated number of Level B harassment events year 1	Estimated number of Level B harassment events year 2
California Sea lion	34,437	10,596
Steller sea lion	117	36
Harbor seal	741	228
Northern elephant seal	39	12

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)). The NDAA for FY 2004 amended the MMPA as it relates to military readiness activities and the incidental take authorization process such that ''least practicable impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) and the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

The DAF must employ Protected Species Observers (PSOs) at established monitoring locations as described in the Monitoring and Reporting section. PSOs must monitor the project area to the maximum extent possible based on the required number of PSOs, required monitoring locations, and environmental conditions.

The DAF, when practicable, would perform LRC test activities when tides are greater than 1.0 foot (0.3 m). This is when haulouts tend to be unoccupied by pinnipeds and would reduce the number of exposures.

To prevent unauthorized take of marine mammals, test activities must be halted upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met.

Based on our evaluation of the applicant's planned measures, NMFS has determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the

most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

Visual Monitoring and Recording

PSOs must commence monitoring at Lion's Head, Little Sal, northern end of Minuteman Beach (beach between Minuteman Beach parking area and LF–05), and Lion Rock at least 72 hours prior to LRC test events and continue until at least 48 hours after each event. PSO's will be stationed at locations offering the best possible view of individual haulout sites. During each daily monitoring effort, surveys (counts with binoculars and spotting scopes, if necessary) will be conducted hourly for 6 hours (6 counts per day) centered around the late morning or afternoon low tides as much as possible. Monitors will record species; number of animals hauled out; general behavior; presence of pups; age class; and gender. Environmental conditions will also be monitored including tide, wind speed, air temperature, and swell.

PSOs cannot be present to survey Little Sal and Lion's Head when live cannon fire is underway for safety purposes, therefore, video recording of pinnipeds would be conducted during live fire testing in order to record any reaction to the blast noise and sonic boom. Lion Rock is approximately 0.25 mi (0.4 km) from the closest observation location and only half of the offshore rock is visible from land so it may be monitored via drone rather than traditional survey methods (spotting scopes and binoculars). The DAF would prefer to use a drone so that the entire rock can be observed. However, if DAF is unable to secure necessary permits, protected species observers (PSOs) would use a spotting scope to observe reactions during test events as an alternative.

Reporting

Technical reports will be submitted to the NMFS' Office of Protected Resources within 90 days from the date that each IHA expires. This report will provide full documentation of methods, results, and interpretation pertaining to LRC testing activities covered under these proposed IHAs.

The DAF will submit reports that include:

- Summary of test activities (dates and times);
- Summary of mitigation and monitoring measures implemented;
- Number and species of pinnipeds present on the haulout prior to commencement of cannon testing;
- Description of pinniped behavior in the absence of cannon testing (before and after);
- Number and species of pinnipeds that may have been harassed as noted by the number of pinnipeds estimated to have moved in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degree, or, entered the water as a result of cannon testing;
- For any pinnipeds that entered the water, the length of time they remained off the haulout;
- Description of behavioral modifications by pinnipeds that were likely the result of cannon testing;
- Environmental conditions when observations were made including visibility, air temperature, clouds, wind speed and direction, tides, and swell height and direction; and
- Assessment of the implementation and effectiveness of mitigation and monitoring measures.

If a dead or seriously injured pinniped is found during post-firing monitoring, the incident must be reported to the NMFS Office of Protected Resources and NMFS West Coast Regional Stranding Coordinator immediately. In the unanticipated event that any cases of pinniped mortality are judged to result from LRC testing activities at any time during the period covered by these IHAs, this will be reported to NMFS and the West Coast Stranding Coordinator. The report must include the following information:

1. Time and date of the incident;
2. Description of the incident;
3. Environmental conditions (*e.g.,* wind speed and direction, cloud cover, and visibility);
4. Description of all marine mammal observations and active sound source use in the 24 hours preceding the incident;
5. Species identification or description of the animal(s) involved;
6. Fate of the animal(s); and
7. Photographs or video footage of the animal(s).

Testing activities must not resume until NMFS is able to review the circumstances of the prohibited take. If it is determined that the unauthorized take was caused by LRC activities, NMFS will work with the Holder to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The DAF may not resume their activities until notified by NMFS.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29,

1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analyses applies to all the species listed in Table 6, given that the anticipated effects of this activity on these different marine mammal species are expected to be similar. Activities associated with the proposed activities, as outlined previously, have the potential to disturb or displace marine mammals.

The specified activities may result in take, in the form of Level B harassment (behavioral disturbance) only, from airborne sounds associated with LRC fire and accompanying sonic booms. Based on the best available information, including monitoring reports from similar activities (*i.e.,* sonic booms) at VSFB and nearby launch facilities, behavioral responses will likely be limited to reactions such as alerting to the noise, with some animals possibly moving toward or entering the water, depending on the species and the intensity of the cannon fire and sonic booms. Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely to result in TTS or PTS. Thresholds for PTS are higher than modeled sound levels across the entirety of the Project Area, and thresholds would not be exceeded or significantly disrupt foraging behavior. Thus, even repeated instances of Level B harassment of some small subset of an overall stock is unlikely to result in any significant realized decrease in fitness to those individuals, and thus would not result in any adverse impact to the stock as a whole.

If a marine mammal responds to a stimulus by changing its behavior (*e.g.,* through relatively minor changes in locomotion direction/speed), the response may or may not constitute taking at the individual level, and is unlikely to affect the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on animals or on the stock or species could potentially be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007). Flushing of pinnipeds into the water has the potential to result in mother-pup separation, or could result in a stampede, either of which could potentially result in serious injury or mortality. However, even in the instances of pinnipeds being behaviorally disturbed by cannon fire and associated sonic booms at VSFB and nearby launch facilities no evidence has been presented of abnormal behavior, injuries or mortalities, or pup abandonment as a result of sonic booms. These findings came as a result of more than two decades of surveys at VSFB. Post missile-launch monitoring generally reveals a return to normal behavioral patterns within minutes up to an hour or two of each launch, regardless of species (SAIC 2012). Therefore, in-air sound associated with canon firing and associated sonic booms is not expected to impact reproductive rates or population levels of affected species.

We do not anticipate that the proposed activities would result in any temporary or permanent effects on the habitats used by the marine mammals in the proposed area, including the food sources they use (*i.e.,* fish and invertebrates) since underwater sound levels would not affect prey species.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- No impacts to cetaceans are anticipated;
- No impacts in the form of TTS or PTS are expected or authorized;
- The anticipated incidences of Level B harassment are expected to consist of, at worst, temporary modifications in behavior (*i.e.,* short distance movements and occasional flushing into the water), which are not expected to adversely affect the fitness of any individuals or populations;
- The proposed activities are expected to result in no long-term changes in the use by pinnipeds of haulouts in the project area, based on over 20 years of monitoring data;
- No impacts to marine mammal habitat/prey are expected; and
- The expected efficacy of planned mitigation measures in reducing the effects of the specified activity to the level of least practicable adverse impact.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS finds that for both the Year 1 IHA and the Year 2 IHA the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must 39 review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the proposed IHAs qualifies to be categorically excluded from further NEPA review

Authorizations

As a result of these determinations, NMFS has issued two distinct and consecutive one-year IHAs to the

Department of the Air Force for conducting Long Range Cannon testing at Vandenberg Space Force Base, California from October 1, 2023 to September 30, 2024 (Year 1) and from October 1, 2024 to September 30, 2025 (Year 2) provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: March 3, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–05045 Filed 3–9–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB813]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

ACTION: Notice of issuance of Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that a Letter of Authorization (LOA) has been issued to BHP Billiton Petroleum (Deepwater) Inc. for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

DATES: The LOA is effective from March 7, 2022 through September 7, 2022.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Kim Corcoran, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in Federal waters of the U.S. Gulf of Mexico (GOM) over the course of 5 years (86 FR 5322; January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

Summary of Request and Analysis

BHP Billiton Petroleum (Deepwater) Inc. (BHP) plans to conduct a zero offset vertical seismic profile (VSP) survey and borehole seismic survey within the Green Canyon Block 124, Well number 002. See attachment 5 of BHP's application for a map. BHP plans to use a 6-element, 2,400 cubic inch (in^3) airgun array. Please see BHP's application for additional detail.

Consistent with the preamble to the final rule, the survey effort proposed by BHP in its LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in the preamble (86 FR 5322, 5398; January 19, 2021). In order to generate the appropriate take number for authorization, the following information was considered: (1) Survey type; (2) location (by modeling zone [1]); (3) number of days; and (4) season.[2] The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled survey type in each zone and season.

No VSP surveys were included in the modeled survey types, and use of existing proxies (*i.e.,* 2D, 3D NAZ, 3D WAZ, Coil) is generally conservative for use in evaluation of these survey types. Summary descriptions of these modeled survey geometries are available in the preamble to the proposed rule (83 FR 29212, 29220; June 22, 2018). Coil was selected as the best available proxy survey type for BHP's survey because the spatial coverage of the planned

[1] For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

[2] For purposes of acoustic exposure modeling, seasons include Winter (December–March) and Summer (April–November).

survey is most similar to the coil survey pattern. For the planned zero offset VSP survey, the source will be hung off of the drilling rig with a crane at a depth of 10 feet (3.05 meters) underwater, with seismic receivers (*i.e.,* geophones) being deployed within the borehole on wireline at specified depth intervals. The offset source will be deployed from the vessel in a fixed position and will alternate firing with the zero offset source. Both sources will be stationary and thus cover no area. The coil survey pattern was assumed to cover approximately 144 kilometers squared (km^2) per day (compared with approximately 795 km^2, 199 km^2, and 845 km^2 per day for the 2D, 3D NAZ, and 3D WAZ survey patterns, respectively). Among the different parameters of the modeled survey patterns (*e.g.,* area covered, line spacing, number of sources, shot interval, total simulated pulses), NMFS considers area covered per day to be most influential on daily modeled exposures exceeding Level B harassment criteria. BHP's planned survey will utilize a stationary source and, therefore, the coil proxy is most representative of the effort planned by BHP in terms of predicted Level B harassment exposures.

In addition, all available acoustic exposure modeling results assume use of a 72-element, 8,000 in^3 array. Thus, estimated take numbers for this LOA are considered conservative due to the differences in both the airgun array (6 elements, 2,400 in^3), and in daily survey area planned by BHP (as mentioned above), as compared to those modeled for the rule.

The survey is planned to occur for 2 days in Zone 5. The survey may occur in either season. Therefore, the take estimates for each species are based on the season that has the greater value for the species (*i.e.,* winter or summer).

In this case, use of exposure modeling produces results that are substantially smaller than average GOM group sizes for multiple species [3] (*i.e.,* estimated exposure values are less than 10 percent of assumed average group size for the majority of species) (Maze-Foley and Mullin, 2006). NMFS' typical practice in such a situation is to increase exposure estimates to the assumed average group size for a species in order to ensure that, if the species is encountered, exposures will not exceed the authorized take number. However, other relevant considerations here lead to a determination that increasing the estimated exposures to average group sizes would likely lead to an overestimate of actual potential take. In this circumstance, the very short survey duration and relatively small Level B harassment isopleths produced through use of the VSP and borehole survey means that it is unlikely that certain species would be encountered at all, much less that the encounter would result in exposure of a greater number of individuals than is estimated through use of the exposure modeling results. As a result, NMFS has not increased the estimated exposure values to assumed group sizes in authorizing take in this case.

Based on the results of our analysis, NMFS has determined that the level of taking authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations. See Table 1 in this notice and Table 9 of the rule (86 FR 5322; January 19, 2021).

Small Numbers Determination

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed ''small numbers.'' In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small. For more information please see NMFS' discussion of the MMPA's small numbers requirement provided in the final rule (86 FR 5322, 5438; January 19, 2021).

The take numbers for authorization, which are determined as described above, are used by NMFS in making the necessary small numbers determinations, through comparison with the best available abundance estimates (see discussion at 86 FR 5322, 5391; January 19, 2021). For this comparison, NMFS' approach is to use the maximum theoretical population, determined through review of current stock assessment reports (SAR; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and model-predicted abundance information (*https://seamap.env.duke.edu/models/Duke/GOM/*). For the latter, for taxa where a density surface model could be produced, we use the maximum mean seasonal (*i.e.,* 3-month) abundance prediction for purposes of comparison as a precautionary smoothing of month-to-month fluctuations and in consideration of a corresponding lack of data in the literature regarding seasonal distribution of marine mammals in the GOM. Information supporting the small numbers determinations is provided in Table 1.

TABLE 1—TAKE ANALYSIS

Species	Authorized take [1]	Abundance [2]	Percent abundance
Rice's whale [3]	0	51	n/a
Sperm whale	2	2,207	0.1
Kogia spp	[4] 0	4,373	n/a
Beaked whales	32	3,768	0.8
Rough-toothed dolphin	[4] 0	4,853	n/a
Bottlenose dolphin	3	176,108	0.0
Clymene dolphin	2	11,895	0.0
Atlantic spotted dolphin	1	74,785	0.0
Pantropical spotted dolphin	7	102,361	0.0
Spinner dolphin	2	25,114	0.0
Striped dolphin	1	5,229	0.0
Fraser's dolphin	[4] 0	1,665	n/a
Risso's dolphin	[4] 0	3,764	n/a
Melon-headed whale	1	7,003	0.0
Pygmy killer whale	[4] 0	2,126	n/a

[3] Species include: Short-finned pilot whale, sperm whale, Clymene dolphin, melon-headed whale, pantropical spotted dolphin, spinner dolphin and striped dolphin.

TABLE 1—TAKE ANALYSIS—Continued

Species	Authorized take [1]	Abundance [2]	Percent abundance
False killer whale	[4] 0	3,204	n/a
Killer whale	[4] 0	267	n/a
Short-finned pilot whale	[4] 0	1,981	n/a

[1] Scalar ratios were not applied in this case due to brief survey duration.
[2] Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.,* 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For the killer whale, the larger estimated SAR abundance estimate is used.
[3] The final rule refers to the GOM Bryde's whale (*Balaenoptera edeni*). These whales were subsequently described as a new species, Rice's whale (*Balaenoptera ricei*) (Rosel *et al.,* 2021).
[4] Modeled take produced a non-zero number which was rounded down to zero.

Based on the analysis contained herein of BHP's proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the affected species or stock sizes and therefore is of no more than small numbers.

Authorization

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to BHP authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: March 7, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–05104 Filed 3–9–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB871]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of webconference.

SUMMARY: The North Pacific Fishery Management Council (Council)'s Enforcement Committee will hold a webconference March 29, 2022.

DATES: The Enforcement Committee will begin on Tuesday, March 29, 2022, from 1 p.m. to 3 p.m., Alaska Time.

ADDRESSES: The meeting will be by webconference. Join online through the link at *https://meetings.npfmc.org/Meeting/Details/2873.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave., Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting via webconference are given under Connection Information, below.

FOR FURTHER INFORMATION CONTACT: Jon McCracken, Council staff; email: *jon.mccracken@noaa.gov.* For technical support, please contact our administrative staff, email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Tuesday, March 29, 2022

The Enforcement Committee will review Council agenda item C1 IFQ Omnibus Amendments. This analysis considers several elements intended to increase operational flexibility for those using pot and jig gear to harvest IFQ, as well as a separate alternative to remove the Adak CQE residency requirement for five years to provide more opportunity for the Adak CQE to fully harvest its allocation. The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/2873* prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone; or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/2873.* For technical support, please contact our administrative staff, email: *npfmc.admin@noaa.gov.*

Public Comment

Public comment letters will be accepted and should be submitted electronically to *https://meetings.npfmc.org/Meeting/Details/2873.*

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

Dated: March 7, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–05048 Filed 3–9–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB872]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of webconference.

SUMMARY: The North Pacific Fishery Management Council (NPFMC) Ecosystem Committee will meet March 29, 2022 through March 30, 2022.

DATES: The meeting will be held on Tuesday, March 29, 2022, through Wednesday, March 30, 2022, from 8 a.m. to 4 p.m. Alaska Time.

ADDRESSES: The meeting will be a webconference. Join online through the link at *https://meetings.npfmc.org/Meeting/Details/2856.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave., Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting are given under **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT: Diana Evans, Council staff; phone: (907) 271–2809 and email: *diana.evans@noaa.gov.* For technical support, please contact administrative Council staff, email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Tuesday, March 29, 2022 Through Wednesday, March 30, 2022

The Ecosystem Committee agenda will include: (a) Bering Sea Fishery Ecosystem Plan Team report (BS FEP); (b) BS FEP Local Knowledge, Traditional Knowledge, and Subsistence Taksforce report; (c) BS FEP Climate Change Taskforce report; (d) Alaska Climate Integrated Modeling Project (ACLIM) update; (e) GOA ecosystem research staff paper; (f) OECM update; (g) EFH 5-year review status update; (h) update on planning for Council Ecosystem Workshop; and (i) other business. The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/2856* prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone; or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/2856.*

Public Comment

Public comment letters will be accepted and should be submitted electronically to *https://meetings.npfmc.org/Meeting/Details/2856.*

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

Dated: March 7, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–05046 Filed 3–9–22; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2022–0018]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau or CFPB) requests the extension of the Office of Management and Budget's (OMB's) approval for an existing information collection titled, ''Generic Information Collection Plan for the Collection of Qualitative Feedback on Bureau Service Delivery.''

DATES: Written comments are encouraged and must be received on or before April 11, 2022 to be assured of consideration.

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. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to Anthony May, PRA Officer, at (202) 435–7278, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Generic Information Collection for the Collection of Qualitative Feedback on Bureau Service Delivery.

OMB Control Number: 3170–0024.

Type of Review: Extension of a currently approved information collection.

Affected Public: Individuals; Private sector; and State, Local, or Tribal Governments.

Estimated Number of Respondents: 500,000.

Estimated Total Annual Burden Hours: 125,000.

Abstract: This generic information collection plan provides for the collection of qualitative feedback from consumers, financial institutions, and stakeholders on a wide range of services the Bureau provides in an efficient, timely manner, in accordance with the Bureau's commitment to improving service delivery. By qualitative feedback, the Bureau means information that provides useful insights on, for example, comprehension, usability, perceptions, and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. The Bureau expects this feedback to include insights into consumer, financial institution 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 Bureau and consumers, financial institutions, and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Request for Comments: The Bureau published a 60-day **Federal Register** notice on 11/16/2021 (86 FR 63345) under Docket Number: CFPB–2021–0019. Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be reviewed by OMB as part of its review of this request. All comments will become a matter of public record.

Anthony May,

Paperwork Reduction Act Officer, Consumer Financial Protection Bureau.

[FR Doc. 2022–05014 Filed 3–9–22; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0035]

Agency Information Collection Activities; Comment Request; Performance Partnership Pilots Application

AGENCY: Office of Career, Technical, and Adult Education (OCTAE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before May 9, 2022.

ADDRESSES: To access and review all the documents related to the information

collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2022–SCC–0035. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208D, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Corinne Sauri, 202–245–6412.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Performance Partnership Pilots Application.

OMB Control Number: 1830–0575.

Type of Review: An extension without change of a currently approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 15.

Total Estimated Number of Annual Burden Hours: 1,200.

Abstract: This information collection request solicits applications for the Performance Partnership Pilots for Disconnected Youth, which provides States, localities, or tribal governments receiving funds under multiple Federal programs additional flexibility in using these funds to achieve significant improvement in outcomes for disconnected youth.

Dated: March 7, 2022.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–05101 Filed 3–9–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #4

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1910–022; ER10–1911–022.

Applicants: Duquesne Power, LLC, Duquesne Light Company.

Description: Notice of Change in Status of Duquesne Light Company, et al.

Filed Date: 3/3/22.

Accession Number: 20220303–5232.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER10–2381–010; ER11–2206–011; ER11–2207–011; ER11–2209–011; ER11–2210–011; ER11–2211–011; ER11–2855–025; ER11–2856–025; ER11–2857–025; ER11–3727–017; ER12–21–023; ER12–1711–017; ER13–1150–009; ER13–1151–009; ER13–1991–020; ER13–1992–020; ER18–814–002; ER19–672–002; ER19–843–002; ER19–1061–002; ER19–1063–002; ER19–1200–004; ER20–486–002.

Applicants: Golden Fields Solar III, LLC, Clearway Power Marketing LLC, Solar Borrego I LLC, Solar Alpine LLC, Solar Blythe LLC, Marsh Landing LLC, Carlsbad Energy Center LLC, Desert Sunlight 300, LLC, Desert Sunlight 250, LLC, Alta Wind XI, LLC, Alta Wind X, LLC, High Plains Ranch II, LLC, Agua Caliente Solar, LLC, El Segundo Energy Center LLC, Sun City Project LLC, Sand Drag LLC, Avenal Park LLC, Alta Wind I, LLC, Alta Wind III, LLC, Alta Wind II, LLC, Alta Wind IV, LLC, Alta Wind V, LLC, Walnut Creek Energy, LLC.

Description: Notice of Change in Status of Agua Caliente Solar, LLC, et al.

Filed Date: 3/3/22.

Accession Number: 20220303–5239.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER10–2405–011; ER10–2407–008; ER10–2424–008; ER10–2425–010; ER17–1316–006; ER18–1186–005; ER19–1280–003; ER19–2626–003; ER21–714–004.

Applicants: Indiana Crossroads Wind Farm LLC, Rosewater Wind Farm LLC, Broadlands Wind Farm LLC, Turtle Creek Wind Farm LLC, Quilt Block Wind Farm LLC, Pioneer Prairie Wind Farm I, LLC, Rail Splitter Wind Farm, LLC, Lost Lakes Wind Farm LLC, High Prairie Wind Farm II, LLC.

Description: Notice of Change in Status of Broadlands Wind Farm LLC, et al.

Filed Date: 3/3/22.

Accession Number: 20220303–5233.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER10–2428–000; ER10–2428–003.

Applicants: Wheat Field Wind Power Project LLC.

Description: Notice of Change in Status of Wheat Field Wind Power Project LLC.

Filed Date: 3/3/22.

Accession Number: 20220303–5234.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER10–2460–020; ER10–2461–021; ER12–682–021; ER13–17–019.

Applicants: Niagara Wind Power, LLC, Erie Wind, LLC, Canandaigua Power Partners II, LLC, Canandaigua Power Partners, LLC.

Description: Notice of Non-Material Change in Status of Canandaigua Power Partners, LLC, et al.

Filed Date: 3/3/22.

Accession Number: 20220303–5226.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER10–2474–025; ER10–2475–026; ER10–2984–054; ER10–3246–019; ER13–1266–037; ER15–2211–034.

Applicants: MidAmerican Energy Services, LLC, CalEnergy, LLC, PacifiCorp, Merrill Lynch Commodities, Inc., Nevada Power Company, Sierra Pacific Power Company.

Description: Notice of Non-Material Change in Status of Sierra Pacific Power Company, et al.

Filed Date: 3/3/22.

Accession Number: 20220303–5240.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER10–3275–005; ER18–213–003; ER19–1714–001; ER20–1106–002; ER20–2060–001.

Applicants: MPH Rockaway Peakers, LLC, Missisquoi, LLC, Pawtucket Power Associates Limited Partnership, Pittsfield Generating Company, L P, Capitol District Energy Center Cogeneration Associates.

Description: Notice of Non-Material Change in Status of Capitol District Energy Center Cogeneration Associates, et al.

Filed Date: 3/3/22.

Accession Number: 20220303–5236.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER15–2101–012; ER15–2582–011; ER10–1852–060; ER17–838–037; ER10–1951–040; ER11–4462–062.

Applicants: Carousel Wind Farm, LLC, Golden West Power Partners, LLC, Florida Power & Light Company, NextEra Energy Marketing, LLC, NextEra Energy Services Massachusetts, LLC, NEPM II, LLC.

Description: Notice of Change in Status of Golden West Power Partners, LLC, et al.

Filed Date: 3/3/22.

Accession Number: 20220303–5237.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER21–2293–004; ER10–1852–061; ER14–21–012; ER17–838–038; ER10–1951–041; ER11–4462–063.

Applicants: NEPM II, LLC, Gexa Energy L.L.C., NextEra Energy Marketing, LLC, Mountain View Solar, LLC, Florida Power & Light Company, Fish Springs Ranch Solar, LLC.

Description: Notice of Change in Status of Fish Springs Ranch Solar, LLC, et al.

Filed Date: 3/3/22.

Accession Number: 20220303–5238.

Comment Date: 5 p.m. ET 3/24/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 4, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–05049 Filed 3–9–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–29–000]

Gas Transmission Northwest LLC; Notice of Availability of the Environmental Assessment for the Proposed Coyote Springs Compressor Station Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a supplemental environmental assessment (EA) for the Coyote Springs Compressor Station Project, proposed by Gas Transmission Northwest LLC (GTN) in the above-referenced docket. GTN requests authorization to construct and operate one new 1,586 horsepower compressor station, in Morrow County, Oregon (Coyote Springs Compressor Station).

The supplemental EA assesses the potential environmental effects of the construction and operation of the Coyote Springs Compressor Station Project in accordance with the requirements of the National Environmental Policy Act and supplements Commission staff's March 15, 2021 EA to address a timely protest as well as updated information regarding impacts on historic properties. The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The Commission mailed a copy of the *Notice of Availability* to federal, state, and local government representatives and agencies; environmental and public interest groups; Native American tribes; and potentially affected landowners and other interested individuals and groups. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*), select ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP21–29). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The EA is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Any person wishing to comment on the EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before 5:00 p.m. Eastern Time on April 4, 2022.

For your convenience, there are three methods you can use to file your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP21–29) on your letter. 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.

Filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. At this point in this proceeding, the timeframe for filing timely intervention requests has expired. Any person seeking to become a party to the proceeding must file a motion to intervene out-of-time pursuant to Rule 214(b)(3) and (d) of the Commission's Rules of Practice and Procedures [18 CFR 385.214(b)(3) and (d)] and show good cause why the time limitation should be waived. Motions to intervene are more fully described at *https://www.ferc.gov/ferc-online/ferc-online/how-guides.*

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: March 4, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–05057 Filed 3–9–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings in Existing Proceedings

Docket Number: PR22–28–000.

Applicants: Columbia Gas of Ohio, Inc.

Description: Submits tariff filing per 284.123(b),(e)/: COH SOC Rates effective 1–31–2022 to be effective 1/31/2022.

Filed Date: 3/2/2022.

Accession Number: 20220302–5147.

Comments/Protests Due: 5 p.m. ET 3/23/22.

Docket Numbers: RP22–676–000.

Applicants: Stagecoach Pipeline & Storage Company LLC.

Description: § 4(d) Rate Filing: Stagecoach Pipeline & Storage Company LLC NRA Chesapeake Energy Marketing LLC to be effective 4/1/2022.

Filed Date: 3/4/22.

Accession Number: 20220304–5052.

Comment Date: 5 p.m. ET 3/16/22.

Docket Numbers: RP22–677–000.

Applicants: Tennessee Gas Pipeline Company, L.L.C.

Description: § 4(d) Rate Filing: Volume No. 2—Direct Energy SP64598 & SP346759 BKV SP367952 to be effective 4/1/2022.

Filed Date: 3/4/22.

Accession Number: 20220304–5054.

Comment Date: 5 p.m. ET 3/16/22.

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.

Dated: March 4, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–05056 Filed 3–9–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2301–037]

Northwestern Corporation; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Application for Temporary Variance from Stream Gaging Requirements.

b. *Project No:* 2301–037.

c. *Date Filed:* February 14, 2022.

d. *Applicant:* Northwestern Corporation (licensee).

e. *Name of Project:* Mystic Lake Hydroelectric Project.

f. *Location:* The project is located on West Rosebud Creek in Carbon and Stillwater counties, Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mary Gail Sullivan, Director; Northwestern Corporation; 11 East Park Street, Butte, MT 59701; Phone: (406) 444–8115.

i. *FERC Contact:* Alicia Burtner, (202) 502–8038, *Alicia.Burtner@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* March 24, 2022.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–2301–037. Comments emailed to Commission staff are not

considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The licensee requests approval of a temporary variance of its stream gaging requirements in order to complete maintenance on the West Rosebud Creek stream gaging weir, located immediately upstream of the Mystic Powerhouse discharge. Standard Article 8 of the project license requires the licensee to install and maintain stream gaging stations for the determination of stage and flow, the amount of water being held in and withdrawn from storage, and the effective head on the turbines. The West Rosebud Creek weir consists of a concrete check dam and metal threshold plate; however, the licensee reports that erosion of the concrete has allowed water to flow under the metal threshold plate, decreasing gaging accuracy. Maintenance of the weir would entail removing the plate, repairing the concrete, and reattaching the plate. In order to do so, the licensee requests that it be allowed to dewater the site for a maximum of 7 days, while maintaining flows in the bypass reach.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: March 4, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–05053 Filed 3–9–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #3

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER22–1188–000.
Applicants: Guzman Energy, LLC.
Description: § 205(d) Rate Filing: Normal filing 2022 to be effective 3/4/2022.
Filed Date: 3/3/22.
Accession Number: 20220303–5147.
Comment Date: 5 p.m. ET 3/24/22.
Docket Numbers: ER22–1189–000.
Applicants: Guzman Energy Partners LLC.
Description: § 205(d) Rate Filing: Normal filing 2022 to be effective 3/4/2022.
Filed Date: 3/3/22.
Accession Number: 20220303–5150.
Comment Date: 5 p.m. ET 3/24/22.
Docket Numbers: ER22–1190–000.
Applicants: Guzman Western Slope LLC.
Description: § 205(d) Rate Filing: Normal filing 2022 to be effective 3/4/2022.
Filed Date: 3/3/22.
Accession Number: 20220303–5153.
Comment Date: 5 p.m. ET 3/24/22.
Docket Numbers: ER22–1191–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: 2022–03–03 PSCo–HLYCRS–O&M Agrmt–430–0.2.0 to be effective 3/4/2022.
Filed Date: 3/3/22.
Accession Number: 20220303–5154.
Comment Date: 5 p.m. ET 3/24/22.
Docket Numbers: ER22–1192–000.
Applicants: Constellation Mystic Power, LLC.
Description: § 205(d) Rate Filing: Post-Spin Compliance Filing to Update Mystic Agreement to be effective 6/1/2022.
Filed Date: 3/3/22.
Accession Number: 20220303–5158.
Comment Date: 5 p.m. ET 3/24/22.
Docket Numbers: ER22–1193–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Rate Schedule No. 306 to be effective 5/4/2022.
Filed Date: 3/4/22.
Accession Number: 20220304–5000.
Comment Date: 5 p.m. ET 3/25/22.
Docket Numbers: ER22–1194–000.
Applicants: Northern States Power Company, a Minnesota corporation.
Description: § 205(d) Rate Filing: 2022–03–04–NSP–GRE–SISA–North Mankato–674–0.0.0 to be effective 3/5/2022.
Filed Date: 3/4/22.
Accession Number: 20220304–5026.
Comment Date: 5 p.m. ET 3/25/22.
Docket Numbers: ER22–1195–000.
Applicants: American Electric Power Service Corporation, Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Ohio Power Company, Wheeling Power Company, AEP Appalachian Transmission Company, Inc., AEP Indiana Michigan Transmission Company, Inc., AEP Kentucky Transmission Company, Inc., AEP Ohio Transmission Company, Inc.,

AEP West Virginia Transmission Company, Inc., PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: American Electric Power Service Corporation submits tariff filing per 35.13(a)(2)(iii: AEP revisions to PJM OATT Atts. H–14 and H–20 re: AEP-Liberty Util. Transaction to be effective 12/31/9998.

Filed Date: 3/4/22.

Accession Number: 20220304–5077.

Comment Date: 5 p.m. ET 3/25/22.

Docket Numbers: ER22–1196–000.

Applicants: Kentucky Power Company, AEP Kentucky Transmission Company, Inc., PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Kentucky Power Company submits tariff filing per 35.13(a)(2)(iii: KY Power and AEP KY Transmission submit OATT Atts. H–35 & H–36 to be effective 12/31/9998.

Filed Date: 3/4/22.

Accession Number: 20220304–5085.

Comment Date: 5 p.m. ET 3/25/22.

Docket Numbers: ER22–1196–001.

Applicants: Kentucky Power Company, AEP Kentucky Transmission Company, Inc., PJM Interconnection, L.L.C.

Description: Tariff Amendment: Kentucky Power Company submits tariff filing per 35.17(b): Amendment to KY Power & AEP KY Transmission Atts. H–35 & H–36 to be effective 12/31/9998.

Filed Date: 3/4/22.

Accession Number: 20220304–5118.

Comment Date: 5 p.m. ET 3/25/22.

Docket Numbers: ER22–1197–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: SCE Second Amended LGIA-Catalina Solar TOT455—SA No. 114 to be effective 3/5/2022.

Filed Date: 3/4/22.

Accession Number: 20220304–5099.

Comment Date: 5 p.m. ET 3/25/22.

Docket Numbers: ER22–1198–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: First Revised ISA No. 5448; Queue No. AF2–139 to be effective 2/2/2022.

Filed Date: 3/4/22.

Accession Number: 20220304–5112.

Comment Date: 5 p.m. ET 3/25/22.

Docket Numbers: ER22–1200–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Revisions to OATT and OA to implement intelligent reserve deployment construct to be effective 6/1/2022.

Filed Date: 3/4/22.

Accession Number: 20220304–5134.

Comment Date: 5 p.m. ET 3/25/22.

Docket Numbers: ER22–1201–000.

Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: Niagara Mohawk Power Corporation submits tariff filing per 35.13(a)(2)(iii: NMPC 205: Smart Path Connect Cost Recovery and Incentive Rate Treatment to be effective 5/4/2022.

Filed Date: 3/4/22.

Accession Number: 20220304–5146.

Comment Date: 5 p.m. ET 3/25/22.

Docket Numbers: ER22–1202–000.

Applicants: Pacific Gas and Electric Company.

Description: Tariff Amendment: Termination of Noosa Energy Storage E&P Agreement (SA 2100 EP–30) to be effective 5/4/2022.

Filed Date: 3/4/22.

Accession Number: 20220304–5177.

Comment Date: 5 p.m. ET 3/25/22.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH22–7–000.

Applicants: CONSTELLATION ENERGY CORPORATION.

Description: Constellation Energy Corporation submits FERC–65A Notice of Change in Fact to Waiver Notification of.

Filed Date: 3/3/22.

Accession Number: 20220303–5225.

Comment Date: 5 p.m. ET 3/24/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *https://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 4, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–05054 Filed 3–9–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER06–1409–007; ER06–1407–007; ER06–1408–007; ER08–579–009; ER08–578–008; ER19–902–002; ER06–1413–007.

Applicants: Noble Clinton Windpark I, LLC, Valcour Wind Energy, LLC, Noble Chateaugay Windpark, LLC, Noble Wethersfield Windpark, LLC, Noble Ellenberg Windpark, LLC, Noble Bliss Windpark, LLC, Noble Altona Windpark, LLC.

Description: Notice of Change in Status of Valcour Altona Windpark, LLC, et. al.

Filed Date: 3/2/22.

Accession Number: 20220302–5300.

Comment Date: 5 p.m. ET 3/23/22.

Docket Numbers: ER10–1484–024; ER12–2381–010; ER13–1069–013.

Applicants: MP2 Energy LLC, MP2 Energy NE LLC, Shell Energy North America (US), L.P.

Description: Notice of Change in Status of Shell Energy North America (US), L.P., et al.

Filed Date: 3/3/22.

Accession Number: 20220303–5230.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER10–1625–009.

Applicants: Tenaska Georgia Partners, L.P.

Description: Notice of Change in Status of Tenaska Georgia Partners, L.P.

Filed Date: 3/3/22.

Accession Number: 20220303–5222.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER10–1890–020; ER10–1899–017; ER11–2160–020; ER10–1918–024; ER10–1907–023; ER11–2642–021; ER10–1930–015; ER10–1931–016; ER10–1935–017; ER10–1932–017; ER13–2147–004; ER10–1950–024; ER13–2112–015; ER16–90–013; ER17–2340–010; ER15–2477–013; ER15–2101–011; ER20–2019–005; ER19–2389–007; ER15–2601–009; ER18–1952–011; ER19–2398–009; ER21–254–005; ER11–3635–017; ER21–1953–003; ER18–2246–013; ER19–1392–008; ER20–2064–005; ER12–1228–027; ER10–1962–019; ER21–2225–003; ER20–2690–005; ER16–2275–015; ER16–2276–015; ER18–1771–013; ER12–2225–016; ER14–2138–013; ER12–2226–016; ER21–2117–003; ER16–1354–012; ER10–1966–017; ER18–2003–011; ER14–2707–022; ER14–1630–013; ER16–1872–014; ER15–1375–014; ER18–2182–011;

ER12–895–025; ER20–1907–004; ER21–2149–003; ER21–2699–003;ER18–2066–006; ER20–2695–005; ER18–1535–008; ER14–21–011.

Applicants: Mountain View Solar, LLC, Montauk Energy Storage Center, LLC, Mohave County Wind Farm LLC, Minco Wind IV, LLC, Minco Wind Energy III, LLC, Minco Wind Energy II, LLC, Minco Wind I, LLC, Minco Wind Interconnection Services, LLC, Minco IV & V Interconnection, LLC, McCoy Solar, LLC, Marshall Solar, LLC, Mantua Creek Solar, LLC, Mammoth Plains Wind Project, LLC, Lorenzo Wind, LLC, Logan Wind Energy LLC, Live Oak Solar, LLC, Little Blue Wind Project, LLC, Limon Wind, LLC, Limon Wind III, LLC,Limon Wind II, LLC, Langdon Renewables, LLC, Kingman Wind Energy II, LLC, Kingman Wind Energy I, LLC, Jordan Creek Wind Farm LLC, Irish Creek Wind, LLC, High Winds, LLC, High Majestic Wind II, LLC, High Majestic Wind I, LLC, High Lonesome Mesa Wind, LLC, Heartland Divide Wind Project, LLC, Heartland Divide Wind II, LLC, Hatch Solar Energy Center I, LLC, Harmony Florida Solar, LLC, Hancock County Wind, LLC, Gulf Power Company, Green Mountain Storage, LLC, Grazing Yak Solar, LLC, Gray County Wind, LLC, Golden West Power Partners, LLC, Golden Hills Wind, LLC, Golden Hills North Wind, LLC, Golden Hills Interconnection, LLC, Genesis Solar, LLC, Garden Wind, LLC, Frontier Utilities New York LLC, FPL Energy Wyman, LLC, FPL Energy Wyman IV, LLC, FPL Energy Vansycle, L.L.C., FPL Energy Stateline II, Inc., FPL Energy South Dakota Wind, LLC, FPL Energy North Dakota Wind, LLC, FPL Energy North Dakota Wind II, LLC, FPL Energy Montezuma Wind, LLC, FPL Energy Illinois Wind, LLC, FPL Energy Green Power Wind, LLC.

Description: Notice of Change in Status of NextEra Companies, et al. (Part 2 of 4).

Filed Date: 3/2/22.

Accession Number: 20220302–5299.

Comment Date: 5 p.m. ET 3/23/22.

Docket Numbers: ER10–2042–040; ER10–1942–032; ER17–696–020; ER10–1941–015; ER19–1127–005; ER10–1938–035; ER10–1934–034; ER10–1893–034; ER10–3051–039; ER10–2985–038; ER10–3049–039; ER10–1888–015; ER10–1885–015; ER10–1884–015; ER10–1883–015; ER10–1878–015; ER20–1699–003; ER10–1876–016; ER10–1875–015; ER10–1873–015; ER11–4369–019; ER16–2218–020; ER12–1987–013; ER10–1947–016; ER12–2645–008; ER10–1863–010; ER10–1862–034; ER12–2261–014; ER10–1865–015.

Applicants: South Point Energy Center, LLC, Russell City Energy Company, LLC, Power Contract Financing, L.L.C., Pine Bluff Energy, LLC, Pastoria Energy Facility L.L.C., Otay Mesa Energy Center, LLC, O.L.S. Energy-Agnews, Inc., North American Power Business, LLC, North American Power and Gas, LLC, Metcalf Energy Center, LLC, Los Medanos Energy Center LLC, Los Esteros Critical Energy Facility, LLC, Johanna Energy Center, LLC, Goose Haven Energy Center, LLC, Gilroy Energy Center, LLC, Geysers Power Company, LLC, Delta Energy Center, LLC, Creed Energy Center, LLC, Champion Energy Services, LLC, Champion Energy Marketing LLC, Champion Energy, LLC, CES Marketing X, LLC, CES Marketing IX, LLC, Calpine Power America—CA, LLC, Calpine King City Cogen, LLC, Calpine Gilroy Cogen, L.P., Calpine Energy Solutions, LLC, Calpine Construction Finance Co., L.P., Calpine Energy Services, L.P.

Description: Notice of Change in Status of Calpine Energy Services, L.P., et al.

Filed Date: 3/3/22.

Accession Number: 20220303–5195.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER10–2401–009; ER20–2746–002.

Applicants: Riverstart Solar Park LLC, Blue Canyon Windpower II LLC.

Description: Notice of Change in Status of Blue Canyon Windpower II LLC, et al.

Filed Date: 3/3/22.

Accession Number: 20220303–5223.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER10–2460–020; ER10–2461–021; ER12–682–021; ER13–17–019.

Applicants: Niagara Wind Power, LLC, Erie Wind, LLC, Canandaigua Power Partners II, LLC, Canandaigua Power Partners, LLC.

Description: Notice of Non-Material Change in Status of Canandaigua Power Partners, LLC, et. al.

Filed Date: 3/3/22.

Accession Number: 20220303–5226.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER10–2881–000; ER10–2881–039; ER10–2882–000; ER10–2883–000; ER10–2884–000; ER16–2509–000; ER17–2400–000; ER17–2401–000; ER17–2403–000; ER17–2404–000; ER10–2882–039; ER10–2883–037; ER10–2884–037; ER16–2509–008; ER17–2400–009; ER17–2401–009; ER17–2404–009; ER17–2403–009.

Applicants: SP Sandhills Solar, LLC, SP Pawpaw Solar, LLC, SP Decatur Parkway Solar, LLC, SP Butler Solar, LLC, Rutherford Farm, LLC, Georgia Power Company, Mississippi Power Company, Southern Power Company, Alabama Power Company.

Description: Notice of Change in Status of Alabama Power Company, et al.

Filed Date: 3/3/22.

Accession Number: 20220303–5217.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER10–3050–009; ER10–3053–009.

Applicants: Whitewater Hill Wind Partners, LLC, Cabazon Wind Partners, LLC.

Description: Notice of Non-Material Change in Status of Cabazon Wind Partners, LLC, et al.

Filed Date: 3/3/22.

Accession Number: 20220303–5220.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER11–4462–060; ER18–772–008; ER16–2443–010; ER17–1774–007; ER10–1970–023; ER17–838–035; ER11–4677–020; ER10–1972–023; ER10–1973–017; ER10–1951–038; ER16–2241–015; ER21–1880–002; ER10–1975–028; ER12–2444–019; ER10–1974–028; ER20–1988–005; ER20–1985–004; ER20–2648–005; ER21–183–003; ER20–792–005; ER10–2641–040; ER20–1220–005; ER20–1879–006; ER16–2506–015; ER20–2012–004; ER16–2297–015; ER14–2710–022; ER15–58–020; ER11–2365–008; ER19–11–007; ER20–1219–004; ER18–2224–014; ER12–676–016; ER13–2461–018; ER17–196–008; ER18–807–009; ER21–2100–003; ER20–1991–005; ER18–1981–011; ER21–2641–002; ER19–2266–006; ER21–1532–002; ER11–2192–019; ER16–1913–009; ER16–1440–016; ER20–1417–005; ER22–96–002; ER19–1128–005; ER16–2240–016; ER21–2048–003.

Applicants: Sac County Wind, LLC, Rush Springs Wind Energy, LLC, Rush Springs Energy Storage, LLC, Route 66 Solar Energy Center, LLC, Roundhouse Renewable Energy, LLC, Roswell Solar, LLC, River Bend Solar, LLC, Red Mesa Wind, LLC, Quitman II Solar, LLC, Quitman Solar, LLC, Quinebaug Solar, LLC, Pratt Wind, LLC, Ponderosa Wind, LLC, Point Beach Solar, LLC, Pinal Central Energy Center, LLC, Pima Energy Storage System, LLC, Pheasant Run Wind, LLC, Perrin Ranch Wind, LLC, Pegasus Wind, LLC, Peetz Table Wind, LLC, Peetz Logan Interconnect, LLC, Paradise Solar Urban Renewal, L.L.C., Palo Duro Wind Interconnection Services, LLC, Palo Duro Wind Energy, LLC, Osborn Wind Energy, LLC, Orbit Bloom Energy, LLC, Oliver Wind III, LLC, Oliver Wind I, LLC, Oliver Wind II, LLC, Oleander Power Project, Limited Partnership, Oklahoma Wind, LLC, Nutmeg Solar, LLC, Northern Divide

Wind, LLC, Northern Colorado Wind Energy Center, LLC, Northern Colorado Wind Energy Center II, LLC, Northeast Energy Associates, L.P., North Sky River Energy, LLC, North Jersey Energy Associates, L.P., Niyol Wind, LLC, Ninnescah Wind Energy, LLC, Gexa Energy L.L.C., NextEra Energy Seabrook, LLC, NextEra Energy Point Beach, LLC, NextEra Energy Montezuma II Wind, LLC, NextEra Energy Marketing, LLC, NextEra Energy Duane Arnold, LLC, NextEra Energy Bluff Point, LLC, NextEra Blythe Solar Energy Center, LLC, New Mexico Wind, LLC, NEPM II, LLC.

Description: Notice of Change in Status of NextEra Companies, et al. (Part 3 of 4).

Filed Date: 3/2/22.

Accession Number: 20220302–5301.

Comment Date: 5 p.m. ET 3/23/22.

Docket Numbers: ER16–1913–010; ER10–1852–059; ER10–1951–039; ER11–4462–061; ER17–838–036.

Applicants: NextEra Energy Marketing, LLC, River Bend Solar, LLC, NEPM II, LLC, Gexa Energy L.L.C., Florida Power & Light Company.

Description: Notice of Change in Status of Florida Power & Light Company, et al.

Filed Date: 3/3/22.

Accession Number: 20220303–5228.

Comment Date: 5 p.m. ET 3/24/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number. Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding. eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 4, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–05055 Filed 3–9–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–42–000]

Northern Natural Gas Company; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed; Ogden to Ventura A-Line Abandonment and Capacity Replacement Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document, that will discuss the environmental impacts of the Ogden to Ventura A-Line Abandonment and Capacity Replacement Project involving abandonment of pipeline facilities by Northern Natural Gas Company (Northern) in Boone, Hancock, and Webster Counties, Iowa, and construction and operation of facilities in Wright County, Iowa. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on April 6, 2022. Comments may be submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission *before* the opening of this docket on January 21, 2022, you will need to file those comments in Docket No. CP22–42–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

Northern provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas Questions or Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow

these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is also on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP22–42–000) on your letter. 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.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Summary of the Proposed Project

Northern proposes to abandon 82.7 miles of 20-inch-diameter pipeline and appurtenances on its IAM60601 A-line system (referred to as the A-Line). Northern also requests authorization to construct and operate a 6.04-mile-long extension of its 30-inch-diameter Ogden to Ventura IAM60604 D-line (referred to as the D-Line) and appurtenances to replace the capacity associated with the abandoned A-line. According to Northern, its project would enhance the safety, reliability, security, and operational efficiency of its pipeline system.

The Ogden to Ventura A-Line Abandonment and Capacity Replacement Project would consist of the following facilities:

- Disconnecting the 20-inch-diameter A-Line near the Ogden compressor station in Boone County, Iowa;
- disconnecting the 20-inch-diameter A-Line at the Eagle Grove branch line take-off in Wright County, Iowa;
- installing temporary compression at three discrete locations (one each in Boone, Webster, and Hancock Counties) to evacuate gas from the A-Line to the IAM60602 B-line;
- disconnecting the 20-inch-diameter A-Line at the Ventura compressor station in Hancock County, Iowa; and
- installing a pipeline extension of the D-Line consisting of approximately 6.04 miles of 30-inch-diameter pipeline and an associated aboveground pig receiver in Wright County, Iowa.[1]

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 152 acres of land for construction of the D-Line aboveground facilities and the pipeline. Following construction, Northern would maintain about 37 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses. All of the proposed pipeline routes parallel existing pipeline, utility, or road rights-of-way. Abandonment in-place of existing facilities would disturb about 14 acres for temporary workspace. All workspaces utilized for facility abandonment would be restored and revert to former uses.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed project under the relevant general resource areas:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- air quality and noise; and
- reliability and safety.

Commission staff have already identified several issues that deserve attention based on public comments, and a preliminary review of the proposed facilities and the environmental information provided by Northern. This preliminary list of issues may change based on your comments and our analysis:

- Impacts on air quality from temporary compression;
- impacts on agricultural land; and final disposition of the pipeline.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/Notice of Schedule* will be issued, which will open up an additional comment period. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary [3] and the

[1] A ''pig'' is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary''. For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

[3] For instructions on connecting to eLibrary, refer to the last page of this notice.

Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.[4] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[5] The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP22–42–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. *This email address is unable to accept comments. OR*

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: March 4, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–05052 Filed 3–9–22; 8:45 am]

BILLING CODE 6717–01–P

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Section 1501.8.

[5] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1470–012; ER18–836–005; ER16–1833–007; ER10–3026–010.

Applicants: Termoelectrica U.S., LLC, Sempra Gas & Power Marketing, LLC, Energia Sierra Juarez 2 U.S., LLC, Energia Sierra Juarez U.S., LLC.

Description: Notice of Change in Status of Energia Sierra Juarez U.S., LLC, et al.

Filed Date: 3/3/22.

Accession Number: 20220303–5227.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER14–41–006; ER14–42–006; ER16–498–005; ER16–499–005; ER16–500–005; ER20–547–005; ER20–2448–001; ER21–133–001; ER21–736–002; ER21–1962–002.

Applicants: Mulberry BESS LLC, RE Slate 1 LLC, HDSI, LLC, American Kings Solar, LLC, Goldman Sachs Renewable Power Marketing LLC, RE Mustang 4 LLC, RE Mustang 3 LLC, RE Mustang LLC, RE Rosamond Two LLC, RE Rosamond One LLC.

Description: Notice of Non-Material Change in Status of Goldman Sachs Renewable Power Marketing LLC, et al.

Filed Date: 3/3/22.

Accession Number: 20220303–5175.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER15–1418–014; ER15–1883–014; ER19–1073–006; ER21–2304–002; ER21–2294–002; ER22–415–002; ER18–2118–012; ER19–2373–007; ER10–2005–024; ER11–26–024; ER20–2179–006; ER21–1990–002; ER16–91–014; ER16–632–013; ER20–819–007; ER20–820–006; ER21–2674–001; ER16–2453–017; ER16–2191–016; ER16–2190–016; ER15–1925–020; ER19–2901–007; ER10–1841–024; ER15–2582–010; ER18–1978–009; ER15–2676–019; ER20–2049–004; ER20–1980–005; ER20–1987–006; ER16–1672–017; ER20–1769–005; ER13–712–028; ER18–1863–009; ER21–1519–001; ER17–804–001; ER17–2152–013; ER20–122–005; ER19–2461–007; ER19–987–011; ER19–1003–011; ER21–1320–002; ER20–1986–004; ER13–1991–019; ER13–1992–019; ER21–2118–002; ER19–2269–006; ER22–381–002; ER18–1534–009; ER18–882–012; ER10–1849–026; ER21–1682–001; ER19–2437–007; ER19–1393–011; ER19–1394–011; ER13–752–016; ER12–2227–025; ER10–1851–015; ER21–1879–002; ER21–2293–002; ER10–1852–057; ER10–1857–017.

Applicants: FPL Energy Cape, LLC, Florida Power & Light Company, Fish Springs Ranch Solar, LLC, Farmington Solar, LLC, ESI Vansycle Partners, L.P., Ensign Wind, LLC, Energy Storage Holdings, LLC, Endeavor Wind II, LLC, Endeavor Wind I, LLC, Emmons-Logan Wind, LLC, Elora Solar, LLC, Elk City Wind, LLC, Elk City Renewables II, LLC, East Hampton Energy Storage Center, LLC, Dunns Bridge Solar Center, LLC, Dougherty County Solar, LLC, Dodge Flat Solar, LLC, Desert Sunlight 300, LLC, Desert Sunlight 250, LLC, Day County Wind I, LLC, Crystal Lake Wind Energy III, LLC, Crystal Lake Wind Energy II, LLC, Crystal Lake Wind Energy I, LLC, Crowned Ridge Wind, LLC, Crowned Ridge Interconnection, LLC, Cottonwood Wind Project, LLC, Coram California Development, L.P., Cool Springs Solar, LLC, Coolidge Solar I, LLC, Cimarron Wind Energy, LLC, Chicot Solar, LLC, Chaves County Solar, LLC, Cerro Gordo Wind, LLC, Cedar Springs Wind, LLC, Cedar Springs Wind III, LLC, Cedar Bluff Wind, LLC, Casa Mesa Wind, LLC, Carousel Wind Farm, LLC, Butler Ridge Wind Energy Center, LLC, Bronco Plains Wind, LLC, Breckinridge Wind Project, LLC, Brady Wind, LLC, Brady Wind II, LLC, Brady Interconnection, LLC, Borderlands Wind, LLC, Blythe Solar IV, LLC, Blythe Solar III, LLC, Blythe Solar II, LLC, Blythe Solar 110, LLC, Blackwell Wind Energy, LLC, Baldwin Wind Energy, LLC, Ashtabula Wind III, LLC, Ashtabula Wind II, LLC, Ashtabula Wind I, LLC ,Armadillo Flats Wind Project, LLC, Arlington Energy Center III, LLC, Arlington Energy Center II, LLC, Arlington Solar, LLC, Alta Wind VIII, LLC, Adelanto Solar, LLC, Adelanto Solar II, LLC.

Description: Notice of Change in Status of NextEra Companies, et al. (Part 1 of 4).

Filed Date: 3/2/22.

Accession Number: 20220302–5298.

Comment Date: 5 p.m. ET 3/23/22.

Docket Numbers: ER16–581–009; ER16–582–009; ER16–2271–008; ER17–1370–008; ER19–828–005; ER20–539–005; ER20–1338–004; ER20–2505–003; ER21–1254–003; ER21–1498–001; ER21–2204–002.

Applicants: ENGIE Power & Gas LLC, Hawtree Creek Farm Solar, LLC, Genbright LLC, Triple H Wind Project, LLC, King Plains Wind Project, LLC, East Fork Wind Project, LLC, Solomon Forks Wind Project, LLC, ENGIE Energy Marketing NA, Inc., ENGIE Resources LLC, ENGIE Retail, LLC, ENGIE Portfolio Management, LLC.

Description: Notice of Change in Status of ENGIE Portfolio Management, LLC, et al.

Filed Date: 3/3/22.

Accession Number: 20220303–5229.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER17–1531–006.

Applicants: CPV Fairview, LLC.

Description: Notice of Change in Status of CPV Fairview, LLC, et al.

Filed Date: 3/3/22.

Accession Number: 20220303–5183.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER18–1863–010; ER10–1852–058; ER10–1857–018; ER10–1935–019; ER10–1932–018; ER13–2147–005; ER11–4462–059; ER17–838–034; ER10–1973–016; ER10–1951–037; ER10–1974–027; ER21–183–002; ER20–2153–005; ER21–744–002.

Applicants: Wallingford Renewable Energy LLC, Sanford Airport Solar, LLC, Nutmeg Solar, LLC, Northeast Energy Associates, L.P., NextEra Energy Services Massachusetts, LLC, NextEra Energy Seabrook, LLC, NextEra Energy Marketing, LLC, NEPM II, LLC, Frontier Utilities New York LLC, FPL Energy Wyman, LLC, FPL Energy Wyman IV, LLC, FPL Energy Cape, LLC, Florida Power & Light Company, Coolidge Solar I, LLC.

Description: Notice of Change in Status of Coolidge Solar I, LLC, et al.

Filed Date: 3/3/22.

Accession Number: 20220303–5216.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER18–2511–002.

Applicants: NorthWestern Corporation.

Description: Notice of Change in Status of NorthWestern Corporation.

Filed Date: 3/3/22.

Accession Number: 20220303–5221.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER19–2269–000; ER19–2269–005; ER10–1852–000; ER18–1952–000; ER16–1354–000; ER11–4462–000; ER17–838–000; ER10–1951–000; ER19–2266–000; ER16–1293–000; ER16–1277–000; ER10–1852–056; ER18–1852–001; ER16–1354–011; ER11–4462–058; ER17–838–033; ER10–1951–036; ER19–2266–005; ER16–1293–012; ER16–1277–012.

Applicants: White Pine Solar, LLC, White Oak Solar, LLC, Quitman Solar, LLC, NextEra Energy Services Massachusetts, LLC, NextEra Energy Marketing, LLC, NEPM II, LLC, Live Oak Solar, LLC, Gulf Power Company, Florida Power & Light Company, Dougherty County Solar, LLC.

Description: Notice of Change in Status of Dougherty County Solar, LLC, et al.

Filed Date: 3/3/22.

Accession Number: 20220303–5204.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER20–391–005.

Applicants: J. Aron & Company LLC.

Description: Notice of Non-Material Change in Status of J. Aron & Company LLC.

Filed Date: 3/3/22.

Accession Number: 20220303–5194.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER20–2380–005; ER20–2153–006; ER14–2709–022; ER15–30–020; ER14–2708–023; ER15–1016–013; ER21–1506–003; ER18–2314–007; ER15–2243–011; ER20–2603–005; ER21–1580–003; ER20–2597–005; ER20–780–005; ER19–774–008; ER13–2474–021; ER19–2382–007; ER17–2270–015; ER21–255–005; ER18–2091–009; ER12–1660–023; ER13–2458–018; ER11–4678–020; ER21–744–003; ER20–2237–005; ER19–2495–007; ER17–582–011; ER21–2109–002; ER20–2070–004; ER10–2078–024; ER16–1293–013; ER16–1277–013; ER17–583–011; ER18–2032–011; ER20–2622–005; ER20–637–005; ER19–2513–007; ER12–631–021; ER19–1076–006; ER21–1813–004; ER21–1814–004.

Applicants: Yellow Pine Energy Center II, LLC, Yellow Pine Energy Center I, LLC, Windstar Energy, LLC, Windpower Partners 1993, LLC, Wilton Wind Energy II, LLC, Wilton Wind Energy I, LLC, Wilmot Energy Center, LLC, Wildcat Ranch Wind Project, LLC, Whitney Point Solar, LLC, White Pine Solar, LLC, White Oak Solar, LLC, White Oak Energy LLC, Wheatridge Wind II, LLC, Wheatridge Solar Energy Center, LLC, Westside Solar, LLC, Wessington Springs Wind, LLC, Weatherford Wind, LLC, Wallingford Renewable Energy LLC, Vasco Winds, LLC, Tuscola Wind II, LLC, Tuscola Bay Wind, LLC, Titan Solar, LLC, Taylor Creek Solar, LLC, Stuttgart Solar, LLC, Story County Wind, LLC, Steele Flats Wind Project, LLC, Stanton Clean Energy, LLC, Sooner Wind, LLC, Soldier Creek Wind, LLC, Sky River Wind, LLC, Skeleton Creek Wind, LLC, Silver State Solar Power South, LLC, Sholes Wind Energy, LLC, Shaw Creek Solar, LLC, Shafter Solar, LLC, Seiling Wind, LLC, Seiling Wind Interconnection Services, LLC, Seiling Wind II, LLC, Sanford Airport Solar, LLC, Saint Solar, LLC.

Description: Notice of Change in Status of NextEra Companies, et al. (Part 4 of 4).

Filed Date: 3/2/22.

Accession Number: 20220302–5302.

Comment Date: 5 p.m. ET 3/23/22.

Docket Numbers: ER21–714–003.

Applicants: Indiana Crossroads Wind Farm LLC.

Description: Notice of Non-Material Change in Status of Indiana Crossroads Wind Farm LLC.

Filed Date: 3/3/22.

Accession Number: 20220303–5207.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER21–1990–000; ER21–1990–003; ER21–2674–000; ER21–1519–000; ER21–2118–000; ER21–1682–000; ER21–2296–000; ER21–1879–000; ER21–2293–000; ER21–1953–000; ER21–2225–000; ER21–2117–000; ER21–2149–000; ER21–2699–000; ER21–1880–000; ER21–2100–000; ER21–2641–000; ER21–1532–000; ER22–96–000; ER21–2048–000; ER21–1580–000; ER21–2109–000; ER21–1519–002; ER21–1532–001; ER21–1580–002; ER21–1682–002; ER21–1879–003; ER21–1880–001; ER21–1953–002; ER21–2048–002; ER21–2100–002; ER21–2109–001; ER21–2117–002; ER21–2118–003; ER21–2149–002; ER21–2225–002; ER21–2293–003; ER21–2296–002; ER21–2641–001; ER21–2674–002; ER21–2699–002; ER22–96–001.

Applicants: Wheatridge Solar Energy Center, LLC, Sky River Wind, LLC, Sac County Wind, LLC, Route 66 Solar Energy Center, LLC, Quitman II Solar, LLC, Quinebaug Solar, LLC, Point Beach Solar, LLC, Niyol Wind, LLC, Minco Wind Energy III, LLC, Minco Wind Energy II, LLC, Little Blue Wind Project, LLC, Irish Creek Wind, LLC, Heartland Divide Wind II, LLC, Fish Springs Ranch Solar, LLC, Farmington Solar, LLC, Ensign Wind Energy, LLC, Elora Solar, LLC, Dodge Flat Solar, LLC, Cool Springs Solar, LLC, Borderlands Wind, LLC, Blackwell Wind Energy, LLC.

Description: Notice of Change in Status of Cool Springs Solar, LLC, et al.

Filed Date: 3/3/22.

Accession Number: 20220303–5213.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER21–2426–001.

Applicants: CPRE 1 Lessee, LLC.

Description: Compliance filing: Broad River Solar, LLC submits tariff filing per 35: Non-Material Change in Status to be effective 5/3/2022.

Filed Date: 3/4/22.

Accession Number: 20220304–5149.

Comment Date: 5 p.m. ET 3/25/22.

Docket Numbers: ER21–2445–001.

Applicants: Glacier Sands Wind Power, LLC.

Description: Amendment to March 1, 2022 Notice of Non-Material Change in Status of Glacier Sands Wind Power, LLC.

Filed Date: 3/3/22.

Accession Number: 20220303–5208.

Comment Date: 5 p.m. ET 3/24/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 4, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–05058 Filed 3–9–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9637–01–OW]

Notice of Public Meeting of the Environmental Financial Advisory Board With Webcast

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The United States Environmental Protection Agency (EPA) announces a public meeting with a webcast of the Environmental Financial Advisory Board (EFAB). The meeting will be shared in real-time via webcast and public comments may be provided in writing in advance or virtually via webcast. Please see **SUPPLEMENTARY INFORMATION** for further details. The purpose of the meeting will be for the EFAB to provide workgroup updates and work products for previously accepted charges, consider possible future advisory topics, and receive updates on EPA activities relating to the Bipartisan Infrastructure Law, administration priorities, and environmental finance. The meeting will be conducted in a hybrid format of in-person and virtual via webcast. An announcement will be made on the EFAB website at *www.epa.gov/waterfinancecenter/efab* and all registered attendees will be notified.

DATES: The meeting will be held on March 29, 2022, from 12 p.m. to 4 p.m. Eastern Time and March 30, 2022, from 12 p.m. to 4 p.m. Eastern Time.

ADDRESSES:

In-Person: U.S. Environmental Protection Agency, William Jefferson Clinton East Building, 1201 Constitution Avenue NW, Washington, DC 20004.

Webcast: Information to access the webcast will be provided upon registration in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants information about the meeting may contact Tara Johnson via telephone/voicemail at (202) 564–6186 or email to *efab@epa.gov.* General information concerning the EFAB is available at *www.epa.gov/waterfinancecenter/efab.*

SUPPLEMENTARY INFORMATION:

Background: The EFAB is an EPA advisory committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, to provide advice and recommendations to EPA on innovative approaches to funding environmental programs, projects, and activities. Administrative support for the EFAB is provided by the Water Infrastructure and Resiliency Finance Center within EPA's Office of Water. Pursuant to FACA and EPA policy, notice is hereby given that the EFAB will hold a public meeting with a webcast for the following purposes:

(1) Provide workgroup updates and work products for the Board's Opportunity Zones and Pollution Prevention charges;

(2) Discuss potential future EFAB charges; and

(3) Receive briefings on environmental finance topics from invited speakers from EPA and outside entities.

Registration for the Meeting: To register for the meeting, please visit *www.epa.gov/waterfinancecenter/efab#meeting.* Interested persons who wish to attend the meeting via webcast must register by March 22, 2022. Pre-registration is strongly encouraged. EFAB members who wish to attend the meeting in-person must comply with EPA's current COVID–19 Safe Federal Workplace requirements, found at *www.epa.gov/aboutepa/covid-19-safe-federal-workplace.* In the event the in-person component of the meeting cannot be held due to relevant pandemic protocols, the meeting will be conducted fully via webcast. Members of the public, including those providing oral comment, are encouraged to participate via webcast or, if attending in-person, must also comply with the above requirements.

Availability of Meeting Materials: Meeting materials, including the meeting agenda and briefing materials, will be available on EPA's website at *www.epa.gov/waterfinancecenter/efab.*

Procedures for Providing Public Input: Public comment for consideration by

EPA's federal advisory committees has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees provide independent advice to EPA. Members of the public may submit comments on matters being considered by the EFAB for consideration as the Board develops its advice and recommendations to EPA.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public meeting will be limited to three minutes each. Persons interested in providing oral statements at the March 2022 meeting virtually via webcast should register in advance and provide notification, as noted in the registration confirmation, by March 22, 2022, to be placed on the list of registered speakers.

Written Statements: Written statements should be received by March 22, 2022, so that the information can be made available to the EFAB for its consideration prior to the meeting. Written statements should be sent via email to *efab@epa.gov.* Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the EFAB website. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities or to request accommodations for a disability, please register for the meeting and list any special requirements or accommodations needed on the registration form at least 10 business days prior to the meeting to allow as much time as possible to process your request.

Dated: March 4, 2022.

Andrew D. Sawyers,

Director, Office of Wastewater Management, Office of Water.

[FR Doc. 2022–05041 Filed 3–9–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2020–0312; FRL–7887–02–OAR]

Release of Volumes 1 and 2 of the Integrated Review Plan for the Lead National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: On or about March 4, 2022, the Environmental Protection Agency (EPA) is making available to the public, Volumes 1 and 2 of the *Integrated Review Plan for the Lead National Ambient Air Quality Standards* (IRP). The national ambient air quality standards (NAAQS) for lead (Pb) are set to protect the public health and the public welfare from Pb in ambient air. Volume 1 of the IRP contains contextual background material and the anticipated schedule for the current review of the air quality criteria and NAAQS for Pb. Volume 2 identifies policy-relevant issues in the review and describes key considerations in EPA's development of the Integrated Science Assessment (ISA). The ISA provides the scientific basis for the EPA's decisions, in conjunction with additional technical and policy assessments, for the review of the NAAQS, as described in the Clean Air Act, section 108(a).

DATES: Comments must be received on or before April 4, 2022.

ADDRESSES: You may send comments on Volume 2 of the IRP, identified by Docket ID No. EPA–HQ–OAR–2020–0312, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Office of Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier (by scheduled appointment only):* EPA Start Printed Page 56264 Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this notice. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments, see the **SUPPLEMENTARY INFORMATION** section of this document. The two volumes described here will be available on the EPA's website at *https://www.epa.gov/naaqs/lead-pb-air-quality-standards.* The documents will be accessible under ''Planning Documents'' from the current review.

FOR FURTHER INFORMATION CONTACT: Dr. Deirdre L. Murphy, Office of Air Quality Planning and Standards, (Mail Code C504–06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: 919–541–0729, fax number: 919–541–027; or email: *murphy.deirdre@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2020–0312, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Due to public health concerns, the EPA Docket Center and Reading Room are open to the public by appointment only. Our Docket Center staff continues to provide remote customer service via email, phone, and webform. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

II. Information About the Documents

Two sections of the Clean Air Act (CAA or the Act) govern the

establishment and revision of the NAAQS. Section 108 directs the Administrator to identify and list certain air pollutants and then issue ''air quality criteria'' for those pollutants. The air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air . . .'' (CAA section 108(a)(2)). Under section 109 of the Act, the EPA is then to establish primary (health-based) and secondary (welfare-based) NAAQS for each pollutant for which the EPA has issued air quality criteria. Section 109(d)(1) of the Act requires periodic review and, if appropriate, revision of existing air quality criteria. Revised air quality criteria are to reflect advances in scientific knowledge on the effects of the pollutant on public health and welfare. Under the same provision, the EPA is also to periodically review and, if appropriate, revise the NAAQS, based on the revised air quality criteria.

The Act additionally requires appointment of an independent scientific review committee that is to periodically review the existing air quality criteria and NAAQS and to recommend any new standards and revisions of existing criteria and standards as may be appropriate (CAA section 109(d)(2)(A)–(B)). Since the early 1980s, the requirement for an independent scientific review committee has been fulfilled by the Clean Air Scientific Advisory Committee (CASAC).

Presently the EPA is reviewing the air quality criteria and NAAQS for Pb.[1] The documents announced in this notice have been developed as part of the integrated review plan (IRP) which is developed in the planning phase for the review. The documents have been prepared jointly by the EPA's Center for Public Health and Environmental Assessment, within the Office of Research and Development, and the Office of Air Quality Planning and Standards, within the Office of Air and Radiation. These documents will be available on the EPA's website at *https://www.epa.gov/naaqs/lead-pb-air-quality-standards,* accessible under ''Planning Documents'' from the current review.

The IRP for the current review of the lead NAAQS will be comprised of three volumes. Volumes 1 and 2 are the subject of this notice. Volume 1 provides background information on the air quality criteria and standards for Pb and may serve as a reference by the public and the CASAC in their consideration of the subsequent two volumes. Volume 2 addresses the general approach for the review and planning for the integrated science assessment (ISA). Comments are solicited from the public on Volume 2, which will also be the subject of a consultation with the CASAC, to be announced in a separate **Federal Register** notice. This volume identifies policy-relevant issues in the review and describes key considerations in EPA's development of the ISA. Volume 3, which is not yet completed, is the planning document for quantitative analyses to be considered in the policy assessment (PA), including exposure and risk analyses. In order that consideration of the availability of new evidence in the review can inform these plans, the development and public availability of Volume 3 will generally coincide with that of the draft ISA and it will be the subject of a consultation with the CASAC at that time.

Comments on Volume 2 of the IRP should be submitted to the docket, as described above, by April 4, 2022. A separate **Federal Register** notice will provide details about the CASAC consultation meeting and the process for participation in the CASAC consultation on Volume 2. The EPA will consider the consultation comments from the CASAC and public comments on the IRP, Volume 2, in preparation of the Pb ISA. Volume 1 of the IRP, also being made available, provides background or contextual and historical material for this NAAQS review. These documents do not represent and should not be construed to represent any final EPA policy, viewpoint, or determination.

Panagiotis Tsirigotis,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 2022–05085 Filed 3–9–22; 8:45 am]

BILLING CODE 6560–50–P

[1] The EPA's call for information for this review was issued on July 7, 2020 (85 FR 40641).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9500–01–OAR]

Disclosure of Information Claimed as, or Determined by EPA To Be, Confidential Business Information (CBI) in Renewable Fuel Standard (RFS) Small Refinery Exemption Petitions and Certain RFS Compliance Reports

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is providing notice of disclosure to all obligated parties under the Renewable Fuel Standard (RFS) program that have petitioned for a small refinery exemption (SRE) or that have submitted any of the following RFS compliance reports: RFS2500 Efficient Producer Data Report, RFS0303 Annual Report, RFS0104 RFS Activity Report, and RFS0105 RFS Activity Report. In response to a request by the U.S. Government Accountability Office (GAO), EPA will disclose information to GAO which has been submitted to EPA that is claimed to be, or has been determined to be, confidential business information (CBI). The information to be disclosed includes all documents, information, and data related to all small refinery exemption petitions received by EPA since May 21, 2021, through December 31, 2023, and all information in the aforementioned RFS compliance reports. These records include, but are not limited to: (a) All materials submitted by the small refineries as part of their petitions; (b) any documentation sent by the Department of Energy (DOE) to EPA stating DOE's findings and scores associated with the petitions and any EPA responses thereto; (c) any EPA record addressing the subject of the exemption petitions, including any analysis that EPA conducted in addition to DOE's findings; and (d) EPA's final exemption decisions sent to the refineries.

DATES: EPA will disclose the material discussed in this document to GAO, including any CBI therein, on March 28, 2022. All CBI-claimed documents will be destroyed, deleted, or returned to EPA at the conclusion of GAO's review.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Environmental Protection Specialist, Compliance Division, Office of Transportation and Air Quality at *nelson.karen@epa.gov* or (734) 214–4657.

SUPPLEMENTARY INFORMATION: In connection with a GAO review, EPA received a request under 40 CFR 2.209(b) from GAO for records submitted to EPA under the RFS program since the date EPA last shared similar documents with GAO (May 21, 2021) through December 31, 2023. GAO, as part of the same program review, has also requested access to a RIN analysis that potentially contains derivative CBI sourced from certain RFS compliance reports. The information that will be disclosed to GAO includes all

documents, information, and data related to all SRE petitions that are received by EPA between May 21, 2021, and December 31, 2023—including new petitions and supplemental information submitted in support of an existing petition—and all information from the following compliance reports for the specified time periods: RFS2500 Efficient Producer Data Report for compliance years 2016 through 2021; RFS0303 Annual Report for compliance years 2011 through 2019; RFS0104 RFS Activity Report for compliance years 2011 through 2019; and RFS0105 RFS Activity Report for compliance year 2020. These records include, but are not limited to: (a) All materials submitted by the small refineries as part of their petitions; (b) any documentation sent by DOE to EPA stating DOE's findings and score associated with the petitions; (c) any analysis that EPA conducted in addition to DOE's findings; (d) EPA's final exemption decisions sent to the refineries; and (e) all information from the aforementioned RFS compliance reports for the specified time periods.

This notice is being provided pursuant to 40 CFR 2.209(b)(2) to inform potentially affected entities that EPA intends to transmit certain documents, which may contain information submitted by oil refiners and refineries, or any company associated therewith, that is claimed to be, or has been determined to be, CBI to GAO in response to its request for information. The disclosure of CBI is limited to GAO and further disclosure is generally restricted by 31 U.S.C. 716(e), and subject to criminal penalties under 18 U.S.C. 1905. Any objections to this disclosure must be raised within 15 calendar days from publication of this notice.

Dated: March 1, 2022.

Byron Bunker,

Director, Compliance Division, Office of Transportation and Air Quality.

[FR Doc. 2022–05017 Filed 3–9–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0599; FR ID 75536]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before May 9, 2022. If you anticipate that you will be submitting comments but find it difficult to do so within the time period allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0599.

Title: Section 90.187, Trunking in the Bands Between 150–512 MHz; and Sections 90.425 and 90.647, Station Identification.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents and Responses: 8,589 respondents and 8,589 responses.

Estimated Time per Response: 0.25–3 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 47 U.S.C. 154(i), 309(j) and 332, as amended.

Total Annual Burden: 11,938 hours.

Annual Cost Burden: No cost.

Needs and Uses: The information contained in this collection sets forth frequency coordination requirements under Section 90.187, and station identification requirements under Section 90.647 and 90.425. The information requested in this collection is used by the Commission staff to enable the FCC to evaluate the accuracy of frequency coordination pursuant to its rule under 47 CFR 90.187, 90.425 and 90.647.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2022–05051 Filed 3–9–22; 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 March 25, 2022.

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. *Amanda Ligon Landry, Ethel, Louisiana;* to join the Ligon Family Group, a group acting in concert, to acquire voting shares of Clinton Bancshares, Inc., and thereby indirectly acquire voting shares of Landmark Bank, both of Clinton, Louisiana.

B. Federal Reserve Bank of San Francisco (Sebastian Astrada, Director, Applications) 101 Market Street, San Francisco, California 94105–1579:

1. *The BRP 2009 Trust, The Jared Goodale 2009 Trust, and The Myles Goodale 2009 Trust, Deana Rae Gillespie, as trustee of all trusts, all of Washington, Utah;* to join the Penoske Family Control Group, a group acting in concert, to retain voting shares of Community Bancshares, Inc., and thereby indirectly retain voting shares of Community Bank, both of Joseph, Oregon.

Board of Governors of the Federal Reserve System, March 7, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–05064 Filed 3–9–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Online Application Order Form for Products from the Healthcare Cost and Utilization Project (HCUP).'' This proposed information collection was previously published in the **Federal Register** on January 3rd, 2021 and allowed 60 days for public comment. During the 60 days, no substantive comments from members of the public were received by AHRQ. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by April 11, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Online Application Order Form for Products From the Healthcare Cost and Utilization Project (HCUP)

The Healthcare Cost and Utilization Project (HCUP, pronounced ''H-Cup'') is a vital resource helping the Agency achieve its research agenda, thereby furthering its goal of improving the delivery of health care in the United States. HCUP is a family of health care databases and related software tools and products developed through a Federal-State-Industry partnership and sponsored by AHRQ. HCUP includes the largest collection of longitudinal hospital care data in the United States, with all-payer, encounter-level information beginning in 1988. The HCUP databases are annual files that contain anonymous information from hospital discharge records for inpatient care and certain components of outpatient care, such as emergency care and ambulatory surgeries. The project currently releases eight types of databases created for research use on a broad range of health issues, including cost and quality of health services, medical practice patterns, access to health care programs, and outcomes of treatments at the national, State, and local market levels. HCUP also produces a large number of software tools to enhance the use of administrative health care data for research and public health use. Software tools use information available from a variety of sources to create new data elements, often through sophisticated algorithms, for use with the HCUP databases.

HCUP's objectives are to:

- Create and enhance a powerful source of national, state, and all-payer health care data.
- Produce a broad set of software tools and products to facilitate the use of HCUP and other administrative data.
- Enrich a collaborative partnership with statewide data organizations (that voluntarily participate in the project) aimed at increasing the quality and use of health care data.
- Conduct and translate research to inform decision making and improve health care delivery.

This project is being conducted by AHRQ through its primary contractor and subcontractor, IBM Watson Health and Pantheon Software, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the outcomes, cost, cost-effectiveness, and use of health care services and access to such services. 42 U.S.C. 299a(a)(3).

Method of Collection

The project currently creates eight types of restricted access public release databases and related files that are released to authorized users under the terms of the HCUP Data Use Agreement (DUA). These HCUP databases and files are used by researchers for a broad range of health issues, including cost and quality of health services, medical practice patterns, access to health care programs, and outcomes of treatments at the national, State, and local market levels.

HCUP achieves the restricted access public release and tracking of the HCUP databases through the Online Application Form for HCUP Products (*https://www.distributor.hcup-us.ahrq.gov/SpecialPages/Shoppingcart.aspx*). To access the eight types of database, HCUP users are required to complete the Online Application Form for HCUP Products which includes three components, the application, HCUP DUA training (*https://www.hcup-us.ahrq.gov/DUA/dua/index.html*) and signing a HCUP DUA. Users are required to sign one of two DUAs: (1) Nationwide or (2) state (hereafter referred to collectively as the HCUP DUA) after they complete the HCUP DUA training.

Information collected in the HCUP Online Application Form process will be used for two purposes only:

1. Business Transaction: In order to deliver the HCUP databases to the applicants, contact information is necessary for shipping the data on disk (or any other media used in the future) and payment collection.

2. Enforcement of the HCUP Data Use Agreement (DUA): The HCUP DUA contains several restrictions on use of the data. Most of these restrictions have been put in place to safeguard the privacy of individuals and establishments represented in the data. For example, data users can only use the data for research, analysis, and aggregate statistical reporting and are prohibited

from attempting to identify any persons in the data. Contact information on HCUP DUAs is retained in the event that a violation of the HCUP DUA takes place requiring legal remedy.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden associated with the applicants' time to order any of the HCUP databases. An estimated 1,800 persons will order HCUP data annually. Each of these persons will complete Online Application Order Form for HCUP products (30 minutes). The total burden for the Online Application Order Form is estimated to be 900 hours annually. Exhibit 2 shows the estimated annualized cost burden associated with the applicants' time to order HCUP data. The total cost burden is estimated to be $39,879 annually.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Total for the HCUP Data Purchase Ordering Form	1,800	1	30/60	900

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
Total	1,800	900	$44.31	$39,879

* *Based upon the mean of the average wages for Life Scientists, All Other (19–1099), National Compensation Survey:* Occupational Employment Statistics, May 2020 National Occupational Employment and Wage Estimates United States, U.S. Department of Labor, Bureau of Labor Statistics. *https://www.bls.gov/oes/current/oes_nat.htm#19-0000.*

Request for Comments

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: March 7, 2022.

Marquita Cullom,

Associate Director.

[FR Doc. 2022–05122 Filed 3–9–22; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–1285]

Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Oncologic Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held virtually on April 21, 2022, from 12 p.m. to 3:30 p.m. Eastern Time and April 22, 2022, from 9 a.m. to 1 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of this COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2021–N–1285. The docket will close on April 20, 2022. Submit either electronic or written comments on this public meeting by April 20, 2022. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 20, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 20, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Comments received on or before April 7, 2022, will be provided to the committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

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–2021–N–1285 for ''Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' 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.'' FDA 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 the 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: She-Chia Chen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 240–402–5343, Fax: 301–847–8533, *ODAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last-minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION: *Agenda:* The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. On April 21, 2022, the committee will discuss the appropriate approach for phosphatidylinositol-3-kinase inhibitors currently under development in patients with hematologic malignancies and whether randomized data should be required to support a demonstration of substantial evidence of effectiveness and that the drug is safe for its intended use in the proposed population.

On April 22, 2022, the committee will discuss supplemental new drug application 213176/S–002, for UKONIQ (umbralisib) tablets, and biologics license application 761207, for ublituximab injection, both submitted by TG Therapeutics, Inc. The proposed indication (use) for these two products is in combination for the treatment of adult patients with chronic lymphocytic leukemia or small lymphocytic lymphoma. In addition, the committee will also discuss the existing umbralisib indications in patients with relapsed or refractory follicular lymphoma and marginal zone lymphoma approved under 21 CFR 314.500 (subpart H, accelerated approval regulations).

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference meeting room will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before April 7, 2022, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 2 p.m. to 2:30 p.m. Eastern Time on April 21, 2022, and between approximately 11:40 a.m. to 12:10 p.m. Eastern Time on April 22, 2022. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 30, 2022. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled

open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by March 31, 2022.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact She-Chia Chen (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 28, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–05022 Filed 3–9–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–3462]

Verification Systems Under the Drug Supply Chain Security Act for Certain Prescription Drugs; 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 revised draft guidance entitled ''Verification Systems Under the Drug Supply Chain Security Act for Certain Prescription Drugs.'' This revised draft guidance addresses the verification systems that manufacturers, repackagers, wholesale distributors, and dispensers must have in place to comply with the Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Drug Supply Chain Security Act (DSCSA). Specifically, this revised draft guidance covers the statutory verification system requirements that include the quarantine and investigation of a product determined to be suspect and the quarantine and disposition of a product determined to be illegitimate. The revised draft guidance also addresses the statutory requirement for notification to the Agency of a product that has been cleared by a manufacturer, repackager, wholesale distributor, or dispenser (also referred to as ''trading partners'') after a suspect product investigation because it is determined that the product is not an illegitimate product. Finally, the revised draft guidance addresses the statutory requirement for responding to requests for verification and processing saleable returns.

DATES: The announcement of the guidance is published in the **Federal Register** on March 10, 2022.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–D–3462 for ''Verification Systems Under the Drug Supply Chain Security Act for Certain Prescription Drugs; Draft Guidance for Industry; Availability.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CDER at at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Sarah Venti, Office of Compliance, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–3130, *drugtrackandtrace@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a revised draft guidance for industry entitled ''Verification Systems Under the Drug Supply Chain Security Act for Certain Prescription Drugs.'' The DSCSA (Title II of Pub. L. 113–54) was signed into law on November 27, 2013. Section 202 of the DSCSA added section 582 to the FD&C Act (21 U.S.C. 360eee–1), which established the requirement that trading partners have systems in place to enable them to comply with certain verification obligations. This revised draft guidance provides recommendations for robust verification systems for the determination, quarantine, and investigation of suspect products, as well as the quarantine, notification, and disposition of illegitimate products. This revised draft guidance also addresses: The manner in which FDA recommends that trading partners submit cleared product notifications (*i.e.,* notifications that a suspect product is not an illegitimate product); the statutory requirements for responding to requests for verification; and the statutory requirements for processing saleable returns.

In the **Federal Register** of October 25, 2018 (83 FR 53880), FDA announced the availability of a draft guidance entitled ''Verification Systems Under the Drug Supply Chain Security Act for Certain Prescription Drugs'' dated October 24, 2018. FDA received several comments on the draft guidance, which have been taken into consideration. In response to comments received from stakeholders, this draft guidance revises the October 2018 draft guidance to: (1) Provide FDA's interpretation of what ''possession or control'' means as used throughout the DSCSA; (2) explain that the guidance uses the term *verification* in referring to both the broad set of requirements set forth in paragraphs (b)(4), (c)(4), (d)(4), and (e)(4) of section 582 of the FD&C Act in addition to using the term with the meaning defined in section 581(28) of the FD&C Act, where appropriate to the context; (3) recognize that, in cases where the DSCSA directs trading partners to coordinate with one another during investigations and dispositions of products, certain types of trading partners are typically better suited to handle specific aspects of those statutory requirements; (4) clarify that FDA will make requests for verification if a trading partner is in possession or control of a product that the Agency has determined to be suspect product; (5) clarify FDA's understanding of what ''electronic quarantine'' means; (6) clarify when samples of illegitimate product should be retained; (7) clarify FDA's expectations related to the requirements for responding to requests for verification from authorized trading partners; (8) inform trading partners of the information that should be communicated among trading partners when determining whether a suspect product is illegitimate; and (9) inform trading partners of the information that should be included when responding to requests for verification from FDA and other trading partners (where applicable), and verifying saleable returned product. In addition, editorial changes were made to improve clarity.

This revised 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 ''Verification Systems Under the Drug Supply Chain Security Act for Certain Prescription Drugs.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance includes information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520) (PRA). FDA intends to solicit public comment and obtain OMB approval for any information collections recommended in this guidance that are new or that would represent substantive or material modifications to those previously approved collections of information found in FDA regulations or guidance.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs* or *https://www.regulations.gov*.

Dated: March 1, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–05018 Filed 3–9–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Science; Notice of Charter Renewal

In accordance with Title 42 of the U.S. Code of Federal Regulations, Section 217a, notice is hereby given that the Charter for the National Center for Advancing Translational Sciences Advisory Council was renewed for an additional two-year period on February 7, 2022.

It is determined that the National Center for Advancing Translational Sciences Advisory Council is in the public interest in connection with the performance of duties imposed on the National Institutes of Health by law, and that these duties can best be performed through the advice and counsel of this group.

Inquiries may be directed to Claire Harris, Director, Office of Federal Advisory Committee Policy, Office of the Director, National Institutes of Health, 6701 Democracy Boulevard, Suite 1000, Bethesda, Maryland 20892 (Mail Stop Code 4875), Telephone (301) 496–2123, or *harriscl@mail.nih.gov.*

Dated: March 4, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–05029 Filed 3–9–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group; Neuroscience and Behavior Study Section.

Date: June 7, 2022.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Beata Buzas, Ph.D., Scientific Review Officer, Extramural Project Review Branch, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2116, MSC 6902, Bethesda, MD 20892, 301–443–0800, *bbuzas@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: March 7, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–05075 Filed 3–9–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2022–0151]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0096

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0096, Report of Oil or Hazardous Substance Discharge; and Report of Suspicious Maritime Activity; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before May 9, 2022.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2022–0151] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–6P), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR. AVE. SE, STOP 7710, WASHINGTON, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2022–0151], and must be received by May 9, 2022.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Information Collection Request

Title: Report of Oil or Hazardous Substance Discharge; and Report of Suspicious Maritime Activity.

OMB Control Number: 1625–0096.

Summary: Any discharge of oil or a hazardous substance must be reported to the National Response Center (NRC) so that the pre-designated on-scene coordinator can be informed and appropriate spill mitigation action carried out. The NRC also receives suspicious activity reports from the public and disseminates this information to appropriate entities.

Need: 33 CFR 153.203, 40 CFR 263.30 and 264.56, and 49 CFR 171.15 mandate that the NRC be the central place for the public to report all pollution spills. 33

CFR 101.305 mandates that owners or operators of those vessels or facilities required to have security plans, report activities that may result in a Transportation Security Incident (TSI) or breaches of security to the NRC. Voluntary reports are also accepted.

Forms: None.

Respondents: Persons-in-charge of a vessel or onshore/offshore facility; owners or operators of vessels or facilities required to have security plans; and the public.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 1,980 hours to 3,683 hours a year, due primarily to an increase in the estimated hour burden per response. The Coast Guard revised the hour burden per response from 5 minutes to 8.5 minutes per response. Based on recent NRC data, the change more accurately reflect the time per response.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: March 4, 2022.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2022–05079 Filed 3–9–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2022–0153]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0101

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0101, Periodic Gauging and Engineering Analyses for Certain Tank Vessels Over 30 Years Old; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before May 9, 2022.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2022–0153] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), ATTN: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave SE, STOP 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2022–0153], and must be received by May 9, 2022.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Information Collection Request

Title: Periodic Gauging and Engineering Analyses for Certain Tank Vessels Over 30 Years Old.

OMB Control Number: 1625–0101.

Summary: The Oil Pollution Act of 1990 required the issuance of regulations related to the structural integrity of tank vessels, including periodic gauging of the plating thickness of tank vessels over 30 years old. This collection of information is used to verify the structural integrity of older tank vessels.

Need: 46 U.S.C. 3703 authorizes the Coast Guard to prescribe regulations related to tank vessels, including design, construction, alteration, repair, and maintenance. 46 CFR 31.10–21a prescribes the regulations related to periodic gauging and engineering analyses of certain tank vessels over 30 years old.

Forms: None.

Respondents: Owners and operators of certain tank vessels.

Frequency: Every 5 years.

Hour Burden Estimate: The estimated burden has increased from 2,784 hours to 2,842 hours a year, due to an increase in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: March 4, 2022.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2022–05076 Filed 3–9–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0016]

Meetings To Implement Pandemic Response Voluntary Agreement Under Section 708 of the Defense Production Act

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Announcement of meetings.

SUMMARY: The Federal Emergency Management Agency (FEMA) is holding a series of meetings, under the Plan of Action to Establish a National Strategy for the Coordination of National Multimodal Healthcare Supply Chains to Respond to COVID–19, to implement the Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic.

DATES:

- Wednesday, March 2, 2022, from 1 p.m. to 3 p.m. Eastern Time (ET).
- Wednesday, March 16, 2022, from 1 p.m. to 3 p.m. ET.
- Wednesday, March 30, 2022, from 1 p.m. to 3 p.m. ET.
- Wednesday, April 13, 2022, from 1 p.m. to 3 p.m. ET.
- Wednesday, April 27, 2022, from 1 p.m. to 3 p.m. ET.
- Wednesday, May 11, 2022, from 1 p.m. to 3 p.m. ET.
- Wednesday, May 25, 2022, from 1 p.m. to 3 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Robert Glenn, Office of Business, Industry, and Infrastructure Integration, via email at *OB3I@fema.dhs.gov* or via phone at (202) 212–1666.

SUPPLEMENTARY INFORMATION: Notice of these meetings is provided as required by section 708(h)(8) of the Defense Production Act (DPA), 50 U.S.C. 4558(h)(8), and consistent with 44 CFR part 332.

The DPA authorizes the making of ''voluntary agreements and plans of action'' with representatives of industry, business, and other interests to help provide for the national defense.[1] The President's authority to facilitate voluntary agreements with respect to responding to the spread of COVID–19 within the United States was delegated to the Secretary of Homeland Security in Executive Order 13911.[2] The Secretary of Homeland Security further delegated this authority to the FEMA Administrator.[3]

On August 17, 2020, after the appropriate consultations with the Attorney General and the Chairman of the Federal Trade Commission, FEMA completed and published in the **Federal Register** a ''Voluntary Agreement, Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic'' (Voluntary Agreement).[4] Unless terminated earlier, the Voluntary Agreement is effective until August 17, 2025, and may be extended subject to additional approval by the Attorney General after consultation with the Chairman of the Federal Trade Commission. The Agreement may be used to prepare for or respond to any pandemic, including COVID–19, during that time.

On October 15, 2021, the sixth plan of action under the Voluntary Agreement—the Plan of Action to Establish a National Strategy for the Coordination of National Multimodal Healthcare Supply Chains to Respond to COVID–19—was finalized.[5] This plan of action established several sub-committees under the Voluntary Agreement, focusing on different transportation categories.

The meetings are chaired by the FEMA Administrator's delegates from the Office of Response and Recovery (ORR) and Office of Policy and Program Analysis (OPPA), attended by the Attorney General's delegates from the U.S. Department of Justice, and attended by the Chairman of the Federal Trade Commission's delegates. In implementing the Voluntary Agreement, FEMA adheres to all procedural requirements of 50 U.S.C. 4558 and 44 CFR part 332.

Meeting Objectives: The objectives of the meetings are as follows:

1. Convene the various Sub-Committees focused on Surface, Maritime, and Aviation Transportation under the National Multimodal Healthcare Supply Chains Plan of Action to establish priorities related to the COVID–19 response under the Voluntary Agreement.
2. Convene the Requirements Sub-Committee under the National Multimodal Healthcare Supply Chains Plan of Action, as a culmination of the above series of meetings, by the end of May 2022.
3. Gather Sub-Committee Participants and Attendees to ask targeted questions for situational awareness.
4. Identify pandemic-related supply chain issues, information gaps, and areas for potential additional discussion.
5. Identify potential Objectives and Actions under the Sub-Committees focused on Surface, Maritime, and Aviation Transportation.

Meetings Closed to the Public: By default, the DPA requires meetings held to implement a voluntary agreement or plan of action be open to the public.[6] However, attendance may be limited if the Sponsor[7] of the Voluntary Agreement finds that the matter to be discussed at a meeting falls within the purview of matters described in 5 U.S.C. 552b(c), such as trade secrets and commercial or financial information.

The Sponsor of the Voluntary Agreement, the FEMA Administrator, found that these meetings to implement the Voluntary Agreement involve matters which fall within the purview of matters described in 5 U.S.C. 552b(c) and the meetings are therefore closed to the public.

Specifically, these meetings may require participants to disclose trade secrets or commercial or financial information that is privileged or confidential. Disclosure of such information allows for meetings to be closed to the public pursuant to 5 U.S.C. 552b(c)(4).

The success of the Voluntary Agreement depends wholly on the willing participation of the private sector participants. Failure to close these meetings to the public could reduce active participation by the signatories due to a perceived risk that sensitive company information could be released to the public. A public disclosure of a private sector participant's information executed prematurely could reduce trust and support for the Voluntary Agreement.

A resulting loss of support by the participants for the Voluntary Agreement would significantly hinder

[1] 50 U.S.C. 4558(c)(1).

[2] 85 FR 18403 (Apr. 1, 2020).

[3] DHS Delegation 09052, Rev. 00.1 (Apr. 1, 2020); DHS Delegation Number 09052 Rev. 00 (Jan. 3, 2017).

[4] 85 FR 50035 (Aug. 17, 2020). The Attorney General, in consultation with the Chairman of the Federal Trade Commission, made the required finding that the purpose of the voluntary agreement may not reasonably be achieved through an agreement having less anticompetitive effects or without any voluntary agreement and published the finding in the **Federal Register** on the same day. 85 FR 50049 (Aug. 17, 2020).

[5] *See* 86 FR 57444 (Oct. 15, 2021). *See also* 87 FR 6880 (Feb. 7, 2022).

[6] *See* 50 U.S.C. 4558(h)(7).

[7] ''[T]he individual designated by the President in subsection (c)(2) [of section 708 of the DPA] to administer the voluntary agreement, or plan of action.'' 50 U.S.C. 4558(h)(7).

the implementation of the Agency's objectives. Thus, these meeting closures are permitted pursuant to 5 U.S.C. 552b(c)(9)(B).

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–05093 Filed 3–9–22; 8:45 am]

BILLING CODE 9111–19–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2022–0012; OMB No. 1660–0008]

Agency Information Collection Activities: Proposed Collection; Comment Request; Elevation Certificate/Floodproofing Certificate

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 60-Day notice of revision and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on a revision of a currently approved collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the Elevation Certificate and the Floodproofing Certificate for Non-Residential Structures.

DATES: Comments must be submitted on or before May 9, 2022.

ADDRESSES: Submit comments at *www.regulations.gov* under Docket ID FEMA–2022–0012. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joycelyn Collins, Program Analyst, Federal Insurance and Mitigation Administration, Flood Insurance Directorate, at 202–701–3383 or *Joycelyn.Collins@fema.dhs.gov.* You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: Communities participating in the National Flood Insurance Program (NFIP) are required to adopt a floodplain management ordinance that meets or exceeds the minimum floodplain management requirements of the NFIP. In accordance with the Federal Emergency Management Agency's (FEMA's) minimum floodplain management criteria, communities must require that all new construction and substantial improvement of residential structures and non-residential structures have the lowest floor (including basement) elevated to above the base flood elevation subject to 44 CFR 60.3(c)(2) and (3), unless, for residential structures, the community is granted an exception by FEMA for the allowance of basements under 44 CFR 60.6(b) or (c). New construction and substantial improvement of non-residential structures can also be floodproofed. This means that, together with attendant utility and sanitary facilities, they are designed such that below the base flood level the structure is watertight, with walls substantially impermeable to the passage of water and with structural components having the capability to resist hydrostatic and hydrodynamic loads and effects of buoyancy. 44 CFR 60.3(c)(3)(ii). Use of the Elevation Certificate and Floodproofing Certificate is one convenient way for a community to document building compliance. Title 44 CFR 61.7 and 61.8 require proper investigation to estimate the risk premium rates necessary to provide flood insurance.

This information collection expires on November 30, 2022. FEMA is requesting a revision of this currently approved information collection.

Collection of Information

Title: Elevation Certificate/ Floodproofing Certificate.

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

OMB Number: 1660–0008.

Form Titles and Numbers: FEMA Form FF–206–FY–22–152 (formerly 086–0–33), Elevation Certificate and FEMA Form FF–206–FY–22–153 (formerly 086–0–34), Floodproofing Certificate for Non-Residential Structures.

Abstract: The Elevation Certificate and Floodproofing Certificate are used in conjunction with the Flood Insurance Application to determine a building's compliance with local floodplain management provisions and to document elevations in support of flood insurance premiums or discounts that align with the building's risk of damage from flooding. Respondents are primarily surveyors, architects, or engineers; individual property owners may opt to complete specified portions of the Elevation Certificate.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit institutions; Farms; State, Local or Tribal Government.

Estimated Number of Respondents: 3,517.

Estimated Number of Responses: 3,517.

Estimated Total Annual Burden Hours: 12,734.

Estimated Total Annual Respondent Cost: $622,253.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $32,343.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2022–05115 Filed 3–9–22; 8:45 am]

BILLING CODE 9111–47–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6277–N–02]

Fair Market Rents for the Housing Choice Voucher Program, Moderate Rehabilitation Single Room Occupancy Program, and Other Programs Fiscal Year 2022; Revised

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Revised Fiscal Year (FY) 2022 Fair Market Rents (FMRs) and Discussion of Comments on FY 2022 FMRs.

SUMMARY: This notice updates the FY 2022 FMRs for 12 areas based on new survey data. Further, HUD responds to comments received on the FY 2022 FMRs.

DATES: *Applicable Date:* The revised FY 2022 FMRs for these 12 areas are applicable on April 11, 2022.

FOR FURTHER INFORMATION CONTACT: Questions related to use of FMRs or voucher payment standards should be directed to the respective local HUD program staff. For technical information on the methodology used to develop FMRs or a listing of all FMRs, please call the HUD USER information line at 800–245–2691 (toll-free), email the Program Parameters and Research Division via *pprd@hud.gov,* or access the information on the HUD USER website: *http://www.huduser.gov/portal/datasets/fmr.html.*

SUPPLEMENTARY INFORMATION: On August 6, 2021, HUD published the FY 2022 FMRs, requested comments on the FY 2022 FMRs, and outlined procedures for requesting a reevaluation of an area's FY 2022 FMRs (86 FR 43260). This notice revises FY 2022 FMRs for 12 areas based on data provided to HUD. In addition to providing revised FY 2022 FMRs, this notice also provides responses to the public comments HUD received on the notice referenced above.

I. Revised FY 2022 FMRs

The FMRs appearing in the following table supersede the use of the FY 2021 FMRs for the twelve areas that provided statistically valid data. The updated FY 2022 FMRs are based on surveys conducted by the area public housing agencies (PHAs) and reflect the estimated 40th percentile rent levels trended to Fiscal Year 2022.

The FMRs for the affected areas are revised as follows:

2022 Fair market rent area	FMR by number of bedrooms in unit				
	0 BR	1 BR	2 BR	3 BR	4 BR
Abilene, TX MSA	$688	$732	$945	$1,288	$1,598
Asheville, NC HUD Metro FMR Area	1,188	1,209	1,378	1,879	2,359
Boston-Cambridge-Quincy, MA-NH HUD Metro FMR Area	1,803	1,986	2,399	2,966	3,253
Bremerton-Silverdale, WA MSA	1,174	1,368	1,765	2,435	2,909
Iron County, UT	615	757	926	1,268	1,585
New York, NY HUD Metro FMR Area	2,018	2,054	2,340	2,952	3,173
Portland, ME HUD Metro FMR Area	1,143	1,330	1,721	2,195	2,689
Portland-Vancouver-Hillsboro, OR-WA MSA	1,416	1,512	1,735	2,451	2,903
San Diego-Carlsbad, CA MSA	1,573	1,739	2,232	3,099	3,795
Santa Maria-Santa Barbara, CA MSA	1,875	2,157	2,516	3,316	3,790
Seattle-Bellevue, WA HUD Metro FMR Area	1,674	1,739	2,044	2,796	3,285
Transylvania County, NC	706	711	935	1,156	1,364

HUD has published these revised FMR values on the HUD USER website at: *http://www.huduser.gov/portal/datasets/fmr.html.* HUD has also updated the FY 2022 Small Area FMRs (SAFMRs) for metropolitan areas with revised FMRs, which may be found at *https://www.huduser.gov/portal/datasets/fmr/smallarea/index.html.* HUD has also updated the 50th percentile rents for all FMR areas, which are published at *http://www.huduser.gov/portal/datasets/50per.html.*

II. Public Comments on FY 2021 FMRs

This summary of comments addresses the most significant concerns raised by the commenters. Commenters are identified in the summary by the last four numbers of the electronic rulemaking number used at *www.regulations.gov.*

The public comment period for the August 6, 2021, notice closed on September 30, 2021, and HUD received 99 distinct comments relating to the notice. The comments were from housing authorities, community development agencies, homeless shelters, healthcare providers, social workers, counselors, and nonprofit social service providers.

Concerns Regarding the Accuracy of the Current FMR Methodology

Commenters noted concerns with the methodology used to calculate the FMRs in light of rapid changes in housing costs. One commenter stated that the current FMR calculations are inadequate for rural counties because it is often difficult to gather valid data in rural counties, and the use of contiguous county data may not accurately reflect the rates present within the jurisdiction and suggested that HUD should develop a methodology that would accurately reflect the FMRs for rural areas. Another commenter noted that HUD's use of the 40th percentile in calculating FMR rates limits the available housing to individuals in the voucher plans.

Other commenters stated that the use of the 2019 American Community Survey (ACS) data does not adequately represent a tightening rental market, even if the survey was an accurate representation of the FMR in previous years. Commenters stated that using current local data from reliable sources would more accurately reflect the changes in the rental market since 2019. One commenter suggested that HUD use commercial data to calculate the FMRs, as the data may be more up-to-date and accurately reflect the individual markets and would ensure that the gross rent data used in the calculation is accurate to current markets, which the commenter stated would prove more effective than HUD's previous research into the trend factor. Another commenter supported HUD's previously announced intent to explore alternative methodologies for FMR calculation. One commenter supported their jurisdiction's FMR value.

HUD Response: HUD's current regulations require it to set the FMR at the 40th percentile rent paid by recent movers. Assessing the accuracy of FMRs is difficult because at any given time the true 40th percentile rent paid by recent

movers is unknown. Commercial sources of rent data do not provide an estimate of the 40th percentile rent paid by recent movers, and what data they do provide are often not based on the entirety of the rental market, such as by building type or by geographic area. Survey-based estimates of rent are subject to sampling and non-sampling error. For the Voucher program, HUD's policy addresses these sources of uncertainty by allowing the payment standard to be set from 90–110 percent of the FMR, as well as above 110 percent of the FMR through the use of exception payment standards. HUD has provided for expedited waivers of payment standard regulation per PIH Notice 2021–34. HUD remains committed to continually assessing its FMR calculation methodology to attempt to deal with its inherent challenges, through both in-house research and working with external research partners.

Small Area FMR Determinations

A commenter stated that the Small Area Fair Market Rent (SAFMR) calculations do not adequately represent the true market rent, citing as an example a significant decrease in a county's SAFMR in one ZIP Code despite being a high opportunity area. The commenter noted that the 2-bedroom SAFMR for the ZIP Code in question was nearly $1000 below surrounding ZIP Codes, while other ZIP Codes in their jurisdiction more accurately reflect existing local commercial data on current market prices. The commenter also noted that the decreased SAFMR for a one-bedroom in this ZIP Code is $200 less than the fair market rent established by a HUD validated rent comparability study of the same area from 2019. The commenter stated that a decrease in the SAFMR would defeat the intent of calculating fair market rents for specific ZIP Codes.

A commenter opposed allowing certain jurisdictions to opt out or be excluded from SAFMR mandates. Commenters noted that the use of excepted payment standards, rather than calculating SAFMR for the areas, leaves PHAs without the resources and flexibility to adjust to increasing rents in the jurisdictions, reducing the availability of affordable housing options to voucher holders. Commenters stated that voucher holders are being pushed into low-rent areas in jurisdiction that have received an exception payment standard, and that residents are not receiving reasonable accommodations because reasonable accommodations are based on the metro area's FMR, not the exceptionally high local rental rates that justified the excepted payment standards, and therefore do not provide any value.

HUD Response: Calculating SAFMRs poses the same challenges as metropolitan-level FMRs, with the added difficulty of greater uncertainty found in ZIP Code-level rent estimates due to their smaller size. HUD will continue to carefully consider how any future changes to its FMR calculation affect Small Area FMRs, as well as explore any SAFMR-specific methodology changes.

HUD remains committed to evaluating the operation of the Housing Choice Voucher program in areas that are required to set payment standards based on Small Area FMRs.

Concerns Regarding the FMR Reevaluation Process

Commenters raised concerns about the current reevaluation process for FMRs. Commenters noted that the reevaluation surveys require a significant amount of time and funding and stated that HUD should provide funding for PHAs who elect to provide local rent surveys. A commenter suggested that address-based mail surveys could be conducted at a lower cost than HUD anticipates, and that a yearly allocation of $5,000 to each PHA would allow PHAs to conduct the necessary reevaluation surveys.

One commenter noted that rural PHAs are often unable to meet the regulatory requirements for reevaluation surveys. The commenter noted that although small, nonmetro counties may conduct surveys with one or more contiguous nonmetro county to obtain a sufficient number of results, this methodology does not provide many options to rural counties that face lower FMRs than neighboring counties. Furthermore, this commenter noted that rural PHAs often do not have the necessary capacity to conduct an in-house survey or the funds to hire outside consultants. The commenter noted their previous request for reevaluation in fiscal year 2021 cost the PHA over $27,000 and was ultimately rejected by HUD as they only received 13 valid responses in a county of 34,000 people. As a result, this commenter stated that FMRs may continue to be inaccurate even if the PHA attempts to request reevaluation if the jurisdiction's PHA is unable to conduct a valid survey.

HUD Response: HUD is committed to working with PHAs who are interested in conducting local rental market surveys, and has accepted surveys and issued revised FMRs for small non-metropolitan counties numerous times. Surveys and data collection are often inherently expensive, and their costs are beyond HUD's control. In addition, HUD's ability to provide funds to PHAs for local rental market surveys is dependent on the availability of funds and their authorized uses specified in annual appropriations statutes.

Requests for Additional Flexibilities in PHA Implementation

A commenter stated that HUD has additional authority under the CARES Act to implement a ''hold harmless policy'' for FMRs in areas that experienced significant FMR reductions. This waiver would be in light of the additional challenges created by the COVID–19 pandemic and would be limited to PHAs that experienced a significant FMR decrease that could not be accounted for through the existing flexibilities in payment standards. The commenter noted that the waiver would be aimed at increasing depressed voucher utilization rates.

Another commenter suggested that increased flexibilities for payment standards should be implemented through permanent statutory changes. This would include allowing PHAs to utilize payment standards between 80 and 120 percent of the FMR, with up to 130 percent available as a reasonable accommodation for a person with a disability and would ultimately reduce the burden of inaccurate FMRs for PHAs.

Another commenter requested authorization to increase their jurisdiction's payment standards to 120 percent or greater for all SAFMRs in their jurisdiction. The commenter also requested that all ZIP Codes be grouped under one payment standard to reduce administrative burdens on the PHA. The commenter stated that this flexibility would provide additional access to safe housing in high opportunity areas for voucher holders.

HUD Response: Declines in FMR are limited by regulation to 10 percent. Additionally, at the PHA's discretion, they may ''hold harmless'' any in-place household from a payment standard reduction. Requests for exception payment standards should be made to local HUD Field Offices. PHAs operating under Small Area FMRs may group ZIP Codes into one payment standard area as long as the combined payment standard is within 90–110 percent of the Small Area FMR.

The Ability of PHAs To Respond to Rent Increases and FMR Changes Through the Use of Payment Standards

Commenters noted that PHAs can adjust payment standards within

statutory limits to provide voucher holders access to units above the FMRs, thus increasing voucher utilization. However, many commenters stated that their jurisdictions were already using the statutory maximum payment standard of 110 percent but continue to face challenges in finding units for voucher holders, with PHAs continuing to experience decreasing success rates. For example, one commenter noted that available units in their jurisdiction are listed at 127 percent to 175 percent of the proposed FMR, beyond the statutory flexibilities that PHAs have without HUD approval. Another commenter noted that a lack of available units in their jurisdiction within the statutory payment standard has caused some one-bedroom voucher holders to rent single room units within the payment standards instead.

Commenters also noted that using payment standards to adjust for insufficient FMRs is limited by its effect on individuals with fixed incomes or the PHA's ability to provide reasonable accommodations. One commenter noted that adjusting their jurisdiction's payment standards in response to an FMR decrease would greatly increase the rent burden for residents that depend on fixed Social Security or SSI Payments, as cost of living increases in those programs are much lower than the rise in rent. Other commenters noted that the use of excepted payment standards for high-rent areas also limits the availability of reasonable accommodations for individuals with disabilities, and accommodations may actually lower the value of vouchers in some cases if the FMR is insufficient for the area.

HUD Response: PHAs have a variety of options beyond setting payment standards at 110 percent of the FMR. PHAs may pursue exception payment standards above 110 percent of FMR, including through the expedited waiver process described in PIH Notice 2021–34. PHAs may apply for success rate payment standards, which allow for setting payment standards using the 50th percentile estimates of rent. PHAs may, with HUD approval, establish an exception payment standard of more than 120 percent of the published FMR if required as a reasonable accommodation in accordance with 24 CFR part 8 for a family that includes a person with a disability after approval from HUD. Finally, PHAs may adopt Small Area FMRs (or use Small Area FMRs as the basis for exception payment standards), which may allow for payment standards of up to 160 percent of the metropolitan FMR in high-rent ZIP Codes.

Market Factors Affecting the Supply of Units at FMR Levels

Commenters noted that the current housing market is competitive. Commenters stated that the rental market for voucher holders is already somewhat limited by the 40th percentile limitations on the program, and a lack of available units for rent has driven rising rent prices. Commenters noted that units are being converted to short term rentals, affected by the impact of natural disasters, or utilized by new residents or temporary college students. This lack of available units can be further complicated by the needs of voucher holders, as a commenter noted necessary features can drive rent prices above the FMRs. Even when the vouchers are sufficient to meet rent, a commenter stated that landlords may choose to rent the limited supply to residents with the best credit and rental histories, further increasing competition within the market.

Commenters also noted that increasing rents have limited voucher holders' housing options due to insufficient FMR rates. When FMR rates are below the current market rates, voucher holders face significant difficulty in finding units within the allowed range. A commenter noted that rent has increased in their jurisdiction by an average of 9.7 percent, while another noted that rent has been consistently rising in the three years since the 2019 ACS survey. A commenter noted that increases in rent prices are not being met by increased wages, while another commenter noted that their jurisdictions have experienced rapid job growth in the area, leading to increased demand and higher prices. One commenter noted that the FMRs in their jurisdiction leave little to no room for the utility allowance, limiting the available options further.

Other commenters stated that the recent end of rent moratoriums imposed by states in response to COVID–19 will result in rapidly increasing rents. Commenters noted that the FMR methodology may not fully capture these recent changes in rent prices, leaving voucher holders with reduced options at the FMR level.

Commenters also noted that landlords are unwilling to accept vouchers as the FMRs are below the rates they can receive on the open market, which further reduces voucher holders' options and drives up competition for the remaining units. Commenters noted that landlords' costs of operation, including taxes, insurance, and repair prices, are increasing, forcing landlords to prioritize the higher rates available on the open market and reducing the number of single-family rental units available to voucher holders. Another commenter stated that while they would be interested in accepting voucher holders, the current market rates in their jurisdiction are between 52 and 123 percent higher than the FMR. Furthermore, a commenter stated that a decrease in FMR for their jurisdiction could harm their existing efforts to address landlord concerns, which could result in landlords leaving the program before PHAs have the chance to resolve previously existing concerns.

HUD Response: As noted earlier, HUD is committed to continuously evaluating its FMR calculation methodology, including considering the implications for areas with rapidly rising rents. HUD recognizes the interaction of the level of FMR on landlords' decisions to accept Housing Choice Vouchers; at the same time, research shows that a variety of factors influence landlord participation in the program. HUD's setting the FMR at the 40th percentile of rents means that by definition a large portion of rental units in any given area will not be available to voucher holders, reflecting HUD's desire to provide a modest unit for low-income families and maximize the number of families served by HUD's limited funds.

Insufficient or Decreasing FMRs Impose Hardships

Commenters noted that FMRs that decrease or fail to keep up with market rents would result in significant hardships for families and individuals as the insufficient value would limit the available units for voucher holders, would require great effort to find units even from voucher holders who are able to find units, and would limit the ability of voucher holders to enter new jurisdictions. Commenters noted that voucher holders face competition from residents with better credit and rental history, require accommodations, or face additional financial pressure and burdens from market inflation and disasters, such as the COVID–19 pandemic.

Commenters noted that PHAs are facing decreasing success rates with vouchers at the current FMR rates and that additional decreases or gaps between the FMR and market rates could further depress success rates, leaving more voucher holders homeless. Commenters stated that landlords are no longer accepting vouchers and are choosing not to renew voucher holders' leases. One commenter also noted that additional COVID–19 response fundings allocated to PHAs may remain unused if PHAs continue to face decreasing

success rates from below-market FMRs. One commenter further noted that this has led to almost a 10 percent increase in rent burdened households since 2019 and has led to PHAs being unable to realize their full administrative fee potential.

Commenters also noted that limited availability of units or insufficient FMRs can put a strain on homeless shelters and nonprofits, as voucher holders may rely on these services when they face difficulty using their vouchers. Some commenters also expressed concern that PHAs have already raised payment standards to the statutory maximum but remain unable to meet market rates due to the FMRs. Furthermore, many commenters stated that decreasing FMRs will increase the burden on voucher holders and PHAs and could lead to increased housing instability or homelessness. One commenter noted that additional vouchers issued under the CARES Act to homeless populations are facing lower success rates due to a decrease in single-bedroom FMRs for their jurisdiction, as the target population of the CARES Act vouchers primarily needs one-bedroom units. As a result, many commenters called for FMRs to increase this year.

HUD Response: As noted elsewhere, PHAs are not required to reduce the payment standard for in-place tenants in response to declining FMRs, and PHAs with declining voucher success rates have a variety of options for setting higher payment standards. HUD acknowledges the many hardships that low-income household face, as well as challenges faced by PHAs and other partners in working with HUD to accomplish its mission. Having an accurate FMR is often critical to helping address these challenges, and as previously discussed, HUD is committed to its ongoing evaluation of its FMR calculation. At the same time, the FMR itself cannot solve all the problems associated with keeping low-income families housed and preventing homelessness, particularly those arising from a low supply of housing in general.

The Impact of COVID–19 and Other Disasters May Not Be Accurately Reflected in the FMRs

Commenters noted that the COVID–19 pandemic has greatly affected the housing market, leading to potentially inaccurate FMRs for Fiscal Year 2022. Commenters stated that the pandemic has worsened an existing housing crisis by increasing rents and decreasing affordable housing supply, leading to rapidly increasing rental prices. One commenter stated that recent data shows average rents have increased 9.4 percent on average since March 2020, with anecdotal evidence pointing to more drastic increases in recent months. Commenters also stated that the nature and impact of the pandemic requires additional steps to keep people in their homes, while PHAs need additional support and resources to respond to additional burdens imposed by the pandemic. Some commenters noted that the expiration of state rent moratoriums will artificially affect the calculation of FMRs, as landlords will begin raising rents after the moratoriums expire. This would result in voucher holders facing difficulty in finding units within the FMRs calculated prior to the end of the moratorium.

Other commenters noted that the COVID–19 pandemic has driven population changes in certain areas, as higher-income new residents purchase units that would otherwise be available as rental units. This decrease in the supply of rental units has driven up rent prices, which the FMR methodology may not be able to account for without updated local data.

Commenters also noted that other disasters have contributed to limited housing supply, such as floods and hurricanes. These disasters can limit the housing supply through permanent or temporary damage to units, ultimately driving prices up due to both increased demand from displaced residents and decreased supply. For example, one commenter noted that flooding in their jurisdiction affected over 700 homes, increasing an existing deficit in affordable units.

HUD Response: The COVID–19 pandemic has caused widespread volatility in the U.S. economy, including in many of the nation's rental markets. Similarly, natural disasters often cause major consequences to housing markets of the areas they affect. In calculating FMRs, HUD is limited by the availability of data and its requirement to calculate FMRs using the current methodology. HUD is committed to evaluating the ongoing impacts of these disasters and adjusting its policies as needed to meet its mission.

Requests for Reevaluations

Commenters submitted valid requests for reevaluation for 28 FMR areas, as well as 10 requests that did not meet HUD requirements. Commenters requesting or in support of a reevaluation for the FY 2022 FMRs stated that the proposed FMRs were not an accurate representation of their area's rental market. Many commenters stated that they would undertake a local rent survey as part of their request for reevaluation. Other commenters stated that prior rent surveys are no longer accurate predictors of rental prices in the market and that new data would more accurately reflect the current market. One commenter stated they did not have the resources to conduct a formal rent survey in line with HUD's requirements and submitted other data points instead. One commenter requested a reevaluation without any discussion of the market conditions in their jurisdiction or a discussion of rent survey data.

HUD Response: HUD published the list of areas requesting reevaluation on October 20, 2021, and the list of areas without a submission of rental market data on January 10, 2022. This notice provides the revised FMRs for areas that submitted survey data and concludes the FY 2022 FMR re-evaluation process.

III. Environmental Impact

This Notice involves establishment of a rate and does not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this Notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Todd M. Richardson,

General Deputy Assistant Secretary, Office of Policy Development and Research.

[FR Doc. 2022–05040 Filed 3–9–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7061–N–02]

60-Day Notice of Proposed Information Collection: Jobs Plus; OMB Control No.: 2577–0281

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* May 9, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding

this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service at (800) 877–8339 (this is a toll-free number).

FOR FURTHER INFORMATION CONTACT: Dawn Smith, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW, (Room 3180), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339 (this is a toll-free number). Copies of available documents submitted to OMB may be obtained from Ms. Smith.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Jobs Plus.

OMB Approval Number: 2577–0281.

Type of Request: Revision of currently approved collection.

Form Number: SF–424, SF–LLL, HUD 2880, HUD 2991, HUD–50144, HUD 50153, SF424B, SF425.

Description of the need for the information and proposed use: The information collection is required to administer the Jobs Plus program, including applying for funds and grantee reporting.

Respondents: Potential applicants and grantees (which includes public housing authorities).

Estimated Number of Respondents: 103 annually.

Estimated Number of Responses: 447 annually.

Frequency of Response: Frequency of response varies depending on what information is being provided (*e.g.,* once per year for applications and four times per year for grantee reporting).

Burden Hours per Response: Burden hours per response for Jobs Plus grant applications is 65.25. The information collections unrelated to the Notice of Funding Opportunity, including grantee reporting and program management is 33.

Total Estimated Burdens: Total burden hours is estimated to be 6,572.75. Total burden cost is estimated to be $302,280.77.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(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 collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Laura Miller-Pittman,

Chief, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2022–05050 Filed 3–9–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033499; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Museum of Us (formerly the Museum of Man) San Diego, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Museum of Us (formerly the Museum of Man), in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects and a sacred object. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Museum of Us. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Museum of Us at the address in this notice by April 11, 2022.

FOR FURTHER INFORMATION CONTACT: Kara Vetter, Director of Cultural Resources, Museum of Us, 1350 El Prado, Balboa Park, San Diego, CA 92101, telephone (619) 239–2001 Ext. 44, email *kvetter@museumofus.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Museum of Us, San Diego, CA, that meet the definition of unassociated funerary objects and a sacred object under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

On January 31, 1974, three cultural items were removed from site W–493 in Santa Ysabel, San Diego County, CA. Collectors David Reynolds and Paul Brown removed the items from an archeological site on their private property and donated them to the Museum of Us (formerly the Museum of Man). (An interview with Paul Brown indicates that the site ''yielded more than a couple of crematory urns,'' which are not under the control of the Museum of Us.) The three unassociated funerary objects are one biface, one projectile point, and one piece of historic glass.

On March 6, 1969, 24 cultural items were removed from site W–556 (aka CA–SDI–17377) in La Jolla, San Diego County, CA. Collector Frank Leinhaupel brought the items to the Museum of Us. W–556 lies near W–1 Spindrift, a

previously documented site known to contain human remains. Consultation with the Kumeyaay Nation regarding the totality of the circumstances concerning the acquisition of the items supports a determination that these items are unassociated funerary objects. The 24 unassociated funerary objects are 11 groundstone mortars and 13 sinkers.

Sometime between the 1920s and the 1950s, 146 cultural items were removed by Malcolm J. Rogers from site C–44 and C–44A in Calexico, Imperial County, CA. Rogers, a geologist, excavated throughout San Diego and Imperial Counties in the late 1920's and early 1950's on behalf of the Museum of Us (formerly the Museum of Man). The site file documents ''two washed out cremations,'' neither of which was collected by Rogers. The 146 unassociated objects are one modified faunal bone, two unmodified faunal bones, five decorated ceramic body sherds, 21 decorated ceramic rim sherds, 24 undecorated ceramic body sherds, 88 undecorated ceramic rim sherds, one core tool, one projectile point, one scraper, one chopper, and one battered stone.

Sometime between the 1920s and the 1950s, 164 cultural items were removed by Malcolm J. Rogers from site C–72 (aka IMP–155), near Kane Springs in Imperial County, CA. The site file documents ''six washed out cremations,'' none of which was collected by Rogers. The 164 unassociated objects are one unmodified faunal bone, 21 decorated ceramic body sherds, 15 decorated ceramic rim sherds, 48 undecorated ceramic body sherds, 39 undecorated ceramic rim sherds, one biface, two choppers, one core tool, 11 projectile points, six scrapers, one utilized flake, three manos, seven modified shells, six unmodified shells, and two battered stones.

Sometime between the 1920s and the 1950s, 125 cultural items were removed by Malcolm J. Rogers from site C–92 (aka IMP–151), near Kane Springs in Imperial County, CA. The site file documents five cremations (''cremation 1 and 2'' and ''three washed out'' cremations). Following an exhaustive search, the Museum of Us has determined that none of the cremated individuals has ever been held by the Museum, and that their whereabouts are unknown. The 124 unassociated funerary objects are two decorated ceramic body sherds, 29 decorated ceramic rim sherds, 18 undecorated ceramic body sherds, 37 undecorated rim sherds, two bifaces, three choppers, one core tool, 17 projectile points, five scrapers, four manos, three unmodified shell, and three battered stones. The one sacred object is a steatite pipe tang.

Sometime between the 1920s and the 1950, 243 cultural items were removed by Malcolm J. Rogers from C–105, C–106, and C–106A, a cluster of archeological sites in Imperial County, CA. The site documents ''four washed out cremations,'' none of which was collected by Rogers. The 243 unassociated funerary objects are seven unmodified faunal bones, 12 decorated ceramic body sherds, 63 decorated ceramic rim sherds, 47 undecorated ceramic body sherds, 63 undecorated ceramic rim sherds, four bifaces, three choppers, two cores, one stone drill, one projectile point, seven scrapers, eight unworked flakes, 10 utilized flakes, five manos, two metates, three game stones, three modified shells, and two unmodified shells.

Sometime between the 1920s and the 1950s, 195 cultural items were removed by Malcolm J. Rogers from site C–110 in Imperial County, CA. C–110 is situated in close proximity to multiple archeological sites associated with human remains, and the site file documents its cultural significance to the Kumeyaay Nation. Consultation with the Kumeyaay Nation regarding the totality of the circumstances concerning the acquisition of the items supports a determination that these items are unassociated funerary objects. The 195 unassociated funerary objects are one ceramic vessel, 24 decorated ceramic body sherds, 41 decorated ceramic rim sherds, 26 undecorated ceramic body sherds, 82 undecorated ceramic rim sherds, three biface, one core tool, seven scrapers, two utilized flakes, three manos, two pestles, one ecofact, one modified shell, and one battered stone.

Sometime between the 1920s and the 1950s, 208 cultural items were removed by Malcolm J. Rogers from C–111, C–111A, C–118, C–118A and C–118B, a cluster of archeological sites in Imperial County, CA. The site file documents ''one washed out cremation,'' which was not collected by Rogers. The 208 associated funerary objects are 20 decorated ceramic body sherds, 25 decorated ceramic rim sherds, 44 undecorated ceramic body sherds, 53 undecorated ceramic rim sherds, three bifaces, five core tools, seven projectile points, 12 choppers, seven scrapers, one core tool, two unworked flakes, 11 utilized flakes, seven manos, one pestle, six ecofacts, two unmodified shells, and two battered stones.

Sometime between the 1920s and the 1950s, 252 cultural items were removed by Malcolm J. Rogers from sites C–113, C–113A and C–114, a cluster of archeological sites in Imperial County, CA. The site file documents ''one washed out cremation,'' which was not collected by Rogers. The 252 associated funerary objects are 12 decorated ceramic body sherds, 41 decorated ceramic rim shreds, 41 undecorated ceramic body sherds, 128 undecorated ceramic rim sherds, three bifaces, four choppers, three scrapers, one core tool, two projectile points, one utilized flake, one unworked flake, four manos, two metates, five modified shells, and four unmodified shells.

Sometime between the 1920s and the 1950s, 216 cultural items were removed by Malcolm J. Rogers from site C–147 in Imperial County, CA. The site file documents ''a few un-gathered cremations . . . found by relic hunters,'' none of which was collected by Rogers. The 216 associated funerary items are 34 decorated ceramic body sherds, 123 undecorated ceramic body sherds, 40 undecorated ceramic rim sherds, two choppers, two cores, two projectile points, seven scrapers, three historic glass, one ecofact, one modified shell, and one battered stone.

Determinations Made by the Museum of Us

Officials of the Museum of Us have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), 1,575 of the cultural items described above 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 and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(3)(C), one of the cultural items 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.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between all 1,576 cultural items described above and the Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Capitan Grande Band of Diegueno Mission Indians of California (Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California); Ewiiaapaayp Band of Kumeyaay Indians, California; Iipay Nation of Santa Ysabel, California [*previously* listed as Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel

Reservation]; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; and the Sycuan Band of the Kumeyaay Nation (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Kara Vetter, Director of Cultural Resources, Museum of Us, 1350 El Prado, Balboa Park, San Diego, CA 92101, telephone (619) 239–2001 Ext. 44, email *kvetter@museumofus.org,* by April 11, 2022. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects and sacred object to The Tribes may proceed.

The Museum of Us is responsible for notifying The Tribes that this notice has been published.

Dated: March 2, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–05061 Filed 3–9–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–CR–NAGPRA–NPS0033415; PPWOCRADN0–PCU00RP14.R50000 (222); OMB Control Number 1024–0144]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Native American Graves Protection and Repatriation Regulations

AGENCY: National Park Service, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before April 11, 2022.

ADDRESSES: Written comments and suggestions on the information collection requirements should be submitted by the date specified above in **DATES** to *http://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the NPS Information Collection Clearance Officer (ADIR–ICCO), 12201 Sunrise Valley Drive, (MS–242) Reston, VA 20191 (mail); or *phadrea_ponds@nps.gov* (email). Please include OMB Control Number 1024–0144 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Melanie O'Brien, Manager, National NAGPRA Program by email at *melanie_o'brien@nps.gov,* or by telephone at (202) 354–2204. 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 and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on November 9, 2021 (86 FR 62203). The public comment period ended on January 10, 2022. 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.

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Authorized by the Native American Graves Protection and Repatriation Act (NAGPRA or the Act 25 U.S.C. 3001–3013), all public and private museums receiving Federal funds are required to compile information regarding Native American cultural items in their possession or control. This information must be provided to lineal descendants, likely interested Indian tribes, Native Hawaiian organizations, and the NPS National NAGPRA Program. Under NAGPRA and its implementing regulations, we are mandated to collect any information that is pertinent in determining the cultural affiliation and geographical origin of Native American human remains and cultural items. This includes descriptions, acquisition data, and records of consultation. Once the identity and cultural affiliation of human remains and cultural items are determined, the museum must send written notice of determination to the affected Indian tribes or Native Hawaiian organizations and the NAGPRA Program for publication in the **Federal Register**.

Title of Collection: Native American Graves Protection and Repatriation Regulations.

OMB Control Number: 1024–0144.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State, local and tribal governments, universities, museums, etc. that receive Federal funds and have possession of, or control over, Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony.

Total Estimated Number of Annual Respondents: 448.

Total Estimated Number of Annual Responses: 448.

Estimated Completion Time per Response: Varies from 0.5 hours to 100 hours depending on respondent and/or activity.

Total Estimated Number of Annual Burden Hours: 4,470.

Respondent's Obligation: Mandatory.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2022–04527 Filed 3–9–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033500; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Southern Mississippi, Hattiesburg, MS

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Southern Mississippi has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the University of Southern Mississippi. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the University of Southern Mississippi at the address in this notice by April 11, 2022.

FOR FURTHER INFORMATION CONTACT: Marie Elaine Danforth, Professor of Anthropology, School of Social Science and Global Studies, University of Southern Mississippi, 118 College Drive #5108, Hattiesburg, MS 39406–0001, telephone (601) 266–5629, email *m.danforth@usm.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the University of Southern Mississippi, Hattiesburg, MS. The human remains are presumed to have been removed from eastern Texas.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the University of Southern Mississippi professional staff in consultation with representatives of the Caddo Nation of Oklahoma.

History and Description of the Remains

Sometime prior to 1994, human remains representing, at minimum, one individual were removed from an unknown site in eastern Texas. The human remains were brought to the Mississippi Petrified Forest Museum in Madison County, MS, where they were on display for an unknown number of years. In 1994, the human remains were transferred to the University of Southern Mississippi. The nearly complete skeleton belongs to a young adult female, and the human remains most likely predate European contact. No known individual was identified. No associated funerary objects are present.

The human remains were determined to be Native American based on facial and dental characteristics. No documentation for these human remains is known to exist. Instead, their provenience and date are based upon oral information provided by a longtime administrator at the museum. They are most likely culturally affiliated with the Caddo Nation of Oklahoma based on that Indian Tribe's traditional association with eastern Texas. This association is supported by information provided by a representative of the Caddo Nation of Oklahoma during consultation.

At an unknown date, human remains representing, at minimum, two individuals were removed from sites in Oklahoma and eastern Texas. The human remains belong to two adults of indeterminate sex. No known individuals were identified. No associated funerary objects are present.

No information concerning how these human remains entered the university's archeological holdings is known to exist. The human remains were found in a box labeled ''Bentley Collection from Texas.'' Notations on the bags in the box read ''Fannin City, Texas'' and ''LeFlore, OK; Great Temple Mound.'' The human remains of these two individuals have been identified as Native American based on the bag labels, especially the one referencing the Great Temple Mound, a part of Spiro Mounds in Oklahoma dating to A.D. 850–1450. There is no Fannin City in Texas, but there is a Fannin County in the far northeastern part of the state on the Oklahoma border. Based on the well-accepted cultural association of Spiro Mounds with the Caddo Nation of Oklahoma, as well as that Indian Tribe's traditional ties with eastern Texas, these human remains most likely are culturally affiliated with the Caddo Nation of Oklahoma. This association is supported by information provided by a representative of the Caddo Nation of Oklahoma during consultation.

Determinations Made by the University of Southern Mississippi

Officials of the University of Southern Mississippi have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human

remains and the Caddo Nation of Oklahoma.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Marie Elaine Danforth, Professor of Anthropology, School of Social Science and Global Studies, University of Southern Mississippi, 118 College Drive #5108, Hattiesburg, MS 39406–0001, telephone (601) 266–5629, email *m.danforth@usm.edu,* by April 11, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Caddo Nation of Oklahoma may proceed.

The University of Southern Mississippi is responsible for notifying the Caddo Nation of Oklahoma that this notice has been published.

Dated: March 2, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–05063 Filed 3–9–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033498; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Museum of Us (Formerly the San Diego Museum of Man), San Diego, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Museum of Us (formerly the San Diego Museum of Man) has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Museum of Us. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Museum of Us at the address in this notice by April 11, 2022.

FOR FURTHER INFORMATION CONTACT: Kara Vetter, Director of Cultural Resources, Museum of Us, 1350 El Prado, Balboa Park, San Diego, CA 92101, telephone (619) 239–2001 Ext. 44, email *kvetter@museumofus.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Museum of Us, San Diego, CA. The human remains and associated funerary objects were removed from San Diego and Imperial Counties, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Museum of Us professional staff in consultation with representatives of the Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Capitan Grande Band of Diegueno Mission Indians of California (Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California); Ewiiaapaayp Band of Kumeyaay Indians, California; Iipay Nation of Santa Ysabel, California [*previously* listed as Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation]; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; and the Sycuan Band of the Kumeyaay Nation (hereafter referred to as ''The Tribes'').

History and Description of the Remains

Between April 7, 1968 and January 8, 1969, human remains representing, at minimum, four individuals were removed from site W–340 (aka CA–SDI–17391) in San Diego, CA, by Emma Lou Davis. Davis, an anthropologist, conducted reconnaissance and salvage excavations on behalf of the Museum of Us (formerly the Museum of Man) throughout San Diego County in the late 1960s and early 1970s. This museum-sponsored excavation focused on salvaging archeological information after the landowner reported having unearthed lithic artifacts during excavation for a development. No known individuals were identified. The 848 associated funerary objects are one modified faunal bone, 97 unmodified faunal bones, five bifaces, 10 choppers, 44 cores, nine core tools, five projectile points, 14 scrapers, 50 utilized flakes, 288 unworked flake, 47 manos, one metate, one mortar, one groundstone abrader, four pestles, one insect cocoon, three organic plants, 105 ecofacts, two modified shells, 120 lots of unmodified shell, five soil samples, nine midden samples, 11 battered stones, eight fire-affected stones, one piece of organic yellow ochre, and six pieces of organic red ochre.

Between October 23 and November 4, 1968, human remains representing, at minimum, one individual, were removed by Emma Lou Davis from W–380, an archeological site located in Poway, San Diego County, CA. This museum-sponsored excavation focused on salvaging archeological information after the landowner reported having unearthed many metates in her backyard over the years and also having encountered ''pothunters'' on her property. The age and sex of this individual are unknown. No known individual was identified. The 177 associated funerary objects are 11 unmodified faunal bones, one ceramic pendant, seven undecorated ceramic body sherds, two undecorated ceramic rim sherds, two bifaces, five choppers, 19 cores, 11 core tools, one ground stone sucking tube, 12 projectile points, 28 scrapers, 19 unworked flakes, 11 utilized flakes, 12 manos, two historic ceramic, five pieces of charcoal, 12 ecofacts, two modified shells, eight unmodified shells, two battered stones, and five fire-affected rocks.

Between June 27 and August 10, 1969, human remains representing, at minimum, 11 individuals were removed by Emma Lou Davis from W–384 and W–384B, two archeological sites located in Julian, San Diego County, CA. These sites are referred to as Lamp Site A and Lamp Site B (after the property owners, who consented to the museum-sponsored excavation). The limited extant documentation identifies the ''Culture Type'' at these sites as ''Diegueño,'' which, if true, would date their origins to approximately 1,300 years before present. No known individuals were identified. The 840 associated funerary objects are three modified faunal bones, 144 unmodified faunal bones, four ceramic pendants, five ceramic pipe fragments, three decorated ceramic body sherds, six decorated ceramic rim sherds, 17 lots of undecorated ceramic body sherds, 42 undecorated ceramic body sherds, four lots of undecorated ceramic rim sherds, 113 undecorated rim sherds, two bifaces, 14 cores, 48 projectile points, 22 scrapers, 27 lots of unworked flakes, 56 unworked flakes, four lots of utilized flakes, 75 utilized flakes, 20 manos, one metate, five ground stone pendants, one discoid, one pestle, three shaft straighteners, 73 pieces of historic period glass, three lots of historic period metal, 35 pieces of historic period metal, five pieces of historic period organic material, four lots of charcoal, 22 pieces of organic material, 37 pieces of plant material, 29 pieces of wood material, three ecofacts, two modified shells, four unmodified shells, and three fire-affected rocks.

Sometime in 1972, human remains representing, at minimum, one individual were removed from archeological sites W–460 (aka CA–SDI–6084) and W–461 (aka CA–SDI–6085) in Poway, San Diego County, CA, during a surface collection conducted at the Carmel Mountain East Housing Development. The limited extant documentation identifies the ''Culture Type'' at these sites as ''San Dieguito II,'' which, if true, would date their origins to approximately 12,000–9,000 years before present. Additional documentation indicates that W–461 is ''a probable extension of W–460'' (the two sites lie near each other). No known individual was identified. The 79 associated funerary objects are six decorated ceramic body sherds, one undecorated ceramic body sherd, three undecorated rim sherds, nine bifaces, one projectile point, 12 scrapers, 23 unworked flakes, 19 utilized flakes, one mano, one historic period ceramic piece, one piece of organic plant material, one unmodified shell, and one fire-affected rock.

Sometime between 1920 and 1950, human remains representing, at minimum, one individual were removed from C–151, an archeological site in McCain Valley, CA, by Malcolm J. Rogers. Rogers, a geologist, conducted reconnaissance excavations on behalf of the Museum of Us (formerly the Museum of Man) throughout San Diego and Imperial Counties County in the late 1920s and early 1950s. A site file identifies the ''Culture Type'' at this site as East Diegueño Yuman III Period, which would date its origins to approximately 1,300 years before present. No known individual was identified. The 160 associated funerary objects are one unmodified faunal bone fragment, two ceramic pipe fragments, three ceramic vessels, two lots of mixed ceramic sherds, six decorated ceramic body sherds, 10 decorated rim sherds, 14 undecorated ceramic body sherds, 105 undecorated rim sherds, two bifaces, one projectile point, eight scrapers, two manos, one pestle, one piece of organic wood material, one ecofact, and one battered stone.

Sometime between 1920 and 1950, human remains representing, at minimum, one individual, were removed by Malcolm J. Rogers from C–153, an archeological site in McCain Valley, CA, during a museum-sponsored excavation. A site file identifies the ''Culture Type'' at this site as East Diegueño Yuman III Period, which, if true, would date its origins to approximately 1,300 years before present. No known individual was identified. The 1551 associated funerary objects are two unmodified faunal bones, 11 incomplete ceramic vessels, 347 decorated ceramic body sherds, eight decorated ceramic rim sherds, 987 undecorated ceramic body sherds, 155 undecorated ceramic rim sherds, two bifaces, three choppers, four projectile points, five scrappers, two unworked flakes, three utilized flakes, three manos, one pestle, 15 pieces of organic plant material, and three historic period paper materials.

Sometime between 1920 and 1950, human remains representing, at minimum, one individual were removed by Malcolm J. Rogers from C–155 and C–155A, a cluster of archeological sites in McCain Valley, CA, during a museum-sponsored excavation. A site file identifies the ''Culture Type'' at this site as North and East Diegueño, which, if true, would date its origins to approximately 1,300 years before present. No known individual was identified. The 418 associated funerary objects are two ceramic pipe fragments, 19 ceramic pendant fragments, 24 decorated ceramic body sherds, two decorated ceramic rim sherds, 91 undecorated ceramic body sherds, five various undecorated ceramic sherds, 214 undecorated ceramic rim sherds, seven bifaces, two core tools, 38 projectile points, two scrapers, four unworked flakes, one stone paint pallet, one historic period ceramic piece, two pieces of historic period glass, one piece of organic wood material, one ecofact, and two modified shells.

All of the above listed sites are located within the traditional ancestral territory of the Kumeyaay Nation, and based on archeological, geographical, ethnographic, anthropological (burial practices), and oral historical information, all the above listed human remains are connected to the Kumeyaay. Today, the Kumeyaay are represented by The Tribes.

Determinations Made by the Museum of Us

Officials of the Museum of Us have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 20 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 4,073 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and The Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Kara Vetter, Director of Cultural Resources, Museum of Us, 1350 El Prado, Balboa Park, San Diego, CA 92101, telephone (619) 239–2001 Ext. 44, email *kvetter@museumofus.org,* by April 11, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The Museum of Us is responsible for notifying The Tribes that this notice has been published.

Dated: March 2, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–05059 Filed 3–9–22; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1236]

Certain Polycrystalline Diamond Compacts and Articles Containing Same

Notice of Request for Submissions on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that on March 3, 2022, the presiding administrative law judge (''ALJ'') issued an Initial Determination on Violation of Section 337. The ALJ also issued a Recommended Determination on remedy and bonding should a violation be found in the above-captioned investigation. The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public only.

FOR FURTHER INFORMATION CONTACT: Ronald A. Traud, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3427. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States:

Unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation, specifically: A limited exclusion order directed to certain polycrystalline diamond compacts and articles containing same imported, sold for importation, and/or sold after importation by respondents Iljin Diamond Co., Ltd.; Iljin USA Inc.; Iljin Holdings Co., Ltd.; Iljin Europe GmbH; Iljin Japan Co., Ltd.; Iljin China Co., Ltd.; SF Diamond Co., Ltd.; SF Diamond USA, Inc.; Zhengzhou New Asia Superhard Materials Composite Co., Ltd.; Shenzhen Haimingrun Superhard Materials Co., Ltd.; Guangdong Juxin New Materials Technology Co., Ltd.; International Diamond Services, Inc.; CR Gems Superabrasives Co., Ltd.; Henan Jingrui New Material Technology Co., Ltd.; and Fujian Wanlong Superhard Material Technology Co., Ltd.; and cease and desist orders directed to SF Diamond Co., Ltd.; and SF Diamond USA, Inc. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ's Recommended Determination on Remedy and Bonding issued in this investigation on March 3, 2022. Comments should address whether issuance of the recommended remedial orders in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third-party suppliers have the capacity to replace the volume of articles potentially subject to the recommended orders within a commercially reasonable time; and

(v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed no later than by close of business on April 2, 2022.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1236'') in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: March 7, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–05084 Filed 3–9–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–467 and 731–TA–1164–1165 (Second Review)]

Narrow Woven Ribbons With Woven Selvedge From China and Taiwan

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the countervailing duty order on imports of narrow woven ribbons with woven selvedge (''narrow woven ribbons'') from China and antidumping duty orders on narrow woven ribbons from China and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on August 2, 2021 (86 FR 41514), and determined on November 5, 2021, that it would conduct expedited reviews (87 FR 7498, February 9, 2022).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on March 7, 2022. The views of the Commission are contained in USITC Publication 5292 (March 2022), entitled *Narrow Woven Ribbons with Woven Selvedge from China and Taiwan: Investigation Nos. 701–TA–467 and 731 TA 1164–1165 (Second Review).*

By order of the Commission.

Issued: March 7, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–05099 Filed 3–9–22; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Fire Protection Association

Notice is hereby given that, on January 28, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Fire Protection Association (''NFPA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, NFPA has provided an updated and current list of its standards development activities, related technical committee and conformity assessment activities. Information concerning NFPA regulations, technical committees, current standards, standards development and conformity assessment activities are publicly available at *nfpa.org.*

On September 20, 2004, NFPA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 21, 2004 (69 FR 61869).

The last notification was filed with the Department on October 15, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 14, 2021 (86 FR 67082).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–05113 Filed 3–9–22; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cable Television Laboratories, Inc.

Notice is hereby given that, on January 7, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Cable Television Laboratories, Inc. (''CableLabs'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Society of Cable Telecommunications Engineers, Inc., Exton, PA has been added as a party to this venture. And, the objective of the venture has been updated as follows: ''The objective of CableLabs is to gather, assess, and disseminate technical information of strategic importance to the cable television industry; to identify, plan, engage in, and fund the development of new technologies for the benefit of the industry, directly or in partnership with others; to transfer such technologies to the industry through reports, standards, specifications, industry conferences, training, online courses, software, seminars, workshops, licenses, loans of personnel, and other appropriate means; and to generally undertake research and development activity in furtherance of each of the foregoing.''

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CableLabs intends to file additional written notifications disclosing all changes in membership.

On August 8, 1988, CableLabs filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 7, 1988 (53 FR 34593).

The last notification was filed with the Department on October 13, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 9, 2021 (86 FR 62205).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–05091 Filed 3–9–22; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—OPENJS Foundation

Notice is hereby given that, on January 10, 2022, pursuant to Section 6(a) of the National Cooperative

Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), OpenJS Foundation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Functional Software, Inc. (Sentry), San Francisco, CA, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OpenJS Foundation intends to file additional written notifications disclosing all changes in membership.

On August 17, 2015, OpenJS Foundation filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 28, 2015 (80 FR 58297).

The last notification was filed with the Department on October 5, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 24, 2021 (86 FR 67081).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–05087 Filed 3–9–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—National Armaments Consortium

Notice is hereby given that, on January 20, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Armaments Consortium (''NAC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, DKW Consulting LLC, Tallahassee, FL; Legacy Consulting Services LLC, Whiteford, MD; Timberghost Tactical LLC dba NovX Ammunition, Calhoun, GA; Unified Business Technologies, Inc., Troy, MI; CONTROP USA, Inc., Lanham, MD; Uptake Technologies, Inc., Chicago, IL; Chesapeake Technology International Corp., California, MD; Outpost Technologies, Inc., Huntsville, AL; DUPONT SPECIALTY PRODUCTS USA, LLC, Circleville, OH; Modern Intelligence, Inc., San Jose, CA; Fibertek, Inc., Herndon, VA; CAV Manufacturing, LLC, Salisbury, MD; Brigham Young University, Provo, UT; Energetics Technology Center, Inc., Indian Head, MD; Tidewater Machine Company, White Plains, MD; Advanced American Technologies LLC, Oak Ridge, TN; Flight Test & Mechanical Solutions, Inc., dba FMS Aerospace, Huntsville, AL; TRUSTEES OF THE COLORADO SCHOOL OF MINES, OFFICE OF RESEARCH ADMINISTRATION, Golden, CO; LEHIGH DEFENSE LLC, Quakertown, PA; NORTHROP GRUMMAN SYSTEMS CORPORATION, Linthicum Heights, MD; Blueshift Materials, Inc., Spencer, MA; Armorlube, LLC, Tuscon, AZ; LAINE LLC/LAINE Technologies, Goose Creek, SC; Sertainty Corporation, Nashville, TN; and Micor Industries, LLC, Decatur, AL, have been added as parties to this venture.

Also, George W. Solhan LLC, Tampa, FL; G. Schneider & Associates, Inc., Tempe, AZ; Advanced Hydrogen Technologies Corporation, Lenoir, NC; Applied Nanotech, Inc., Austin, TX; Navatek LLC, Honolulu, HI; Applied Technology, Inc., King George, VA; United Support Solutions-LMT, Inc., Grove, NJ; ProSync Technology Group, Inc., Ellicott City, MD; Nahsai LLC, Huston, TX; Iowa State University of Science and Technology, Ames, IA; The Curators of the University of Missouri, Columbia, MO; C3 Engineering LLC, Baltimore, MD; Johnson Technology Systems, Inc., Dover, NJ; and Reheat LLC, Marquette, MI, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NAC intends to file additional written notifications disclosing all changes in membership.

On May 2, 2000, NAC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 30, 2000 (65 FR 40693).

The last notification was filed with the Department on October 12, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 26, 2021 (86 FR 67495).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–05092 Filed 3–9–22; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Medical CBRN Defense Consortium

Notice is hereby given that, on January 10, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Medical CBRN Defense Consortium (''MCDC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Centivax, Inc., San Francisco, CA; EverGlade Pharmaceuticals, Washington, DC; Global Pandemic Prevention and Biodefense Center, Arlington, VA; Tutela Pharmaceuticals, Inc., Vernon Hills, IL and Vala Sciences, Inc., San Diego, CA have been added as parties to this venture.

Also, Fraunhofer USA Center for Molecular Biotechnology, Newark, DE; FUJIFILM Pharmaceuticals USA, Inc., Boston, MA; Full Effect Biotech, Inc., Kansas City, KS; GattaCo, Inc., Murrieta, CA; Hawaii Biotech, Inc., Honolulu, HI; Indiana Biosciences Research Institute, Indianapolis, IN; Integrity Bio, Inc., Camarillo, CA; NYU School of Medicine, New York, NY; Rutgers, The State University of New Jersey, New Brunswick, NJ; SitScape, Inc., Vienna, VA and The Regents of the University of Colorado, Boulder, CO have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MCDC intends to file additional written notifications disclosing all changes in membership.

On November 13, 2015, MCDC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the

Federal Register pursuant to Section 6(b) of the Act on January 6, 2016 (81 FR 513).

The last notification was filed with the Department on October 1, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 24, 2021 (86 FR 67082).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–05095 Filed 3–9–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute—Cooperative Research Group on ROS-Industrial Consortium Americas

Notice is hereby given that, on January 28, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on ROS-Industrial Consortium-Americas (''RIC-Americas'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Lemurian Labs Inc., Ontario, CANADA, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and RIC-Americas intends to file additional written notifications disclosing all changes in membership.

On April 30, 2014, RIC-Americas filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 9, 2014 (79 FR 32999).

The last notification was filed with the Department on October 29, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 26, 2021 (86 FR 67493).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–05111 Filed 3–9–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Fluids for Electrified Vehicles

Notice is hereby given that, on January 17, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Advanced Fluids for Electrified Vehicles (''AFEV'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, American Axle & Manufacturing, Inc., Detroit, MI; The Shephard Chemical Co., Norwood, OH; and Tianjin SwARC Automotive Research Laboratory Co., Ltd., Tianjin, CHINA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AFEV intends to file additional written notifications disclosing all changes in membership.

On June 16, 2021, AFEV filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 16, 2021 (86 FR 45751).

The last notification was filed with the Department on December 02, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 13, 2022 (87 FR 2183).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–05105 Filed 3–9–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Undersea Technology Innovation Consortium

Notice is hereby given that, on February 2, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Undersea Technology Innovation Consortium (''UTIC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Production System Automation LLC, Duryea, PA; L3 Technologies, Inc., Millersville, MD; Scale AI, Inc., San Francisco, CA; Inertial Labs, Inc., Paeonian Springs, VA; Aviation & Missile Solutions LLC, Huntsville, AL; Sonatech LLC, Santa Barbara, CA; Platform Systems, Inc., Hollywood, MD; and Sertainty Corporation, Nashville, TN, have been added as parties to this venture.

Also, Argon St. Inc. a Boeing Company, Fairfax, VA; BioSonics, Inc., Seattle, WA; Compass Systems, Inc., Lexington Park, MD; DeepWater Buoyancy, Inc., Biddeford, ME; Dragonfly Pictures, Inc., Essington, PA; Edward Buiel Consulting dba Coulometrics LLC, Chattanooga, TN; GenOne Technologies LLC, Cambridge, MA; Moire, Inc., Issaquah, WA; Pandata Tech, Inc., Houston, TX; Peraton, Inc., Herndon, VA; Perspecta Labs, Inc., Basking Ridge, NJ; Sidus Solutions LLC, San Diego, CA; Technical Systems Integration, Inc., Norfolk, VA; and Truston Technologies, Inc., Annapolis, MD, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and UTIC intends to file additional written notifications disclosing all changes in membership.

On October 9, 2018, UTIC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 2, 2018 (83 FR 55203).

The last notification was filed with the Department on November 10, 2021. A notice was published in the **Federal**

Register pursuant to Section 6(b) of the Act on December 22, 2021 (86 FR 72628).

Suzanne Morris,

Chief, Premerger and Division Statistics. Antitrust Division.

[FR Doc. 2022–05112 Filed 3–9–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Maritime Sustainment Technology and Innovation Consortium

Notice is hereby given that, on January 19, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Maritime Sustainment and Technology Innovation Consortium (''MSTIC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Advanced Conductor Technologies LLC, Boulder, CO; Advanced Cooling Technologies, Inc., Lancaster, PA; ALEX—Alternative Experts LLC, Marshall, VA; Amazon Web Services, Inc., Seattle, WA; AMPeers LLC, Houston, TX; Appleton Marine, Inc., Appleton, WI; Biconvex, Coral Gables, FL; Big Metal Additive, Denver, CO; Boston Engineering Corporation, Waltham, MA; Decatur Mold, Tool & Engineering, Inc., North Vernon, IN; Deloitte Consulting LLP, Arlington, VA; D–TA Systems Corporation, Arlington, VA; Engineered Coil Company d/b/a DRS Marlo Coil, High Ridge, MO; Expression Networks LLC, Washington, DC; Exyn Technologies, Inc., Philadelphia, PA; Huntington Ingalls Incorporated—Newport News Shipbuilding, Newport News, VA; Impact Resources, Inc. dba IR Technologies, Reston, VA; Inertial Labs, Inc., Paeonian Springs, VA; Intelligent Automation, A Bluehalo Company, Rockville, MD; IOMAXIS LLC, Lorton, VA; IT-Soft-USA, Inc., Chicago, IL; Kyntronics, Inc., Solon, OH; Mainstream Engineering, Rockledge, FL; MartinFederal Consulting, LLC, Huntsville, AL; Materials Sciences LLC, Horsham, PA; MicroStrategy Inc., Vienna, VA; Moog, Inc., Orrville, OH; Navmar Applied Sciences Corporation, Warminster, PA; Palantir USG, Inc, Palo Alto, CA; Peaxy, Inc., San Jose, CA; Peraton, Inc., Herndon, VA; Raytheon Technologies, San Diego, CA; Rockwell Collins, Inc., Cedar Rapids, IA; Scientific Research Corporation, North Charleston, SC; Sellers & Associates, LLC, Chesapeake, VA; SGSD Partners LLC dba Elevate Government Solutions, Washington, DC; Siemens Government Technologies, Inc., Reston, VA; Special Power Sources, Alliance, OH; Tai-Yang Research Company dba Energy to Power Solutions (e2P), Tallahassee, FL; TDI Novus, Inc., Philadelphia, PA; Teksouth Corporation, Gardendale, AL; Total Concepts of Design, Inc., Scottsburg, IN; Uptake Technologies, Chicago, IL; Whitney Strategic Services LLC, New York, NY; and WPI Services LLC dba Systecon North America, Juno Beach, FL, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MSTIC intends to file additional written notifications disclosing all changes in membership.

On October 21, 2020, MSTIC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 19, 2020 (85 FR 73750).

The last notification was filed with the Department on October 11, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 24, 2021 (86 FR 67083).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–05103 Filed 3–9–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Countering Weapons of Mass Destruction

Notice is hereby given that, on January 5, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Countering Weapons of Mass Destruction (''CWMD'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 4D Tech Solutions, Inc., Fairmont, WV; Cape Henry Associates, Inc., Virginia Beach, VA; Droneshield LLC, Warrenton, VA; Gold Standard Radiation Detection, Inc., Albuquerque, NM; Kinsa, Inc., San Francisco, CA; Kuprion, Inc., San Jose, CA; Next Tier Concepts, Inc., Vienna, VA; NTELX, Inc., Asheville, NC; Paratek Pharmaceuticals, Boston, MA; Philips North America LLC, Cambridge, MA; Rose Developments, Inc., Virginia Beach, VA; Sherpa 6, Inc., Littleton, CO; Software AG Government Solutions, Inc., Herndon, VA; Spark Insights LLC, Tampa, FL; The University of Illinois, Urbana, IL; and XCMR, Inc., Penn Valley, PA have been added as parties to this venture.

Also, Alion Science and Technology Corporation, Burr Ridge, IL; CDO Technologies, Inc., Dayton, MD; Life Safety Systems, Inc., Santa Cruz, CA; Practical Energetics Research, Inc., Huntsville, AL; QRC LLC dba QRC Technologies, Fredericksburg, VA; SitScape, Inc., Vienna, VA; Terminal Horizon Operations and Resourcing (THOR), St. Petersburg, FL; Veterans Corps of America (VCA), O'Fallon, IL; and WWT Asynchrony Labs, St. Louis, MO have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CWMD intends to file additional written notifications disclosing all changes in membership.

On January 31, 2018, CWMD filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 12, 2018 (83 FR 10750).

The last notification was filed with the Department on October 28, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 24, 2021 (86 FR 67084).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–05106 Filed 3–9–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—AI Infrastructure Alliance, Inc.

Notice is hereby given that, on January 5, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), AI Infrastructure Alliance, Inc. (''AIIA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: DataTalks.Club, Berlin, GERMANY; Allegro Systems Ltd., Tel-Aviv, ISRAEL; Neuro Inc., San Francisco, CA; Pachyderm, Inc., San Francisco, CA; Arize AI, Mill Valley, CA.; TerminusDB, Dublin, IRELAND; Data Science Salon, Miami, FL; MLOps Community, Flagstaff, AZ; Molecula, Austin, TX; Activeloop, Mountain View, CA; Superwise AI LTD, Tel Aviv, ISRAEL; Artefact, Paris, FRANCE; and LGN Innovations Inc., St. Asaph, IRELAND. The general area of AIIA's planned activity is to support and promote the development of standards in the fields of artificial intelligence and machine learning.

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–05081 Filed 3–9–22; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Railpulse, LLC

Notice is hereby given that, on January 7, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), RailPulse, LLC (''RailPulse'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, The Greenbrier Companies, Lake Oswego, OR has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and RailPulse intends to file additional written notifications disclosing all changes in membership.

On April 20, 2021, RailPulse filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 25, 2021 (86 FR 28151).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–05108 Filed 3–9–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on Hedge V

Notice is hereby given that, on January 13, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Cooperative Research Group on HEDGE V (''HEDGE V'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, FCA US LLC, Auburn Hills, MI, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and HEDGE V intends to file additional written notifications disclosing all changes in membership.

On June 18,2021, HEDGE V filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 16, 2021 (86 FR 45750).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–05088 Filed 3–9–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Telemanagement Forum

Notice is hereby given that, on January 26, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), TM Forum, A New Jersey Non-Profit Corporation (''The Forum'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the following entities have become members of the Forum: Marand Software, Ljubljana, SLOVENIA; Suntech S.A., Warszawa, POLAND; conology GmbH, Frankfurt am Main, GERMANY; Full Fibre Limited, Exeter, UNITED KINGDOM; Flytxt B.V., Nieuwegein, THE NETHERLANDS; Crossjoin Solutions Lda, Pragal, PORTUGAL; Saphety, Lisboa, PORTUGAL; Bruhati Solutions Ltd, Maidenhead, UNITED KINGDOM; PT Indosat TBK, Jakarta Pusat, INDONESIA; PT Telekomunikasi Selular, Jakarta Selatan, INDONESIA; NCS Pte Ltd, Singapore, SINGAPORE; Allo Technology, Cyberjaya, MALAYSIA; Airbus, Blagnac, FRANCE; SAS Institute Inc, Cary, NC; Telkom University, Bandung, INDONESIA; GG Media Resources Ltd, Corsham, UNITED KINGDOM; Inselleben.Berlin GmbH, Berlin, GERMANY; Rakuten Mobile, Inc., Tokyo, JAPAN; Juniper Networks Inc, Sunnyvale, CA; Starbucks, Seattle, WA; Panamax Inc., New York, NY; NTS Retail KG, Leonding, AUSTRIA; Lifecell Ventures Coöperatief U.A., Amsterdam, THE NETHERLANDS; Digitral Private Limited, Hyderabad, INDIA; AFR–IX telecom S.L., Barcelona, SPAIN; Kuwadate Inc., Tokyo, JAPAN.

Also, the following members have changed their names: Ciminko Luxembourg, Oryx Gateway, Ahn, LUXEMBOURG; S4Digital, S4-Digital,

Lisbon, PORTUGAL; Telekom Austria AG, A1 Group, Vienna, AUSTRIA.

In addition, the following parties have withdrawn as parties to this venture: Altifio, London, UNITED KINGDOM; Avanseus Holdings Pte Limited, Singapore, SINGAPORE; Caribbean Knowledge & Learning Network (CKLN), St George's, GRENADA; Case Western Reserve University Information Technology Services, Cleveland, OH; Center for Digital Technology and Management of the Maximilians-Universität München and Technische Universität München, Munich, GERMANY; Chinese Society For Urban Studies National Smart City Joint Lab, Beijing, PEOPLE'S REPUBLIC OF CHINA; Cloudorizon Ltd, London, UNITED KINGDOM; Ecole De Technologie Supérieure (ETS), Montréal, CANADA; Forschungsinstitut für Rationalisierung, Aachen, GERMANY; Georgia Southern University Computer Science Faculty, Statesboro, GA; Incedo Inc., Santa Clara, CA; Indiana University Luddy School of Informatics and Computing, Bloomington, IN; Innova Bilisim Cozumleri, Cankaya Ankara, TURKEY; IST—International Software Techniques S.A., Marousi, GREECE; King Faisal Foundation, Riyadh, SAUDI ARABIA; L&T Technology Services Limited, Vadodara, INDIA; Labcities, Watford, UNITED KINGDOM; Limerick City and County Council, Limerick, IRELAND; National Technical University of Athens—Network Management & Optimal Design Laboratory, Zofragou, GREECE; Nelson Mandela Metropolitan University, Port Elizabeth, SOUTH AFRICA; Osaka University, Osaka, JAPAN; POWERACT Consulting, Casablanca, MOROCCO; Seconda Universita' di Napoli—Dipartimento di Ingegneria Industriale e dell' Informazione, Aversa (CE), ITALY; Shanghai Academy, Shanghai, PEOPLE'S REPLUBLIC OF CHINA; Starnet Solutii SRL, Chisinau, MOLDOVA; Technical University of Sofia—Department of Telecommunications Networks, Sofia, BULGARIA; TIMIR TOO, Almaty, KAZAKHSTAN; U Mobile Sdn. Bhd., Kuala Lumpur, MALAYSIA; University of Bradford, Bradford, UNITED KINGDOM; University of Calgary, Calgary, CANADA; University of Castilla La Mancha, Ciudad Real, SPAIN; University of Sarajevo, Faculty of Electrical Engineering, Sarajevo, BOSNIA AND HERZEGOVINA; Unryo, Laval, CANADA; Webcircles B.V., Oosterbeek, THE NETHERLANDS; Zen Internet Ltd, Rochdale, UNITED KINGDOM.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open and TM Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, TM Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on October 19, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 24, 2021 (86 FR 67079).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–05110 Filed 3–9–22; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Border Security Technology Consortium

Notice is hereby given that, on January 18, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Border Security Technology Consortium (''BSTC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Next Tier Concepts, Inc., Vienna, VA has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and BSTC intends to file additional written notifications disclosing all changes in membership.

On May 30, 2012, BSTC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 18, 2012 (77 FR 36292).

The last notification was filed with the Department on October 6, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 9, 2021 (86 FR 62205).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–05089 Filed 3–9–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities for H–2A Foreign Labor Certification Program; Comment Request

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension to the information collection request (ICR) titled, ''H–2A Foreign Labor Certification Program,'' and the related information collection and retention requirements (Office of Management and Budget (OMB) Control Number 1205–0466), which covers Forms ETA–9142A, *Application for H–2A Temporary Employment Certification;* ETA–9142A, Appendix A, *Assurances and Obligations;* ETA–9142A, *Final Determination: H–2A Temporary Labor Certification Approval;* ETA–790/790A, *H–2A Agricultural Clearance Order;* ETA–790/790A, Addendum A, *Additional Crops or Agricultural Activities;* ETA–790/790A, Addendum B, *Additional Worksite and/or Housing Information;* and related form instructions. This action seeks to extend without change all forms in the information collection. This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by May 9, 2022.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained for free by contacting Brian Pasternak, Administrator, Office

of Foreign Labor Certification, by telephone at 202–693–8200 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *ETA.OFLC.Forms@dol.gov.*

Instructions: Submit written comments about, or requests for a copy of, this ICR by email: *ETA.OFLC.Forms@dol.gov.* To ensure proper consideration, include the OMB control number 1205–0466.

FOR FURTHER INFORMATION CONTACT: Brian Pasternak, Administrator, Office of Foreign Labor Certification, by telephone at (202) 693–8200 (this is not a toll-free number) or by email *ETA.OFLC.Forms@dol.gov.*

Authority: 44 U.S.C. 3506(c)(2)(A).

SUPPLEMENTARY INFORMATION: DOL, in its continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to OMB for final approval. This program ensures the public provides all necessary data in the desired format, the reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed. The information collection is required by secs. 101(a)(15)(H)(ii)(a), 214(c), and 218 of the Immigration and Nationality Act (INA) (8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188), as well as 8 CFR 214.2(h)(5) and 20 CFR part 655, subpart B. The H–2A visa program enables employers to bring nonimmigrant foreign workers to the United States to perform agricultural work of a seasonal or temporary nature as defined in 8 U.S.C. 1101(a)(15)(H)(ii)(a). Before an employer can file a petition with the Department of Homeland Security (DHS) to employ temporary workers as H–2A nonimmigrants, the INA and DHS regulations require an employer to first obtain a determination from DOL certifying whether a qualified U.S. worker is available to fill the job opportunity described in the employer's petition for a temporary agricultural worker and whether a foreign worker's employment in the job opportunity will adversely affect the wages or working conditions of similarly employed U.S. workers. 8 U.S.C. 1188, INA sec. 218; 8 CFR 214.2(h)(5)(i), (ii), and (iv)(B). DOL's regulations establish the processes by which an employer must obtain a temporary labor certification from DOL and the rights and obligations of workers and employers. 20 CFR part 655, subpart B.

This ICR, OMB Control No. 1205–0466, includes the collection of information related to the temporary labor certification process and agricultural clearance order process in the H–2A program. The information contained in the application Form ETA–9142A, *H–2A Application for Temporary Employment Certification,* and job order Form ETA–790/790A, *H–2A Agricultural Clearance Order,* together serve as the basis for the Secretary of Labor's determination that qualified U.S. workers are not available to perform the services or labor needed by the employer and that the wages and working conditions of similarly employed U.S. workers will not be adversely affected by the employment of H–2A workers. Employers use *Appendix A* of Form ETA–9142A to attest that they will comply with all of the terms, conditions, and obligations of the H–2A program. ETA is seeking a three-year extension, without change, for each of these forms.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB control number 1205–0466.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL 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 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).

Agency: DOL–ETA.

Action: Extension.

Title of Collection: H–2A Temporary Agricultural Employment Certification Program.

OMB Control Number: 1205–0466.

Affected Public: Individuals or Households, Private Sector—businesses or other for-profits, Government, State, Local and Tribal Governments.

Form(s): ETA–9142A, *H–2A Application for Temporary Employment Certification;* ETA–9142A—*Appendix A;* ETA–9142A—*Final Determination: H–2A Temporary Labor Certification Approval;* ETA–790/790A, *H–2A Agricultural Clearance Order;* ETA–790/790A—*Addendum A;* ETA–790/790A—*Addendum B.*

Total Estimated Number of Annual Respondents: 14,586.

Frequency: On occasion.

Total Estimated Number of Annual Responses: 458,114.

Average Time per Response:

- Forms ETA–9142A, *Appendix A*—.50 hours per response.
- Forms ETA–790/790A/790B—.67 hours per response.
- Administrative Appeals—0.33 hours per response.

Total Estimated Annual Time Burden: 88,268.23 hours.

Total Estimated Annual Other Costs Burden: $0.

Angela Hanks,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2022–05011 Filed 3–9–22; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Notice of Federal Agency With Adequate Safeguards To Satisfy the Requirements of the Federal Regulation on Confidentiality and Disclosure of Unemployment Compensation Information

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Federal agency with adequate safeguards.

SUMMARY: In this notice, the Department of Labor (Department) recognizes that the United States Census Bureau (Census) has in place safeguards adequate to satisfy the requirements of the Federal regulation on the confidentiality and disclosure of unemployment compensation (UC) information. As a result, the safeguards and security requirements enumerated in the regulation do not apply to disclosures of confidential unemployment compensation information by state UC agencies to Census for the Longitudinal Employer Household Dynamics (LEHD) program.

FOR FURTHER INFORMATION CONTACT: Agnes Wells, Program Specialist, Office of Unemployment Insurance, Employment and Training Administration, (202) 693–2996 (this is not a toll-free number) or 1–877–889–5627 (TTY), or by email at *Wells.Agnes@dol.gov.* Or Daniel Hays, Supervisory Program Specialist, Office of Unemployment Insurance, Employment and Training Administration, (202) 693–3011 (this is not a toll-free number) or 1–877–889–5627 (TTY), or by email at *Hays.Daniel@dol.gov.*

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA) interprets Federal law requirements pertaining to UC programs. ETA interprets section 303(a)(1) of the Social Security Act to require states to maintain the confidentiality of certain UC information. The regulations at 20 CFR part 603 implement this confidentiality requirement. 20 CFR 603.9 requires States and State UC agencies to ensure that recipients of confidential UC information have certain safeguards in place before any confidential UC information may be disclosed. Section 603.9(d) provides that States are not required to apply these safeguards and security requirements to a Federal agency which the Department has determined, by notice published in the **Federal Register**, to have in place safeguards adequate to satisfy the requirements of 20 CFR 603.9.

The authority for Census to enter into state data sharing agreements is 13 U.S.C. 6, which permits Census to access, by purchase or otherwise, information to assist in the performance of its official duties. Under this authority, Census aims to improve labor market data infrastructure and develop products for better understanding of the dynamics of the U.S. labor market to meet the broad objectives of the LEHD program. This research provides important data to support Census programs including the Master Address File, current demographic and economic survey and census operations, the Intercensal Estimates Program's population and housing estimates, and related census and survey program improvements.

Under the Local Employment Dynamics (LED) Partnership, confidential data is received by Census and processed within its Economic Directorate, with complementary research and product development conducted within the Research and Methodology Directorate. The LED Partnership is comprised of U.S. States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and eligible U.S. territories when the entity enters into an agreement with Census.

To disclose confidential UC information to Census for purposes of the LEHD program, State UC agencies are currently required to enter into an agreement with Census that includes the safeguards and security requirements of 20 CFR 603.9. Census has advised the Department that securing a determination under 20 CFR 603.9(d) would be of great value as an independent assurance of data security, thus providing additional peace of mind and confidence to data providers, researchers, and policymakers.

The Department has determined that for purposes of the LEHD program, the methods and procedures employed by Census for the protection of information received from members of the LED Partnership meet the requirements of 20 CFR 603.9. Census complies with all current NIST standards and publications in accordance with Title III of the E-Government Act of 2002 (Pub. L. 107–347). Access to the information is strictly controlled and monitored by both physical and electronic means, limited to authorized Census staff and contractors who have signed a Sworn Oath of Nondisclosure, and not available to any third party. Information is expunged from Census systems when the purpose for the disclosure is finished. In addition, Census maintains a system sufficient to allow for audits and inspections and complies with OMB Memorandum M–17–12 with regard to the reporting of, and response to losses of protected information.

With this notice, the Department recognizes that Census has in place safeguards adequate to satisfy the requirements of 20 CFR 603.9. Thus, pursuant to 20 CFR 603.9(d), the safeguards and security requirements of 20 CFR 603.9 do not apply to disclosures of confidential UC information to Census for purposes of the LEHD program.

This notice is published to inform the public of the Department's determination with respect to this agency.

Angela Hanks,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2022–04899 Filed 3–9–22; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

[Docket No: DOL–2021–00##]

Privacy Act of 1974; System of Records

AGENCY: Department of Labor, Employment and Training Administration.

ACTION: Notice of a new system of records.

SUMMARY: As required by the Privacy Act of 1974, and Office of Management and Budget (OMB) Circular No. A–108, this notice is a new Privacy Act System of Records titled Unemployment Insurance Claimant Portal, DOL/ETA–33. This new system will contain records related to claims for unemployment insurance, including personally identifiable information (PII) necessary to verify the identity of an applicant or claimant; claims files; determinations by a State Workforce Agency and any case notes, conversation history, or other records used in making determinations; employer contribution records; and employer wage records.

DATES:

Comment Dates: We will consider comments that we receive on or before April 11, 2022.

Applicable date: This notice is applicable upon publication, subject to a 30-day review and comment period for the routine uses.

ADDRESSES: We invite you to submit comments on this notice. You may

submit comments by any of the following methods:

• *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail, hand delivery, or courier:* 200 Constitution Avenue NW, S–4516, Washington, DC. In your comment, specify Unemployment Insurance Claimant Portal, and the Docket ID DOL–2021–00##.

• *Federal mailbox: https://dol.gov/privacy.*

All comments will be made public by DOL and will be posted without change to *http://www.regulations.gov,* including any personal information provided. Note, the Department of Labor is currently operating under a maximum telework posture, commenters are strongly encouraged to transmit their comments electronically or by mail early. Comments, including any personal information provided, become a matter of public record.

FOR FURTHER INFORMATION CONTACT: To submit general questions about the system, contact Stephanie Garcia, *Garcia.Stephanie@dol.gov.* Include ''Unemployment Insurance Claimant Portal'' and the Docket ID DOL–2021–00##.

SUPPLEMENTARY INFORMATION: Pursuant to section three of the Privacy Act of 1974 (5 U.S.C. 552a(e)(4)), hereinafter referred to as the Act, the Department hereby publishes notice of a new system of records. This proposed system of records is entitled DOL/ETA–33, *Unemployment Insurance Claimant Portal.* The system is a component of the Unemployment Insurance State Program ARPA investment. The system contains information necessary to help Unemployment Insurance (UI) claimants file and manage UI claims.

SYSTEM NAME AND NUMBER:

Unemployment Insurance Claimant Portal, DOL/ETA–33.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The Department of Labor (DOL) Employment and Training Administration's (ETA) Office of Unemployment Insurance. The system will be hosted on the Department's cloud and data center computing infrastructure. This will serve as the primary location for the system. Duplicate versions of some or all system information may be at satellite locations where the ETA has granted direct access to support ETA operations, system backup, emergency preparedness, and/or continuity of operations. To determine the location of particular program records, contact the systems manager, listed in section ''System Manager'' below.

SYSTEM MANAGER(S):

Jim Garner, Administrator, Office of Unemployment Insurance, 200 Constitution Avenue NW, Washington, DC 20210.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title III of the Social Security Act (SSA), 42 U.S.C. 501–503; the Federal Unemployment Tax Act (FUTA), 26 U.S.C. 3304; Section 2118 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116–136), as amended; Section 410(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (42 U.S.C. 5177(a)); The Unemployment Compensation for Ex-Service Members (UCX) law (5 U.S.C. 8509); The Unemployment Compensation for Federal Employees (UCFE) law (5. U.S.C. 8501 *et seq.*); Chapter 2 of Title II of the Trade Act of 1974 (19 U.S.C. 2271 *et seq.*), as amended; 20 CFR parts 603 & 604.

PURPOSE(S) OF THE SYSTEM:

The Unemployment Insurance Claimant Portal (UICP) encompasses a joint state-federal program that provides cash benefits to eligible workers for unemployment insurance (UI). Each state administers a separate UI program under their respective state law, which must comply with guidelines established by federal law.

The UICP is a component of the Unemployment Insurance State Program American Rescue Plan Act investment. The UICP is part of a wider effort to modernize UI. The UICP system provides UI applicants with the ability to file and manage UI claims, and states with an improved UI claims intake process. Information about a claim will be captured and ultimately processed and owned by the state that will process the claim.

The information will consist of personally identifiable information (PII) as well as employment-related data consisting of start date of employment, end date of employment, reasons for separation, addresses and phone numbers. Claimants will navigate to the UICP web application and complete an identity-proofing and authentication process using an approved third-party provider. The third-party service provider will collect and encrypt applicant's email, password, name, date of birth, social security number, and images of a state issued identification card. The claimant will then file claims information or manage existing claims information. Finally, claimant data will be sent to or retrieved from states as needed.

While the UICP provides a user interface for claimants, the states themselves are still responsible for eligibility determinations, adjudication, and other administration of the UI program. Therefore, claims data collected by the UICP must be shared with states to ensure states have the information necessary to administer the UI program. As determined through state agreements, data may also be shared back with the UICP to convey claims status information to claimants.

Finally, the UICP will collect information about claims that is not personally identifiable, such as timestamps at various phases in the claims process, and metadata. Such data may be used to evaluate how well the system is performing on timeliness, equity, and other considerations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for and claimants of State or Federal unemployment compensation, employers or employees covered under a State or Federal unemployment compensation law, Disaster Unemployment Assistance or a short-time compensation program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system(s) may include personally identifiable information such as: Name, date of birth, social security number, address phone number and images necessary to verify the identity of an applicant or claimant; claims files; determinations by a State Workforce Agency and any case notes, conversation history, or other records used in making determinations; employer contribution records; employer wage records; account information such as email address and password; timestamps and metadata; and financial information such as preferred payment method and tax withholding selection.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from individuals, employers, and Federal and State Government agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to the disclosures permitted under 5 U.S.C. 522a(b) and consistent with the requirements and limitations in 20 CFR part 603, records may be disclosed in accordance with the Department's Universal Routine Uses of

Records published at 81 FR 25765, 25775 (April 29, 2016) and available on DOL's website at *https://www.dol.gov/agencies/sol/privacy/intro.* In addition, disclosures may be made:

1. To appropriate agencies, entities, and persons when (1) the DOL suspects or confirms a breach of the System of Records; (2) the DOL determines as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DOL (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the DOL's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

2. To another Federal agency or Federal entity, when the DOL determines that information from this System of Records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The files are stored electronically.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Files and automated data are retrieved after identification by coded file number and/or Social Security Number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The Department will prepare a record retention policy for approval through the National Archives and Records Administration (NARA). Until such policy is approved, the records will be maintained indefinitely.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Confidential unemployment compensation data will be maintained and stored consistent with the requirements of 20 CFR 603.9. Access by authorized personnel only. Computer security and physical safeguards are used for electronically stored data.

RECORD ACCESS PROCEDURES:

A request for access should be mailed to the System Manager and comply with the requirements specified in 29 CFR 71.2.

CONTESTING RECORD PROCEDURES:

A request for amendment should be mailed to the System Manager and comply with the requirements specified in 29 C.F.R § 71.9.

NOTIFICATION PROCEDURES:

Inquiries should be mailed to the System Manager and comply with the requirements specified in 29 CFR 71.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Milton Stewart,

Senior Agency Official for Privacy, Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor.

[FR Doc. 2022–05013 Filed 3–9–22; 8:45 am]

BILLING CODE 4510–FW–P

LEGAL SERVICES CORPORATION

Notice of Availability of Calendar Year 2023 Competitive Grant Funds for the Veterans Pro Bono Program

AGENCY: Legal Services Corporation.

ACTION: Notice.

SUMMARY: The Legal Services Corporation (LSC) provides grants of federally-appropriated funds for civil legal services to low-income individuals and families. LSC administers the process of awarding grant funds for the Veterans Pro Bono Program to furnish effective, efficient, and high-quality pro bono legal services to eligible veterans appearing before the United States Court of Appeals for Veterans Claims (Court). LSC hereby announces the availability of competitive grant funds for the Veterans Pro Bono Program for calendar year 2023 and solicits pre-applications from interested parties. The exact amount of available funds and the date, terms, and conditions of their availability for the calendar year 2023 will be determined through the congressional appropriations process for FY 2023. In 2021, Congress appropriated $3,286,509.

DATES: The deadline to submit a Pre-Application is Thursday, April 14, 2022, by 5 p.m. Eastern Time. Pre-Applications must be submitted by email to *TaboasA@lsc.gov.*

ADDRESSES: Letters of Intent must be submitted electronically to *TaboasA@lsc.gov.*

FOR FURTHER INFORMATION CONTACT: Anais M. Taboas, Program Counsel, Office of Program Performance, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007, (202) 295–1617, *TaboasA@lsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Funds for the Veterans Pro Bono Program are authorized by and subject to Public Law 102–229, 105 Stat. 1701, as incorporated by reference in subsequent appropriations for the United States Court of Appeals for Veterans Claims (Court). That law requires the Court to provide the funds to LSC to award grants or contracts for the provision of ''legal or other assistance, without charge, to veterans and other persons who are unable to afford the cost of legal representation in connection with decisions'' of, or other proceedings in, the Court.

Public Law 102–229 requires this assistance to be provided through ''a program that furnishes case screening and referral, training and education for attorney and related personnel, and encouragement and facilitation of pro bono representation by members of the bar and law school clinical and other appropriate programs, such as veterans service organizations, and through defraying expenses incurred in providing representation to such persons[.]''

I. Grant Application Process

A. Eligibility

LSC seeks proposals from (1) Non-profit organizations that have as a purpose the provision of free legal assistance to low-income individuals or the provision of free services to veterans; or (2) private attorneys or law firms that seek to establish such a non-profit for these purposes.

B. Veterans Pro Bono Grant Application Process

Applicants must first submit a Pre-Application to LSC via email to *TaboasA@lsc.gov* by Thursday, April 14, 2022, by 5 p.m. Eastern Time to be considered for a grant. After review by LSC staff, LSC's leadership decides which applicants will be asked to submit a full application. Applicants will be notified of approval to submit a full application by early May 2022. Full applications are due to LSC via email to *TaboasA@lsc.gov* by 5 p.m. Eastern on July 8, 2022. Once received, full applications will undergo a rigorous review by LSC staff and other subject matter experts. LSC leadership makes the final decision on funding the Veterans Pro Bono Program Grant.

C. Required Pre-Application Content

The Pre-Application must include the following information:

(1) Organization name;
(2) Organization type (*e.g.,* non-profit or law firm);
(3) Name and title of primary contact;
(4) Primary contact mailing address, phone number, and email address;
(5) Names and a brief description of relevant experience of principals and key staff;
(6) Names and a brief description of relevant experience of the current governing board;
(7) Brief description of how your organization will serve eligible veterans, dependents, or other persons with proceedings before the Court regardless of their location or residence; and
(8) If the non-profit organization has not yet been established, names and a brief description of relevant experience of prospective members of a governing board.

''Relevant experience'' includes experience with: (a) Veterans benefits law; (b) recruiting, training, supervising, and assigning cases to volunteer attorneys; (c) practice before the Court or supervision of attorneys practicing before the Court; (d) reviewing and evaluating veterans benefits cases; and (e) outreach and education for veterans and dependents regarding veterans benefits rights and procedures.

The Pre-Application must not exceed seven (7) single-spaced pages and must be submitted as a single PDF document.

D. Late or Incomplete Pre-Applications

LSC may consider a request to submit a Pre-Application after the deadline, but only if the Applicant submitted an email to *TaboasA@lsc.gov* explaining the circumstances that caused the delay before the Pre-Application deadline. Communication with LSC staff is not a substitute for sending a formal request and explanation to *TaboasA@lsc.gov.* At its discretion, LSC may consider incomplete Pre-Applications. LSC will determine the admissibility of late or incomplete Pre-Application on a case-by-case basis.

E. Additional Information and Guidelines

Additional guidance and instructions on the Veterans Pro Bono Program Pre-Application and Application processes will be available on *https://lsc.gov/grants/veterans-pro-bono-grant-program.*

The Application, guidelines, content requirements, and specific selection criteria will be available the week of May 10, 2022, at *www.lsc.gov.*

For more information about the current grantee, The Veterans Consortium Pro Bono Program, please visit *www.vetsprobono.org.*

Authority: 42 U.S.C. 2996g(e).

Dated: March 4, 2021.

Stefanie Davis,

Senior Associate General Counsel.

[FR Doc. 2022–05031 Filed 3–9–22; 8:45 am]

BILLING CODE 7050–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will convene a meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on April 5, 2022. A sample of agenda items to be discussed during the public session includes: An overview of fiscal year (FY) 2021 medical related events; an overview of how to minimize institutional approaches to reducing medical events; an overview of two yttrium-90 microsphere technologies; an overview on non-medical events for FYs 2020 and 2021; updates on the National Institute of Standards and Technology Radioisotope Measurement Assurance Program; a discussion on the current ACMUI reporting structure; and an update on Medical Team activities. The agenda is subject to change. The current agenda and any updates will be available on the ACMUI's Meetings and Related Documents web page at *https://www.nrc.gov/reading-rm/doc-collections/acmui/meetings/2022.html* or by emailing Mr. Don Lowman at the contact information below.

Purpose: Discuss issues related to 10 CFR part 35 Medical Use of Byproduct Material.

Date and Time for Open Session: Tuesday, April 5, 2022, from 10:00 a.m. to 5:00 p.m. EST.

Date	Webinar information (Microsoft Teams)
April 5, 2022.	*Link: https://teams.microsoft.com/l/meetup-join/19%3ameeting_MzgyMWU5ZDUtMDc2Ny00YmUwLWFkODUtNDk1N2Y5MmEzMTM2%40thread.v2/0?context=%7b%22Tid%22%3a%22e8d01475-c3b5-436a-a065-5def4c64f52e%22%2c%22Oid%22%3a%2209a47f07-225c-402e-8b6f-c9f03adf8db6%22%7d.* *Call in number (audio only):* +1 301–576–2978 (Silver Spring, MD, US). Phone Conference ID: 220 765 08#.

Public Participation: The meeting will be held as a webinar using Microsoft Teams. Any member of the public who wishes to participate in any open sessions of this meeting should click on the link above to join the meeting. It is recommended that attendees should login ten minutes prior to ensure they can properly connect to the meeting. Members of the public should also monitor the NRC's Public Meeting Schedule at *https://www.nrc.gov/pmns/mtg* for any meeting updates. If there are any questions regarding the meeting, persons should contact Mr. Lowman using the information below.

Contact Information: Mr. Don Lowman, email: *Donald.Lowman@nrc.gov,* telephone: 301–415–5452.

Conduct of the Meeting

The ACMUI Chair, Darlene F. Metter, M.D., will preside over the meeting. Dr. Metter will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit an electronic copy to Mr. Lowman using the contact information listed above. All submittals must be received by the close of business on March 28, 2022 and must only pertain to the topics on the agenda.

2. Questions and comments from members of the public will be permitted during the meeting, at the discretion of the ACMUI Chairman.

3. The draft transcript and meeting summary will be available on ACMUI's website *https://www.nrc.gov/reading-rm/doc-collections/acmui/meetings/2022.html* on or about May 17, 2022.

4. Persons who require special services, such as those for the hearing impaired, should notify Mr. Lowman of their planned participation.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in title 10 of the *Code of Federal Regulations,* Part 7.

Dated at Rockville, Maryland this 7th day of March, 2022.

For the U.S. Nuclear Regulatory Commission.

Russell E. Chazell,

Federal Advisory Committee Management Officer.

[FR Doc. 2022–05047 Filed 3–9–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–1151; NRC–2022–0047]

Westinghouse Electric Company, LLC; Columbia Fuel Fabrication Facility; and US Ecology, Inc.; Idaho Resource Conservation and Recovery Act Subtitle C Hazardous Disposal Facility Located Near Grand View, Idaho

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an environmental assessment (EA) and finding of no significant impact (FONSI) related to a request for alternate disposal, exemptions, and associated license amendment for the disposition of waste containing byproduct material and special nuclear material (SNM) from the Westinghouse Electric Company, LLC's (WEC) Columbia Fuel Fabrication Facility (CFFF) in Hopkins, South Carolina, under License Number SNM–1107. The material would be transported to and disposed of at the US Ecology, Inc. (USEI) disposal facility located near Grand View, Idaho, a Subtitle C Resource Conservation and Recovery Act (RCRA) hazardous waste disposal facility permitted by the State of Idaho to receive low-level radioactive waste. The NRC is also considering the related action of approving corresponding exemptions to USEI, allowing them to accept and dispose the material on their site. Approval of the alternate disposal request from WEC, the exemptions requested by WEC and USEI, and a conforming license amendment to WEC would allow WEC to transfer specific waste from CFFF for disposal at USEI.

DATES: The EA and FONSI referenced in this document are available March 10, 2022.

ADDRESSES: Please refer to Docket ID NRC–2022–0047 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0047. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov*. For technical questions, contact the individual listed in the ''For Further Information Contact'' section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov*. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jenny Tobin, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2328, email: *Jennifer.Tobin@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated November 5, 2021, as corrected by letter dated December 1, 2021, WEC requested exemptions and an associated license amendment to License Number SNM–1107, issued for the operation of the CFFF located in Hopkins, South Carolina pursuant to section 20.2002 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Method for obtaining approval of proposed disposal procedures.'' By letter dated November 5, 2021, USEI incorporated the supplemented WEC application in its request for corresponding exemptions. The requests are for NRC authorization for an alternate disposal of NRC-licensed byproduct and SNM from the CFFF. As required by 10 CFR 51.21, the NRC conducted an EA. Based on the results of the EA that follows, the NRC has determined that pursuant to 10 CFR 51.31, preparation of an environmental impact statement for the exemption request is not required and, pursuant to 10 CFR 51.32, issuance of a FONSI is appropriate.

WEC submitted a 10 CFR 20.2002 alternate disposal request (ADR) on May 8, 2020 with a corresponding exemption request from USEI on May 11, 2020. The NRC staff reviewed and approved the request on December 9, 2020, along with the corresponding exemptions for USEI. Following approval, WEC determined that the volume of material considered was incorrect. To resolve the issue WEC submitted a second request, dated February 8, 2021. The NRC staff reviewed and approved the second request and issued an updated safety evaluation report (SER) evaluating both requests as well as a new exemption to USEI on March 11, 2021. On June 1, 2021, WEC submitted another ADR for the disposal of additional material from CFFF. On September 14, 2021, in a response to an NRC staff request for additional information (RAI), WEC supplemented and narrowed its June 1, 2021, request to consider only the disposal of calcium fluoride (CaF_2) sludge containing byproduct material and SNM. WEC stated that the other waste material types discussed in the June 1, 2021, request would be addressed in the response to the NRC staff's RAI. The NRC staff approved the request to dispose of CaF_2 sludge at USEI on October 12, 2021.

This ADR seeks approval to dispose of volumetrically contaminated and surface-contaminated wastes using bounding dose calculations and corresponding volume and radionuclide concentration limits that are based upon the annual USEI worker exposure limit of 5 millirem per year (mrem/yr).

II. Environmental Assessment

Description of the Proposed Action

WEC and USEI requested NRC approval for a 10 CFR 20.2002 ADR, exemptions to 10 CFR part 70.3 and 10 CFR 30.3, and a conforming WEC license amendment to allow WEC to package, ship, and dispose of specific volumetrically contaminated and surface-contaminated waste at the USEI disposal facility. The volumetrically contaminated waste includes CaF_2 sludge dredged from the disposal lagoons and the Sanitary Lagoon located on the site, contaminated soil from under and adjacent to the Sanitary Lagoon, and soil associated with the demolition of the CaF_2 storage pad. The surface-contaminated waste being considered for disposal includes obsolete uranium hexafluoride (UF_6) shipping cylinders and debris associated with demolition and removal of the CaF_2 pad and Sanitary Lagoon. The waste being considered originates from processes associated with the chemical conversion of UF_6 to uranium dioxide (UO_2) performed at CFFF and

are contaminated with isotopic uranium (U–234, U–235, and U–238) and technicium-99 (Tc-99).

As proposed, this waste would be transported from CFFF in Hopkins, South Carolina, to the USEI facility near Grand View, Idaho. The USEI facility is a RCRA Subtitle C hazardous waste disposal facility permitted by the State of Idaho. The USEI site has both natural and engineered features that limit the transport of radioactive material. The natural features include a low precipitation rate [*i.e.,* 18.4 cm/year (7.4 in./year)] and a long vertical distance to groundwater (*i.e.,* 61-meter (203-ft) thick on average unsaturated zone below the disposal zone). The engineered features include an engineered cover, liners, and leachate monitoring systems. Because the USEI facility is not licensed by the NRC, this proposed action requires the NRC to exempt USEI from the Atomic Energy Act of 1954, and NRC licensing requirements with respect to USEI's requested receipt and disposal of this material.

Need for the Proposed Action

The need for the proposed action is to authorize a safe and appropriate method for disposing of the volumetrically contaminated and surface-contaminated waste as part of remediation activities currently being performed at the CFFF in accordance with Consent Agreement 19–02–HW between WEC and the South Carolina Department of Health and Environmental Control. The proposed action would also conserve low-level radioactive waste disposal capacity at licensed low-level radioactive disposal sites while ensuring that the material being considered is disposed of safely in a regulated facility.

Environmental Impacts of the Proposed Action

The NRC staff reviewed the information provided by WEC to support their 10 CFR 20.2002 alternate disposal request and for USEI's specific exemptions from 10 CFR 30.3 and 10 CFR 70.3 in order to dispose of the volumetrically contaminated and surface-contaminated waste. Under the 10 CFR 20.2002 criteria, a licensee may seek NRC authorization to dispose of licensed material using procedures not otherwise authorized by NRC regulations. The licensee's supporting analysis must show that the radiological doses arising from the proposed 10 CFR 20.2002 disposal will be as low as reasonably achievable and within the 10 CFR part 20 dose limits.

As documented in the SER, the NRC staff concluded that the requested alternate disposal is acceptable under 10 CFR 20.2002. Details provided in this request, in combination with past reviews considering similar material from the same site, provide an adequate description of the waste and the proposed manner and conditions of waste disposal. The use of maximum annual volumes and radionuclide concentration limits ensures that potential doses to members of the public, including transportation workers and USEI workers involved in processing and disposing of the waste upon its arrival at USEI, are minimal and within the ''few mrem'' per year criteria that the NRC established (see NUREG–1757, Volume 1, Revision 2). As USEI is a RCRA Subtitle C hazardous waste landfill permitted by the Idaho Department of Environmental Quality, these disposals are also subject to the RCRA regulations for the site, which includes a site-specific waste acceptance criteria.

NRC staff also considered non-radiological impacts associated with the proposed action. NRC staff concludes that approval of the proposed request would not result in significant environmental impacts from non-radiological effluents or significantly impact air quality or noise because the volume of materials to be transported for disposal are relatively small, the sites where the proposed action would occur are already disturbed industrial areas which perform these actions on a regular basis, and because the proposed action would not require the development or disturbance of additional land. In addition, approval of the proposed action will not significantly increase the probability or consequences of accidents associated with the transport and disposal of the volumetrically contaminated and surface-contaminated waste.

Considering the small amounts of radioactive material and limited volumes of material, along with the NRC staff's analyses in the SER, the NRC staff finds that the environmental impacts of the proposed action are not significant.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered the no-action alternative in which the NRC staff would deny the disposal request. Denial of the request would require WEC to transport the volumetrically contaminated and surface-contaminated waste to a licensed low-level radioactive processing and disposal facility that is authorized to take waste containing radioactive material in order to satisfy the requirements of the Consent Agreement. This action would ultimately only change the location of the disposal site. All other factors would be of similar significance. Therefore, the no-action alternative was not further considered.

Agencies and Persons Consulted

In accordance with its stated policy, on February 28, 2022, the staff consulted with the South Carolina Department of Health and Environmental Control and the Idaho Department of Environmental Quality regarding the environmental impacts of the proposed action. The State officials concurred with the EA and FONSI.

III. Finding of No Significant Impact

The proposed action consists of NRC approval of (a) WEC's and USEI's alternate disposal requests under 10 CFR 20.2002, (b) WEC and USEI's exemption request under 10 CFR 30.11(a) and 10 CFR 70.17(a), and the issuance of a conforming license amendment to WEC. Based on this EA, the NRC finds that there are no significant environmental impacts from the proposed action. Therefore, the NRC has determined, pursuant to 10 CFR 51.31, that preparation of an environmental impact statement is not required for the proposed action and a FONSI is appropriate.

IV. Availability of Documents

The documents identified in the following table are available to interested persons through ADAMS, as indicated.

Document	ADAMS accession No.
Request for Alternate Disposal Approval and Exemption for Specific Columbia Fuel Fabrication Facility Waste (License No. SNM–1197, Docket No. 70–1151), dated May 8, 2020.	ML20129J934 (Package)
Request for Exemptions under 10 CFR 30.11 and 10 CFR 70.17 for Alternate Disposal of Wastes from Columbia Fuel Fabrication Facility under 10 CFR 20.2002, dated February 25, 2021.	ML21061A273
Request for Exemptions under 10 CFR 30.11 and 10 CFR 70.17 for Alternate Disposal of Wastes from Columbia Fuel Fabrication Facility Under 10 CFR 20.2002, dated May 11, 2020.	ML20280A601

Document	ADAMS accession No.
US Ecology Exemption for Alternate Disposal of Specific Waste from the Westinghouse Columbia Fuel Fabrication Facility under 10 CFR 20.2002, 10 CFR 30.11 and 10 CFR 70.17, dated December 9, 2020.	ML20304A341
Westinghouse Electric Company, LLC—Amendment 25 to Material License SNM–1107, Exemption for Alternate Disposal of Specific Waste (Enterprise Project Identifier L–2020-LII-0009), dated December 9, 2020.	ML20302A083 (Package)
Request for Alternate Disposal Approval and Exemption for Specific Columbia Fuel Fabrication Waste (Docket No. 70–1151, Material License SNM–1107), dated February 8, 2021.	ML21039A719
Westinghouse Electric Company, LLC—Amendment 26 to Material License SNM–1107, Exemption for Alternate Disposal of Specific Waste (Enterprise Project Identifier L–2021–LLA–0013), dated March 11, 2021.	ML21064A225
U.S. Ecology Exemption for Alternate Disposal of Specific Waste from the Westinghouse Columbia Fuel Fabrication Facility under 10 CFR 20.2002, 10 CFR 30.11 and 10 CFR 70.17, dated March 11, 2021.	ML21061A277 (Package)
Request for Exemption Associated with Disposal of Specified Columbia Fuel Fabrication Facility Waste (Docket No. 70–1151), dated November 5, 2021.	ML21309A095
Request for Exemption Associated with Disposal of Specified Columbia Fuel Fabrication Facility Waste (Docket No. 70–1151), correction dated December 1, 2021.	ML21336A461
Safety Evaluation Report for Request or Alternate Disposal Approval and Exemptions from Disposal of Columbia Fuel Fabrication Facility Waste to the US Ecology Idaho Facility, dated March 4, 2022.	ML22054A045 (Package)
Request for Exemptions Associated with Disposal and Transportation of Specified Columbia Fuel Fabrication Waste dated June 1, 2021.	ML21153A001
Letter: Westinghouse Electric Company, LLC—Amendment 28 to Material License Snm–1107, Exemption for Alternate Disposal of Specific Waste (Enterprise Project Identifier L–2021–LLA–0101) dated October 12, 2021.	ML21214A093 (Package)
Request for Exemptions under 10 CFR 30.11 and 10 CFR 70.17 for Alternate Disposal of Wastes from Columbia Fuel Fabrication Facility under 10 CFR 20.2002, dated November 5, 2021.	ML21351A038
Letter from the Idaho Department of Environmental Quality entitled ''Review of the Draft Environmental Assessment related to an alternative disposal request from Westinghouse Columbia Fuel Fabrication Facility (CFFF) for disposal of CaF_2 Sludge,'' dated March 3, 2022.	ML22062B349
Email from Ken Taylor of the South Carolina Department of Health and Environmental Control entitled ''Review of Draft Environmental Assessment for Westinghouse Columbia alternative disposal request,'' dated March 3, 2022.	ML22062B355
NUREG–1757, Volume 1, Revision 2. Consolidated Decommissioning Guidance: Decommissioning Process for Materials Licensees.	ML063000243

Dated: March 4, 2022.

For the Nuclear Regulatory Commission.

Jacob I. Zimmerman,

Chief, Fuel Facility Licensing Branch, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2022–05030 Filed 3–9–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–397; NRC–2022–0062]

Energy Northwest; Columbia Generating Station

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering approval of the continued onsite disposal of sediments containing very low levels of radioactive materials at the Columbia Generating Station (Columbia), located in Benton County, Washington for Renewed Facility Operating License No. NPF–21, held by Energy Northwest (EN, the licensee). The NRC is issuing an environmental assessment (EA) and finding of no significant impact (FONSI) associated with the proposed action.

DATES: The EA and FONSI referenced in this document are available on March 10, 2022.

ADDRESSES: Please refer to Docket ID NRC–2022–0062 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0062. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mahesh Chawla, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–8371, email: *Mahesh.Chawla@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering approval of a request dated December 21, 2020, as supplemented by letter dated June 23, 2021, from EN for continued onsite disposal of sediments containing very low levels of radioactive material at Columbia, located in Benton County, Washington. Columbia is a single unit boiling water reactor. The cooling system consists of the circulating water system and standby service water system, including spray ponds and cooling towers. The sediments are generated from periodic cleaning of cooling towers and standby service water system spray ponds at the site. The licensee is requesting approval in

accordance with Section 20.2002 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Method for obtaining approval of proposed disposal procedures,'' to dispose of approximately 1,116 cubic meters (m^3) (1,460 cubic yards (yd^3)) of sediment onsite within an existing disposal area. Based on the results of the EA that follows, the NRC has determined that the proposed action will not have significant environmental impacts and is issuing a FONSI.

Under 10 CFR 20.2002, a licensee may seek NRC authorization to dispose of licensed material using procedures not otherwise authorized by the NRC's regulations. A licensee's supporting analysis must satisfy the requirements associated with the four parts of the regulation, including demonstrating that the radiological doses arising from the proposed disposal will be within the dose limits of 10 CFR part 20, ''Standards for Protection Against Radiation,'' and will be as low as reasonably achievable.

II. Environmental Assessment

Description of the Proposed Action

The proposed action would permit the disposal of up to 1,116 m^3 (1,460 yd^3) of sediment containing very low levels of radioactive material from the circulating water system cooling towers and the standby service water system spray ponds into sediment disposal cells in an existing sediment disposal area on the Columbia site. This material results from the accumulation of sediment in the cooling towers and the standby service water system spray ponds and is removed from these systems, as needed, to prevent build-up.

Since 1995, the licensee has disposed of sediment containing very low concentrations of radioactive material from cooling towers and the standby service water system spray ponds within disposal cells located approximately 250 feet south of the cooling towers. Currently, the sediment disposal area totals approximately 4,459 square meters (m^2) (48,000 square feet (ft^2) and consists of five disposal cells. Two of the disposal cells no longer have capacity for future sediment disposal. The three remaining disposal cells, including two active disposal cells and one newly established cell for future disposal, have a combined capacity of approximately 1,116 m^3 (39,420 ft^3). The corners of the disposal area are marked with posts and signs indicating its dedicated purpose, and a fence with a locked gate encloses the disposal area to prevent inadvertent access. Sediments collected from the cooling towers and the spray ponds consist of sand and silt-sized particles, with up to 25 percent of organic material by weight. The sediments are shown to have low levels of metals, with concentrations of lead and chromium detected above background levels. Removal and transfer of the sediment from the cooling towers will be via a vacuum truck or other mechanical means. The vacuum truck will be filled with sediment and emptied into the disposal cell during a cooling tower cleaning event. Removal and transfer of sediment from the standby service water system spray ponds will be determined by Columbia's operating status. When the plant is offline and water drained from the ponds, a vacuum truck will be used to remove and transfer the sediment. During plant operations when the spray ponds cannot be drained, the sediment will be vacuumed by divers into the vacuum truck and then discharged to the disposal cells. Pumping of the sediment from the spray ponds to large filter bags may also be used to remove the sediment from the spray ponds. The filter bags are used to separate the water from the sediment. Once dewatered, the sediment is moved to the disposal cells and the water that was collected from the laydown area is pumped back to the spray ponds. Each disposal cell will continue to be filled until the level reaches the top of the berm. Transportation of the sediments from the cooling towers and spray ponds to the disposal cells occurs within the boundaries of the Columbia property.

The proposed action is in accordance with the licensee's application dated December 21, 2020, as supplemented by letter dated June 23, 2021.

Need for the Proposed Action

The proposed action is needed to allow onsite disposal of sediments containing very low levels of radioactive material removed from Columbia's cooling towers and spray ponds.

Benefits of the licensee's proposed action include significantly reduced transportation distances and costs incurred as a result of offsite disposal, while maintaining protection of public health and safety and the environment. This request provides the licensee with an alternative to the usage of offsite shallow land burial waste repositories consistent with a previously released NRC Information Notice (IN) 83–05, ''Obtaining Approval for Disposal of Very-Low-Level Radioactive Waste,'' dated February 24, 1983.

Environmental Impacts of the Proposed Action

This section addresses the radiological and non-radiological (resource-specific) impacts of the proposed action. The NRC considered the potential impacts of the proposed sediment disposal activities as well as the potential cumulative impacts associated with past, present, and reasonably foreseeable activities including consideration of recent disposal cell construction on the Columbia site that was completed in November 2020.

Radiological Impacts and Human Health Occupational Dose

The proposed request for onsite disposal of slightly contaminated sediment will not require any physical changes to the plant or plant operations; therefore, there will be no change to any in-plant radiation sources. In addition, the NRC's review of the processes and procedures for disposing of the material found that doses to different individuals involved with these disposal actions would be less than the NRC's public dose limit of 25 millirem per year (mrem/yr). NRC staff also confirmed that the established maximum radionuclide concentration limits ensure that sum of fractions calculations for sediments containing a mixture of radionuclides will not exceed one.

The licensee applies pre-disposal screening criteria to contaminated sediment samples in accordance with Washington State's Energy Facility Site Evaluation Council (EFSEC) Resolution No. 299 to ensure that disposal limits are met.[1] Routine disposal cell monitoring is performed to determine the direct dose rates using thermoluminescent dosimeters (TLDs) placed in close proximity to disposal cells as well as a control TLD located farther away. Specifically, TLD 119B is located at the disposal cells while TLD 119 Ctrl is located 200 yards east of the sediment disposal area and is used for determining background radiation levels.

The NRC staff reviewed the licensee's summary report of radionuclide

[1] The NRC clarified the jurisdiction of these requests and their related disposal actions in Regulatory Issue Summary (RIS)–2016–11, ''Requests to Dispose of Very Low-Level Radioactive Waste Pursuant to 10 CFR 20.2002.'' As reflected in that document, the NRC has jurisdiction over both the 20.2002 request for alternative disposal procedures and the on-site disposal of this material. This EA provides the NRC's analysis of the environmental impacts of approval of the disposal procedures under 20.2002; no separate NRC action is necessary regarding on-site disposal because the licensee already has authority to possess the radioactive materials.

concentrations for each onsite disposal event from 2010 through 2019. The measured concentrations for each of the radionuclides were much lower than the corresponding disposal limits. Additionally, the mean quarterly TLD results were provided for each monitoring station for each year and were documented in the summary report. The staff confirmed, using the measured exposure rate, that the dose estimated to workers would be much lower than the licensee's established limit of 15 mrem/yr. Thus, the proposed Columbia onsite disposal of slightly contaminated sediment containing very low concentrations of radioactive material within an existing disposal cell will have no significant radiological impact to the workers. Additionally, the licensee's established limit of 15 mrem/yr is below the radiological criteria of 25 mrem/yr for unrestricted use after license termination in accordance with 10 CFR 20.1402, ''Radiological criteria for unrestricted use.''

Offsite Dose

This request is for approval for the onsite disposal of slightly contaminated sediment within the sediment disposal area on the Columbia site. As such, members of the public will not have access to the disposal area. Therefore, there is no direct radiation exposure to the public. In addition, the proposed action does not require any physical changes to the plant or plant operation. Therefore, there will be no change to the types and quantities of radioactive effluents or to the operation of the radioactive gaseous and liquid waste management systems to perform their intended functions. Once deposited in the sediment disposal cell, the consolidated, mud-cake consistency of the dried sediment is not readily erodible, including by precipitation in the semiarid climate. Should erosion become a concern, site personnel will cover the deposited material with locally sourced sand to minimize fugitive dust emissions. The proposed onsite disposal would not contribute any additional groundwater contamination and associated radiological exposure to the public. For these reasons, the offsite radiation dose to members of the public would not change and would continue to be within regulatory limits and therefore would not be significant. Finally, as previously noted, the potential onsite radiological dose would be below the radiological criteria for unrestricted use after license termination. Therefore, the proposed action would not be expected to have a significant radiological impact to the public.

Radiological Impacts Summary

Based on the radiological evaluations previously discussed, the NRC staff has determined the proposed action would not result in any adverse or significant radiological impacts. The proposed action would have no or a negligible contribution to cumulative radiological doses to workers and the public.

Land Use

Current land uses would not be affected by the proposed onsite disposal of slightly contaminated sediment at Columbia. The designated disposal site is a previously disturbed area adjacent to the Columbia cooling towers. Therefore, the disposal area is industrial in nature, and the NRC staff has determined that there would be no significant land use impacts associated with the proposed action. The recent construction of the disposal cell and the continued use of the sediment disposal area under the proposed action would not affect existing land uses and would not contribute to regional cumulative land use trends.

Water Resources

The proposed sediment disposal location includes existing disposal cells and a newly established disposal cell within a designated sediment disposal area. As with past disposals, site personnel would transport the dewatered but saturated sediment removed from the cooling tower structures and deposit the material in a disposal cell. These activities would have no or negligible impact on surface water hydrology or quality because no surface water drainages exist in or near the sediment disposal area. The closest surface water feature is the Columbia River, which is located approximately 3.5 miles to the east of the disposal area.

Once deposited in the cell, the consolidated, mud-cake consistency of the dried sediment is not readily erodible, including by precipitation in the semiarid climate. When necessary, site personnel will cover the deposited material with locally sourced sand should erosion become a concern. In addition, the licensee's cooling system sediment disposal activities are subject to Columbia's National Pollutant Discharge Elimination System (NPDES) permit (number WA–002515–1) (EFSEC 2014, 2019). Special Condition 10 of the site NPDES permit requires the licensee to develop, implement, and maintain a Storm Water Pollution Prevention Plan. This plan prescribes best management practices for soil erosion and sediment control, stormwater pollution prevention, waste management, and spill response across the Columbia site.

The NPDES permit requires that the licensee manage all solid waste material so that it does not enter either surface waters or groundwater. The permit also requires that the discharge of leachate be managed to prevent a violation of State water quality standards for surface water and groundwater. Further, the NPDES permit specifically references site cooling water system sediment disposal operations and requires that the licensee follow the prescribed procedures for sediment handling and disposal set forth in the latest resolutions (*i.e.,* Resolution No. 299) issued by the State of Washington EFSEC.

In accordance with EFSEC Resolution No. 299, EN personnel must conduct environmental and radiological monitoring of the sediment and the disposal site in accordance with the licensee's standard environmental monitoring procedures and practices. This monitoring includes ensuring that sediments placed in the disposal cells comply with specified disposal concentration limits for listed radionuclides. The licensee provides an updated summary of sediment disposal activities and associated sediment monitoring results in its publicly available annual radiological environmental operating reports. The NRC staff's review of the latest available report dated May 13, 2020, shows that the radionuclide concentrations in sediments placed in the disposal cells were well below the prescribed concentration limits, with overall activity levels (*i.e.,* for cobalt-60 and cesium-137) within the range historically observed for cooling tower sediment. The licensee's adherence to the measures previously described and associated regulatory requirements would prevent or minimize any surface water quality or groundwater quality impacts during sediment disposal operations.

The potential exists for some water from the saturated sediment to infiltrate through the unlined disposal cells and reach groundwater. Groundwater occurs at a depth of approximately 50 feet below land surface at the disposal area. The underlying groundwater is contaminated with tritium and other contaminants associated with legacy activities at the U.S. Department of Energy's Hanford Reservation. Nevertheless, EN's adherence to sediment disposal procedures and disposal concentration limits for specified radiological constituents would ensure that disposal activities would not further contribute to

groundwater contamination and associated radiological exposure to the public.

Long term, management and monitoring activities would ensure that there are no inadvertent offsite impacts to surface water or groundwater quality from continued disposal site operations. Based on the previously mentioned information, the NRC staff has determined the impacts to water resources would not be significant.

With the work practices, management, and monitoring measures in place as previously described, the recent disposal cell construction and the continued use of the sediment disposal area would result in a negligible contribution to cumulative water quality impacts, either in the underlying groundwater system or in the Columbia River.

Air Resources

With regards to the National Ambient Air Quality Standards for criteria pollutants (ozone, carbon monoxide, lead, particulate matter, nitrogen oxides, and sulfur dioxide), Benton County is designated in attainment for all criteria pollutants (EPA 2021). Air emissions would be predominantly from the transfer of the sediment and equipment used in transporting the sediment (*e.g.,* vacuum truck). The removal and disposal of sediment can result in fugitive dust emissions; fugitive dust is particulate matter suspended in the air. The use of vacuum trucks or filter bags to remove and transfer the sediment minimizes the potential for fugitive emissions. Similarly, soil erosion, and therefore fugitive dust, from the disposal cells is minimal since the sediment in the disposal cells dries as mud-cake. Air emissions from equipment exhaust would be intermittent and localized.

Based on the previously provided information, the NRC staff has determined that there would be no significant air quality impacts associated with the proposed action. With the best management practices (water application and placement of sand or gravel) that have been implemented to control fugitive dust, the recent construction of the disposal cell and the continued use of the sediment disposal area would result in a negligible contribution to cumulative air quality impacts in Benton County.

Terrestrial and Aquatic Resources

The designated disposal site is a previously disturbed area within the industrial-use portion of the Columbia site. The area where the disposal cells are located were originally disturbed during construction of Columbia and currently contain sediments from previous cleaning operations. To the west of the disposal cells, the borrow pit is used as a construction landfill. All areas of the disposal site are largely devoid of vegetation, although some sparse grasses and shrubs have repopulated the area. Topography is generally flat with some gentle slopes. Some animals may frequent the disposal site. Mammals common to the Columbia property include mule deer (*Odocoileus hemionus*), coyote (*Canis latrans*), cottontail rabbit (*Sylvilagus nuttalli*), and black-tailed jackrabbit (*Lepus californicus*) (NRC 2012). Columbia is within the Pacific Flyway, and over 145 species of birds have been reported from the site. Some of the most commonly sighted birds include western meadowlark (*Sturnella neglecta*), red-winged blackbird (*Agelaius phoeniceus*), bank swallow (*Riparia riparia*), brown-headed cowbird (*Molothrus ater*), eastern kingbird (*Tyrannus tyrannus*), California gull (*Larus californicus*), Bullock's oriole (*Icterus bullockii*), killdeer (*Charadrius vociferus*), western kingbird (*Tyrannus verticalis*), and barn swallow (*Hirundo rustica*). No aquatic resources, such as wetlands, streams, or ponds occur within the disposal site.

No terrestrial or aquatic habitat would be altered, modified, or destroyed as a result of the proposed action. The licensee anticipates no surface water or storm water runoff as a result of disposal activities. Some limited wind erosion and fugitive dust may occur during movement of heavy equipment during use of the disposal cells. Wind erosion after placement of the sediment is not expected because of its tendency to dry as mud-cake. Noise associated with grading, transportation, or other related activities may temporarily disturb wildlife. However, most wildlife on or near the disposal site is likely relatively tolerant of human activity given that the disposal site is part of a larger operating power plant site. Disposal activities would not require additional lighting. The recent construction of the disposal cell and the continued use of the sediment disposal area would not affect terrestrial or aquatic habitats, and no cumulative effects to ecological resources would result.

As previously described, the only potential impact on ecological resources is temporary noise-related disturbance; however, this does not pose a significant impact on surrounding wildlife due to their relative tolerance to human activity. Therefore, the NRC concludes that the impacts to aquatic and terrestrial resources resulting from the proposed action would not be significant.

Threatened and Endangered Species

The Endangered Species Act (ESA) was enacted to prevent further decline of endangered and threatened species and to restore those species and their critical habitat. Section 7 of the ESA requires Federal agencies to consult with the U.S. Fish and Wildlife Service (FWS) or National Marine Fisheries Service (NMFS) regarding actions that may affect listed species or designated critical habitats. The NRC staff conducted a search of Federally listed species and critical habitats that have the potential to occur in the action area using the FWS's Environmental Conservation Online System Information for Planning and Conservation system. The FWS-generated report from this system (FWS 2021) identifies two Federally listed species that occur or potentially occur within the vicinity of the action area: Western yellow-billed cuckoo (*Coccyzus americanus*) and bull trout (*Salvenlinus confluentus*). Additionally, the upper Columbia River spring chinook salmon (*Oncorhynchus tshawytscha*) and upper Columbia River steelhead (*O. mykiss*), which are under the jurisdiction of NMFS, occur in the Columbia River, which lies approximately 3.5 miles east of the Columbia site. No critical habitats occur in the action area. The designated disposal site lacks suitable aquatic features for the three fish species. Therefore, these species do not occur in the action area and would not be affected by the proposed action.

The western yellow-billed cuckoo is associated with riparian habitats, especially cottonwood-willow forests. When migrating, the species may inhabit coastal scrub, second-growth forests, and forest edges. Although this species has been recorded within Benton County, it has not been observed on the Columbia site. Based on the lack of suitable habitat and sightings, the NRC staff concludes that this species does not occur within the action area and would, therefore, not be affected by the proposed action.

For these reasons, the NRC staff concludes that the proposed action would have no effect on Federally listed species or designated critical habitats. Federal agencies are not required to consult with NMFS or the FWS if they determine that an action will not affect listed species or critical habitats. Thus, the ESA does not require consultation for the proposed action, and the NRC staff considers its obligations under the

ESA Section7 to be fulfilled for the proposed action.

Historic and Cultural Resources

Section 106 of the National Historic Preservation Act requires Federal agencies to take into account the effects of their undertakings on historic properties. Historic properties are defined as resources included in, or eligible for inclusion, in the National Register of Historic Places. There are no historic properties within the Columbia site. The designated disposal site is a previously disturbed area adjacent to the Columbia cooling towers, which is not considered a culturally sensitive area. The only known culturally sensitive area at Columbia is approximately 3 miles to the east of the sediment disposal area, along the Columbia River. EN has been disposing sediment from the cooling towers and spray ponds in disposal cells within this area since 1995 (Energy Northwest 2020). Based on the information previously mentioned, the NRC staff concludes (1) there would be no significant historic and cultural resources impacts associated with continued disposal of sediment within the existing disposal cells, and (2) continued disposal of sediment within the existing disposal cells does not have the potential to cause effects on historic properties.

Given that the disposal site is in a previously disturbed area and not near culturally sensitive areas, the recent construction of the disposal cell and the continued use of the sediment disposal area would not have a cumulative impact on historic and cultural resources.

Socioeconomics

Current socioeconomic conditions would be unaffected by the proposed onsite disposal of slightly contaminated sediment at Columbia. The licensee would use existing resources including onsite workforce or local contractors to conduct the disposal; therefore, there would be no significant socioeconomic impacts. Similarly, the recent construction of the disposal cell and the continued use of the sediment disposal area would result in a negligible contribution to cumulative socioeconomic impacts.

Noise

Noise emissions would occur as a result of equipment used onsite to remove and transfer the sediment. Noise levels from the proposed action would not be beyond those generated from operation of Columbia. Furthermore, the nearest resident is approximately 4.5 miles from Columbia, and noise levels from equipment and activities are not expected to be noticeable at this distance.

Based on the information previously mentioned, the NRC staff has determined that there would be no significant noise impacts associated with the proposed action.

Environmental Justice

The environmental justice impact analysis evaluates the potential for disproportionately high and adverse human health and environmental effects on minority and low-income populations that could result from the proposed disposal of slightly contaminated sediment at Columbia. Such effects may include human health, biological, cultural, economic, or socioeconomic impacts.

According to the 2010 Census, approximately 27 percent of the total population residing within a 10-mile radius of Columbia identified themselves as minority (MCDCCAPS 2021). The largest minority populations were people of Hispanic, Latino, or Spanish origin of any race (18 percent). Minority populations within Benton County comprise 30 percent of the total population with the largest minority populations being Hispanic, Latino, or Spanish origin of any race (23 percent).

According to the U.S. Census Bureau's 2015–2019 American Community Survey 5-Year Estimates using the University of Missouri's Circular Area Profiling System (MCDCCAPS 2021), approximately 9 percent of individuals and 6.5 percent of families residing within a 10-mile radius of Columbia were identified as living below the Federal poverty threshold. The 2019 Federal poverty threshold was $26,172 for a family of four (USCB 2021).

According to the U.S. Census Bureau's 2019 American Community Survey 1-Year Estimates (USCB 2021), the median household income for Washington was $78,687, while 10 percent of the state population and 6 percent of families were found to be living below the Federal poverty threshold. Benton County had a lower median household income average ($72,084) with 11 percent of individuals and 9 percent of families living below the poverty level, respectively.

Potential impacts to minority and low-income populations would mostly consist of radiological and environmental effects (*e.g.,* noise and dust impacts). Radiation doses are expected to remain well within regulatory limits and noise and dust impacts would be temporary and limited to onsite activities.

Based on this information and the analysis of human health and environmental impacts presented in this EA, minority and low-income populations near Columbia are not expected to experience disproportionately high and adverse human health and environmental effects from the proposed action.

Similarly, the contributory effects of the recent construction of the disposal cell and the continued use of the sediment disposal area would also not have disproportionately high and adverse human health and environmental cumulative effects on minority and low-income populations residing in the vicinity of the Columbia site.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed request (*i.e.,* the ''no-action'' alternative). Denial of the application would result in no change in current environmental conditions or impacts. However, if the request for continued onsite disposal of slightly contaminated sediments were not approved, the licensee would have to pursue other means of managing materials removed from the Columbia cooling system. The no-action alternative would not satisfy the purpose and need for efficient and cost-effective disposal of routinely generated sediments from the Columbia cooling system.

As an alternative to the proposed action and no-action alternative, the NRC staff considered other options for disposing contaminated sediments. The most reasonable alternative would involve disposal at an offsite location. The chosen site would have to be licensed to accept low-level waste (LLW) including the slightly contaminated sediments from Columbia. In considering this alternative, the potential environmental impacts of loading and transporting the contaminated sediments from Columbia to any licensed, offsite disposal facility would be greater than those associated with the proposed action. As discussed in IN 83–05, the NRC has recognized that onsite disposal of LLW can minimize the quantity of waste shipped to radioactive waste disposal facilities and can provide a reasonable alternative to the high costs associated with disposal at radioactive waste disposal facilities. Therefore, disposal at an offsite location would not result in a compensating improvement in the

environmental impacts, as there would be additional transportation related impacts associated with transporting the contaminated sediments offsite.

Alternative Use of Resources

The proposed action does not involve the use of any different resources or significant quantities of resources beyond those previously considered and associated with past onsite disposals of sediments from Columbia's cooling system. Further, the proposed disposal activities are consistent with the proposed action (Columbia license renewal and 20 years of continued operations) considered in NUREG–1437, Supplement 47.

Agencies and Persons Consulted

The NRC notified the representative from the State of Washington on October 28, 2021, of the EA and FONSI, and was informed on February 4, 2022, that the State of Washington does not have any comments on this action. No additional agencies or persons were consulted regarding the environmental impact of the proposed action. The NRC staff determined that the proposed action would have no effect on Federally listed threatened and endangered species that could occur on or near the proposed disposal area. As well, the proposed action would have no potential to cause effects on historic properties. Therefore, consultation was not required under Section 7 of the ESA or under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

Energy Northwest has requested onsite disposal of up to 1,116 m^3 (39,420 ft^3) of sediments containing very low levels of radioactive materials at Columbia in accordance with 10 CFR 20.2022. Based on the EA, included in Section II of this document, the NRC staff has concluded that the proposed action will not have a significant impact on the quality of the human environment. Consistent with 10 CFR 51.21, the NRC conducted an environmental review of the proposed action, and this FONSI incorporates by reference the EA in Section II. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

IV. Availability of Documents

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

Document	ADAMS Accession No. 1/web link
Energy Northwest, ''Columbia Generating Station, Docket No. 50–397 On-Site Cooling System Sediment Disposal,'' dated December 21, 2020.	ADAMS Accession No. ML20356A172.
Energy Northwest, ''Columbia Generating Station, Docket No. 50–397 Response to Request for Additional Information Related to On-Site Cooling System Sediment Disposal,'' dated June 23, 2021.	ADAMS Accession No. ML21174A151.
State of Washington, Energy Facility Site Evaluation Council (EFSEC 2014). National Pollutant Discharge Elimination System Waste Discharge Permit No. WA0002515–1, Energy Northwest's Columbia Generating Station, dated September 30, 2014.	*https://www.efsec.wa.gov/energy-facilities/columbia-generating-station/columbia-generating-station-permits* (date accessed August 17, 2021).
Energy Northwest, ''Columbia Generating Station, Docket No. 50–397 Independent Spent Fuel Storage Installation, Docket No. 72–35 2019 Annual Radiological Environmental Operating Report,'' dated May 13, 2020.	ADAMS Accession No. ML20134J113.
State of Washington Energy Facility Site Evaluation Council (EFSEC 2019). Letter from Sonia Bumpus, EFSEC, to S. Khounnala, Energy Northwest Environmental and Regulatory Programs Manager. Subject: Columbia Generating Station, Energy Northwest (EN) National Pollutant Discharge Elimination System (NPDES) Permit No. WA002515–1 Extension of NPDES Permit, dated September 13, 2019.	*https://www.efsec.wa.gov/energy-facilities/columbia-generating-station/columbia-generating-station-permits* (accessed January 19, 2022).
U.S. Environmental Protection Agency (EPA 2021). Washington Nonattainment/Maintenance Status for Each County by Year for All Criteria Pollutants,'' data is current as of January 31, 2022.	*https://www3.epa.gov/airquality/greenbook/anayo_wa.html* (date accessed August 16, 2021).
U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office. (FWS 2021). ''Pygmy Rabbit (Columbia Basin DPS).''.	*https://ecos.fws.gov/ecp/species/1126.*
Endangered Species Act of 1973, as amended	16 U.S.C. 1531 *et seq.*
U.S. Fish and Wildlife Service, Columbia Onsite Disposal 20.2002 Exemption Request, ''List of threatened and endangered species that may occur in your proposed project location or may be affected by your proposed project,'' dated August 17, 2021.	ADAMS Accession No. ML21229A180.
National Historic Preservation Act, as amended	54 U.S.C. 300101 *et seq.*
Missouri Census Data Center Circular Area Profiling System (MCDCCAPS 2021). Summary Report, U.S. Census 2010 Summary File 1 (SF1) and Aggregated 2015–2019 American Community Survey Data Estimates in a 10-mile radius around the proposed disposal site at Columbia (46.471111 Lat., –119.333889 Long.).	Summary Report, U.S. Census 2010 Summary File 1: *https://mcdc.missouri.edu/cgi-bin/broker?_PROGRAM=apps.caps2010.sas&_debug=&latitude=46.471111&longitude=-119.333889&radii=10&sitename=&units=bgs* (accessed January 19, 2022). Aggregated 2015–2019 American Community Survey Data Estimates: *https://mcdc.missouri.edu/cgi-bin/broker?_PROGRAM=apps.capsACS.sas&_SERVICE=MCDC_long&_debug=&latitude=46.471111&longitude=-119.333889&radii=10&sitename=&dprofile=on&eprofile=on&sprofile=on&hprofile=on&units=* (accessed January 19, 2022).

Document	ADAMS Accession No. 1/web link
U.S. Census Bureau (USCB 2021). ''2019 American Community Survey 1-Year Estimates, Table S1701—Poverty Status in the Past 12 Months, Table S1702 ''Poverty Status in the Past 12 Months of Families,'' and Table S1901 ''Income in the Past 12 Months (in 2019 Inflation-Adjusted Dollars)'' for Benton County and the State of Washington.	Table S1701: *https://data.census.gov/cedsci/table?q=S1701%3A%20POVERTY%20STATUS%20IN%20THE%20PAST%2012%20MONTHS&tid=ACSST1Y2019.S1701* (accessed January 19, 2022). Table S1702: *https://data.census.gov/cedsci/table?q=s1702&tid=ACSST1Y2019.S1702* (accessed January 19, 2022). Table S1901: *https://data.census.gov/cedsci/table?q=S1901&g=0400000US53_0500000US53005* (accessed January 19, 2022).
U.S. Nuclear Regulatory Commission. (NRC 2012). NUREG–1437, Supplement 47, Vol.1, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants Supplement 47 Regarding Columbia Station,'' dated April 2012.	ADAMS Accession No. ML12096A334.

Dated: March 7, 2022.

For the Nuclear Regulatory Commission.

Mahesh L. Chawla,

Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2022–05043 Filed 3–9–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–29146; License No. 21–24685–01; EA–21–146; NRC–2022–0056]

In the Matter of Somat Engineering, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Confirmatory order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a Confirmatory Order to Somat Engineering, Inc. (Somat) to document commitments made as part of a settlement agreement made between the NRC and Somat following an alternative dispute resolution mediation session held on January 11, 2022. The mediation addressed three apparent violations involving Somat's failure to secure portable moisture density gauges against loss or unauthorized access or removal. Somat has committed to various measures intended to improve its ability to track such gauges, to improve employee awareness of their responsibilities to secure such gauges against loss or unauthorized access, and to share their lessons learned with others in the industry. The Confirmatory Order is effective upon issuance.

DATES: The confirmatory order was issued on March 3, 2022.

ADDRESSES: Please refer to Docket ID NRC–2022–0056 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0056. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The Confirmatory Order to Somat Engineering, Inc is available in ADAMS under Accession No. ML22025A039.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Shelbie Lewman, Region III, U.S. Nuclear Regulatory Commission, telephone: 630–829–9653, email: *Shelbie.Lewman@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated: March 4, 2022.

For the Nuclear Regulatory Commission.

Mohammed A. Shuaibi,

Deputy Regional Administrator, NRC Region III.

Attached—Confirmatory Order

United States of America

Nuclear Regulatory Commission

In the Matter of Somat Engineering, Inc.
030–29146
21–24685–01
EA–21–146

Confirmatory Order Modifying License (Effective Upon Issuance)

I

Somat Engineering, Inc. (Somat or the licensee) is the holder of Nuclear Materials License No. 21–24685–01 renewed on September 24, 2021, by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Part 30 of Title 10 of the *Code of Federal Regulations* (10 CFR). The license authorizes the operation of portable moisture/density gauges containing licensed radioactive materials for measuring physical properties of materials at temporary job sites in NRC jurisdiction in accordance with conditions specified in the license. The licensee's facilities are located in Grand Rapids and Taylor, Michigan.

This Confirmatory Order (CO) is the result of an agreement reached during an Alternative Dispute Resolution (ADR) mediation session conducted on January 11, 2022, in Lisle, Illinois.

II

On November 2, 2021, the NRC issued Inspection Report 03029146/2021001(DNMS) to Somat, which documented the identification of three apparent violations that were being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The apparent violations concerned: (1) The loss of a portable moisture density gauge due to

the failure to control and maintain constant surveillance of the gauge after failing to secure it as required by 10 CFR 20.1802 and 10 CFR 30.34(i); (2) the failure to secure this gauge from shifting during transportation as required by 10 CFR 71.5(a) and 49 CFR 173.448(a); and (3) the failure to secure a second portable moisture density gauge from unauthorized removal or access as required by 10 CFR 20.1801 and 10 CFR 30.34(i).

The NRC notified Somat by letter, dated November 2, 2021, (Agencywide Documents Access and Management System (ADAMS) Accession No. ML21302A205) of the results of the inspection with an opportunity to: (1) Provide a response in writing, (2) attend a predecisional enforcement conference, or (3) to participate in an ADR mediation session in an effort to resolve this matter.

In response to the NRC's offer, Somat requested the use of the NRC's ADR process to resolve differences it had with the NRC. On January 11, 2022, the NRC and Somat met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. The ADR process is one in which a neutral mediator, with no decision-making authority, assists the parties in reaching an agreement on resolving any differences regarding the dispute. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

III

During the ADR session, Somat and the NRC reached a preliminary settlement agreement.

The NRC recognizes that immediately following each incident, Somat took corrective actions. As a corrective action with respect to the lost gauge, Somat made a concerted effort to recover the gauge, suspended the technician responsible for the loss without pay and required him to retake all company training related to gauge use, and reiterated policies and expectations for gauge use to all technicians. As a corrective action with respect to the unsecured gauge, Somat's management sent a memo to all technicians reiterating requirements and expectations for maintaining control of vehicles and their contents.

Therefore, the parties agree to the following terms and conditions:

1. Somat commits to create and implement an electronic form that will be used by Somat field personnel to verify the presence and security of licensed gauges any time prior to leaving the storage location of the gauges or a job site where gauges are used. The form will be completed electronically and submitted with a photo of the secured gauge in the vehicle (except for rare occurrences, *e.g.,* inoperable phone camera). An independent Somat representative will review the forms on a random basis, and there will be no fewer than 3 reviews per week when gauges are in use. This commitment will be implemented no later than May 1, 2022. Somat will evaluate the effectiveness of this commitment and develop a report no later than one year following the date of this Confirmatory Order, to be made available to NRC inspectors for review.

2. Somat commits to engage with the Michigan Department of Transportation (MDOT) to propose a lessons-learned summary of these incidents for inclusion in MDOT's initial and refresher training of moisture density gauge technicians. This summary need not identify Somat's company information or that of its personnel. This contact will occur no later than December 31, 2022.

3. Somat commits to engage with InstroTek Incorporated to propose a lessons-learned summary of these incidents for inclusion into InstroTek's periodic ''lunch and learn'' seminars. This summary need not identify Somat's company information or that of its personnel. This contact will occur no later than December 31, 2022.

4. Somat commits to include a discussion of these incidents, with lessons learned, at its Annual Pre-Season Construction Field Staff Meeting(s) occurring no later than June 30, 2022.

5. Somat commits to include a discussion of these incidents, with lessons learned, at one of its bi-weekly management meetings occurring no later than May 1, 2022.

6. Somat commits to include a discussion of these incidents, with lessons learned, at its next Health and Safety Committee Meeting no later than May 1, 2022. The minutes from the Health and Safety Committee Meeting will include the discussion of the incident and will be provided to all company personnel. These minutes will be provided no later than May 1, 2022.

7. Somat commits to enhance its job site audit program—specific to the use of gauges—to perform audits of job sites more frequently. Specifically, one audit will occur each week at a job site chosen at random when gauges are in use. These enhanced audits will begin no later than May 1, 2022.

8. Somat commits to an independent review, to be performed by a Somat employee not engaged in the day-to-day operations of moisture density gauge use, of the two 2022 bi-annual program audits. This review will be completed no later than December 31, 2022.

9. Somat commits to incorporate tracking devices to enhance its ability to track the location of moisture density gauges. In addition to three existing gauges with internal tracking capability, one additional gauge with internal tracking capability will be procured and fielded no later than December 31, 2022. Additionally, for a trial period, 50 percent of Somat's remaining gauges or their transport cases will be fitted and fielded with aftermarket tracking devices no later than August 1, 2022. The trial period will end no later than November 30, 2022. At that time, Somat will prepare a report available for NRC inspector review with the results of the trial period and recommendations for future use of aftermarket tracking devices. This report will be completed no later than one year following the date of this Confirmatory Order.

Based on the completed actions and commitments described above and the license modifications described in Section V below, the NRC agrees not to pursue any further enforcement action in connection with the apparent violations described in NRC's letter dated November 2, 2021, and relating to Inspection Report 03029146/2021001(DNMS). In further consideration of the commitments delineated above, the NRC agrees to refrain from issuing a notice of violation or proposing a civil penalty. However, the NRC will consider this Confirmatory Order as an escalated enforcement action.

This agreement is binding upon successors or assignees of Somat. The terms and conditions set forth herein shall accordingly continue to apply to Somat and survive any transfer of ownership or license.

On January 11, 2022, Somat consented to issuing this Confirmatory Order with the commitments as described in Section V below. Somat further agreed that this Confirmatory Order is to be effective upon issuance, the agreement memorialized in this Confirmatory Order settles the matter between the parties, and that it has waived its right to a hearing.

IV

I find that Somat's actions completed as described in Section III above, combined with the commitments as set forth above and in Section V are acceptable and necessary, and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have

determined that public health and safety require that Somat's commitments be confirmed by this Confirmatory Order. Based on the above and Somat's consent, this Confirmatory Order is effective upon issuance.

By no later than thirty (30) days after the completion of the commitments specified in Section V, Somat is required to notify the NRC in writing and summarize its actions.

V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 20, 30, and 71, and in 49 CFR part 173, *it is hereby ordered, effective upon issuance, that* License No. 21–24685–01 *is modified as follows:*

1. No later than May 1, 2022, Somat will create and implement an electronic form that will be used by Somat field personnel to verify the presence and security of licensed gauges any time prior to leaving the storage location of the gauges or a job site where gauges are used. The form will be completed electronically and submitted with a photo of the secured gauge in the vehicle (except for rare occurrences, *e.g.,* inoperable phone camera). An independent Somat representative will review the forms on a random basis, and there will be no fewer than 3 reviews per week when gauges are in use. Somat will evaluate the effectiveness of this commitment and develop a report no later than one year following the date of this Confirmatory Order, to be made available to NRC inspectors for review.

2. No later than December 31, 2022, Somat will engage with the Michigan Department of Transportation (MDOT) to propose a lessons-learned summary of these incidents for inclusion in MDOT's initial and refresher training of moisture density gauge technicians. This summary need not identify Somat's company information or that of its personnel.

3. No later than December 31, 2022, Somat will engage with InstroTek Incorporated to propose a lessons-learned summary of these incidents for inclusion into InstroTek's periodic ''lunch and learn'' seminars. This summary need not identify Somat's company information or that of its personnel.

4. No later than June 30, 2022, Somat will include a discussion of these incidents, with lessons learned, at its Annual Pre-Season Construction Field Staff Meeting(s).

5. No later than May 1, 2022, Somat will include a discussion of these incidents, with lessons learned, at one of its bi-weekly management meetings occurring.

6. No later than May 1, 2022, Somat will include a discussion of these incidents, with lessons learned, at its next Health and Safety Committee Meeting. The minutes from the Health and Safety Committee Meeting will include the discussion of the incident and will be provided to all company personnel no later than May 1, 2022.

7. No later than May 1, 2022, Somat will enhance its job site audit program—specific to the use of gauges—to perform audits of job sites more frequently. Specifically, one audit will occur each week at a job site chosen at random when gauges are in use.

8. No later than December 31, 2022, a Somat employee who is not engaged in the day-to-day operations of moisture density gauges will perform an independent review of two bi-annual program audits.

9. Somat will incorporate tracking devices to enhance its ability to track the location of moisture density gauges. In addition to Somat's three existing gauges with internal tracking capability, Somat will procure and field one additional gauge with internal tracking capability no later than December 31, 2022. Additionally, for a trial period beginning no later than August 1, 2022, 50 percent of Somat's remaining gauges or their transport cases will be fitted and fielded with aftermarket tracking devices. The trial period will end no later than November 30, 2022. At that time, Somat will prepare a report available for NRC inspector review with the results of the trial period and recommendations for future use of aftermarket tracking devices. This report will be completed no later than one year following the date of this Confirmatory Order.

This agreement is binding upon successors or assignees of Somat. The terms and conditions set forth hereunder shall continue to apply to Somat and survive any transfer of ownership or license. The Regional Administrator, Region III may, in writing, relax or rescind any of the above conditions upon demonstration by Somat or its successors of good cause.

VI

In accordance with 10 CFR 2.202 and 10 CFR 2.309, any person adversely affected by this Confirmatory Order, other than Somat, may request a hearing within thirty (30) calendar days of the date of issuance of this Confirmatory Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene, any motion of other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by an interested State, local governmental body, Federally-recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as discussed below, is granted. Detailed guidance on electronic submissions is located in the Guidance for Electronic Submissions to the NRC (ADAMS Accession No. ML13031A056) and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format (PDF). Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/*

site-help/electronic-sub-ref-mat.html. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. Participants who do not have an NRC-issued digital ID certificate as described above may click ''cancel'' when the link requests certificates and they will be automatically directed to the NRC's electronic hearing dockets where they will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

If a person other than Somat requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final thirty (30) days from the date of this Confirmatory Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

Dated this 3rd day of March, 2022

Attachments: As stated

For the Nuclear Regulatory Commission.

Mohammed A. Shuaibi,

Deputy Regional Administrator, NRC Region III.

Michigan Facilities Leased and Operated by Somat Engineering, Inc. With Moisture Density Gauges

Somat Engineering, Inc.
Docket No. 030–29146
License No. 21–24685–01
Mr. Matthew Richardson, Radiation Safety Officer
26445 Northline Road, Taylor, MI 48180
4039 40th St. SE, Ste. 4, Grand Rapids, MI 49512

[FR Doc. 2022–05027 Filed 3–9–22; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Request for Case Review for Enhanced Disability Annuity Benefit, RI 20–123

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on an expiring information collection (ICR), Request for Case Review for Enhanced Disability Annuity Benefit, RI 20–123.

DATES: Comments are encouraged and will be accepted until May 9, 2022.

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

—Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

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

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent by email to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or reached via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection (OMB No. 3206–0254). The Office of

Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of 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.

RI 20–123 is used by retirees separated for disability and the survivors of retirees separated for disability to request that Retirement Operations review the computations of disability annuities to include the formula provided in law for individuals who performed service as law enforcement officers, firefighters, nuclear materials couriers, air traffic controllers, Congressional employees, and Capitol and Supreme Court Police.

Analysis

Agency: Retirement Services, Office of Personnel Management.

Title: Request for Case Review for Enhanced Disability Annuity Benefit.

OMB Number: 3206–0254.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 100.

Estimated Time per Respondent: 5 minutes.

Total Burden Hours: 8.

Office of Personnel Management.

Kellie Cosgrove Riley,

Director, Office of Privacy and Information Management.

[FR Doc. 2022–05067 Filed 3–9–22; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–401, OMB Control No. 3235–0459]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 3a–4

The prior 30-day notice was issued in error and this new one allows a new 30 days to comment.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l–3520), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 3a–4 (17 CFR 270.3a–4) under the Investment Company Act of 1940 (15 U.S.C. 80a) (''Investment Company Act'' or ''Act'') provides a nonexclusive safe harbor from the definition of investment company under the Act for certain investment advisory programs. These programs, which include ''wrap fee'' programs, generally are designed to provide professional portfolio management services on a discretionary basis to clients who are investing less than the minimum investments for individual accounts usually required by the investment adviser but more than the minimum account size of most mutual funds. Under wrap fee and similar programs, a client's account is typically managed on a discretionary basis according to pre-selected investment objectives. Clients with similar investment objectives often receive the same investment advice and may hold the same or substantially similar securities in their accounts. Because of this similarity of management, some of these investment advisory programs may meet the definition of investment company under the Act.

In 1997, the Commission adopted rule 3a–4, which clarifies that programs organized and operated in accordance with the rule are not required to register under the Investment Company Act or comply with the Act's requirements.[1] These programs differ from investment companies because, among other things, they provide individualized investment advice to the client. The rule's provisions have the effect of ensuring that clients in a program relying on the rule receive advice tailored to the client's needs.

For a program to be eligible for the rule's safe harbor, each client's account must be managed on the basis of the client's financial situation and investment objectives and in accordance with any reasonable restrictions the client imposes on managing the account. When an account is opened, the sponsor[2] (or its designee) must obtain information from each client regarding the client's financial situation and investment objectives, and must allow the client an opportunity to impose reasonable restrictions on managing the account.[3] In addition, the sponsor (or its designee) must contact the client annually to determine whether the client's financial situation or investment objectives have changed and whether the client wishes to impose any reasonable restrictions on the management of the account or reasonably modify existing restrictions. The sponsor (or its designee) must also notify the client quarterly, in writing, to contact the sponsor (or its designee) regarding changes to the client's financial situation, investment objectives, or restrictions on the account's management.

Additionally, the sponsor (or its designee) must provide each client with a quarterly statement describing all activity in the client's account during the previous quarter. The sponsor and personnel of the client's account manager who know about the client's account and its management must be reasonably available to consult with the client. Each client also must retain certain indicia of ownership of all securities and funds in the account.

The Commission staff estimates that 27,979,460 clients participate each year in investment advisory programs relying on rule 3a–4.[4] Of that number, the staff

[1] Status of Investment Advisory Programs Under the Investment Company Act of 1940, Investment Company Act Rel. No. 22579 (Mar. 24, 1997) [62 FR 15098 (Mar. 31, 1997)] (''Adopting Release''). In addition, there are no registration requirements under section 5 of the Securities Act of 1933 for programs that meet the requirements of rule 3a–4. *See* 17 CFR 270.3a–4, introductory note.

[2] For purposes of rule 3a–4, the term ''sponsor'' refers to any person who receives compensation for sponsoring, organizing or administering the program, or for selecting, or providing advice to clients regarding the selection of, persons responsible for managing the client's account in the program.

[3] Clients specifically must be allowed to designate securities that should not be purchased for the account or that should be sold if held in the account. The rule does not require that a client be able to require particular securities be purchased for the account.

[4] These estimates are based on an analysis of the number of individual clients from Form ADV Item 5D(a)(1) and (b)(1) of advisers that report they provide portfolio management to wrap programs as indicated in Form ADV Item 5I(2)(b) and (c), and the number of individual clients of advisers that identify as internet advisers in Form ADV Item 2A(11). From analysis comparing reported individual client assets in Form ADV Item 5D(a)(3) and 5D(b)(3) to reported wrap portfolio manager assets in Form ADV Item 5I(2)(b) and (c), we

estimates that 2,127,147 are new clients and 25,852,313 are continuing clients.[5] The staff estimates that each year the investment advisory program sponsors' staff engage in 1.5 hours per new client and 1 hour per continuing client to prepare, conduct and/or review interviews regarding the client's financial situation and investment objectives as required by the rule.[6] Furthermore, the staff estimates that each year the investment advisory program sponsors' staff spends 1 hour per client each year to prepare and mail quarterly client account statements, including notices to update information.[7] Based on the estimates above, the Commission estimates that the total annual burden of the rule's paperwork requirements is 57,022,493 hours.[8]

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by April 11, 2022 to (i) *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo , 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Comments must be submitted to OMB within 30 days of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Dated: March 4, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05015 Filed 3–9–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94363; File No. SR–NYSE–2021–45]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 2, To Adopt Listing Standards for Subscription Warrants Issued by a Company Organized Solely for the Purpose of Identifying an Acquisition Target

March 4, 2022.

On August 24, 2021, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt listing standards for subscription warrants issued by a company organized solely for the purpose of identifying an acquisition target. The proposed rule change was published for comment in the **Federal Register** on September 10, 2021.[3]

On September 30, 2021, pursuant to Section 19(b)(2) of the Exchange Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On December 8, 2021, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act[6] to determine whether to approve or disapprove the proposed rule change.[7] On March 1, 2022, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[8] On March 2, 2022, the Commission published notice of Amendment No. 2 to the proposed rule change.[9]

Section 19(b)(2) of the Act[10] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on September 10, 2021.[11] The 180th day after publication of the proposed rule change is March 9, 2022. The Commission is extending the time period for approving or disapproving the proposed rule change, as modified by Amendment No. 2, for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change, as modified by Amendment No. 2, so that it has sufficient time to consider the proposed rule change, as modified by Amendment No. 2, and the issues raised in the comments that have been submitted in connection therewith. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[12] designates May 8, 2022, as the date by which the Commission shall either approve or disapprove the proposed rule change, as modified by Amendment No. 2 (File No. SR–NYSE–2021–45).

discount the estimated number of individual clients of non-internet advisers providing portfolio management to wrap programs by 10%.

[5] These estimates are based on the number of new clients expected due to average year-over-year growth in individual clients from Form ADV Item 5D(a)(1) and (b)(1) (about 8%) and an assumed rate of yearly client turnover of 10%.

[6] These estimates are based upon consultation with investment advisers that operate investment advisory programs that rely on rule 3a–4.

[7] The staff bases this estimate in part on the fact that, by business necessity, computer records already will be available that contain the information in the quarterly reports.

[8] This estimate is based on the following calculation: (25,852,313 continuing clients × 1 hour) + (2,127,147 new clients × 1.5 hours) + (27,979,460 total clients × (0.25 hours × 4 statements)) = 57,022,493 hours.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 92876 (September 3, 2021), 86 FR 50748. Comments received on the proposal are available on the Commission's website at: *https://www.sec.gov/comments/sr-nyse-2021-45/srnyse202145.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 93221, 86 FR 55662 (October 6, 2021). The Commission designated December 9, 2021 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 93741, 86 FR 71111 (Dec. 14, 2021).

[8] Amendment No. 2 is available at: *https://www.sec.gov/comments/sr-nyse-2021-45/srnyse202145-20118274-271197.pdf.* On February 17, 2022, the Exchange filed Amendment No. 1 to the proposed rule change. The Exchange withdrew Amendment No. 1 on March 1, 2022.

[9] *See* Securities Exchange Act Release No. 94349.

[10] 15 U.S.C. 78s(b)(2).

[11] *See supra* note 3.

[12] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05023 Filed 3–9–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–792; OMB Control No. 3235–0739]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Order Granting a Conditional Exemption under the Securities Exchange Act of 1934 from the Confirmation Requirements of Exchange Act Rule 10b–10(a) for Certain Transactions in Money Market Funds

The prior 30-day notice was issued in error and this new one allows a new 30 days to comment.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in the following: Order Granting a Conditional Exemption under the Securities Exchange Act of 1934 from the Confirmation Requirements of Exchange Act Rule 10b–10(a) for Certain Transactions in Money Market Funds (17 CFR 240.10b–10(a)).

Rule 10b–10 under the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78a *et seq.*) generally requires broker-dealers to provide customers with specified information relating to their securities transactions at or before the completion of the transactions. Rule 10b–10(b), however, provides an exception from this requirement for certain transactions in money market funds that attempt to maintain a stable net asset value when no sales load or redemption fee is charged. The exception permits broker-dealers to provide transaction information to money market fund shareholders on a monthly, rather than immediate, basis, subject to the conditions. Amendments to Rule 2a–7 (17 CFR 270.2a–7) of the Investment Company Act of 1940 (''Investment Company Act'') (15 U.S.C. 80a–1 *et seq.*) among other things, means, absent an exemption, broker-dealers would not be able to continue to rely on the exception under Exchange Act Rule 10b–10(b) for transactions in money market funds operating in accordance with Investment Company Act Rule 2a–7(c)(1)(ii).[1]

In 2015, the Commission issued an Order Granting a Conditional Exemption under the Securities Exchange Act of 1934 From The Confirmation Requirements of Exchange Act Rule 10b–10(a) For Certain Transactions In Money Market Funds (''Order'') [2] which allows broker-dealers, subject to certain conditions, to provide transaction information to investors in any money market fund operating pursuant to Investment Company Act Rule 2a–7(c)(1)(ii) on a monthly basis in lieu of providing immediate confirmations as required under Exchange Act Rule 10b–10(a) (''the Exemption''). Accordingly, to be eligible for the Exemption, a broker-dealer must (1) provide an initial written notification to the customer of its ability to request delivery of immediate confirmations consistent with the written notification requirements of Exchange Act Rule 10b–10(a), and (2) not receive any such request to receive immediate confirms from the customer.

As of December 31, 2020, the Commission estimates there are approximately 154 broker-dealers that clear customer transactions or carry customer funds and securities who would be responsible for providing customer confirmations. The Commission estimates that the cost of the ongoing notification requirements would be minimal, approximately 5% of the initial burden which was previously estimated to be 36 hours per broker-dealer, or approximately 1.8 hours per broker-dealer per year to provide ongoing notifications or a total burden of 277 hours annually for the 154 carrying broker-dealers.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent by April 11, 2022 to (i) *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 4, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05019 Filed 3–9–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94362; File No. SR–NYSE–2021–42]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend the Requirements of Section 102.06 of the NYSE Listed Company Manual To Allow an Acquisition Company To Contribute a Portion of Its Trust Account to a New Acquisition Company and Spin-Off the New Acquisition Company to Its Shareholders

March 4, 2022.

On August 23, 2021, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the requirements of Section 102.06 of the NYSE Listed Company Manual (''Manual'') to allow an acquisition company to contribute a portion of the amount held in its trust account to a trust account of a new

[13] 17 CFR 200.30–3(a)(57).

[1] *See generally* Money Market Fund Reform; Amendments to Form PF, Securities Act Release No. 9408, Investment Advisers Act Release No. 3616, Investment Company Act Release No. 30551 (June 5, 2013), 78 FR 36834, 36934 (June 19, 2013); *see also* Exchange Act Rule 10b–10(b)(1), 17 CFR 240.10b–10(b)(1) (limiting alternative monthly reporting to money market funds that attempt to maintain a stable NAV).

[2] *See* Order Granting a Conditional Exemption Under the Securities Exchange Act of 1934 From the Confirmation Requirements of Exchange Act Rule 10b–10(a) for Certain Transactions in Money Market Funds, Exchange Act Release No. 34–76480 (Nov. 19, 2015), 80 FR 73849 (Nov. 25, 2015).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

acquisition company and spin off the new acquisition company to its shareholders in certain situations. The proposed rule change was published for comment in the **Federal Register** on September 8, 2021.[3]

On September 30, 2021, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On December 3, 2021, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act[6] to determine whether to approve or disapprove the proposed rule change.[7]

Section 19(b)(2) of the Act[8] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on September 8, 2021.[9] The 180th day after publication of the proposed rule change is March 7, 2022. The Commission is extending the time period for approving or disapproving the proposed rule change for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change and the comments that have been submitted in connection therewith. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[10] designates May 6, 2022, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–NYSE–2021–42).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05024 Filed 3–9–22; 8:45 am]

BILLING CODE 8011–01–P

[3] *See* Securities Exchange Act Release No. 92839 (September 1, 2021), 86 FR 50408. Comments received on the proposal are available on the Commission's website at: *https://www.sec.gov/comments/sr-nyse-2021-42/srnyse202142.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 93222, 86 FR 55671 (October 6, 2021). The Commission designated December 7, 2021 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 93714, 86 FR 70150 (Dec. 9, 2021).

[8] 15 U.S.C. 78s(b)(2).

[9] *See supra* note 3.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94365; File No. SR–FINRA–2021–030]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to TRACE Reporting of Corporate Bond Trades That Are Part of a Larger Portfolio Trade

March 4, 2022.

I. Introduction

On November 22, 2021, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to require members to append a modifier to a corporate bond trade that is part of a larger portfolio trade when reporting to FINRA's Trade Reporting and Compliance Engine (''TRACE''). The proposed rule change was published for comment in the **Federal Register** on December 7, 2021.[3] On January 20, 2022, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission received three comments on the proposal.[6] On March 4, 2022, FINRA filed Amendment No. 1 to the proposed rule change.[7] The Commission is publishing notice of Amendment No. 1 and approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

For purposes of the proposed rule change, FINRA considers a ''portfolio trade'' to be a trade between two parties for a basket of corporate bonds at a single aggregate price for the entire basket. FINRA rules do not allow for reporting of a single portfolio trade with an aggregated price. Instead, a member firm must report to TRACE a trade for each individual bond in the portfolio with an attributed dollar price for each bond. FINRA believes that, in many cases, the reported price for each bond in a portfolio trade is in line with the bond's current market price, while in other cases the attributed price reported for an individual bond might deviate from its current market price.

In 2020, the Commission's Fixed Income Market Structure Advisory Committee (''FIMSAC'')[8] approved a recommendation that FINRA amend the TRACE reporting rules to require members to identify corporate bond trades that are part of a portfolio trade.[9]

Accordingly, FINRA is proposing to add new paragraph (d)(4)(H) to Rule 6730 to require a member to append a designated modifier if reporting a transaction in a corporate bond that: (i) Is executed between only two parties;

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93699 (December 1, 2021), 86 FR 69337 (December 7, 2021) (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 94011 (January 20, 2022), 87 FR 4097 (January 26, 2022).

[6] *See* Letter from Howard Meyerson, Managing Director, Financial Information Forum, to Vanessa A. Countryman, Secretary, SEC, dated December 23, 2021 (''FIF Letter''); Letter from Chris Killian, Managing Director, Securitization and Credit, Securities Industry and Financial Markets Association, to Vanessa A. Countryman, Secretary, SEC, dated December 28, 2021 (''SIFMA Letter''); Letter from Michael Grogan, V.P. & Head of US Fixed Income Trading—Investment Grade, Dwayne Middleton, V.P. & Heading of Fixed Income Trading, Brian Rubin, V.P. & Head of US Fixed Income Trading—Below Investment Grade, and Jonathan Siegal, V.P. & Senior Legal Counsel—Legislative & Regulatory Affairs, T. Rowe Price, to Vanessa A. Countryman, Secretary, SEC, dated December 30, 2021 (''T. Rowe Price Letter'').

[7] In Amendment No. 1, FINRA revised the proposal to remove any requirements relating to delayed Treasury spot trades so that it can further consider this issue, and responded to comments relating to the portfolio trade aspects of the proposal. Amendment No. 1 to the proposed rule change is available at *https://www.sec.gov/comments/sr-finra-2021-030/srfinra2021030.htm.*

[8] The FIMSAC is a federal advisory committee formed in November 2017 to provide the Commission with advice and recommendations on matters related to fixed income market structure. *See https://www.sec.gov/files/fimsac-charter.pdf.*

[9] *See* FIMSAC, Recommendation Regarding Additional TRACE Reporting Indicators for Corporate Bond Trades (February 10, 2020), available at: *https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-additional-trace-flags-recommendation.pdf.*

(ii) involves a basket of corporate bonds of at least ten [10] unique issues; [11] and (iii) has a single agreed price for the entire basket. The new portfolio trade modifier would be disseminated through TRACE, together with other information about the transaction, immediately upon receipt of a transaction report. FINRA will publish the specific format for the new portfolio trade modifier in the TRACE technical specifications. FINRA also has represented that it will publish a *Regulatory Notice* announcing the effective date of the proposed rule change no later than 90 days following Commission approval, and the effective date will be no later than 365 days following publication of the *Regulatory Notice*.

The Notice also included proposed requirements relating to TRACE reporting of a delayed Treasury spot trade, defined by FINRA in the Notice to mean a transaction in a corporate bond that occurs on the basis of a spread to a benchmark U.S. Treasury Security, where the agreed-upon spread is later converted to a dollar price by ''spotting'' the benchmark U.S. Treasury Security at a designated time. As discussed further below, FINRA amended the proposed rule change to remove the provisions relating to delayed Treasury spot trades.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[12] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[13] which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; 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 proposal appears reasonably designed to improve transparency for portfolio trades, and the individual components thereof, without imposing undue burdens on members who report these trades and who must report other TRACE modifiers under FINRA rules.[14] Requiring a TRACE modifier for each corporate bond transaction that is part of a portfolio trade will allow market participants and other market observers to know that the price reported for that transaction might not reflect the price for the individual bond if it were individually negotiated. The Commission also believes that the criteria for defining the scope of portfolio trades for which the modifier must be used, as set forth in new paragraph (d)(4)(H) of Rule 6730, are reasonably designed to facilitate implementation of the proposed rule change.

No issues were raised by commenters that would preclude Commission approval of this proposed rule change. Although one commenter stated that ''the incremental benefit to transparency of this flag is somewhat limited,'' [15] another commenter broadly supported the proposal for a portfolio trade modifier to increase transparency.[16] Commenters also requested certain clarifications to the proposal, which FINRA provided in Amendment No. 1.[17] One commenter noted the changes between the FINRA proposal and the FIMSAC recommendation but did not raise an objection to those changes.[18] Finally, issues raised by commenters pertaining to the proposed requirements relating to delayed Treasury spot trades are moot in light of Amendment No. 1.

IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2021–030 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2021–030. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment

[10] The FIMSAC recommended a size threshold for portfolio trades of at least 30 unique issuers. In the Notice, FINRA stated that it was proposing a lower size threshold—ten rather than 30—believing that the lower threshold would provide greater informational benefits to market participants by capturing a greater number of transactions that satisfy the other conditions the rule.

[11] In the Notice, FINRA stated its belief that using the number of issues, rather than the number of issuers, would provide a simpler and more effective way to identify portfolio trades for purposes of the proposed rule change.

[12] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78*o*–3(b)(6).

[14] *See, e.g.,* Rule 6730(d)(4)(B) (requiring members to append a trade report modifier if the price of the transaction is determined using a weighted average price method); Rule 6730(d)(4)(F) (requiring members to append a trade report modifier where a trade report does not reflect either a commission, mark-up, or mark-down).

[15] SIFMA Letter at 1.

[16] *See* T. Rowe Price Letter at 1.

[17] For example, one commenter sought guidance on the meaning of ''single aggregate price'' for the entire basket as used in proposed Rule 6730(d)(4)(H)(iii). *See* SIFMA Letter at 2–3. FINRA responded that, where the parties to a trade aggregate individual prices obtained from a pricing list or service without further negotiation, it would not be considered within the scope of the rule. Another commenter asked whether the TRACE system will validate whether the counterparties to a trade consistently identify a trade as being part of a portfolio trade. *See* FIF Letter at 3. FINRA stated that the portfolio trade modifier will not be part of the TRACE system's matching logic.

[18] *See* SIFMA Letter at 2 (supporting the change to base the definition on the number of issues rather than the number of issuers and stating, with regard to lowering the numerical threshold from 30 to ten issues: ''We do not have a consensus view on the number, however, we would point out that as the number of securities in the basket gets lower, our members believe it is less likely that any individual security traded would be off market'').

submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2021–030, and should be submitted on or before March 31, 2022.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the **Federal Register**. In Amendment No. 1, FINRA removed all provisions relating to delayed Treasury spot trades. In doing so, FINRA noted that it would ''continue to consider whether any potential alternative to the proposed approach may better meet FINRA's regulatory objectives in this area.'' The parts of the proposed rule change relating to the modifier for corporate bond transactions that are part of a larger portfolio trade remain identical to those noticed for comment, to which commenters had opportunity to respond and have in fact responded. Therefore, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[19] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–FINRA–2021–030), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05021 Filed 3–9–22; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2022–0012]

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA,

Comments: *https://www.reginfo.gov/public/do/PRAMain.* Submit your comments online referencing Docket ID Number [SSA–2022–0012].

(SSA), Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

Or you may submit your comments online through *https://www.reginfo.gov/public/do/PRAMain,* referencing Docket ID Number [SSA–2022–0012].

The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than May 9, 2022. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Certificate of Responsibility for Welfare and Care of Child Not in Applicant's Custody—20 CFR 404.330, 404.339–404.341 and 404.348–404.349—0960–0019. SSA uses Form SSA–781 to determine if non-custodial parents who file for spouse, mother's, father's, or surviving divorced mother's or father's benefits based on having a child in their care, meet the child-in-care requirements. The child-in-care provision requires claimants to have an entitled child under age 16 or disabled in their care. The respondents are applicants for spouse's; mother's; father's; or surviving divorced mother's or father's Social Security benefits.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
SSA–781	390	1	5	33	* $27.07	** 21	*** $4,602

* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm#00-0000*).

** We based this figure by averaging the average FY 2022 wait times for field offices and teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

2. Child Relationship Statement—20 CFR 404.355 and 404.731—0960–0116. To help determine a child's entitlement to Social Security benefits, SSA uses criteria under Section 216(h)(3) of the Social Security Act (Act), deemed child provision. SSA may deem a child to an insured individual if: (1) The insured individual presents SSA with satisfactory evidence of parenthood, and was living with or contributing to the child's support at certain specified times; or (2) the insured individual (a) acknowledged the child in writing; (b) was court decreed as the child's parent; or (c) was court ordered to support the child. To obtain this information, SSA uses Form SSA–2519, Child Relationship Statement. The respondents are people with knowledge of the relationship between certain individuals filing for Social Security benefits and their alleged biological children.

Type of Request: Revision of an OMB-approved information collection.

[19] 15 U.S.C. 78s(b)(2).

[20] *Id.*

[21] 17 CFR 200.30–3(a)(12).

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
SSA–2519	4,981	1	15	1,245	* $27.07	** 21	*** $80,885

* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm#00-0000*).

** We based this figure by averaging the average FY 2022 wait times for field offices and teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

3. Pre-1957 Military Service Federal Benefit Questionnaire—20 CFR 404.1301–404.1371—0960–0120. SSA may grant gratuitous military wage credits for active military or naval service (under certain conditions) during the period September 16, 1940 through December 31, 1956, if no other Federal agency (other than the Veterans Administration) credited the service for benefit eligibility or computation purposes. We use Form SSA–2512 to collect specific information about other Federal, military, or civilian benefits the wage earner may receive when the applicant indicates both pre-1957 military service and the receipt of a Federal benefit. SSA uses the data in the claims adjudication process to grant gratuitous military wage credits when applicable, and to solicit sufficient information to determine eligibility. Respondents are applicants for Social Security benefits on a record where the wage earner claims pre-1957 military service.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–2512	5,000	1	10	833	* $27.07	** 24	*** $76,689

* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm#00-0000*).

** We based this figure on the average FY 2022 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

4. Authorization for the Social Security Administration to Obtain Account Records from a Financial Institution—20 CFR 416.200, 416.203, 416.207, 404.508, and 416.553—0960–0293. SSA collects and verifies financial information from individuals applying for Title II and Title XVI waiver determinations, as well as those who apply for, or currently receive (in the case of redetermination), Supplemental Security Income (SSI) payments. We require the financial information from these applicants to: (1) Determine the eligibility of the applicant or recipient for SSI benefits; or (2) determine if a request to waive a Social Security overpayment defeats the purpose of the Act. If the Title II and Title XVI waiver applicants, or the SSI claimants provide incomplete, unavailable, or seemingly altered records, SSA contacts their financial institutions to verify the existence, ownership, and value of accounts owned. Financial institutions need individuals to sign Form SSA–4641, or work with SSA staff to complete one of SSA's electronic applications, e4641 or the Access to Financial Institutions (AFI) screens, to authorize the individual's financial institution to disclose records to SSA. The respondents are Title II and Title XVI recipients applying for waivers, or SSI applicants, recipients, and their deemors to determine SSI eligibility.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) ***	Average wait time in field office (minutes) ****	Total annual opportunity cost (dollars) ******
Individuals (Paper and Internet) *	** 1,565,000	1	4	104,333	*** $19.01	**** 24	***** $13,883,630
Financial Institutions (Paper SSA–4641)	90,000	1	6	9,000	*** $19.01	.....	***** $171,090
Financial Institutions (Internet e4641 or AFI)	14,575,000	1	2	485,833	*** $19.01	.....	***** 9,235,685
Totals	16,230,000	.....	.....	599,166	.....	.....	***** 23,290,405

* This includes individuals completing the form to provide their authorization for purposes of determining SSI eligibility *as well as* individuals providing their authorization for purposes of a waiver determination.

** This likely is an overestimate because individuals providing their authorization for purposes of a waiver determination may, alternatively, provide their authorization using another form, the SSA–632, but we do not have readily-available MI on how many individuals use that form instead of the SSA–4641.

*** We based this figure by averaging both the average DI payments based on SSA's current FY 2021 data (*https://www.ssa.gov/legislation/2021FactSheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

**** We based this figure on the average FY 2022 wait times for field offices, based on SSA's current management information data.

***** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

5. Vocational Rehabilitation Provider Claim—20 CFR 404.2101(a), 404.2108(b), 404.2117(c)(1)&(2), 404.2121(a), 416.2208(b), 416.2217(c)(1)&(2), 416.2201(a), and 416.2221(a)—0960–0310. State vocational rehabilitation (VR) agencies submit Form SSA–199 to SSA to obtain reimbursement of costs incurred for providing VR services. SSA requires state VR agencies to submit reimbursement claims for the following categories: (1) Claiming reimbursement for VR services provided; (2) certifying adherence to cost containment policies and procedures; and (3) preparing causality statements. The respondents provide the information requested through a web-based Secure Ticket Portal, in lieu of submitting forms. This Portal allows VRs to retrieve reports, and enter and submit information electronically, minimizing the use of the paper form to SSA for consideration and approval of the claim for reimbursement of costs incurred for SSA beneficiaries. SSA uses the information on the SSA–199, along with the written documentation, to determine whether, and how much, to pay State VR agencies under SSA's VR program. Respondents are State VR agencies offering vocational and employment services to Social Security and SSI recipients.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
a. Claiming Reimbursement on SSA–199—20 CFR 404.2108(b) & 416.2208(b)	77	22,300	1,717,100	23	658,222	* $15.50	** $10,202,441
b. Certifying Adherence to Cost Containment Policy and Procedures—20 CFR 404.2117(c)(1)&(2), 416.2217(c)(1)&(2) & 34 CFR 361	77	77	5,929	60	5,929	* 15.50	** 91,900
c. Preparing Causality Statements—20 CFR 404.2121(a), 404.2101(a), 416.2201(a), & 416.2221(a)	77	77	5,929	100	9,882	* 15.50	** 153,171
Totals	231				674,033		** 10,447,512

* We based this figure on the average Healthcare Support Occupations, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes310000.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

6. Request for Change in Time/Place of Disability Hearing—20 CFR 404.914(c)(2) and 416.1414(c)(2)—0960–0348. At the request of the claimants or their representatives, SSA schedules evidentiary hearings at the reconsideration level for claimants of Title II benefits or Title XVI payments when we deny their claims for disability. When claimants or their representatives find they are unable to attend the scheduled hearing, they complete Form SSA–769 to request a change in time or place of the hearing. SSA uses the information as a basis for granting or denying requests for changes and for rescheduling disability hearings. Respondents are claimants or their representatives who wish to request a change in the time or place of their hearing.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA–769	41,440	1	8	5,525	* $19.01	** $105,030

* We based this figure by averaging both the average DI payments based on SSA's current FY 2021 data (*https://www.ssa.gov/legislation/2021FactSheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

7. Notice Regarding Substitution of Party Upon Death of Claimant—Reconsideration of Disability Cessation—20 CFR 404.907–404.921 and 416.1407–416.1421—0960–0351. When a claimant dies before we make a determination on that person's request for reconsideration of a disability cessation, SSA seeks a qualified substitute party to pursue the appeal. If SSA locates a qualified substitute party, the agency uses Form SSA–770 to collect information about whether to pursue or withdraw the reconsideration request. We use this information as the basis for the decision to continue or discontinue with the appeals process. Respondents are substitute applicants who are pursuing a reconsideration request for a deceased claimant.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA–770	384	1	5	32	* $27.07	** $866

* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm#00-0000*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

8. Appointment of Representative—20 CFR 404.1707, 404.1720, 408.1101, 416.1507, and 416.1520—0960–0527. Individuals claiming rights or benefits under the Act must notify SSA in writing when they appoint an individual to represent them in dealing with SSA. In addition, as part of SSA's regulations, SSA requires representatives who are not attorneys to sign the written notice of appointment. SSA does not require attorneys acting as representatives to sign the notice of appointment. Respondents can use Form SSA–1696, or the submittable electronic version, e1696, to appoint a representative to handle their claim before SSA and name their principal representative, and their selected representative(s) can use the SSA–1696 or e1696 to indicate whether they will charge a fee, and to show their eligibility for direct fee payment. In addition, representatives also use the SSA–1696 or e1696 to inform SSA of their disbarment; suspension from a court or bar in which they previously admitted to practice; or their disqualification from participating in or appearing before a Federal program or agency. SSA uses the information on the SSA–1696 or e1696 to document the appointment of the representative, and we recognize the individual named in the notice of appointment the claimant signed and filed at an SSA office, or through our submittable portal, as the claimant's representative. We also use this form to collect the representative's business affiliation and employment identification number. In addition, respondents use the SSA–1696–SUP1 to revoke their appointment of a representative, and representatives use the SSA–1696–SUP2 to withdraw their acceptance of the appointment. SSA uses the information on the SSA–1696–SUP1 and SSA–1696–SUP2 to document the revocation and withdrawal of a representative. Respondents are applicants for, or recipients of, Social Security disability benefits (SSDI); SSI payments; or anyone pursuing a benefit or invoking a right under SSA programs, who are notifying SSA they have appointed someone to represent them in their dealings with SSA; any non-attorney representatives who need to sign the form; as well as individuals revoking their appointment of representative, and their representatives' withdrawal of their acceptance of an appointment.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA–1696; e1696	1,100,000	1	12	220,000	*$73.86	**$16,249,200
SSA–1696–SUP1	5,505	1	5	459	*10.95	**5,026
SSA–1696–SUP2	254,825	1	5	21,235	*73.86	**1,568,417
Totals	1,360,330			241,694		**17,822,643

* We based these figures on average Legal Service hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes231011.htm*) and the average DI payments based on SSA's current FY 2021 data (*https://www.ssa.gov/legislation/2021FactSheet.pdf*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

9. Work Incentives Planning and Assistance Program—0960–0629. As part of SSA's strategy to assist SSDI beneficiaries and SSI recipients who wish to return to work and achieve self-sufficiency, SSA established the Work Incentives Planning and Assistance (WIPA) program. This community based, work incentive, planning and assistance project collects identifying claimant information via project sites and community work incentives coordinators (CWIC). SSA uses this information to ensure proper management of the project, with particular emphasis on administration, budgeting, and training. SSA uses Form SSA–4565 (WIPA Intake Information) to collect data from SSDI beneficiaries and SSI recipients on background employment, training, benefits, and work incentives. CWIC use Form SSA–4566 (WIPA Notes) to create a case note to record actions taken for a beneficiary. CWIC will use the WIPA Star System which is a new management and reporting system that allows the CWIC to: (1) Provide SSA with information provided on Form SSA–4565, and additional information on beneficiaries served under the WIPA program; (2) to manage their case notes for beneficiaries; and (3) to collect additional information not collected on Forms SSA–4565 and SSA–4566 which allows SSA to monitor WIPA grantee's performance and progress. The respondents are SSDI beneficiaries, SSI recipients, community project sites, and community work incentives coordinators.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Annual burden (hours)	Hourly cost amount (dollars) *	Opportunity cost (dollars) **
SSA–4565	32,000	1	25	13,333	*$15.67	**$208,928
SSA–4566	360	890	2	10,680	*15.67	**167,356
WIPA STAR System	720	1,869	20	448,560	*15.67	**7,028,935
Totals	33,080	2,760		472,573		**7,405,219

* We based this figure on the average DI payments based on SSA's current FY 2021 data (*https://www.ssa.gov/legislation/2021FactSheet.pdf*); and the average Office and Administrative Support hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes430000.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

10. Internet Direct Deposit Application—31 CFR 210—0960–0634. SSA requires all applicants and recipients of Social Security Old Age, Survivors, and Disability Insurance (OASDI) benefits, or SSI payments to receive these benefits and payments via direct deposit, at a financial institution. SSA receives Direct Deposit/Electronic Funds Transfer (DD/EFT) enrollment information from OASDI beneficiaries and SSI recipients to facilitate DD/EFT of their funds, with their chosen financial institution. We also use this information when an enrolled individual wishes to change their DD/EFT information. For the convenience of the respondents, we collect this information through several modalities, including an internet application, in-office or telephone interviews, and our automated telephone system. In addition to using the direct deposit information to enable DD/EFT of funds to the recipient's chosen financial institution, we also use the information through our Direct Deposit Fraud Indicator, to ensure the correct recipient receives the funds. Respondents are OASDI beneficiaries and SSI recipients requesting that we enroll them in the Direct Deposit program, or change their direct deposit banking information.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
Internet DD	683,397	1	10	113,900	*$10.95	**$1,247,205
Non-Electronic Services (FO, 800#-ePath, SSI Claims System, SPS, MACADE, POS, RPS)	2,557,048	1	12	511,410	*10.95	**5,599,940
Direct Deposit Fraud Indicator	30,531	1	2	1,018	*10.95	**11,147
Totals	3,270,976			626,328		** 6,858,292

* We based this figure on the average DI payments based on SSA's current FY 2021 data (*https://www.ssa.gov/legislation/2021FactSheet.pdf*).
** This figure does not represent actual costs that SSA is imposing on claimants of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

11. International Direct Deposit—31 CFR 210—0960–0686. SSA's International Direct Deposit (IDD) Program allows beneficiaries living abroad to receive their payments via direct deposit to an account at a financial institution outside the United States. SSA uses Form SSA–1199-(Country) to enroll Title II beneficiaries residing abroad in IDD, and to obtain the direct deposit information for foreign accounts. Routing account number information varies slightly for each foreign country, so we use a variation of the Treasury Department's Form SF–1199A for each country. The respondents are Social Security beneficiaries residing abroad who want SSA to deposit their Title II benefit payments directly to a foreign financial institution.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA–1199-(Country)	449,274	1	5	37,440	*$27.07	**$1,013,501

* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm#00-0000*).
** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

12. Request for Reinstatement (Title XVI)—20 CFR 416.999–416.999d—0960–0744. SSA uses Form SSA–372 to: (1) Inform previously entitled beneficiaries of the expedited reinstatement (EXR) requirements of SSI payments under Title XVI of the Act; and (2) document their requests for EXR. SSA requires this application for reinstatement of benefits for respondents to obtain SSI disability payments for EXR. When an SSA claims representative learns of individuals whose medical conditions no longer permit them to perform substantial gainful activity as defined in the Act, the claims representative gives the form to the previously entitled individuals (or mails it to those who request EXR over the phone). SSA employees collect this information whenever an individual files for EXR benefits. The respondents are applicants for EXR of SSI disability payments.

Type of Request: Revision of an OMB approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars)*	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–372	2,000	1	5	167	*$10.95	**24	***$10,589

* We based this figure on the average DI payments based on SSA's current FY 2021 data (*https://www.ssa.gov/legislation/2021FactSheet.pdf*).
** We based this figure on the average FY 2022 wait time for teleservice centers, based on SSA's current management information data.
*** This figure does not represent actual costs that SSA is imposing on claimants of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

Dated: March 4, 2022.

Naomi Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2022–05026 Filed 3–9–22; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 11674]

60-Day Notice of Proposed Information Collection: Statement of Political Contributions, Fees, and Commissions Relating to Sales of Defense Articles and Defense Services

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to May 9, 2022.

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

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2022–0005'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: DDTCPublicComments@state.gov*.
- *Regular Mail:* Send written comments to: Directorate of Defense Trade Controls, Attn: Andrea Battista, 2401 E St. NW, Suite H–1205, Washington, DC 20522–0112.

You must include the subject (PRA 60 Day Comment), information collection title (Statement of Political Contributions, Fees, and Commissions Relating to Sales of Defense Articles and Defense Services), and OMB control number (1405–0025) in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding this collection to Andrea Battista, who may be reached at *BattistaAL@state.gov* or 202–663–3136.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Statement of Political Contributions, Fees, and Commissions Relating to Sales of Defense Articles and Defense Services.
- *OMB Control Number:* 1405–0025.
- *Type of Request:* Extension.
- *Originating Office:* Directorate of Defense Trade Controls (DDTC).
- *Form Number:* No Form.
- *Respondents:* Persons requesting a license or other approval for the export, reexport, or retransfer of USML-regulated defense articles or defense services valued in an amount of $500,000 or more that are being sold commercially to or for the use of the armed forces of a foreign country or international organization or persons who enter into a contract with the Department of Defense for the sale of defense articles or defense services valued in an amount of $500,000 or more under section 22 of the AECA.
- *Estimated Number of Respondents:* 57.
- *Estimated Number of Responses:* 450.
- *Average Time per Response:* 60 minutes.
- *Total Estimated Burden Time:* 450 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Mandatory.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

DDTC regulates the export and temporary import of defense articles and defense services enumerated on the USML in accordance with the Arms Export Control Act (AECA) (22 U.S.C. 2751 *et seq.*) and the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130). In accordance with section 39 of the AECA, the Secretary of State must require, in part, adequate and timely reporting of political contributions, gifts, commissions and fees paid, or offered or agreed to be paid in connection with the sales of defense articles or defense services licensed or approved under AECA sections 22 and 38. Pursuant to ITAR § 130.9(a), any person applying for a license or approval required under section 38 of the AECA for sale to the armed forces of a foreign country or international organization valued at $500,000 or more must inform DDTC, and provide certain specified information, when they have paid, offered to, or agreed to pay, (1) political contributions in an aggregate amount of $5,000 or greater; or (2) fees or commissions in an aggregate amount equaling or exceeding $100,000. Similarly, ITAR § 130.9(b) requires any person who enters into a contract with the Department of Defense under section 22 of the AECA, valued at $500,000 or more, to inform DDTC and provide the specified information, when they or their vendors, have paid, or offered or agreed to pay, in respect to any sale (1) political contributions in an aggregate amount of $5,000 or greater; or (2) fees or commissions in an aggregate amount equaling or exceeding $100,000. Respondents are also required to collect information pursuant to Sections 130.12 and 130.13 prior to submitting their report to DDTC.

Methodology

Respondents will submit information as attachments to relevant license applications or requests for other approval.

Michael F. Miller,

Deputy Assistant Secretary, Directorate of Defense Trade Controls, U.S. Department of State.

[FR Doc. 2022–05090 Filed 3–9–22; 8:45 am]

BILLING CODE 4710–05–P

STATE JUSTICE INSTITUTE

SJI Board of Directors Meeting, Notice

AGENCY: State Justice Institute.

ACTION: Notice of meeting.

SUMMARY: The SJI Board of Directors will be meeting on Monday, March 28, 2022 at 1:00 p.m. ET. The purpose of this meeting is to consider grant applications for the 2nd quarter of FY 2022, and other business.

ADDRESSES: The Nathan Deal Judicial Center, 330 Capitol Avenue SE, Atlanta, GA, 30334.

FOR FURTHER INFORMATION CONTACT: Jonathan Mattiello, Executive Director, State Justice Institute, 12700 Fair Lakes

Circle, Suite 340, Fairfax, VA 22033, 703–660–4979, *contact@sji.gov.*

Authority: 42 U.S.C. 10702(f).

Jonathan D. Mattiello,

Executive Director.

[FR Doc. 2022–05086 Filed 3–9–22; 8:45 am]

BILLING CODE 6820–SC–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2022–0002]

Request for Comments on the Proposed Fair and Resilient Trade Pillar of an Indo-Pacific Economic Framework

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: On October 27, 2021, President Biden announced that the United States would explore the development of an Indo-Pacific Economic Framework (IPEF) to deepen economic relations in the Indo-Pacific region and coordinate approaches to addressing global economic challenges. The Secretary of Commerce and the U.S. Trade Representative will co-chair the U.S. team leading the IPEF negotiations. The Office of the United States Trade Representative (USTR) will lead the IPEF's pillar on Fair and Resilient Trade, and the Department of Commerce will lead the IPEF's pillars on: (1) Supply Chain Resiliency; (2) Clean Energy, Decarbonization, and Infrastructure; and (3) Taxation and Anti-Corruption. Accordingly, USTR is seeking public comments on matters relevant to the Fair and Resilient Trade pillar, including U.S. interests and priorities, in order to develop U.S. negotiating objectives and positions and identify potential partners.

DATES: The deadline for the submission of written comments is April 11, 2022.

ADDRESSES: You should submit written comment through the Federal eRulemaking Portal: *https://www.regulations.gov* (*Regulations.gov*). Follow the instructions for submissions in parts II and III below. For procedural questions concerning written comments, please contact Spencer Smith at *Spencer.L.Smith2@ustr.eop.gov* or (202) 395–2974 in advance of the deadline and before transmitting a comment.

FOR FURTHER INFORMATION CONTACT: Direct all other questions to Colette Morgan, Director for Southeast Asia and the Pacific, at *Colette.M.Morgan@ustr.eop.gov* or (202) 395–9535.

SUPPLEMENTARY INFORMATION:

I. Background

On October 27, 2021, President Biden announced that the United States would explore the development of an IPEF that will contain multiple pillars covering key areas of interest, including fair and resilient trade. Negotiating an agreement under the Fair and Resilient Trade pillar is an important step towards strengthening U.S. economic engagement in the Indo-Pacific region and promoting durable, broad-based economic growth. Under the Fair and Resilient Trade pillar, the Administration aims to develop high-standard, worker-centered commitments in the following areas:

- Labor
- Environment and climate
- Digital economy
- Agriculture
- Transparency and good regulatory practices
- Competition policy
- Trade facilitation

The United States will build upon high-standard trade commitments and develop new approaches in trade policy to advance a broad set of worker-centered priorities, and promote durable, broad-based economic growth. At this time, the Administration is not seeking to address tariff barriers.

II. Public Comment

The Trade Policy Staff Committee (TPSC) invites interested parties to submit comments to assist USTR as it develops negotiating objectives and positions for the IPEF trade pillar. In particular, the TPSC invites interested parties to comment on issues that USTR should address in the negotiations, including the following:

1. General negotiating objectives for the proposed agreement.
2. Labor-related matters.
3. Environment and climate-related matters.
4. Digital economy-related matters.
5. Agriculture-related matters.
6. Transparency and good regulatory practice issues.
7. Competition-related matters.
8. Customs and trade facilitation issues.
9. Issues of particular relevance to small and medium-sized businesses that should be addressed in the negotiations.
10. Other measures or practices, including those of third-country entities, which undermine fair market opportunities for U.S. workers, farmers, ranchers, and businesses.

USTR requests small businesses (generally defined by the Small Business Administration as firms with fewer than 500 employees) or organizations representing small business members that submit comments to self-identify as such, so that USTR is aware of issues of particular interest to small businesses.

III. Requirements for Submissions

Persons submitting written comments must do so in English and must identify on the first page of the submission 'Comments Regarding Fair and Resilient Trade Pillar'. The submission deadline is April 11, 2022.

USTR strongly encourages commenters to make online submissions, using *Regulations.gov*. To submit comments via *Regulations.gov*, enter docket number USTR–2022–0002 on the home page and click 'search.' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice and click on the link entitled 'Comment Now.' For further information on using *Regulations.gov*, please consult the resources provided on the website by clicking on 'How to Use This Site' on the left side of the home page.

Regulations.gov allows users to submit comments by filling in a 'type comment' field, or by attaching a document using an 'upload file' field. USTR prefers that you provide comments in an attached document. If you attach a document, please identify the name of the country to which the submission pertains in the 'type comment' field, *e.g.,* see attached comments with respect to (name of country). USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If you use an application other than those two, please indicate the name of the application in the 'type comment' field.

Filers submitting comments containing no business confidential information (BCI) should name their file using the name of the person or entity submitting the comments. For any comments submitted electronically containing BCI, the file name of the business confidential version should begin with the characters 'BCI.' Clearly mark any page containing BCI with 'BUSINESS CONFIDENTIAL' on the top of that page. Filers of submissions containing BCI also must submit a public version of their comments that USTR will place in the docket for public inspection. The file name of the public version should begin with the character 'P.' Follow the 'BCI' and 'P' with the name of the person or entity submitting the comments.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might

appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files.

As noted, USTR strongly urges that you file comments through *Regulations.gov*. You must make any alternative arrangements with Spencer Smith at *Spencer.L.Smith2@ustr.eop.gov* or (202) 395–2974 before transmitting a comment and in advance of the deadline.

USTR will post comments in the docket for public inspection, except properly designated BCI. You can view comments on the *Regulations.gov* by entering docket number USTR–2022–0002 in the search field on the home page. General information concerning USTR is available at *https://www.ustr.gov*.

William Shpiece,

Chair of the Trade Policy Staff Committee, Office of the United States Trade Representative.

[FR Doc. 2022–05044 Filed 3–9–22; 8:45 am]

BILLING CODE 3290–F2–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2019–0003]

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 January 12, 2022, Canadian National Railway Company (CN) 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 232.305, *Single car air brake tests.* The relevant FRA Docket Number is FRA–2019–0003.

Specifically, CN requests to extend relief from § 232.305(b)(2), regarding the requirement to conduct a single car air brake test (SCT) on a car when it is placed on a repair track for any reason, and the car has not had a SCT in the previous 12 months. CN explains that it seeks to continue using this relief for the in-train wheelset replacement program in Fulton, KY, a purpose-built facility that utilizes a drop table to safely and efficiently replace defective wheelsets while keeping the train intact. The program identifies and replaces wheelsets with minor defects falling between Association of American Railroads standards and FRA requirements, which assists in reducing the number of wheel, bearing, impact, and broken rail-caused derailments, as well as associated injuries.

CN states that it has complied with the requirements of FRA's approval letter, dated June 14, 2019, and successfully changed out 4,454 wheels from the date of approval until December 23, 2021. CN reports no injuries or accidents due to the operation of the facility.

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 April 25, 2022 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. 2022–05038 Filed 3–9–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Market Risk

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

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC 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 OCC is soliciting comment concerning the renewal of its information collection titled, ''Market Risk.''

DATES: *You should submit written comments by:* May 9, 2022.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557–0247, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0247'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* 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.

Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day

comment period. You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection by the method set forth in the next bullet.

• *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' tab and click on ''Information Collection Review'' dropdown. Underneath the ''Currently under Review'' section heading, from the drop-down menu select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0247'' or ''Market Risk.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.

• For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, 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: Under the PRA (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include 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 title 44 generally requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each renewal of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the renewal of the collection of information set forth in this document.

Title: Market Risk.

OMB Control No.: 1557–0247.

Description: The Office of the Comptroller of the Currency's (OCC) market risk capital rule (12 CFR part 3, subpart F) applies to national banks and Federal savings associations with significant exposure to market risk, which include those national banks and Federal savings associations with aggregate trading assets and trading liabilities (as reported in the national bank's or Federal savings association's most recent Call Report) equal to 10 percent or more of quarter-end total assets or $1 billion or more. The rule captures positions for which the market risk capital rule is appropriate; reduces procyclicality in market risk capital requirements; enhances the risk sensitivity of the OCC's capital requirements by measuring risks that are not adequately captured under the requirements for credit risk; and increases transparency through enhanced disclosures.

The information collection requirements are located at 12 CFR 3.203 through 3.212. The rule enhances risk sensitivity and includes requirements for the public disclosure of certain qualitative and quantitative information about the market risk of national banks and Federal savings associations. The collection of information is necessary to ensure capital adequacy appropriate for the level of market risk.

Section 3.203 sets forth the requirements for applying the market risk framework. Section 3.203(a)(1) requires national banks and Federal savings associations to have clearly defined policies and procedures for determining which trading assets and trading liabilities are trading positions and specifies the factors a national bank or Federal savings association must take into account in drafting those policies and procedures. Section 3.203(a)(2) requires national banks and Federal savings associations to have clearly defined trading and hedging strategies for trading positions that are approved by senior management and specifies what those strategies must articulate. Section 3.203(b)(1) requires national banks and Federal savings associations to have clearly defined policies and procedures for actively managing all covered positions and specifies the minimum requirements for those policies and procedures. Section 3.203(c)(1) requires national banks and Federal savings associations to obtain prior written approval of the OCC before using any internal model to calculate their risk-based capital requirement under the market risk capital rule. Sections 3.203(c)(4) through 3.203(c)(10) require the review, at least annually, of internal models and specify certain requirements for those models. Section 3.203(d)(4) requires the internal audit group of a national bank or Federal savings association to report, at least annually, to the board of directors on the effectiveness of controls supporting the market risk measurement systems.

Section 3.204(b) requires national banks and Federal savings associations to conduct quarterly backtesting. Section 3.205(a)(5) requires institutions to demonstrate to the OCC the appropriateness of any proxies used to capture risks within value-at-risk models. Section 3.205(c) requires institutions to develop, retain, and make available to the OCC value-at-risk and profit and loss information on sub-portfolios for two years. Section 3.206(b)(3) requires national banks and Federal savings associations to have policies and procedures that describe how they determine the period of significant financial stress used to calculate the institution's stressed value-at-risk models and to obtain prior OCC approval for any material changes to these policies and procedures.

Section 3.207(b)(1) details requirements applicable to a national bank or Federal savings association when the national bank or Federal savings association uses internal models to measure the specific risk of certain covered positions. Section 3.208 requires national banks and Federal savings associations to obtain prior OCC approval for incremental risk modeling of portfolios of equity positions and describes the requirements for incremental risk modeling. Section 3.209 requires prior OCC approval for the use of a comprehensive risk measure and describes applicable requirements. Section 3.209(c)(2) requires national banks and Federal savings associations to retain and make available to the OCC the results of supervisory stress testing. Section 3.210(f) requires national banks and Federal savings associations to document an internal analysis of the risk characteristics of each securitization position in order to demonstrate to the satisfaction of the OCC an understanding of the position. Section 3.212 requires quarterly quantitative disclosures, annual qualitative disclosures, and a formal disclosure policy approved by the board of directors that addresses the approach for determining the market risk disclosures it makes.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals; Businesses or other for-profit.

Number of Respondents: 19.

Estimated Burden per Respondent: 1,964 hours.

Total Estimated Annual Burden: 37,316 hours.

Comments submitted in response to this notice will be summarized, included in the request for OMB approval, and become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection 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.

Theodore J. Dowd,

Deputy Chief Counsel, Comptroller of the Currency.

[FR Doc. 2022–05037 Filed 3–9–22; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Interagency Guidance on Asset Securitization Activities

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

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning renewal of its information collection titled ''Interagency Guidance on Asset Securitization Activities.''

DATES: Comments must be submitted on or before May 9, 2022.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557–0217, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0217'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* 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.

Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period. You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection by the method set forth in the next bullet.

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' tab and click on ''Information Collection Review'' dropdown. Underneath the ''Currently under Review'' section heading, from the drop-down menu select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0217'' or ''Interagency Guidance on Asset Securitization Activities.''

Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.

- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, 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: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include 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 title 44 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, the OCC is publishing notice of the proposed collection of information set forth in this document.

Title: Interagency Guidance on Asset Securitization Activities.

OMB Control No.: 1557–0217.

Type of Review: Regular.

Description: In 1999, the OCC issued the Interagency Guidance on Asset Securitization Activities [1] (guidance) in response to a determination that some institutions involved in asset securitization activities had significant weaknesses in their asset securitization practices. The information collection contained in the guidance applies to financial institutions engaged in asset securitization activities and provides that any institution engaged in these activities should maintain a written asset securitization policy, document the fair value of retained interests, and maintain a management information system to monitor asset securitization activities. Financial institution management uses the information collected to ensure the safe and sound operation of the institution's asset securitization activities. The OCC uses the information to evaluate the quality of an institution's risk management practices.

Affected Public: Businesses or other for-profit.

Burden Estimates:

Estimated Number of Respondents: 35 national banks and Federal savings associations.

Estimated Annual Burden: 1,827 hours.

Frequency of Response: On occasion.

[1] OCC Bulletin 1999–46, December 13, 1999, *https://www.occ.gov/news-issuances/bulletins/1999/bulletin-1999-46a.pdf.*

Comments submitted in response to this notice will be summarized, included in the request for OMB approval, and become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2022–05033 Filed 3–9–22; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

On March 3, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Individuals

1. DUGINA, Darya Aleksandrovna, Russia; DOB 15 Dec 1992; nationality Russia; Gender Female (individual) [UKRAINE–EO13661] [CYBER2] [ELECTION–EO13848] (Linked To: UNITED WORLD INTERNATIONAL).

Designated pursuant to section 2(a)(iii) of Executive Order 13848 of September 12, 2018, ''Imposing Certain Sanctions in the Event of Foreign Interference in a United States Election,'' (E.O. 13848) for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, UNITED WORLD INTERNATIONAL, a person whose property and interests in property are blocked pursuant to E.O. 13848.

Also designated pursuant to section l(a)(iii)(C) of Executive Order 13694 of April 1, 2015, ''Blocking Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities,'' as amended by Executive Order 13757 of December 28, 2016, ''Taking Additional Steps to Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities,'' (E.O. 13694, as amended) for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, UNITED WORLD INTERNATIONAL, a person whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

Also designated pursuant to section l(a)(ii)(C)(2) of Executive Order 13661 of March 16, 2014, ''Blocking Property of Additional Persons Contributing to the Situation in Ukraine,'' (E.O. 13661) for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, UNITED WORLD INTERNATIONAL, a person whose property and interests in property are blocked pursuant to E.O. 13661.

2. MAMAKOVA, Aelita Leonidovna, Russia; DOB 01 Nov 1988; nationality Russia; Gender Female (individual) [NPWMD] [CYBER2] [ELECTION–EO13848] (Linked To: SOUTHFRONT).

Designated pursuant to section 2(a)(ii) of E.O. 13848 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, SOUTHFRONT, a person whose property and interests in property are blocked pursuant to E.O. 13848.

Also designated pursuant to section 1(a)(ii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored or provided financial, material, or technological support for, or goods or services to or in support of, SOUTHFRONT, a person whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

Also designated pursuant to section 1(a)(iii) of E.O. 13382, for having provided, or attempted to provide, financial, material, or technological or other support for, or goods or services in support of, SOUTHFRONT, a person whose property and interests in property are blocked pursuant to E.O. 13382.

3. PROKOFYEV, Yuriy Anatolyevich (a.k.a. PROKOFIEV, Yuri), Russia; DOB 14 Apr 1986; nationality Russia; Gender Male (individual) [ELECTION–EO13848] (Linked To: THE STRATEGIC CULTURE FOUNDATION).

Designated pursuant to section 2(a)(ii) of E.O. 13848 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, THE STRATEGIC CULTURE FOUNDATION, a person whose property and interests in property are blocked pursuant to E.O. 13848.

4. SKOROKHODOVA, Natalya Petrovna, Russia; DOB 25 Aug 1968; nationality Russia; Gender Female (individual) [ELECTION–EO13848] (Linked To: THE STRATEGIC CULTURE FOUNDATION).

Designated pursuant to section 2(a)(ii) of E.O. 13848 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, THE STRATEGIC CULTURE FOUNDATION, a person whose property and interests in property are blocked pursuant to E.O. 13848.

5. FEDIN, Yuriy Sergeyevich, Ukraine; DOB 26 Mar 1989; nationality Russia; Gender Male (individual) [NPWMD] [CYBER2] (Linked To: NEWSFRONT).

Designated pursuant to section l(a)(iii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, NEWSFRONT, a person whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

Also designated pursuant to section 1(a)(iii) of E.O. 13382, for having provided, or attempted to provide, financial, material, or technological or other support for, or goods or services in support of, NEWSFRONT, a person whose property and interests in property are blocked pursuant to E.O. 13382.

6. KNYRIK, Konstantin Sergeyevich, Crimea, Ukraine; DOB 14 Aug 1989; nationality Russia; Gender Male; Tax ID No. 910406732278 (Russia) (individual) [NPWMD] [CYBER2] [CAATSA—RUSSIA] (Linked To: NEWSFRONT; Linked To: FEDERAL SECURITY SERVICE).

Designated pursuant to section l(a)(iii)(C) of E.O. 13694, as amended for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the FEDERAL SECURITY SERVICE and NEWSFRONT, persons whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

Also designated pursuant to section 224(a)(1)(B) of CAATSA, for being owned or

controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the FEDERAL SECURITY SERVICE and NEWSFRONT, persons designated under Section 224(a)(1)(A) of CAATSA.

Also designated pursuant to section 1(a)(iv) of E.O. 13382, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the FEDERAL SECURITY SERVICE and NEWSFRONT, persons whose property and interests in property are blocked pursuant to E.O. 13382.

7. ILYASHENKO, Andrey Vitalyevich, Russia; DOB 19 Dec 1958; nationality Russia; Gender Male (individual) [NPWMD] [CYBER2] [CAATSA—RUSSIA] (Linked To: INFOROS, OOO).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13694, as amended, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, INFOROS, OOO, a person whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

Also designated pursuant to section 224(a)(1)(B) of CAATSA, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, INFOROS, OOO, a person designated under Section 224(a)(1)(A) of CAATSA.

Also designated pursuant to section 1(a)(iv) of E.O. 13382, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, INFOROS, OOO, a person whose property and interests in property are blocked pursuant to E.O. 13382.

8. KRASOVSKIY, Maksim Borisovich, Russia; DOB 28 Jan 1970; nationality Russia; Gender Male; Passport 4514985443 (Russia) (individual) [NPWMD] [CYBER2] [CAATSA—RUSSIA] (Linked To: INFOROS, OOO).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13694, as amended, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, INFOROS, OOO, a person whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

Also designated pursuant to section 224(a)(1)(B) of CAATSA, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, INFOROS, OOO, a person designated under Section 224(a)(1)(A) of CAATSA.

Also designated pursuant to section 1(a)(iv) of E.O. 13382, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, INFOROS, OOO, a person whose property and interests in property are blocked pursuant to E.O. 13382.

9. MAKSIMENKO, Vladimir Ilich (a.k.a. MAXIMENKO, Vladimir), Russia; DOB 01 Jan 1954; nationality Russia; Gender Male (individual) [ELECTION–EO13848] (Linked To: THE STRATEGIC CULTURE FOUNDATION).

Designated pursuant to section 2(a)(ii) of E.O. 13848 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, THE STRATEGIC CULTURE FOUNDATION, a person whose property and interests in property are blocked pursuant to E.O. 13848.

10. BUBNOVA, Irina Sergeyevna, Russia; DOB 01 Apr 1983; nationality Russia; Gender Female; Passport 703828693 (Russia) (individual) [ELECTION–EO13848] (Linked To: THE STRATEGIC CULTURE FOUNDATION).

Designated pursuant to section 2(a)(ii) of E.O. 13848 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, THE STRATEGIC CULTURE FOUNDATION, a person whose property and interests in property are blocked pursuant to E.O. 13848.

11. BESPALOV, Anton Sergeyevich, Russia; DOB 02 Feb 1981; nationality Russia; Gender Male (individual) [ELECTION–EO13848] (Linked To: THE STRATEGIC CULTURE FOUNDATION).

Designated pursuant to section 2(a)(ii) of E.O. 13848 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, THE STRATEGIC CULTURE FOUNDATION, a person whose property and interests in property are blocked pursuant to E.O. 13848.

12. SAENKO, Sergei Ivanovich (a.k.a. SAYENKO, Sergey Ivanovich), Russia; DOB 25 Sep 1950; nationality Russia; Gender Male (individual) [ELECTION–EO13848] (Linked To: THE STRATEGIC CULTURE FOUNDATION).

Designated pursuant to section 2(a)(ii) of E.O. 13848 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, THE STRATEGIC CULTURE FOUNDATION, a person whose property and interests in property are blocked pursuant to E.O. 13848.

13. ZAMLELOVA, Svetlana Georgiyevna, Russia; DOB 22 Aug 1973; nationality Russia; Gender Female (individual) [ELECTION–EO13848] (Linked To: JOURNAL KAMERTON).

Designated pursuant to section 2(a)(ii) of E.O. 13848 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, JOURNAL KAMERTON, a person whose property and interests in property are blocked pursuant to E.O. 13848.

14. GAFNER, Denis Yakovlevich, Russia; DOB 08 Sep 1980; nationality Russia; Gender Male; Passport 5003226888 (Russia); Identification Number 21500322688 (Russia) (individual) [NPWMD] [CYBER2] [ELECTION–EO13848] (Linked To: SOUTHFRONT).

Designated pursuant to section 2(a)(ii) of E.O. 13848 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, SOUTHFRONT, a person whose property and interests in property are blocked pursuant to E.O. 13848.

Also designated pursuant to section 1(a)(ii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored or provided financial, material, or technological support for, or goods or services to or in support of, SOUTHFRONT, a person whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

Also designated pursuant to section 1(a)(iii) of E.O. 13382, for having provided, or attempted to provide, financial, material, or technological or other support for, or goods or services in support of, SOUTHFRONT, a person whose property and interests in property are blocked pursuant to E.O. 13382.

15. CHUGULEVA, Aleyona Anatolyevna, Russia; DOB 14 May 1986; nationality Russia; Gender Female (individual) [NPWMD] [CYBER2] [ELECTION–EO13848] (Linked To: SOUTHFRONT).

Designated pursuant to section 2(a)(ii) of E.O. 13848 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, SOUTHFRONT, a person whose property and interests in property are blocked pursuant to E.O. 13848.

Also designated pursuant to section 1(a)(ii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored or provided financial, material, or technological support for, or goods or services to or in support of, SOUTHFRONT, a person whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

Also designated pursuant to section 1(a)(iii) of E.O. 13382, for having provided, or attempted to provide, financial, material, or technological or other support for, or goods or services in support of, SOUTHFRONT, a person whose property and interests in property are blocked pursuant to E.O. 13382.

16. KALABAYEVA, Valeriya, Russia; DOB 01 Oct 1997; nationality Russia; Gender Female; Passport 653701605 (Russia) (individual) [NPWMD] [CYBER2] [ELECTION–EO13848] (Linked To: SOUTHFRONT).

Designated pursuant to section 2(a)(ii) of E.O. 13848 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, SOUTHFRONT, a person whose property and interests in property are blocked pursuant to E.O. 13848.

Also designated pursuant to section 1(a)(ii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored or provided financial, material, or technological support for, or goods or services to or in support of, SOUTHFRONT, a person whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

Also designated pursuant to section 1(a)(iii) of E.O. 13382, for having provided, or attempted to provide, financial, material, or technological or other support for, or goods or services in support of, SOUTHFRONT, a person whose property and interests in property are blocked pursuant to E.O. 13382.

17. SINELIN, Mikhail Anatolyevich (a.k.a. SINELIN, Mihail Anatol'evich), Russia; DOB 14 Aug 1989; nationality Russia; Gender Male; Passport 100019509 (Russia) (individual) [NPWMD] [CYBER2] (Linked To: NEWSFRONT).

Designated pursuant to section l(a)(ii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, NEWSFRONT, a person whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

Also designated pursuant to section 1(a)(iii) of E.O. 13382, for having provided, or attempted to provide, financial, material, or technological or other support for, or goods or services in support of, NEWSFRONT, a person whose property and interests in property are blocked pursuant to E.O. 13382.

18. GLOTOV, Yevgeniy Eduardovich, Ukraine; DOB 19 Sep 1987; nationality Ukraine; Gender Male; National ID No. 3203817519 (Ukraine) (individual) [NPWMD] [CYBER2] (Linked To: NEWSFRONT).

Designated pursuant to section l(a)(ii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, NEWSFRONT, a person whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

Also designated pursuant to section 1(a)(iii) of E.O. 13382, for having provided, or attempted to provide, financial, material, or technological or other support for, or goods or services in support of, NEWSFRONT, a person whose property and interests in property are blocked pursuant to E.O. 13382.

19. DOROKHOVA, Nina Viktorovna, Russia; DOB 20 Nov 1965; nationality Russia; Gender Female (individual) [NPWMD] [CYBER2] [CAATSA—RUSSIA] (Linked To: INFOROS, OOO).

Designated pursuant to section 1(a)(ii)(C) of E.O. 13694, as amended, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, INFOROS, OOO, a person whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

Also designated pursuant to section 224(a)(1)(B) of CAATSA, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, INFOROS, OOO, a person designated under Section 224(a)(1)(A) of CAATSA.

Also designated pursuant to section 1(a)(iv) of E.O. 13382, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, INFOROS, OOO, a person whose property and interests in property are blocked pursuant to E.O. 13382.

20. NEZHDANOVA, Yevgeniya Vitalyevna, Russia; DOB 07 May 1981; nationality Russia; Gender Female (individual) [NPWMD] [CYBER2] [CAATSA—RUSSIA] (Linked To: INFOROS, OOO).

Designated pursuant to section 1(a)(ii)(C) of E.O. 13694, as amended, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, INFOROS, OOO, a person whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

Also designated pursuant to section 224(a)(1)(B) of CAATSA, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, INFOROS, OOO, a person designated under Section 224(a)(1)(A) of CAATSA.

Also designated pursuant to section 1(a)(iv) of E.O. 13382, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, INFOROS, OOO, a person whose property and interests in property are blocked pursuant to E.O. 13382.

21. KAMYSHANOVA, Aleksandra Aleksandrovna, Russia; DOB 29 Nov 1986; nationality Russia; Gender Female (individual) [NPWMD] [CYBER2] [CAATSA—RUSSIA] (Linked To: INFOROS, OOO).

Designated pursuant to section 1(a)(ii)(C) of E.O. 13694, as amended, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, INFOROS, OOO, a person whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

Also designated pursuant to section 224(a)(1)(B) of CAATSA, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, INFOROS, OOO, a person designated under Section 224(a)(1)(A) of CAATSA.

Also designated pursuant to section 1(a)(iv) of E.O. 13382, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, INFOROS, OOO, a person whose property and interests in property are blocked pursuant to E.O. 13382.

22. KIRILLOVA, Anastasiya Sergeyevna, Russia; DOB 31 Dec 1986; nationality Russia; Gender Female (individual) [NPWMD] [CYBER2] [CAATSA—RUSSIA] (Linked To: INFOROS, OOO).

Designated pursuant to section 1(a)(ii)(C) of E.O. 13694, as amended, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, INFOROS, OOO, a person whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

Also designated pursuant to section 224(a)(1)(B) of CAATSA, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, INFOROS, OOO, a person designated under Section 224(a)(1)(A) of CAATSA.

Also designated pursuant to section 1(a)(iv) of E.O. 13382, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, INFOROS, OOO, a person whose property and interests in property are blocked pursuant to E.O. 13382.

23. KRANS, Maksim Iosifovich, Russia; DOB 08 Mar 1950; nationality Russia; Gender Male (individual) [NPWMD] [CYBER2] [CAATSA—RUSSIA] (Linked To: INFOROS, OOO).

Designated pursuant to section 1(a)(ii)(C) of E.O. 13694, as amended, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, INFOROS, OOO, a person whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

Also designated pursuant to section 224(a)(1)(B) of CAATSA, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, INFOROS, OOO, a person designated under Section 224(a)(1)(A) of CAATSA.

Also designated pursuant to section 1(a)(iv) of E.O. 13382, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, INFOROS, OOO, a person whose property and interests in property are blocked pursuant to E.O. 13382.

24. POGREBENKOV, Valeriy Ivanovich, Russia; DOB 19 Jul 1947; nationality Russia; Gender Male (individual) [NPWMD] [CYBER2] [CAATSA—RUSSIA] (Linked To: INFOROS, OOO).

Designated pursuant to section 1(a)(ii)(C) of E.O. 13694, as amended, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, INFOROS, OOO, a person whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

Also designated pursuant to section 224(a)(1)(B) of CAATSA, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, INFOROS, OOO, a person designated under Section 224(a)(1)(A) of CAATSA.

Also designated pursuant to section 1(a)(iv) of E.O. 13382, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, INFOROS, OOO, a person whose property and interests in property are blocked pursuant to E.O. 13382.

25. TATARCHENKO, Denis Sergeyevich (a.k.a. TATARCHENKO, Denis), Russia; DOB 01 Feb 1991; nationality Russia; Gender Male (individual) [NPWMD] [CYBER2] [CAATSA—RUSSIA] (Linked To: INFOROS, OOO).

Designated pursuant to section 1(a)(ii)(C) of E.O. 13694, as amended, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, INFOROS, OOO, a person whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

Also designated pursuant to section 224(a)(1)(B) of CAATSA, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, INFOROS, OOO, a person designated under Section 224(a)(1)(A) of CAATSA.

Also designated pursuant to section 1(a)(iv) of E.O. 13382, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, INFOROS, OOO, a person whose property and interests in property are blocked pursuant to E.O. 13382.

26. ARESHEV, Andrey Grigoryevich, Russia; DOB 21 Jul 1974; nationality Russia; Gender Male (individual) [ELECTION–EO13848] (Linked To: THE STRATEGIC CULTURE FOUNDATION).

Designated pursuant to section 2(a)(ii) of E.O. 13848 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or

services in support of, THE STRATEGIC CULTURE FOUNDATION, a person whose property and interests in property are blocked pursuant to E.O. 13848.

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Entities

1. GEOPOLITICA (Cyrillic: ГЕОПОЛИТИКА), Russia; Website Geopolitica.ru [UKRAINE-EO13660] (Linked To: DUGIN, Aleksandr).

Designated pursuant to section 1(a)(v) of Executive Order 13660 of March 6, 2014, "Blocking Property of Certain Persons Contributing to the Situation in Ukraine" (E.O. 13660) for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, ALEKSANDR DUGIN, a person whose property and interests in property are blocked pursuant to E.O. 13660.

2. JOURNAL KAMERTON (a.k.a. NETWORK LITERARY AND HISTORICAL MAGAZINE KAMERTON; a.k.a. WEB KAMERTON), Moscow, Russia; Website www.webkamerton.ru [ELECTION-EO13848] (Linked To: THE STRATEGIC CULTURE FOUNDATION).

Designated pursuant to section 2(a)(iii) of E.O. 13848 for being owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, THE STRATEGIC CULTURE FOUNDATION, a person whose property and interests in property are blocked pursuant to E.O. 13848.

3. NEW EASTERN OUTLOOK, Russia; Website journal-neo.org [RUSSIA-EO14024].

Designated pursuant to section 1(a)(vii) of Executive Order 14024 of April 15, 2021, "Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation," (E.O. 14024) for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation or any person whose property and interests in property are blocked pursuant to E.O. 14024.

4. ODNA RODYNA (Cyrillic: ОДНА РОДИНА), Russia; Website odnarodyna.org [ELECTION-EO13848] (Linked To: THE STRATEGIC CULTURE FOUNDATION).

Designated pursuant to section 2(a)(iii) of E.O. 13848 for being owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, THE STRATEGIC CULTURE FOUNDATION, a person whose property and interests in property are blocked pursuant to E.O. 13848.

5. ORIENTAL REVIEW, Russia; Website www.orientalreview.org [RUSSIA-EO14024].

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation or any person whose property and interests in property are blocked pursuant to E.O. 14024.

6. RHYTHM OF EURASIA (Cyrillic: РИТМ ЕВРАЗИИ), Russia; Website

www.ritmeurasia.org [ELECTION-EO13848] (Linked To: THE STRATEGIC CULTURE FOUNDATION).

Designated pursuant to section 2(a)(iii) of E.O. 13848 for being owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, THE STRATEGIC CULTURE FOUNDATION, a person whose property and interests in property are blocked pursuant to E.O. 13848.

7. UNITED WORLD INTERNATIONAL, Russia; Website www.unitedworldint.com; alt. Website www.uwidata.com [UKRAINE-EO13661] [CYBER2] [ELECTION-EO13848] (Linked To: PRIGOZHIN, Yevgeniy Viktorovich).

Designated pursuant to section 2(a)(iii) of E.O. 13848 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, YEVGENIY VIKTOROVICH PRIGOZHIN, a person whose property and interests in property are blocked pursuant to E.O. 13848.

Also designated pursuant to section 1(a)(iii)(C) of E.O. 13694, as amended for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, YEVGENIY VIKTOROVICH PRIGOZHIN, a person whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

Also designated pursuant to section 1(a)(ii)(C)(2) of E.O. 13661 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, YEVGENIY VIKTOROVICH PRIGOZHIN, a person whose property and interests in property are blocked pursuant to E.O. 13661.

Designated pursuant to section 2(a)(ii) of E.O. 13848 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, THE STRATEGIC CULTURE FOUNDATION, a person whose property and interests in property are blocked pursuant to E.O. 13848.

Dated: March 3, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–05096 Filed 3–9–22; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons or property that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

On March 3, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked and also identified the following property as blocked under the relevant sanctions authority listed below.

BILLING CODE 4810–AL–P

Individuals

1. TOKAREV, Nikolay Petrovich (Cyrillic: ТОКАРЕВ, Николай Петрович) (a.k.a. TOKAREV, Nikolai; a.k.a. TOKAREV, Nikolay), Moscow, Russia; DOB 20 Dec 1950; POB Karaganda, Kazakhstan; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(iii)(A) of Executive Order 14024 of April 15, 2021, "Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation," (E.O. 14024) for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

2. TOKAREVA, Maiya Nikolaevna (Cyrillic: ТОКАРЕВА, Майя Николаевна) (f.k.a. BOLOTOVA, Maiya Nikolaevna; f.k.a. BOLOTOVA, Mayya; a.k.a. TOKAREVA, Mayya), Brusova Str., 19, 5, Moscow 125009, Russia; DOB 18 Jan 1975; POB Karaganda, Kazakhstan; nationality Russia; Gender Female; Passport 530212750 (Russia) issued 12 Apr 2012 expires 12 Apr 2022; Tax ID No. 772450740210 (Russia) (individual) [RUSSIA-EO14024].

   Designated pursuant to sections 1(a)(v) of E.O. 14024 for being the spouse or adult child of Nikolay Petrovich Tokarev, a person whose property and interests in property are blocked pursuant to section 1(a)(ii) or (iii) of E.O. 14024.

3. TOKAREVA, Galina Alekseyevna (Cyrillic: ТОКАРЕВА, Галина Алексеевна), Russia; DOB 24 Sep 1951; Gender Female (individual) [RUSSIA-EO14024].

   Designated pursuant to sections 1(a)(v) of E.O. 14024 for being the spouse or adult child of Nikolay Petrovich Tokarev, a person whose property and interests in property are blocked pursuant to section 1(a)(ii) or (iii) of E.O. 14024.

4. PRIGOZHIN, Pavel Evgenyevich (Cyrillic: ПРИГОЖИН, Павел Евгеньевич), Russia; DOB 18 Jun 1998; nationality Russia; Gender Male; Tax ID No. 780103765308 (Russia) (individual) [RUSSIA-EO14024] (Linked To: PRIGOZHIN, Yevgeniy Viktorovich).

   Designated pursuant to sections 1(a)(v) of E.O. 14024 for being the spouse or adult child of Yevgeniy Viktorovich Prigozhin, a person whose property and interests in property are blocked pursuant to section 1(a)(ii) or (iii) of E.O. 14024.

5. PRIGOZHIN, Yevgeniy Viktorovich (a.k.a. PRIGOZHIN, Evgeny), Russia; DOB 01 Jun 1961; POB Leningrad, Russia; nationality Russia; Gender Male (individual) [UKRAINE-EO13661] [CYBER2] [ELECTION-EO13848] [RUSSIA-EO14024] (Linked To: INTERNET RESEARCH AGENCY LLC).

   Designated pursuant to section 1(a)(ii)(B) of E.O. 14024 for being responsible for or complicit in, or having directly or indirectly engaged or attempted to engage in, interference

in a United States or other foreign government election for or on behalf of, or for the benefit of, directly or indirectly, the Government of the Russian Federation.

6. PRIGOZHINA, Polina Evgenyevna (Cyrillic: ПРИГОЖИНА, Полина Евгеньевна), Russia; DOB 15 Aug 1992; nationality Russia; Gender Female; Tax ID No. 780157495143 (Russia) (individual) [RUSSIA-EO14024] (Linked To: PRIGOZHIN, Yevgeniy Viktorovich).

   Designated pursuant to sections 1(a)(v) of E.O. 14024 for being the spouse or adult child of Yevgeniy Viktorovich Prigozhin, a person whose property and interests in property are blocked pursuant to section 1(a)(ii) or (iii) of E.O. 14024.

7. PRIGOZHINA, Lyubov Valentinovna (Cyrillic: ПРИГОЖИНА, Любовь Валентиновна), Russia; DOB 26 Jun 1970; nationality Russia; Gender Female; Tax ID No. 780107463330 (Russia) (individual) [RUSSIA-EO14024] (Linked To: PRIGOZHIN, Yevgeniy Viktorovich).

   Designated pursuant to sections 1(a)(v) of E.O. 14024 for being the spouse or adult child of Yevgeniy Viktorovich Prigozhin, a person whose property and interests in property are blocked pursuant to section 1(a)(ii) or (iii) of E.O. 14024.

8. USMANOV, Alisher Burhanovich (Cyrillic: УСМАНОВ, Алишер Бурханович) (a.k.a. USMANOV, Alisher Burkhanovich; a.k.a. USMONOV, Alisher), Russia; Monaco; DOB 09 Sep 1953; POB Chust, Uzbekistan; nationality Russia; Gender Male; Tax ID No. 1601108019 (Russia) (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

Entities

1. KATINA DRUSTVO S OGRANICENOM ODGOVORNOSCU ZA NEKRETNINE I UGOSTITELJSTVO (a.k.a. KATINA D.O.O.), Trg zrvata fasizma 6, Zagreb 10000, Croatia; Organization Established Date 11 Jun 2003; Tax ID No. 22558501304 (Croatia); Registration Number 01737015 (Croatia) [RUSSIA-EO14024] (Linked To: TOKAREVA, Maiya Nikolaevna).

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Maiya Nikolaevna Tokarev, a person whose property and interests in property are blocked pursuant to E.O. 14024.

2. LIMITED LIABILITY COMPANY OSTOZHENKA 19 (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ОСТОЖЕНКА 19) (a.k.a. LLC OSTOZHENKA 19 (Cyrillic: ООО ОСТОЖЕНКА 19); a.k.a. OSTOZHENKA 19; a.k.a. OSTOZHENKA 19 OOO), etazh/pom 3/14, stroenie 1, dom 19, ulitsa Ostozhenka,

Moscow 119034, Russia; Organization Established Date 03 Oct 2013; Tax ID No. 7703798019 (Russia); Registration Number 1137746907781 (Russia) [RUSSIA-EO14024] (Linked To: TOKAREVA, Maiya Nikolaevna).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Maiya Nikolaevna Tokarev, a person whose property and interests in property are blocked pursuant to E.O. 14024.

3. T.G.A. D.O.O. ZA TRGOVINU I USLUGE (a.k.a. T.G.A. D.O.O.), Trg zrtava fasizma 6, Zagreb 10000, Croatia; Organization Established Date 26 Feb 2010; Tax ID No. 13620997820 (Croatia); Registration Number 02617846 (Croatia) [RUSSIA-EO14024] (Linked To: TOKAREVA, Maiya Nikolaevna).

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Maiya Nikolaevna Tokarev, a person whose property and interests in property are blocked pursuant to E.O. 14024.

4. LAKHTA PARK PREMIUM, OOO (Cyrillic: ЛАХТА ПАРК ПРЕМИУМ), St. Petersburg, Russia; Tax ID No. 7810764381 (Russia) [RUSSIA-EO14024] (Linked To: PRIGOZHIN, Pavel Evgenyevich).

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Pavel Evgenyevich Prigozhin, a person whose property and interests in property are blocked pursuant to E.O. 14024.

5. LAKHTA PARK, OOO (Cyrillic: ЛАХТА ПАРК), Pargolovo, Russia; Tax ID No. 7807381808 (Russia) [RUSSIA-EO14024] (Linked To: PRIGOZHIN, Pavel Evgenyevich).

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Pavel Evgenyevich Prigozhin, a person whose property and interests in property are blocked pursuant to E.O. 14024.

6. LAKHTA PLAZA, OOO (Cyrillic: ЛАХТА ПЛАЗА), St. Petersburg, Russia; Tax ID No. 7801634178 (Russia) [RUSSIA-EO14024] (Linked To: PRIGOZHIN, Pavel Evgenyevich).

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Pavel Evgenyevich Prigozhin, a person whose property and interests in property are blocked pursuant to E.O. 14024.

Vessel

1. DILBAR (ZGFO) Yacht 15,917GRT Cayman Islands flag; Vessel Registration Identification IMO 9661792 (vessel) [RUSSIA-EO14024] (Linked To: USMANOV, Alisher Burhanovich).

   Identified as property in which Alisher Burhanovich Usmanov, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

Aircraft

1. M-IABU (a.k.a. BOURKHAN); Aircraft Manufacture Date 17 Sep 2008; Aircraft Model Airbus A340-300; Aircraft Manufacturer's Serial Number (MSN) 955; Aircraft Tail Number M-IABU (aircraft) [RUSSIA-EO14024] (Linked To: USMANOV, Alisher Burhanovich).

   Identified as property in which Alisher Burhanovich Usmanov, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

Dated: March 3, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–05094 Filed 3–9–22; 8:45 am]

BILLING CODE 4810–AL–C

FEDERAL REGISTER

Vol. 87 Thursday,
No. 47 March 10, 2022

Part II

Department of Veterans Affairs

38 CFR Part 78
Staff Sergeant Parker Gordon Fox Suicide Prevention Grant Program; Final Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 78

RIN 2900–AR16

Staff Sergeant Parker Gordon Fox Suicide Prevention Grant Program

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) is issuing this interim final rule to implement a new authority requiring VA to implement a three-year community-based grant program to award grants to eligible entities to provide or coordinate the provision of suicide prevention services to eligible individuals and their families for the purpose of reducing veteran suicide. This rulemaking specifies grant eligibility criteria, application requirements, scoring criteria, constraints on the allocation and use of the funds, and other requirements necessary to implement this grant program.

DATES:

Effective date: This interim final rule is effective on April 11, 2022.

Comments: Comments must be received on or before May 9, 2022.

ADDRESSES: Comments must be submitted through *www.Regulations.gov.* Comments received will be available at *regulations.gov* for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Sandra Foley, Supervisory Grants Manager—Suicide Prevention Program, Office of Mental Health and Suicide Prevention, 11MHSP, 810 Vermont Avenue NW, Washington, DC 20420, 202–502–0002 (This is not a toll-free telephone number), *VASSGFoxGrants@va.gov.*

SUPPLEMENTARY INFORMATION:

Background on Governing Statute and Public Input

On October 17, 2020, the Commander John Scott Hannon Veterans Mental Health Care Improvement Act of 2019, Public Law (Pub. L.) 116–171 (the Act), was enacted in law. Section 201 of the Act, codified as a note to section 1720F of title 38, United States Code (U.S.C.), mandated VA establish the Staff Sergeant Parker Gordon Fox Suicide Prevention Grant Program (SSG Fox SPGP), a community-based grant program that would support certain eligible entities to provide or coordinate the provision of suicide prevention services to eligible individuals and their families. Section 201 of the Act specified which entities are eligible for grants and those individuals eligible to receive suicide prevention services, defined the suicide prevention services that may be provided, described grant application requirements, and explained instances in which eligible entities must refer individuals to VA for additional care, among other requirements. This grant program is authorized for a period of three years starting on the date on which the first grant is awarded. The maximum amount per grant is capped by section 201(c)(2) of the Act at $750,000 per fiscal year.

Section 201 of the Act required that VA consult with certain entities to assist in developing a plan for the design and implementation of the provision of grants; establishing criteria for the selection of eligible entities; developing a framework for collecting and sharing information about grantees; and developing measures and metrics to be used by grantees to determine the effectiveness of programming provided pursuant to the suicide prevention services grant.

Section 201(h)(3) of the Act specifically required VA consult with the following entities: (1) Veterans service organizations; (2) National organizations (including national organizations that advocate for the needs of individuals with or at risk of behavioral health conditions; and those that represent mayors, unions, first responders, chiefs of police and sheriffs, governors, a territory of the United States, or a Tribal alliance) representing potential community partners of eligible entities in providing supportive services to address the needs of eligible individuals and their families; (3) National organizations representing members of the Armed Forces; (4) National organizations that represent counties; (5) Organizations with which VA has a current memorandum of agreement or understanding related to mental health or suicide prevention; (6) State departments of veterans affairs; (7) National organizations representing members of the Reserve Components of the Armed Forces; (8) National organizations representing members of the Coast Guard; (9) Organizations, including institutions of higher education, with experience in creating measurement tools for purposes of advising the Secretary on the most appropriate existing measurement tool or protocol for VA to utilize; (10) The National Alliance on Mental Illness; (11) A labor organization (as such term is defined in section 7103(a)(4) of title 5, U.S.C.); (12) The Centers for Disease Control and Prevention (CDC), the Substance Abuse and Mental Health Services Administration (SAMHSA), and the President's Roadmap to Empower Veterans and End a National Tragedy of Suicide (PREVENTS) Task Force; and such other organizations as the Secretary deems appropriate.

On April 1, 2021, VA published a Notice of Request for Information on the Department of Veterans Affairs' Staff Sergeant Parker Gordon Fox Suicide Prevention Grant Program (RIN 2900–AR16) in the **Federal Register** (FR), requesting information and comments from the public to meet the requirements for consultation in the Act. 86 FR 17268 (April 1, 2021). Through this notice, VA asked the public, including those organizations listed in the previous paragraph, to comment on various aspects of the suicide prevention services grant program, such as distribution and selection of grants; administration of the grant program, including development of measures and metrics; training and technical assistance; referrals for care; degrees of risk of suicide and processes for determining degrees of risk of suicide; and nontraditional and innovative approaches and treatment practices that may be appropriate under this grant program. VA directly contacted various organizations that met the categories of organizations listed under section 201(h)(3) of the Act to notify them that VA was seeking input through this FR notice. VA received 124 comments, including comments outside the scope of the questions posed. Many commenters expressed support for awarding grants to entities with prior relevant experience. Many commenters also provided suggestions for training and technical assistance related to suicide prevention, evaluation and reporting requirements, and referrals to VA for further care. Additionally, numerous commenters provided suggestions for non-traditional and innovative treatment and services under this grant program. The comments received from this notice are publicly available online at *www.regulations.gov.*

On May 11, 2021, VA published a Notice of Listening Sessions on the Department of Veterans Affairs Staff Sergeant Parker Gordon Fox Suicide Prevention Grant Program (RIN 2900–AR16) in the FR notifying the public of two related listening sessions, which were held on May 25, 2021 and May 26, 2021. 86 FR 25938 (May 11, 2021). The topics for the first listening session included distribution and selection of grants, administration of the grant program, and training and technical assistance. The topics for the second listening session included referrals for

care, risk of suicide, and suicide prevention services. Similar to the April 1, 2021 notice, this second notice included specific questions for the public to consider and upon which to comment at the listening session. VA directly contacted various organizations that met the categories of organizations listed under section 201(h)(3) of the Act to notify them that VA was seeking input through these listening sessions. Thirty-two individuals presented oral comments at these listening sessions. Many of these comments were similar to those received in response to the April 1, 2021 notice. Commenters expressed support for awarding grants to entities with demonstrated experiences and capacity to implement evidence-based programs. Commenters also expressed support for awarding grants to entities that have experience working with veterans at risk of suicide and have or plan to have culturally competent care. Additionally, commenters supported awarding grants to entities that utilized validated assessment tools and entities that had area partnerships (including at local, regional, and national levels) as well as with VA. Many commenters also provided suggestions for training and for assessment tools. Additionally, numerous commenters provided suggestions for non-traditional and innovative treatment and services under this grant program. The transcript for these listening sessions is publicly available online at *www.regulations.gov.*

VA appreciates the time and attention from commenters who shared their opinions on how to implement section 201 of the Act. In developing this interim final rule, VA considered the feedback received from the April 1, 2021, Notice of Request for Information on the Department of Veterans Affairs' Staff Sergeant Parker Gordon Fox Suicide Prevention Grant Program (RIN 2900–AR16) and the listening sessions held on May 25, 2021, and May 26, 2021.

Part 78 of Title 38, Code of Federal Regulations

Through this interim final rule, VA is establishing and implementing, in new part 78 of title 38, Code of Federal Regulations (CFR), SSG Fox SPGP required by section 201 of the Act. Establishment of this new part ensures organization and clarity for implementation of this new grant program. The interim final rule is establishing regulations authorizing VA to award suicide prevention services grants to eligible entities who will provide or coordinate the provision of suicide prevention services to eligible individuals and their families.

Consistent with section 201 of the Act, part 78 is titled the Staff Sergeant Parker Gordon Fox Suicide Prevention Grant Program.

78.0 Purpose and Scope

Section 78.0 of this IFR explains the purpose and scope of new part 78.

Paragraph (a) states that this part implements SSG Fox SPGP with the purpose of reducing veteran suicide by expanding suicide prevention programs for veterans through the award of suicide prevention services grants to eligible entities to provide or coordinate the provision of suicide prevention services to eligible individuals and their families. This purpose is consistent with section 201(a)(1) and (b) of the Act. Section 201(a)(1) states that its purpose is to reduce veteran suicide through a community-based grant program to award grants to eligible entities to provide or coordinate suicide prevention services to eligible individuals and their families. Section 201(b) states that the Secretary shall provide financial assistance through grants to eligible entities to provide or coordinate the provision of services to eligible individuals and their families to reduce the risk of suicide.

Paragraph (b) states that suicide prevention services covered by this part are those services that address the needs of eligible individuals and their families and are necessary for improving the mental health status and wellbeing and reducing the suicide risk of eligible individuals and their families. This broadly defines the intended effects of the program, is consistent with the intent of the law, and ensures that those services authorized under this grant program are those that meet the purpose of this grant program—to reduce suicide risk.

78.5 Definitions

Section 78.5 contains the definitions for key terms that apply to new part 78 and to any Notice of Funding Opportunity (NOFO) for this grant program. The definitions are listed in alphabetical order, beginning with the definition of applicant.

VA is defining applicant to mean an eligible entity that submits an application for a suicide prevention services grant announced in a NOFO. VA is defining applicant in this manner since only an eligible entity (as that term is defined later in this rulemaking) that submits an application for a suicide prevention services grant under part 78 will be able to apply for such a grant. This is based on a plain language understanding of the term ''applicant'' and is consistent with how VA defines this in the Supportive Services for Veteran Families (SSVF) Program. See 38 CFR 62.2. As explained in § 78.15, VA will require submission of an application similar to other grant programs that VA administers.

Direct Federal financial assistance means Federal financial assistance received by an entity selected by the Government or a pass-through entity as defined in 38 CFR 50.1(d) to provide or carry out a service (*e.g.,* by contract, grant, or cooperative agreement). This is used for purposes of § 78.130 and is consistent with how VA defines this in the Homeless Providers Grant and Per Diem Program and the SSVF Program (see §§ 61.64(b)(2) and 62.62, respectively).

Eligible child care provider is defined to mean a provider of child care services for compensation, including a provider of care for a school-age child during non-school hours, that (1) is licensed, regulated, registered, or otherwise legally operating, under State and local law; and (2) satisfies the State and local requirements, applicable to the child care services the provider provides. This is consistent with the definition of eligible child care provider that VA uses in the SSVF Program. See 38 CFR 62.2. This definition of eligible child care provider is also consistent with the broader definition used by the Department of Health and Human Services (HHS) for its Child Care and Development Block grant. See 42 U.S.C. 9859(2).

This term is used for purposes of § 78.80(h), which includes among suicide prevention services certain child care services. Pursuant to section 201(q)(11)(A)(ix)(VIII) of the Act, child care services (not to exceed $5,000 per family of an eligible individual per fiscal year) are authorized as assistance with emergent needs under this grant program, and VA explains in § 78.80(h) the limitations on such services and payments.

Eligible entity is defined to mean an entity that meets the definition of an eligible entity in section 201(q) of Public Law 116–171. VA refers to section 201(q) of Public Law 116–171 rather than include the exact definition from subsection (q)(3) of section 201, as this would allow VA to immediately implement any changes made by Congress to that definition without requiring amendment to these regulations. Currently, under section 201(q)(3) of the Act, an eligible entity must be one of the following: (1) An incorporated private institution or foundation (i) no part of the net earnings of which incurs to the benefit of any member, founder, contributor, or

individual, and (ii) that has a governing board that would be responsible for the operation of the suicide prevention services provided under this part; (2) a corporation wholly owned and controlled by an organization meeting the requirements of clauses (i) and (ii) above; (3) an Indian tribe; (4) a community-based organization that can effectively network with local civic organizations, regional health systems, and other settings where eligible individuals and their families are likely to have contact; or (5) a State or local government.

Eligible individual is defined to mean an individual that meets the requirements of § 78.10(a). As discussed later in this rulemaking, § 78.10(a) describes the eligibility criteria to be an eligible individual under part 78. These criteria are consistent with section 201(q)(4) of the Act.

Family is defined to mean any of the following: A parent, spouse, child, sibling, step-family member, extended family member, and any other individual who lives with the eligible individual. This is consistent with section 201(q)(6) of the Act.

Grantee is defined to mean an eligible entity that is awarded a suicide prevention services grant under part 78. This is consistent with how VA defines grantee for other VA grant programs and the plain meaning of this term. See, *e.g.,* 38 CFR 62.2; 38 CFR 61.1.

Indian tribe is defined to mean an Indian tribe as defined in 25 U.S.C. 4103. Section 4103(13)(A) of title 25, U.S.C., defines Indian tribe in general to mean a tribe that is a Federally or a State recognized tribe. Section 4103(13)(B) of title 25, U.S.C., further defines Federally recognized tribe to mean any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*). Section 4103(13)(C) of title 25, U.S.C., also defines State recognized tribe to mean any tribe, band, nation, pueblo, village, or community—(1) that has been recognized as an Indian tribe by any State; and (2) for which an Indian Housing Authority has, before the effective date under section 705, entered into a contract with the Secretary of Housing and Urban Development pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) for housing for Indian families and has received funding pursuant to such contract within the 5-year period ending upon such effective date. This definition also includes certain conditions set forth in 25 U.S.C. 4103(13)(C)(ii). This definition of Indian tribe is consistent with section 201(q)(7) of the Act.

Indirect Federal financial assistance means Federal financial assistance in which a service provider receives program funds through a voucher, certificate, agreement or other form of disbursement, as a result of the genuine, independent choice of a participant. This is used for purposes of § 78.130 and is consistent with how VA defines this in the VA Homeless Providers Grant and Per Diem Program and the SSVF Program. See §§ 61.64(b)(2) and 62.62, respectively.

Section 201(d)(1)(A)(iv) of the Act authorizes VA to prioritize distribution of grants to medically underserved areas. While section 201 of the Act does not define medically underserved areas, VA is defining medically underserved areas consistent with the definition of medically underserved population that is set forth in other Federal law. Section 254b(b)(3)(A) of 42 U.S.C. defines medically underserved population to mean the population of an urban or rural area designated by the HHS Secretary as an area with a shortage of personal health services or a population group designated by the HHS Secretary as having a shortage of such services. While section 254b(b)(3)(A) uses the term medically underserved population, section 254b(b)(3) generally establishes a process for identifying medically underserved areas that are designated by the United States Health Resources and Services Administration (HRSA), the HHS sub-agency responsible for issuing data and maps on medically underserved populations and areas in a combined manner. See HRSA's maps on medically underserved areas/populations at *https://www.hrsa.gov/maps/quick-maps?config=mapconfig/MUA.jsondevelops.* See also, *https://data.hrsa.gov/tools/shortage-area/mua-find.* Because 42 U.S.C. 254b(b)(3) may be amended in the future, VA is not incorporating the actual definition in proposed § 78.5. Rather, VA is defining medically underserved areas to mean an area that is designated as a medically underserved population under 42 U.S.C. 254b(b)(3). This term is defined consistently with its use in 38 U.S.C. 7601 note, and is widely known, commonplace, and established. It also allows VA to defer to the expertise of another agency that specializes in analyzing and identifying medically underserved areas and populations.

VA is defining Notice of Funding Opportunity (NOFO) to mean a Notice of Funding Opportunity published on *grants.gov* in accordance with § 78.110. This is consistent with how VA defines a similar term, Notice of Funding Availability (NOFA), in other grant regulations and with the plain meaning of this term. This definition references § 78.110, which explains that VA will publish a NOFO when funds for suicide prevention services grants are available and indicates the type of information that must be included in the application for this program. Pursuant to 2 CFR 200.203, all NOFOs must be posted on *grants.gov.*

Participant is defined to mean an eligible individual or their family who is receiving suicide prevention services for which they are eligible from a grantee. This definition is necessary for purposes of understanding part 78 and SSG Fox SPGP.

VA is defining rural communities to mean those communities considered rural according to the Rural-Urban Commuting Area (RUCA) system as determined by the United States Department of Agriculture (USDA). This is consistent with section 201(q)(9) of the Act. VA will use this term and its definition in § 78.30 for purposes of prioritizing the distribution of grants to rural communities pursuant to section 201(d)(1)(A)(i) of the Act. For more information on RUCA, please refer to *https://www.ers.usda.gov/data-products/rural-urban-commuting-area-codes/.*

VA is defining State to mean any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. This is identical to most of the definition of the same term for the SSVF Program (see § 62.2), except that we do not include here the exception that is present in the SSVF regulations to public and Indian housing agencies under the United States Housing Act of 1937, as that portion of the definition is not relevant to the suicide prevention grant program established under these regulations. This definition is understood by VA and grantees.

Suicide prevention services is defined consistent with the definition of this term in section 201(q)(11) of the Act. VA is setting forth each of the suicide prevention services in their own individual sections (see 38 CFR 78.45 through 78.90) for clarity. Thus, VA is defining suicide prevention services to

include the following services provided to address the needs of a participant: (1) Outreach as specified under § 78.45, (2) baseline mental health screening as specified under § 78.50, (3) education as specified under § 78.55, (4) clinical services for emergency treatment as specified under § 78.60, (5) case management services as specified under § 78.65, (6) peer support services as specified under § 78.70, (7) assistance in obtaining VA benefits as specified under § 78.75, (8) assistance in obtaining and coordinating other public benefits and assistance with emergent needs as specified under § 78.80, (9) nontraditional and innovative approaches and treatment practices as specified under § 78.85, and (10) other services as specified under § 78.90.

VA is defining suicide prevention services grant to mean a grant awarded under part 78. This definition is based on the plain language understanding of this term.

VA is defining suicide prevention services grant agreement to mean the agreement executed between VA and a grantee as specified under § 78.115. This definition is based on the plain language understanding of this term and is consistent with the definition of similar terms in other VA regulations. See § 62.2.

Suspension is defined to mean an action by VA that temporarily withdraws VA funding under a suicide prevention services grant, pending corrective action by the grantee or pending a decision to terminate the suicide prevention services grant by VA. Suspension of a suicide prevention services grant is a separate action from suspension under VA regulations or guidance implementing Executive Orders 12549 and 12689, ''Debarment and Suspension.'' This definition is consistent with the SSVF grant program's definition for this term. See § 62.2. However, with regards to implementing Executive Orders 12549 and 12689, VA has added the language, guidance, as not all of VA's implementations of Executive Orders are regulatory.

Territories is defined to mean the territories of the United States, including Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, and the Northern Mariana Islands. This is consistent with how the Federal government commonly describes U.S. territories (in comparison to States). This term is necessary to define as it is used in the Act, although not defined within section 201, and in § 78.30. VA is defining this term as VA has authority under section 201(d)(1)(A)(iii) of the Act to prioritize distribution of grants to territories of the United States. As explained in § 78.30, VA may prioritize territories, along with other areas such as medically underserved areas and tribal lands, for purposes of this grant program. While there is some overlap between this definition and the definition of State above—all territories are considered States under part 78 (as provided for under 38 U.S.C. 101(20)), but not all States are territories—the specific application of this potential priority under § 78.30(d)(2)(iii) reflects the only meaningful distinction between the two terms.

Veteran is defined to mean veteran under 38 U.S.C. 101(2). This is based on section 201(q)(4)(A) of the Act. Section 101 of title 38, U.S.C., defines veteran as a person who served in the active military, naval, air, or space service, and who was discharged or released therefrom under conditions other than dishonorable. This term is used for purposes of peer support services in part 78.

The term Veterans Crisis Line is defined to mean the toll-free hotline for veterans in crisis and their families and friends established under 38 U.S.C. 1720F(h). This is consistent with section 201(q)(12) of the Act. This term is used in § 78.30(d)(2)(vi) for purposes of prioritizing selection of applicants for this grant program.

VA is defining withholding to mean that payment of a suicide prevention services grant will not be paid until such time as VA determines that the grantee provides sufficiently adequate documentation and/or actions to correct a deficiency for the suicide prevention services grant. This term is defined in this manner, as it is intended to provide a general description of how this term is used in 2 CFR part 200, which governs VA grant programs including the SSG Fox SPGP. This term relates to withholding payment of a suicide prevention services grant pursuant to § 78.160, described later in this rulemaking.

78.10 Eligible Individuals

Section 78.10 explains the criteria for determining the eligibility of individuals under part 78 consistent with the definition of eligible individual in section 201(q)(4) of the Act. As explained in the definitions section, an eligible individual is an individual that meets the requirements of § 78.10(a).

Paragraph (a) states that to be an eligible individual under this part, a person must meet criteria that determine that person is at risk of suicide and further meet the definition of eligible individual in section 201 of Public Law 116–171. VA refers to section 201(q) of Public Law 116–171 rather than include the exact definition from subsection (q)(4), as this would allow VA to immediately implement any changes made by Congress to that definition without requiring amendment to these regulations. Subsection (q)(4) of section 201 currently states that an eligible individual must be one of the following: (1) A veteran as defined in 38 U.S.C. 101, (2) an individual described in 38 U.S.C. 1720I(b), or (3) an individual described in 38 U.S.C. 1712A(a)(1)(C)(i) through (iv).

Section 101(2) of title 38, U.S.C. defines veteran as a person who served in the active military, naval, air, or space service, and who was discharged or released therefrom under conditions other than dishonorable. Section 1720I(b) requires VA furnish to certain former member of the Armed Forces (1) an initial mental health assessment and (2) mental health care or behavioral health care services authorized under 38 U.S.C. chapter 17 that are required to treat the mental or behavioral health care needs of these former service members, including risk of suicide or harming others. Such former members of the Armed Forces, including reserve components, are those who (1) while serving in the active military, naval, air, or space service, were discharged or released therefrom under a condition that is not honorable but not a dishonorable discharge or a discharge by court-martial; (2) are not enrolled in VA health care; and either served in the Armed Forces for a period of more than 100 cumulative days and were deployed in a theater of combat operations, in support of a contingency operation, or in an area at a time during which hostilities were occurring in that area during such service, including by controlling an unmanned aerial vehicle from a location other than such theater or area; or (3) while serving in the Armed Forces, were the victim of a physical assault of a sexual nature, a battery of a sexual nature, or sexual harassment. Section 1712A details the individuals to whom VA is required to furnish readjustment counseling. These include any individual who is a veteran or member of the Armed Forces, including a member of a reserve component of the Armed Forces, who served on active duty in a theater of combat operations or an area at a time during which hostilities occurred in that area; any individual who is a veteran or member of the Armed Forces, including a member of a reserve component of the Armed Forces, who provided direct emergency medical or mental health care, or mortuary services to the

causalities of combat operations or hostilities, but who at the time was located outside the theater of combat operations or area of hostilities; any individual who is a veteran or member of the Armed Forces, including a member of a reserve component of the Armed Forces, who engaged in combat with an enemy of the United States or against an opposing military force in a theater of combat operations or an area at a time during which hostilities occurred in that area by remotely controlling an unmanned aerial vehicle, notwithstanding whether the physical location of such veteran or member during such combat was within such theater of combat operations or area; and any individual who is a veteran or member of the Armed Forces, including a member of a reserve component of the Armed Forces, who served on active service in response to a national emergency or major disaster declared by the President or in the National Guard of a State under orders of the chief executive of that State in response to a disaster or civil disorder in such State.

For purposes of eligible individuals, paragraph (b) defines risk of suicide. Consistent with section 201(q)(8) of the Act, risk of suicide means exposure to, or the existence of, any of the following factors, to any degree, that increase the risk of suicidal ideation and/or behaviors: (1) Health risk factors, including mental health challenges, substance use disorder, serious or chronic health conditions or pain, and traumatic brain injury; (2) environmental risk factors, including prolonged stress, stressful life events, unemployment, homelessness, recent loss, and legal or financial challenges; and (3) historical risk factors, including previous suicide attempts, family history of suicide, and history of abuse, neglect or trauma, including military sexual trauma.

While section 201(q)(8) uses the language, substance abuse, VA instead uses the language, substance use disorder, in paragraph (b) to reduce stigma and discrimination related to substance use. For purposes of paragraph (b), an individual will not be required to have a diagnosis of substance use disorder. This definition is necessary to meet the intent and purpose of the program to provide grants to eligible entities to provide or coordinate the provision of suicide prevention services to eligible individuals who are considered at risk of suicide and is consistent with feedback received from commenters during consultation. This provision is thus used for determining eligibility of eligible individuals for receipt of suicide prevention services under this grant program. VA notes that this definition is overly inclusive, as to define this term otherwise could exclude individuals who may need these critical services prior to a crisis.

Section 201(q)(8)(iii)(III) includes a history of trauma as a potential historical risk factor for suicide. VA interprets this, for purposes of this grant program, to include military sexual trauma. VA notes that survivors of military sexual trauma are at higher risk of suicide. See the National Military and Veteran Suicide Prevention Strategy (*https://www.whitehouse.gov/wp-content/uploads/2021/11/Military-and-Veteran-Suicide-Prevention-Strategy.pdf*). This reference is not intended to exclude other forms of trauma, but rather serves as an example of how this language is interpreted by VA.

As noted in the previous paragraph, section 201(q)(8) of the Act defines risk of suicide based on exposure to, or the existence of, certain factors, to a degree determined by the Secretary pursuant to regulations. Thus, section 201(q)(8)(A) of the Act authorized VA to determine the degree required for these risk factors, and VA will require that grantees use the health, environmental, and historical risk factors just described and the impact thereof to determine the degree of risk of suicide for eligible individuals. This is explained in a note to paragraph (b). The note also explains that the degree of risk depends on the presence of one or more suicide risk factors and the impact of those factors on an individual's mental health and wellbeing.

VA will require grantees determine an individual's degree of risk of suicide through the use of a screening tool approved by the Department. To assist grantees in determining risk of suicide (and thus an individual's eligibility for suicide prevention services), VA will provide grantees with a screening tool that will determine the presence of suicide risk. This tool will be a validated tool that can be administered by non-clinical staff and/or a self-report tool such as the Columbia Suicide Severity Rating Scale. See *https://cssrs.columbia.edu.* VA is not identifying the specific tool in regulation, as the screening tool may change due to an evolving field of study and VA may approve the use of several tools. This tool is subject to the Paperwork Reduction Act because it is an information collection. As such, the public may comment on this screening tool as part of the information collections associated with this rulemaking, and VA welcomes public comment on use of this screening tool. VA will ensure that grantees are provided this tool before providing or coordinating suicide prevention services under this grant program and have access to publicly available training materials to support the grantees' use of this tool.

VA would not require a clinical tool to be used to determine eligibility because many of the authorized suicide prevention services are not clinical in nature. To require a clinical tool to determine the degree of risk of suicide would severely limit the number of applicants and grantees for this grant program, which VA does not believe was the intent of section 201 of the Act. This screening tool is not the same as the tool that will be used for purposes of the baseline mental health screening conduct pursuant to § 78.50, which is described later in this discussion. This screening tool will assess health, environmental, and historical risk factors and the impact thereof. An individual's degree of risk of suicide can vary hour to hour, day to day, and thus, requiring a certain degree of risk of suicide to be eligible for services could result in the ineligibility of individuals whom this program was intended to cover. This is a non-clinical tool that will be used by grantees regardless of whether their staff are licensed, independent clinical providers.

78.15 Applications for Suicide Prevention Services Grants

Under § 78.15(a), applicants must submit a complete application package for a suicide prevention services grant under this new part 78, as described in the NOFO. Paragraph (a) also explains the information that must be included in the application to be considered a complete suicide prevention services grant application package. This list of items described in paragraph (a) is derived from section 201(d)(2), (f), and (h)(2) of the Act, and it ensures that VA can adequately evaluate applicants for the purposes of this grant program (that is, to provide or coordinate the provision of suicide prevention services to reduce the risk of suicide among eligible individuals).

The following information must be included in the application package: (1) Documentation evidencing the experience of the applicant and any identified community partners in providing or coordinating the provision of suicide prevention services to eligible individuals and their families; (2) a description of the suicide prevention services proposed to be provided by the applicant and the identified need for those services; (3) a detailed plan

describing how the applicant proposes to coordinate or deliver suicide prevention services to eligible individuals, including (i) if the applicant is a State or local government or an Indian tribe, an identification of the community partners, if any, with which the applicant proposes to work in delivering such services, (ii) a description of the arrangements currently in place between the applicant and such partners with regard to the provision or coordination of the provision of suicide prevention services, (iii) an identification of how long such arrangements have been in place, (iv) a description of the suicide prevention services provided by such partners that the applicant must coordinate, if any, and (v) an identification of local VA suicide prevention coordinators and a description of how the applicant will communicate with local VA suicide prevention coordinators; (4) a description of the location and population of eligible individuals and their families proposed to be provided suicide prevention services; (5) an estimate of the number of eligible individuals at risk of suicide and their families proposed to be provided suicide prevention services, including the percentage of those eligible individuals who are not currently receiving care furnished by VA; (6) evidence of measurable outcomes related to reductions in suicide risk and mood-related symptoms utilizing validated instruments by the applicant (and the proposed partners of the applicant, if any) in providing suicide prevention services to individuals at risk of suicide, particularly to eligible individuals and their families; (7) a description of the managerial and technological capacity of the applicant to (i) coordinate the provision of suicide prevention services with the provision of other services, (ii) assess on an ongoing basis the needs of eligible individuals and their families for suicide prevention services, (iii) coordinate the provision of suicide prevention services with VA services for which eligible individuals are also eligible, (iv) tailor (*i.e.,* provide individualized) suicide prevention services to the needs of eligible individuals and their families, (v) seek continuously new sources of assistance to ensure the continuity of suicide prevention services for eligible individuals and their families as long as the eligible individuals are determined to be at risk of suicide, and (vi) measure the effects of suicide prevention services provided by the applicant or partner organization on the lives of eligible individuals and their families who receive such services provided by the organization using pre- and post-evaluations on validated measures of suicide risk and mood-related symptoms; (8) clearly defined objectives for the provision of suicide prevention services; (9) a description and physical address of the primary location of the applicant; (10) a description of the geographic area the applicant plans to serve during the grant award period for which the application applies; (11) if the applicant is a State or local government or an Indian tribe, the amount of grant funds proposed to be made available to community partners, if any, through agreements; (12) a description of how the applicant will assess the effectiveness of the provision of grants under this part; (13) an agreement to use the measures and metrics provided by VA for the purposes of measuring the effectiveness of the programming to be provided in improving mental health status, wellbeing, and reducing suicide risk and suicide deaths of eligible individuals and their families; (14) an agreement to comply with and implement the requirements of this part throughout the term of the suicide prevention services grant; and (15) any additional information as deemed appropriate by VA.

The items in paragraph (a) generally are consistent with requirements in section 201(f) and (h)(2) of the Act and are necessary for VA to properly evaluate whether applicants will be able to meet the requirements in this part to provide or coordinate suicide prevention services if they are awarded a grant under this new part 78. While language similar to paragraph (a)(1) does not appear in section 201(f) or (h)(2) of the Act, it does appear in section 201(d)(2) of the Act, where VA is instructed to give preference to eligible entities that have demonstrated the ability to provide or coordinate suicide prevention services. Paragraph (a)(14) similarly does not appear explicitly in section 201(f) or (h)(2) of the Act, but section 201(f)(1) authorizes the Secretary to include such commitments as the Secretary considers necessary to carry out this section. Compliance with the requirements of the new part 78 is such a commitment. Section 201(f)(2)(M) also authorizes the Secretary to include additional application criteria as the Secretary considers appropriate. Again, an agreement to comply with the requirements of this part is an appropriate obligation. VA notes that technical assistance with completing applications will be available for applicants, including how to determine the required estimates under paragraph (a)(5).

For purposes of paragraph (a)(7)(iv), VA notes that tailoring (*i.e.,* providing individualized) suicide prevention services to the needs of eligible individuals and their families, includes how services would be tailored (provided) to priority sub-populations, including but not limited to survivors of military sexual trauma, women veterans under the age of 35, and other groups identified in the National Military and Veteran Suicide Prevention Strategy. See, *https://www.whitehouse.gov/wp-content/uploads/2021/11/Military-and-Veteran-Suicide-Prevention-Strategy.pdf. Such services may include but not be limited to care and support with military sexual trauma, employment, and housing.*

For purposes of paragraphs (a)(4) and (a)(10) of this section, as well as for other sections of this rule, VA is requiring applicants to provide information regarding the location of eligible individuals and a description of the geographic area the applicant plans to serve. Section 201(d)(1)(C) of the Act permits VA to provide grants to eligible entities that furnish services to eligible individuals and their families in geographically dispersed areas; this authority is discretionary. At this time, VA is choosing not to exercise this authority. While there may be some applicants who desire to serve a population that is geographically dispersed, it would be logistically difficult for such organizations to provide necessary services, and a number of other provisions in section 201 of the Act clearly state requirements related to geographic locations. For example, section 201(d)(1)(A) and (B) of the Act permit and require, respectively, VA to prioritize grants to geographic areas, such as rural communities, Tribal lands, territories of the United States, medically underserved areas, areas with a high number or percentage of minority veterans or women veterans, areas with a high number or percentage of calls to the Veterans Crisis Line, and areas that have experienced high rates of suicide by eligible individuals. Each of these descriptions clearly requires a geographic description or scope. Other provisions of section 201 of the Act also clearly refer to geographic areas. For example, section 201(f)(2)(I) requires applicants to provide ''a description of the geographic area the eligible entity plans to serve during the grant award period for which the application applies.'' Section 201(h)(2)(A) requires the Secretary to develop a framework for

collecting and sharing information about grantees for purposes of improving the services available for eligible individuals and their families set forth by locality, among other factors. Section 201(q)(11)(A)(iv), which defines suicide prevention services, includes the provision of clinical services for emergency treatment as a suicide prevention service, and these services would generally need to be furnished in-person. Additionally, applicants seeking grant funds to support non-geographically focused populations would likely have higher overhead and administrative costs due to the need to conduct outreach across a broader area, maintain information and connections with more VA facilities and other entities, and deliver services in different locations. Higher overhead costs mean fewer available resources dedicated to the delivery of suicide prevention services, which, given the population being served by this program, would be less than ideal as those resources could be better utilized elsewhere to serve this unique population. Given the short period of time in which VA is authorized to operate this program, only three years from the date of the first grant award (see section 201(j) of the Act), it would be prudent to ensure these resources are used to maximal effect.

This does not prohibit organizations that function at a national level or in multiple geographic areas from applying for a grant in one or more location as long as they meet the requirements necessary to implement suicide prevention services for the specific geographic area. However, VA notes that many of the suicide prevention services, particularly emergent services for those at immediate risk of suicide, could not be furnished by entities without a physical presence in the area or could only be furnished at a greater risk of the loss of life of a participant and the services required by law and by the targeted population require engagement with local VA medical centers and community.

Paragraph (b) states that subject to funding availability, grantees may submit an application for renewal of a suicide prevention services grant if the grantee's program will remain substantially the same. To apply for renewal of a suicide prevention services grant, a grantee must submit to VA a complete suicide prevention services grant renewal application package, as described in the NOFO. This is consistent with how VA administers the SSVF Program under part 62 and will allow VA to renew grants in an efficient and timely manner so that there will be no lapse in the provision or coordination of the provision of suicide prevention services by grantees to participants from year to year.

Paragraph (c) establishes that VA may request in writing that an applicant or grantee, as applicable, submit other information or documentation relevant to the suicide prevention services grant application. This is authorized by section 201(f)(1) of the Act, which permits VA to require such commitments and information as the Secretary considers necessary to carry out this section. This provides VA with the authority to request additional information that may not be in the initial or renewal application but will be necessary for VA to properly evaluate the applicant or grantee for a suicide prevention services grant.

78.20 Threshold Requirements Prior To Scoring Suicide Prevention Services Grant Applicants

Pursuant to section 201(h) of the Act, VA, in consultation with various entities listed in the Act, is required to establish selection criteria for this new grant program. As explained earlier in this rulemaking, VA conducted this consultation through an FR notice and through listening sessions. See 86 FR 17268 (April 1, 2021); 86 FR 25938 (May 11, 2021). Section 78.20 sets forth the threshold requirements for further scoring applicants pursuant to § 78.25.

Section 78.20 explains that VA will only score applicants for suicide prevention services grants if they meet certain threshold requirements as set forth in paragraphs (a) through (g).

These threshold requirements in paragraphs (a) through (g) include that the application is filed within the time period established in the NOFO, and any additional information or documentation requested by VA under § 78.15(c) is provided within the time frame established by VA; the application is completed in all parts; the activities for which the suicide prevention services grant is requested are eligible for funding under this part; the applicant's proposed participants are eligible to receive suicide prevention services under this part; the applicant agrees to comply with the requirements of this part; the applicant does not have an outstanding obligation to the Federal government that is in arrears and does not have an overdue or unsatisfactory response to an audit; and the applicant is not in default by failing to meet the requirements for any previous Federal assistance.

These are minimum requirements that must be met before VA will score applications, and applicants will be able to understand whether they meet these threshold requirements in advance of application submission. VA anticipates this will reduce the amount of time and resources that VA will dedicate to evaluating and scoring applicants for suicide prevention services grants. These requirements are authorized by section 201(f)(1) of the Act, which permits VA to include such commitments and information as the Secretary considers necessary to carry out section 201. These threshold requirements are consistent with other VA grant programs, such as the Homeless Providers Grant and Per Diem Program and the SSVF Program (See §§ 61.12 and 62.21, respectively).

78.25 Scoring Criteria for Awarding Grants

Section 201(h)(1) of the Act requires the VA Secretary to establish criteria for the selection of eligible entities that have submitted applications for a suicide prevention services grant. Consistent with that authority, in § 78.25, VA sets forth the criteria to be used to score applicants who are applying for a suicide prevention services grant, as the amount of funds available for grants each year will be limited and VA may receive a higher number of applicants than there are available grant funds. Scoring criteria will allow VA to award grants to those who are most qualified and will ensure that VA administers grants in a manner consistent with the intent and purpose of SSG Fox SPGP. The scoring criteria were developed based on the scoring criteria used for other VA grant programs, such as the SSVF Program (38 CFR 62.22) and Homeless Providers Grant and Per Diem Program (38 CFR 61.13), but tailored to the purpose and requirements of section 201 of the Act. These criteria are consistent with feedback received from commenters during consultation that expressed support for awarding grants to entities with prior experience working with veterans, including those at risk of suicide, entities that had partnerships within the area and with VA, and entities that have or plan to have culturally competent care related to veterans.

While this section does not include specific point values for each criterion, the regulation provides that such point values will be set forth in the NOFO. This will allow VA to retain flexibility in determining those point values each year of the grant program in the event that such point values need to change. At all times, VA will comply with the requirements in section 201(d) of the Act regarding prioritization of and

preference for certain applicants. VA will establish in each NOFO a minimum number of points that an applicant must be awarded, both in each category and in total, to ensure that all applicants who are awarded a grant can perform all necessary elements of the program, and that their program as a whole is likely to be successful. These dual requirements will ensure that VA is giving preference to applicants that have demonstrated the ability to provide or coordinate suicide prevention services, as required by section 201(d)(2) of the Act.

Paragraph (a) explains that VA will award points based on the background, qualifications, experience, and past performance, of the applicant and any community partners identified by the applicant in the suicide prevention services grant application, as demonstrated by the following: (1) Background and organizational history, (2) staff qualifications, and (3) organizational qualifications and past performance, including experience with veterans services. These scoring criteria are important to determine whether applicants have the necessary and relevant background and experience to administer a suicide prevention services program consistent with section 201 of the Act and 38 CFR part 78.

In scoring an applicant's background and organizational history under paragraph (a)(1), VA will consider the applicant's, and any identified community partners', background and organizational history that are relevant to the program; whether the applicant, and any identified community partners, maintain organizational structures with clear lines of reporting and defined responsibilities; and whether the applicant, and any identified community partners, have a history of complying with agreements and not defaulting on financial obligations.

Under paragraph (a)(2), VA will score applications based on staff qualifications. This includes determining the applicant's staff's, and any identified community partners' staff's, experience providing to, or coordinating services for, eligible individuals and their families; and the applicant's staff's, and any identified community partners' staff's, experience administering programs similar to SSG Fox SPGP.

VA will score applicants' organizational qualifications and past performance, including experience with veterans services, under paragraph (a)(3) based on the applicant's, and any identified community partners', organizational experience providing suicide prevention services to or coordinating suicide prevention services for eligible individuals and their families; the applicant's, and any identified community partners', organizational experience coordinating services for eligible individuals and their families among multiple organizations and Federal, State, local, and tribal governmental entities; the applicant's, and any identified community partners', organizational experience administering a program similar in type and scale to SSG Fox SPGP to eligible individuals and their families; and the applicant's, and any identified community partners', organizational experience working with veterans and their families.

Examples of experience VA will consider under paragraph (a) may include but are not limited to participation in VA–SAMHSA's Governors' and Mayors' Challenges to Prevent Suicide among service members, veterans, and their families; endorsement by a local or State public health agency or State Department of Veterans Affairs recognizing care coordination experience; and participation in the SSVF Program and Homeless Providers Grant and Per Diem Program.

While experience providing suicide prevention services to eligible individuals and their families is an important scoring criterion, we acknowledge that some organizations may not have such experience. However, they may have experience working with veterans and their families (other than those eligible under this grant program) for purposes other than those related to this grant program. Having an understanding of the veteran population as a whole and demonstrating related military cultural competency is critical for ensuring that the needs of eligible individuals and their families are met through this grant program. This is consistent with the feedback received through consultation as described earlier. This also allows VA the ability to award points at various levels (local, regional, State) since the types of experience entities at those levels may have can vary. Thus, pursuant to paragraph (a), VA will score applicants not only based on their experience administering similar programs to the suicide prevention grant programs and providing or coordinating services to eligible individuals, but also based on their experience working with veterans and their families.

Paragraph (b) explains that VA will award points based on the applicant's program concept and suicide prevention services plan. The scoring criteria under this paragraph are important for VA to use to determine whether the applicant has a fully developed program concept and plan that will meet the requirements of section 201 of the Act and 38 CFR part 78.

VA will award points based on the applicant's program concept and suicide prevention services plan, as demonstrated by the (1) need for the program, (2) outreach and screening plan, (3) program concept, (4) program implementation timeline, (5) coordination with VA, (6) ability to meet VA's requirements, goals and objectives for SSG Fox SPGP, and (7) capacity to undertake the program.

VA will score the need for the program under paragraph (b)(1) based on whether the applicant has shown a need amongst eligible individuals and their families in the area where the program will be based and whether the applicant demonstrates an understanding of the unique needs for suicide prevention services of eligible individuals and their families.

VA will score the outreach and screening plan under paragraph (b)(2) based on whether the applicant has a feasible plan for outreach, consistent with § 78.45, and referral to identify and assist individuals and their families that may be eligible for suicide prevention services and are most in need of suicide prevention services, has a feasible plan to process and receive participant referrals, and has a feasible plan to assess and accommodate the needs of incoming participants. As part of scoring the application based on whether the applicant has a feasible plan to assess and accommodate the needs of incoming participants, VA notes that this may include but not be limited to addressing language assistance needs of limited English proficient individuals, physical accommodation needs, and transportation needs.

Pursuant to paragraph (b)(3), VA will score the program concept based on whether the applicant's program concept, size, scope, and staffing plan are feasible; and that the applicant's program is designed to meet the needs of eligible individuals and their families.

VA will score the program implementation timeline under paragraph (b)(4) based on whether the applicant's program will be implemented in a timely manner and suicide prevention services will be delivered to participants as quickly as possible and within a specified timeline. VA will also score this based on whether the applicant has a feasible staffing plan in place to meet the

applicant's program timeline or has existing staff to meet such timeline.

Pursuant to paragraph (b)(5), VA will score applications based on whether the applicant has a feasible plan to coordinate outreach and services with local VA facilities.

In paragraph (b)(6), scoring criteria will include the applicant's ability to meet VA's requirements, goals, and objectives for SSG Fox SPGP. This will be based on whether the applicant demonstrates commitment to ensuring that its program meets VA's requirements, goals, and objectives for SSG Fox SPGP as identified in this part and the NOFO.

Under paragraph (b)(7), VA will score the applicant's capacity, including staff resources, to undertake its program.

Paragraph (c) states that VA will award points based on the applicant's quality assurance and evaluation plan, as demonstrated by (1) program evaluation, (2) monitoring, (3) remediation, and (4) management and reporting. This scoring criterion is important to ensure that applicants can meet any requirements for evaluation, monitoring, and reporting contained in section 201 of the Act and in 38 CFR part 78, will help VA ensure that grant funds are being used appropriately, and will assist in the overall assessment of the grant program.

Pursuant to paragraph (c)(1), VA will evaluate whether the applicant has created clear, realistic, and measurable goals that reflect SSG Fox SPGP's aim of reducing and preventing suicide among veterans against which the applicant's program performance can be evaluated; and the applicant has a clear plan to continually assess the program.

The scoring criterion regarding monitoring in paragraph (c)(2) will be based on whether the applicant has adequate controls in place to regularly monitor the program, including any community partners, for compliance with all applicable laws, regulations, and guidelines; whether the applicant has adequate financial and operational controls in place to ensure the proper use of suicide prevention services grant funds; and the applicant has a feasible plan for ensuring that the applicant's staff and any community partners are appropriately trained and stay informed of SSG Fox SPGP policy, evidence-informed suicide prevention practices, and the requirements of 38 CFR part 78.

Paragraph (c)(3) includes the scoring criterion of remediation. This will be based on whether the applicant has an appropriate plan to establish a system to remediate non-compliant aspects of the program if and when they are identified.

Under paragraph (c)(4), VA will score the applicant's management and reporting, based on whether the applicant's program management team has the capability and a system in place to provide to VA timely and accurate reports at the frequency set by VA.

Paragraph (d) explains that VA will award points based on the applicant's financial capability and plan, as demonstrated by (1) organizational finances (based on whether the applicant, and any identified community partners, are financially stable); and (2) financial feasibility of the program (based on whether the applicant has a realistic plan for obtaining all funding required to operate the program for the time period of the suicide prevention services grant; and whether the applicant's program is cost-effective and can be effectively implemented on-budget). These are important to ensure that funds are not provided to an applicant that is financially unstable and that the applicant has considered the costs and necessary funding for administering a suicide prevention services program.

Paragraph (e) states that VA will award points based on the applicant's area linkages and relations, as demonstrated by the (1) area linkages, (2) past working relationships, (3) local presence and knowledge, and (4) integration of linkages and program concept. This is important for ensuring success of the suicide prevention services program. VA acknowledges that applicants may not have these existing linkages and relationships, but they may develop them over time. VA also acknowledges that certain applicants without these existing linkages and relationships may obtain them through community partners with which they enter into agreements (to the extent permitted under section 201 of the Act).

Area linkages under paragraph (e)(1) will include whether the applicant has a feasible plan for developing or relying on existing linkages with Federal (including VA), State, local, and tribal government agencies, and private entities for the purposes of providing additional services to participants within a given geographic area.

Past working relationships under paragraph (e)(2) will include whether the applicant (or applicant's staff), and any identified community partners (or community partners' staff), have fostered similar and successful working relationships and linkages with public and private organizations providing services to veterans or their families in need of services. These may include but not be limited to housing assistance non-profits and agencies, housing crisis centers, local food banks, employment assistance non-profits and agencies, rape crisis centers, and sexual assault and domestic violence programs with a history of serving veterans and military-connected victims of sexual trauma and abuse.

Local presence and knowledge under paragraph (e)(3) will be based on whether the applicant has a presence in the area to be served by the applicant and understands the dynamics of the area to be served by the applicant. This presence and knowledge does not necessarily mean the applicant has an address or physical office in the area, but rather that they are operating in the area such that they have sufficient knowledge of the area and that their staff has a presence in the area. For example, staff may travel from a nearby area to serve eligible individuals in the targeted area, or a national organization may have a local office through which it intends to make services available. Evaluation of whether an applicant understands the dynamics of the area to be served by the applicant will be based on information including but not limited to the applicant's description of the area, including mental health centers, and relationships with local mental health centers. These criteria under paragraph (e)(3) may be met through letters of support and documented coordination of care.

Integration of linkages and program concept under paragraph (e)(4) will be based on whether the applicant's linkages to the area to be served by the applicant enhance the effectiveness of the applicant's program.

78.30 Selection of Grantees

Section 201(c) of the Act requires the VA Secretary to award a grant to each eligible entity for which the Secretary has approved an application to provide or coordinate the provision of suicide prevention services. Section 201(d) of the Act sets forth how VA may and shall distribute grants based on certain priorities, areas, and geography. Section 201(d)(2) requires the Secretary give preference to eligible entities that have demonstrated the ability to provide or coordinate suicide prevention services. Section 201(h) of the Act requires the Secretary to establish criteria for the selection of eligible entities that have submitted applications for a suicide prevention services grant. In accordance with these subsections of section 201 of the Act, 38 CFR 78.30 sets forth the process for selecting applicants for suicide prevention services grants, which will be a process similar to that of the SSVF Program (38 CFR 62.23) and the Homeless Providers Grant and Per

Diem Program (38 CFR 61.14 and 61.94). However, the selection process under § 78.30 will also incorporate preference, priority, and distribution requirements from section 201(d) of the Act.

As part of the process for selecting applicants to receive suicide prevention services grants, paragraph (a) explains that VA will first score all applicants that meet the threshold requirements set forth in § 78.20 using the scoring criteria set forth in § 78.25.

Next, paragraph (b) states that VA will group applicants within the applicable funding priorities if any are set forth in the NOFO. As funding priorities can change annually, VA will set forth any funding priorities in the NOFO, which will allow VA flexibility in updating priorities in a quick and efficient manner every year that funds are available under this grant program.

Then, as set forth in paragraph (c), VA will rank those applicants that receive at least the minimum amount of total points and points per category set forth in the NOFO, within their respective funding priority group, if any. As noted above, VA will set forth the minimum amount of total points and points per category in the NOFO as these can change annually. Setting forth these points in the NOFO will provide VA flexibility in updating the minimum amount of points in an efficient and quick manner. The applicants will be ranked in order from highest to lowest scores, within their respective funding priority group, if any.

Paragraph (d) explains that VA will use the applicant's ranking as the primary basis for selection for funding. However, consistent with section 201(d)(1) and (d)(2) of the Act, paragraph (d) further explains that VA: (1) Will give preference to applicants that have demonstrated the ability to provide or coordinate suicide prevention services; (2) may prioritize the distribution of suicide prevention services grants to rural communities, Tribal lands, territories of the United States, medically underserved areas, areas with a high number or percentage of minority veterans or women veterans, and areas with a high number or percentage of calls to the Veterans Crisis Line; and (3) to the extent practicable, will ensure that suicide prevention services grants are distributed to provide services in areas of the United States that have experienced high rates of suicide by eligible individuals, including suicide attempts, to eligible entities that can assist eligible individuals at risk of suicide who are not currently receiving health care furnished by VA, and to ensure services are provided in as many areas as possible.

As explained above, pursuant to section 201(d)(2) of the Act, in paragraph (d)(1), VA will give preference to applicants that have demonstrated the ability to provide or coordinate suicide prevention services. This preference may be met by such experience that includes but is not limited to entities that are part of VA–SAMHSA's Governors' and Mayors' Challenge to Prevent Suicide among service members, veterans, and their families; entities that are part of local or State coalitions for suicide prevention; and entities that support suicide prevention services through receipt of local, State, and Federal funding. Additionally, entities may demonstrate this ability if they are currently providing or coordinating suicide prevention services that align with the National Strategy for Preventing Veteran Suicide, VA-Department of Defense (DoD) Clinical Practice Guideline for the Assessment and Management of Patients at Risk for Suicide, or CDC's Preventing Suicide: A Technical Package of Policy, Programs, and Practices. This is consistent with feedback received from commenters during consultation in which several commenters suggested awarding grants, or providing preference for grants, to entities with prior experience providing or coordinating suicide prevention services and programs, including those who are part of Governors' Challenges.

Pursuant to section 201(d)(1), VA has discretionary authority to prioritize the distribution of grants to rural communities, Tribal lands, territories of the United States, medically underserved areas, areas with a high number or percentage of minority veterans or women veterans, and areas with a high number or percentage of calls to the Veterans Crisis Line. This will be a consideration for the distribution of grants, as described in paragraph (d)(2), and is consistent with feedback received from commenters during consultation.

Due to funding limitations, VA may choose to utilize this discretionary authority in distributing grants. However, VA does not want to mandate use of this discretionary authority because it is important to ensure that grants can be distributed equitably across the country and provided to areas where the grants may be best utilized. If VA prioritized these areas for all awarded grants for this program, it may exhaust all of its funding annually with none of the grants being distributed to any other grantees that may also be deserving. VA does not want to limit itself by mandating this, but rather retain the discretion to distribute to these areas as warranted. As explained in paragraph (b) of § 78.35 and in § 78.110, VA would establish any priorities in a NOFO.

For purposes of this discretionary authority, VA will use the definitions for rural communities, Tribal lands, territories of the United States, and medically underserved areas in § 78.5. In determining areas with a high number or percentage of minority veterans or women veterans, VA will base such determinations on the veteran population data from VA's National Center for Veterans Analysis and Statistics (NCVAS). VA will use the most recent data that NCVAS has published, which is made publicly available at *https://www.va.gov/vetdata/veteran_population.asp.* In determining areas with a high number or percentage of calls to the Veterans Crisis Line, VA will use internal data that VA maintains to determine where these areas are and will consider the most recent data VA has for purposes of using this discretionary authority when making these annual funding determinations. VA anticipates making this information available to the public and through technical assistance to grantees.

Consistent with section 201(d)(1)(B) of the Act, paragraph (d)(3) explains that to the extent practicable, VA will ensure that suicide prevention services grants are distributed to (1) provide services in areas of the United States that have experienced high rates of suicide by eligible individuals, including suicide attempts; and to (2) applicants that can assist eligible individuals at risk of suicide who are not currently receiving health care furnished by VA. Paragraph (d)(3) also explains that to the extent practicable, VA will ensure that suicide prevention services grants are distributed to ensure services are provided in as many areas as possible.

While the Act requires, to the extent practicable, distribution of grants to provide services in areas with high rates of suicide, including suicide attempts, by eligible individuals, VA notes that data on suicide attempts is generally insufficient, incomplete, and generally unavailable for purposes of determining areas with high rates of suicide. This is because this data is collected only when veterans report suicide attempts, and there is no requirement to report such attempts. Given the issues with the data on suicide attempts as explained above, for purposes of implementing section 201(d)(1)(B), VA will not utilize data on suicide attempts solely. If such data become available in a sufficient and complete manner, VA will utilize such

data to determine areas with high rates of suicide attempts.

Until and if such data become available, in order to meet the requirement of section 201(d)(1)(B) of the Act, VA will determine areas with high rates of suicide based on VA's most recently published National Veteran Suicide Prevention Annual Report, which is based on CDC's mortality and death index. This report is published annually, and the most recent report will be utilized by VA for purposes of paragraph (d)(3)(i).

For purposes of paragraph (d)(3)(ii) and determining whether applicants can assist eligible individuals at risk of suicide who are not currently receiving VA health care, VA will consider the information included in applicants' applications for this grant program. Such information could include, but not be limited to, existing arrangements (such as Memorandums of Understanding) with, or linkages to, VA and/or community partners in providing services to these individuals, plans on how the entity would coordinate with local VA medical facilities to identify these individuals, and plans to include these individuals as part of the population to be provided suicide prevention services if awarded a grant. VA will consider past and current actions as well as future plans to serve these individuals when determining whether to distribute a grant to an applicant that can assist eligible individuals at risk of suicide who are not currently receiving health care furnished by VA.

Paragraph (d)(3)(iii) allows VA, to the extent practicable, to ensure grants are distributed to provide services in as many areas as possible. This will allow VA to consider geographic location, in some cases, when determining distribution of grant awards. VA anticipates receiving applications from numerous applicants in the same location or serving the same population, and VA will not be able to award grants to every applicant due to funding limitations. If VA received five high-scoring applications from applicants proposing to serve eligible individuals in the same location, but one of those applicants alone can provide or coordinate suicide prevention services to the eligible population in that location, VA will be able to use this discretionary authority to distribute grants to applicants in other locations that can provide or coordinate services to eligible individuals and their families. This will allow VA to ensure that as many veterans as possible throughout the country are able to receive services under this grant program.

VA notes that suicide prevention services grant applications must include applicants' identification of the target populations and the area the applicant proposes to serve. VA will use this information in determining the distribution of suicide prevention services grants consistent with paragraph (d).

Paragraph (e) explains that subject to paragraph (d) of this section, which sets forth the preference and distribution requirements and considerations, VA will fund the highest-ranked applicants for which funding is available, within the highest funding priority group, if any. Under § 78.110 (discussed later in this interim final rule), in order to meet the requirements of section 201 of the Act and the goals of SSG Fox SPGP, VA will be able to choose to include funding priorities in the NOFO. If VA establishes funding priorities in the NOFO, to the extent funding is available and subject to paragraph (d) of this section, VA will select applicants in the next highest funding priority group based on their rank within that group.

Similar to existing processes in other VA grant programs, such as the Homeless Providers Grant and Per Diem Program (38 CFR 61.63) and the SSVF Program (38 CFR 62.61), paragraph (f) authorizes VA to select an applicant for funding if that applicant is not selected because of a procedural error by VA. An applicant would not be required to submit a new application in this situation. This will ease any administrative burden on applications and could be used in situations where there is no material change in the information that would have resulted in the applicant's selection for a grant under this part.

78.35 Scoring Criteria for Grantees Applying for Renewal of Suicide Prevention Services Grants

Section 201(h) of the Act requires the VA Secretary to establish criteria for the selection of eligible entities that have submitted applications for a suicide prevention services grant. Based on this requirement, § 78.35 describes the criteria that VA will use to score those grantees who are applying for renewal of a grant. Such criteria will assist with VA's review and evaluation of grantees to ensure that those grantees have successful existing programs using the previously awarded grant funds and that they have complied with the requirements of this part and section 201 of the Act. The criteria in paragraphs (a) through (c) ensure that renewals of grants are awarded based on the grantee's program's success, cost-effectiveness, and compliance with VA goals and requirements for this grant program. This is consistent with how VA awards renewals of grants in the SSVF Program (38 CFR 62.24).

While this section does not include specific point values for the criteria, such point values will be set forth in the NOFO. This will allow VA to retain flexibility in determining those point values each year of the grant program.

Under paragraph (a), VA will award points based on the success of the grantee's program, as demonstrated by the following: (1) The grantee made progress in reducing veteran suicide deaths and attempts, reducing all-cause mortality, reducing suicidal ideation, increasing financial stability; improving mental health status, well-being, and social supports; and, engaging in best practices for suicide prevention services; (2) participants were satisfied with the suicide prevention services provided or coordinated by the grantee, as reflected by the satisfaction survey conducted under § 78.95(d); (3) the grantee implemented the program by delivering or coordinating suicide prevention services to participants in a timely manner, consistent with SSG Fox SPGP policy, the NOFO, and the grant agreement; and (4) the grantee was effective in conducting outreach to eligible individuals and their families and increasing engagement of eligible individuals and their families in suicide prevention services, as assessed through an SSG Fox SPGP grant evaluation. VA notes that for purposes of paragraph (a)(1), best practices for suicide prevention services will include, but not be limited to, best practices recommended by the National Strategy for Preventing Veteran Suicide, VA-DoD Clinical Practice Guideline for the Assessment and Management of Patients at Risk for Suicide VA, CDC's Preventing Suicide: A Technical Package of Policy, Programs, and Practices, and the Surgeon General's Call to Action to Implement the National Strategy for Suicide Prevention.

Paragraph (b) states that points will be awarded based on the cost-effectiveness of the grantee's program, as demonstrated by the following: The cost per participant was reasonable and the grantee's program was effectively implemented on-budget. This criterion is important as it will assist with VA's review and evaluation of grantees to ensure that grantees have been fiscally responsible. This is also consistent with similar criterion used in the SSVF program. See 38 CFR 62.24.

Paragraph (c) states that VA will award points based on the extent to which the grantee's program complies with SSG Fox SPGP goals and requirements, as demonstrated by the following: The grantee's program was administered in accordance with VA's goals for SSG Fox SPGP as noted in the NOFO; the grantee's program was administered in accordance with all applicable laws, regulations, and guidelines; and the grantee's program was administered in accordance with the grantee's suicide prevention services grant agreement. This criterion is important to ensure that renewals of grants are awarded to those who comply with VA's goals and requirements for SSG Fox SPGP and who have shown competence regarding grant program implementation. This criterion is consistent with how VA awards renewals in the SSVF program. See 38 CFR 62.24.

78.40 Selection of Grantees for Renewal of Suicide Prevention Services Grants

Section 201(c) of the Act requires the VA Secretary to award a grant to each eligible entity for which the Secretary has approved an application to provide or coordinate the provision of suicide prevention services. Section 201(h) of the Act requires the Secretary to establish criteria for the selection of eligible entities that have submitted applications for a suicide prevention services grant. Based on these sections of the Act, section 78.40 describes the process for selecting grantees that have received suicide prevention services grants and are applying for renewal of such grants. It is important to note that this is a simpler process than awarding the initial grant. This is consistent with how VA awards renewals of grants in the SSVF Program (38 CFR 62.25).

Paragraph (a) explains that so long as grantees meet the threshold requirements in § 78.20, VA will score the grantee using the scoring criteria set forth in § 78.35. This ensures that grantees are still eligible to participate in the program.

Under paragraph (b), VA will rank those grantees who receive at least the minimum amount of total points and points per category set forth in the NOFO, and such grantees will be ranked in order from highest to lowest scores.

Paragraph (c) explains that VA will use the grantee's ranking as the basis for selection for funding, and that VA will fund the highest-ranked grantees for which funding is available.

In paragraph (d), at its discretion, VA may award any non-renewed funds to an applicant or existing grantee. If VA chooses to award non-renewed funds to an applicant or existing grantee, VA will first offer to award the non-renewed funds to the applicant or grantee with the highest grant score under the relevant NOFO that applies for, or is awarded a renewal grant in, the same area as, or a proximate area to, the affected area if available. Such applicant or grantee will be required to have the capacity and agree to provide prompt services to the affected area. Under § 78.40, the relevant NOFO is the most recently published NOFO that covers the affected area, or for multi-year grant awards, the NOFO for which the grantee, who is offered the additional funds, received the multi-year award. If the first such applicant or grantee offered the non-renewed funds refuses the funds, VA will then offer to award the funds to the next highest-ranked such applicant or grantee, per the criteria in paragraph (d)(1) of this section, and continue in rank order until the non-renewed funds are awarded. VA notes that it does not anticipate offering multi-year awards at this time, but may choose to do so at a later point. To avoid the need for further rulemaking to authorize multi-year awards, such language is included now to allow for future flexibility.

Similar to existing processes in other VA grant programs, such as the Homeless Providers Grant and Per Diem Program (38 CFR 61.63) and the SSVF Program (38 CFR 62.61), paragraph (e) authorizes VA to select an existing grantee for available funding, based on the grantee's previously submitted renewal application, if that grantee is not selected for renewal because of a procedural error by VA. A grantee would not be required to submit a new renewal application in this situation. This will ease any administrative burden on grantees and could be used in situations where there is no material change in the renewal application that would have resulted in the grantee's selection for renewal of a grant under this part.

78.45 Suicide Prevention Services: Outreach

As indicated in the definition of suicide prevention services, there are ten categories of suicide prevention services that can be provided or coordinated under this grant program. Each one has its own separate section in this regulation, and each will be discussed subsequently for clarity and readability.

In accordance with section 201(q)(11)(A)(i) of the Act, 38 CFR 78.45 describes outreach, which is the first of ten sections describing the types of suicide prevention services that grantees may be approved to provide or coordinate the provision of through this grant program.

In paragraph (a), grantees providing or coordinating the provision of outreach must use their best efforts to ensure that eligible individuals, including those who are at highest risk of suicide or who are not receiving health care or other services furnished by VA, and their families are identified, engaged, and provided suicide prevention services. This is consistent with how outreach services are addressed in the definition of suicide prevention services in section 201(q)(11)(A)(i) of the Act. Based on the assessment of suicide risk conducted by grantees to determine eligibility for services, eligible individuals that should be considered at highest risk of suicide are those with a recent suicide attempt, an active plan or preparatory behavior for suicide, or a recent hospitalization for suicidality.

Paragraph (b) explains that outreach must include active liaison with local VA facilities; State, local, or tribal government (if any); and private agencies and organizations providing suicide prevention services to eligible individuals and their families in the area to be served by the grantee. This can include, for example, local mental health and emergency or urgent care departments in local hospitals or clinics. Paragraph (b) effectively requires grantees to have a presence in the area to meet with individuals and organizations to create referral processes to the grantee, similar to VA's suicide prevention coordinators.

This section is consistent with how VA defines outreach in the SSVF Program (38 CFR 62.30). Outreach is important for ensuring that eligible individuals and families receive suicide prevention services to reduce the risk of suicide. Outreach also ensures that grantees are able to identify participants that may be eligible and in need of suicide prevention services. Working with local entities, including VA, that serve eligible individuals and their families can help grantees identify and reach potential participants.

78.50 Suicide Prevention Services: Baseline Mental Health Screening

In accordance with section 201(q)(11)(A)(ii) of the Act, under § 78.50(a), grantees must provide or coordinate the provision of a baseline mental health screening to all participants they serve at the time those services begin. For purposes of this grant program, all grantees will be required to provide, or coordinate the provision of, a baseline mental

screening to participants. This baseline mental health screening ensures that participants' mental health needs can be properly determined, and that suicide prevention services can be further tailored to meet the individual's needs.

This baseline mental health screening must be provided using a validated screening tool that assesses suicide risk and mental and behavioral health conditions. Information on the specific tools to be used will be included in the NOFO, as the tools VA will approve for baseline mental health screenings may vary from year to year as the screening tools may evolve over time due to emerging evidence through research. VA will provide these tools to grantees providing or coordinating the provision of baseline mental health screenings. These tools will be those that a non-clinician can administer, as many grantees may not be clinicians and may not be able to administer a clinical screening for suicide risk and mental or behavioral health conditions. These tools will also indicate when a participant must be referred for additional care, as explained in paragraph (b) of this section. These tools will ensure consistent screening and reporting of suicide risk and the need for referral for additional care or care coordination. It is also important to note that this is consistent with feedback VA received through consultation. These tools used to conduct the baseline mental health screening are different than the tool used to determine risk of suicide for purposes of eligibility and will be administered to participants after they have been deemed an eligible individual pursuant to § 78.10.

Paragraph (b) states that if an eligible individual is at risk of suicide or other mental or behavioral health condition pursuant to the baseline mental health screening conducted under paragraph (a) of this section, the grantee must refer such individual to VA for care. If the eligible individual refuses the grantee's referral to VA, any ongoing clinical services provided to the eligible individual by the grantee is at the expense of the grantee. This is based on section 201(m)(1) and (3) of the Act, which explain that if a grantee determines that an eligible individual is at-risk of suicide or other mental or behavioral health condition pursuant to a baseline mental health screening, the grantee must refer the eligible individual to VA for additional care as authorized under the Act or any other provision of law, and if the eligible individual refuses the referral, any ongoing clinical services provided to the individual by the grantee will be at the grantee's expense. It is important to note that this is only required for eligible individuals and not the family of eligible individuals.

Section 201(m)(1) of the Act requires referral when the grantee determines that an eligible individual is at-risk of suicide or other mental health or behavioral health condition, consistent with the language in paragraph (b). This reflects Congressional intent that these referrals for care be required for those eligible individuals who are not only at risk of suicide but also those who have additional needs that require further evaluation by VA for additional care. Whether an eligible individual has additional needs that require referral for further evaluation by VA for additional care will be determined pursuant to the baseline mental health screening conducted under paragraph (a). For example, should the baseline mental health screening indicate a potential mental health disorder related to depression, the participant would need to be referred for further evaluation for diagnosis and treatment.

This baseline mental health screening will be performed by grantees using various VA-approved validated tools. These tools will indicate to the grantee if the eligible individual must be referred for additional evaluation and care based on the outcome of the screening for mental or behavioral health and suicide risk.

When referrals are made by grantees to VA, to the extent practicable, those referrals are required to be a ''warm hand-off'' to ensure that the eligible individual receives necessary care. This ''warm hand-off'' may include providing any necessary transportation to the nearest VA facility, assisting the eligible individual with scheduling an appointment with VA, and any other similar activities that may be necessary to ensure the eligible individual receives necessary care in a timely manner. This is consistent with feedback received from commenters during consultation. This ''warm hand-off'' is also consistent with other suicide prevention services that grantees may provide, such as assistance in obtaining any VA benefits and assistance with emergent needs, authorized under section 201(q)(11)(A)(vii) and (ix), respectively.

To the extent that a veteran referred to VA for care is eligible for care in the community through VA's Community Care Program, that veteran may elect to receive care in the community under VA's Community Care Program regulations located at 38 CFR 17.4000 through 17.4040. For purposes of section 201(m)(3), this election would not be considered a refusal to receive care from VA.

Paragraph (b) further explains that if an eligible individual refuses referral to VA for care by a grantee, any ongoing clinical services provided to the eligible individual by the grantee are at the grantee's expense. This is based on section 201(m)(3) of the Act and ensures that grantees understand their responsibilities regarding the baseline mental health screening of an eligible individual.

Similar to the language in paragraph (b), paragraph (c) explains that if a participant other than an eligible individual is at risk of suicide or other mental or behavioral health condition pursuant to the baseline mental health screening conducted under paragraph (a) of this section, the grantee must refer such participant to appropriate health care services in the area. To the extent that the grantee is able to furnish such appropriate health care services on an ongoing basis and has available funding separate from funds provided under this grant program to do so, they would be able to furnish such services using those non-VA funds without being required to refer such participants to other services. VA requires that grantees refer those individuals (that is, families of eligible individuals) for further care as appropriate and will codify this in paragraph (c) to ensure that grantees do so. This ensures that those individuals' needs can be met by further care as needed.

Under paragraph (d), except as provided for under § 78.60(a), funds provided under this grant program may not be used to provide clinical services to participants, and any clinical services provided to such individuals by the grantee are at the expense of the grantee. Paragraph (d) explicitly states that any clinical services provided by the grantee are at its expense and not VA's. Further, this language in the Act and in the regulation clarifies that grantees may not charge, bill, or otherwise hold liable eligible individuals for the receipt of such care or services; we interpret the phrase ''at the expense of the entity'' in section 201(m)(3) to bar the entity from billing, charging, or holding liable eligible individuals for the receipt of such care or services. This will also ensure that the relationship between the grantee and the eligible individual is not adversely affected through collections or other efforts. It also provides an incentive for grantees to work with eligible individuals to refer them to VA for their health care needs.

While grantees that provide participants ongoing clinical services pursuant to paragraphs (b) and (c) do so

at their own expense, this does not preclude the grantee from seeking to cover those expenses through other sources of funding and existing agreements. For example, a grantee that provides a participant with ongoing clinical services may bill a third-party payor, such as the participant's other health insurance, for the ongoing clinical services provided by the grantee. However, as explained in the previous paragraph, the grantee may not charge, bill, or otherwise hold liable participants for the receipt of ongoing clinical services under § 78.50. In the instance that a grantee bills a third-party payor (*e.g.,* health insurance) for ongoing clinical services provided to the participant, certain cost-sharing, such as copayments, imposed on the participant by a third-party payor, may be covered by the grantee at its discretion. VA does not interpret the language ''at the expense of the entity'' in section 201(m)(3) to preclude grantees from covering such copayments for participants for ongoing clinical services. VA would not require that grantees cover such costs, but rather, would permit grantees to do so if it chooses and has the funds to do so. However, as noted above, section 201(m)(3) bars the entity from billing, charging, or holding liable eligible individuals for the receipt of such care or services. Pursuant to § 78.50(a), the grantee would be unable to use grant funds to cover such costs.

VA notes that while section 201(m)(3) is specific to eligible individuals, paragraph (d) applies to all participants because this would ensure that the potential liabilities of a family member would not deter a veteran from seeking services from a grantee and to make administration easier. VA has authority to extend this protection to include participants other than eligible individuals pursuant to section 201(f)(1) of the Act, which authorizes VA to require grantees to make such commitments as the Secretary considers necessary to carry out this section.

78.55 Suicide Prevention Services: Education

In accordance with section 201(q)(11)(A)(iii), under § 78.55, grantees providing or coordinating the provision of education must provide or coordinate the provision of suicide prevention education programs to educate communities, veterans, and families on how to identify those at risk of suicide, how and when to make referrals for care, and the types of suicide prevention resources available within the area. Education can include gatekeeper training, lethal means safety training, or specific education programs that assist with identification, assessment, or prevention of suicide.

Gatekeeper training generally refers to programs that seek to develop individuals' knowledge, attitudes, and skills to prevent suicide. Gatekeeper training is an educational course designed to teach clinical and non-clinical professionals or gatekeepers the warning signs of a suicide crisis and how to respond and refer individuals for care. For more information, see: *http://www.sprc.org/sites/default/files/migrate/library/SPRC_Gatekeeper_matrix_Jul2013update.pdf.*

Defining education in this manner is consistent with how education is administered in the community and is commonly understood by those in the community who work in the area of suicide prevention. Education is important because learning the signs of suicide risk, how to reduce access to lethal means, and to connect those at risk of suicide to care can improve understanding of suicide and has the potential to reduce suicide.

78.60 Suicide Prevention Services: Clinical Services for Emergency Treatment

In accordance with section 201(q)(11)(A)(iv) of the Act, § 78.60(a) requires that grantees providing or coordinating the provision of clinical services for emergency treatment must provide or coordinate the provision of clinical services for emergency treatment of a participant.

Consistent with section 201(m)(2) and (3) of the Act, paragraph (b) explains that if an eligible individual is furnished clinical services for emergency treatment under paragraph (a) of this section and the grantee determines that the eligible individual requires ongoing services, the grantee must refer the eligible individual to VA for additional care. If the eligible individual refuses the grantee's referral to VA, any ongoing clinical services provided to the eligible individual by the grantee is at the expense of the grantee. This aligns with section 201(m)(2) of the Act, which explains that if a grantee furnishes clinical services for emergency treatment to an eligible individual and determines ongoing services are required, the grantee must refer the eligible individual to VA for additional care as authorized under the Act or any other provision of law. VA notes that this is only required for eligible individuals, not the family of eligible individuals. To the extent that an eligible individual referred to VA for care is eligible for care in the community through VA's Community Care Program, that eligible individual may elect to receive care in the community under VA's Community Care Program regulations located at 38 CFR 17.4000 through 17.4040. As stated above, such election is not considered a refusal to receive care from VA.

Subsection (m)(3) of section 201 of the Act further states that if an eligible individual refuses a referral by a grantee, any ongoing clinical services provided to the eligible individual by the grantee is at the grantee's expense. That is codified in paragraph (b) to ensure that grantees understand their responsibilities regarding clinical services of an eligible individual. Paragraph (b) further includes the same language as § 78.50(d) regarding limitations on charging, billing, or otherwise holding liable eligible individuals for the receipt of such care. As explained in the discussion on § 78.50(d), a grantee is not precluded from seeking to cover those expenses through other sources of funding and existing agreements.

In paragraph (c), if a participant other than an eligible individual (that is, the family member of an eligible individual) is furnished clinical services for emergency treatment under paragraph (a) of this section and the grantee determines that the participant requires ongoing services, the grantee must refer the participant to appropriate health care services in the area for additional care. Except as provided for under paragraph (a) of this section, funds provided under this grant program may not be used to provide ongoing clinical services to family, and any ongoing clinical services provided to the family by the grantee is at the expense of the grantee. VA expects that grantees will refer those participants for further care as appropriate and is codifying this requirement in this paragraph to ensure that grantees do so. This ensures that these participants' needs can be met by further care as needed. Except as provided for under § 78.60(a), funds provided under this grant program may not be used to provide clinical services to such participants, and any ongoing clinical services provided to the participant by the grantee is at the expense of the grantee. This is because VA does not have authority to cover such expenses under this grant program. However, to the extent that a grantee can and desires to provide ongoing clinical services to such participants, they may do so, but it will be at their expense. As explained in discussion on § 78.50(d), this language does not preclude the grantee from seeking to cover those expenses through other sources of funding and existing

agreements (for example, billing a participant's health insurance). Grantees also are not precluded from covering any copayments imposed on participants by their health insurance for ongoing clinical services provided by the grantee if the grantee so chooses and has the funds to cover such costs. However, the grantee may not charge, bill, or otherwise hold liable such participants for the receipt of such care or services. This is consistent with similar language in paragraph (b) relating to eligible individuals.

Consistent with section 201(q)(5) of the Act, paragraph (d) explains that for purposes of this section, emergency treatment means medical services, professional services, ambulance services, ancillary care and medication (including a short course of medication related to and necessary for the treatment of the emergency condition that is provided directly to or prescribed for the patient for use after the emergency condition is stabilized and the patient is discharged) was rendered in a medical emergency of such nature that a prudent layperson would have reasonably expected that delay in seeking immediate medical attention would have been hazardous to life or health. This standard is met by an emergency medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in placing the health of the individual in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

The description and standard are consistent with VA's description of medical emergency for purposes of payment or reimbursement for emergency treatment furnished by non-VA providers to certain veterans with service-connected disabilities pursuant to 38 CFR 17.120 and for nonservice-connected disabilities pursuant to 38 CFR 17.1000 *et seq.* It is important to note that emergency medical conditions includes emergency mental health conditions.

Paragraph (e) explains that the direct provision of clinical services for emergency treatment by grantees under this section is not prohibited by § 78.80(a). As explained later in this discussion, § 78.80(a) prohibits grantees from directly providing health care services, which include health insurance and referral to a governmental entity or grantee that provides certain services. As clinical services for emergency treatment under § 78.60 are considered health care services and section 201 of the Act specifically authorizes the provision of clinical services for emergency treatment, paragraph (e) clarifies that such services do not fall under the prohibition in § 78.80(a). VA acknowledges that while some grantees may not be able to provide these services directly, others will. This ensures that if a grantee is capable of furnishing emergency treatment and needs to do so, there will be no delay in the delivery of such services.

78.65 Suicide Prevention Services: Case Management Services

In accordance with section 201(q)(11)(A)(v), case management services are described in § 78.65. These definitions are similar to case management services in the SSVF Program (see 38 CFR 62.31), but they are focused on suicide prevention to effectively assist participants at risk of suicide. The SSVF Program derived its definition from similar definitions of case management services provided in other Federal programs, such as the Department of Health and Human Services' Medicare and Medicaid Services Program, the Department of Housing and Urban Development's Congregate Housing Services Program, and the Housing and Urban Development—Veterans Affairs Supported Housing (see 42 CFR 440.169 and 24 CFR 700.105). 75 FR 24514, 24518 (May 5, 2010). This description of case management services is also consistent with VA-DoD Clinical Practice Guidelines for the Assessment and Management of Patients at Risk for Suicide (see *https://www.healthquality.va.gov/guidelines/MH/srb/VADoDSuicideRiskFullCPGFinal5088212019.pdf*).

Grantees providing or coordinating the provision of case management services must provide or coordinate the provision of such services that include, at a minimum: (a) Performing a careful assessment of participants, and developing and monitoring case plans in coordination with a formal assessment of suicide prevention services needed, including necessary follow-up activities, to ensure that the participant's needs are adequately addressed; (b) establishing linkages with appropriate agencies and service providers in the area to help participants obtain needed suicide prevention services; (c) providing referrals to participants and related activities (such as scheduling appointments for participants) to help participants obtain needed suicide prevention services, such as medical, social, and educational assistance or other suicide prevention services to address participants' identified needs and goals; (d) deciding how resources and services are allocated to participants on the basis of need; (e) educating participants on issues, including, but not limited to, suicide prevention services availability and participant rights; and, (f) other activities, as approved by VA, to serve the comprehensive needs of participants for the purpose of reducing suicide risk. This list ensures that grantees have the same understanding of what activities are considered case management services, but it also provides VA authority to approve other activities that may be considered case management services. Such other activities will be included in any NOFO published as well as incorporated into any agreement with grantees.

78.70 Suicide Prevention Services: Peer Support Services

Consistent with section 201(q)(11)(A)(vi) of the Act, 38 CFR 78.70 explains the peer support services authorized under this grant program. Paragraph (a) explains that grantees providing or coordinating the provision of peer support services must provide or coordinate the provision of peer support services to help participants understand what resources and supports are available in their area for suicide prevention. Peer support services must be provided by veterans trained in peer support with similar lived experiences related to suicide or mental health. Peer support specialists serve as role models and a resource to assist participants with their mental health recovery. Peer support specialists function as interdisciplinary team members, assisting physicians and other professional and non-professional personnel in a rehabilitation treatment program. This is consistent with how VA defines peer support services for its programs, including its peer support program pursuant to 38 U.S.C. 1720F(j).

Paragraph (b) further explains that each grantee providing or coordinating the provision of peer support services must ensure that veterans providing such services to participants meet the requirements of 38 U.S.C. 7402(b)(13) and meet qualification standards for appointment or have completed peer support training, are pursuing credentials to meet the minimum qualification standards for appointment, and are under the supervision of an individual who meets the requirements of 38 U.S.C. 7402(b)(13). Section 7402(b)(13) establishes standards for

appointment as a VA peer support specialist. Qualification standards include that the individual is (1) a veteran who has recovered or is recovering from a mental health condition, and (2) certified by (i) a not-for-profit entity engaged in peer support specialist training as having met such criteria as the Secretary shall establish for a peer support specialist position, or (ii) a State as having satisfied relevant State requirements for a peer support specialist position. VA has further set forth qualifications for its peer support specialists in VA Handbook 5005, Staffing (last updated July 17, 2012). See *https://vaww.va.gov/OHRM/Directives-Handbooks/Documents/5005.pdf.*

Meeting minimum qualification standards for appointment under 38 U.S.C. 7402(b)(13) ensures that participants receive peer support services in a safe and effective manner consistent with VA's standards and with those required by law. However, VA would also allow grantees to provide peer support services through veterans who have completed peer support training, are pursuing credentials to meet the minimum qualification standards for appointment, and are under the supervision of an individual who meets the minimum qualification standards. VA would allow this as a way to build capacity in the community for peer support services, particularly as there are individuals who may be supervised and working toward meeting the requirements of 38 U.S.C. 7402(b)(13), but who have not yet met those conditions. Grant funds may be used to provide education and training for employees of the grantee or the community partner who provide peer support services based on the terms set forth in the grant agreement. VA believes the use of these funds to support education and training for peer support specialists is authorized by section 201(b) of the Act, which directs VA to provide financial assistance to eligible entities approved under this section to provide or coordinate the provision of suicide prevention services to eligible individuals and their families. Because the requirements to be a VA peer support specialist, as generally described above, are more specific than many community organizations might require, we believe the use of grant funds to support education and training is appropriate as it may be necessary to ensure these services are provided by appropriately qualified individuals. VA would set forth conditions regarding the use of funds, such as any limits on the amount of funds that may be used for these purposes or documentation requirements, in the NOFO and terms of the grant agreement.

These appointment requirements for those veterans providing peer support services would be included in the NOFO so that those applicants who apply to provide peer support services understand and know the applicable requirements for purposes of providing or coordinating such services. These requirements would also be included in any program guides developed for purposes of administering services under this grant program.

78.75 Suicide Prevention Services: Assistance in Obtaining VA Benefits

In accordance with section 201(q)(11)(A)(vii), § 78.75 sets forth the requirements associated with suicide prevention services authorized under this grant program related to assistance in obtaining VA benefits. The provision of this assistance will provide grantees with additional means by which VA can notify participants of available VA benefits and is consistent with the SSVF Program (see 38 CFR 62.32).

Paragraph (a) requires grantees assisting participants in obtaining VA benefits to assist participants in obtaining any benefits from VA for which the participants are eligible. Such benefits include but are not limited to: (1) Vocational and rehabilitation counseling; (2) supportive services for homeless veterans; (3) employment and training services; (4) educational assistance; and, (5) health care services.

Under paragraph (b), grantees will not be permitted to represent participants before VA with respect to a claim for VA benefits unless they are recognized for that purpose pursuant to 38 U.S.C. 5902. Employees and members of grantees are not permitted to provide such representation unless the individual providing representation is accredited pursuant to 38 U.S.C. chapter 59. Consistent with 38 U.S.C. 5902, VA does not interpret section 201 of the Act to allow grantees to represent veterans in benefit claims before VA unless they are recognized under 38 U.S.C. 5902. VA also does not interpret section 201 of the Act as requiring that grantees become recognized organizations pursuant to 38 U.S.C. 5092 or that their employees or members become accredited service organization representatives, claims agents, or attorneys. Instead, assistance in obtaining benefits may include providing information about available benefits, helping individuals locate a recognized veterans services organization or other accredited individual, and other services short of actual representation before VA, unless the grantee is accredited pursuant to 38 CFR 14.629 (that is, VA's regulation implementing 38 U.S.C. 5902), which sets forth requirements for accreditation of service organization representatives, agents, and attorneys.

78.80 Suicide Prevention Services: Assistance in Obtaining and Coordinating Other Public Benefits and Assistance With Emergent Needs

Consistent with section 201(q)(11)(A)(viii) and (ix) of the Act, under § 78.80, grantees assisting in obtaining and coordinating other public benefits or assisting with emergent needs will be required to assist participants to obtain and coordinate the provision of other public benefits. For purposes of this section, VA considers other public benefits and emergent needs to be the same types of benefits. At a minimum, grantees are required to assist participants in obtaining and coordinating the provision of benefits listed in paragraphs (a) through (h) of § 78.80 that are being provided by Federal, State, local, or tribal agencies, or any other grantee in the area served by the grantee by referring the participant to and coordinating with such entity. If a public benefit is not being provided by Federal, State, local, or tribal agencies, or any other grantee in the area, the grantee is not required to obtain, coordinate, or provide such public benefit. Grantees may elect to provide directly to participants the public benefits identified in paragraphs (c) through (h) of § 78.80.

In accordance with section 201(q)(11)(A)(ix)(I) of the Act, paragraph (a) describes health care services, which include: (1) Health insurance, and (2) referral to a governmental entity or grantee that provides any of the following services: (i) Hospital care, nursing home care, outpatient care, mental health care, preventive care, habilitative and rehabilitative care, case management, respite care, and home care; (ii) the training of any eligible individual's family in the care of any eligible individual; and (iii) the provision of pharmaceuticals, supplies, equipment, devices, appliances, and assistive technology. This is consistent with how VA administers the SSVF Program (see 38 CFR 62.33(a)). VA believes services in paragraph (a) should not be provided directly by grantees as these services are commonly available in the area, including at VA. It also would be cost-prohibitive for grantees to provide these directly and would thus impact grantees' ability to provide

suicide prevention services to participants.

In accordance with section 201(q)(11)(A)(ix)(II) of the Act, paragraph (b) describes referral of a participant, as appropriate, to an entity that provides daily living services relating to the functions or tasks for self-care usually performed in the normal course of a day, including, but not limited to, eating, bathing, grooming, dressing, and home management activities. This is identical to how VA administers the SSVF Program (See 38 CFR 62.33(b)). VA believes that daily living services should not be provided directly by grantees as these services are commonly available in the community, including at VA. It also would be cost-prohibitive for grantees to provide these directly and would thus impact grantees' ability to provide suicide prevention services to participants. Thus, referrals for these services would be appropriate.

In accordance with section 201(q)(11)(A)(ix)(III) of the Act, paragraph (c) describes personal financial planning services, which include, at a minimum, providing recommendations regarding day-to-day finances and achieving long-term budgeting and financial goals. Grant funds may pay for credit counseling and other services necessary to assist participants with critical skills related to household budgeting, managing money, accessing a free personal credit report, and resolving credit problems. This is consistent with how VA administers the SSVF Program (see 38 CFR 62.33(c)).

In accordance with section 201(q)(11)(A)(ix)(IV) of the Act, paragraph (d) describes transportation services. Paragraph (d)(1) explains that the grantee may provide temporary transportation services directly to participants if the grantee determines such assistance is necessary; however, the preferred method of direct provision of transportation services is the provision of tokens, vouchers, or other appropriate instruments so that participants may use available public transportation options. Paragraph (d)(2) explains that if public transportation options are not sufficient within an area, costs related to the lease of vehicle(s) may be included in a suicide prevention services grant application if the applicant or grantee, as applicable, agrees that: (i) The vehicle(s) will be safe, accessible, and equipped to meet the needs of the participants; (ii) the vehicle(s) will be maintained in accordance with the manufacturer's recommendations; and (iii) all transportation personnel (employees and community partners) will be licensed, insured, and trained in managing any special needs of participants and handling emergency situations. This is consistent with how VA administers the SSVF Program (see 38 CFR 62.33(d)). However, unlike § 62.33(d) which refers to subcontractors, VA refers to community partners under paragraph (d)(2)(iii).

Paragraph (d)(3) permits grantees to provide transportation services through reimbursement for transportation furnished through ride-sharing services, taxi services, or other similar sources if two conditions are met: First, the participant must lack any other means of transportation, including transportation or reimbursement for transportation from VA under part 70 of this title, and second, the grantee must document the participant's lack of other means. Such documentation would be maintained as part of the participant's case file, and consistent with the recordkeeping requirements in § 78.150. VA includes this provision to allow for flexibility in situations where transportation options may be limited, but the two conditions are intended to limit this support as a matter of last resort given that the expenses for such transportation are likely higher than other methods of transportation, and VA does not believe it would be an optimal use of grant funds. If beneficiary travel under subpart A of part 70 of title 38, Code of Federal Regulations, or transportation through the Veterans Transportation Service under subpart B of part 70 of title 38, Code of Federal Regulations, are available to the participant, the participant would be ineligible for assistance under paragraph (d)(3).

In accordance with section 201(q)(11)(A)(ix)(V) of the Act, paragraph (e) describes temporary income support services, which may consist of providing assistance in obtaining other Federal, State, tribal, and local assistance, in the form of, but not limited to, mental health benefits, food assistance, housing assistance, employment counseling, medical assistance, veterans' benefits, and income support assistance. This is consistent with how VA administers the SSVF Program (see 38 CFR 62.33(e)). However, unlike the SSVF Program, this suicide prevention services grant program will include food assistance because of the correlation between food insecurity and mental health issues including suicide risk. See Bergmans, R.S., Jannausch, M. and Ilgen, M.A. (2020), Prevalence of suicide ideation, planning and attempts among Supplemental Nutrition Assistance Program participants in the United States. Journal of Affective Disorders, 277, 99–103. The suicide prevention services grant program also expressly includes housing assistance, which does not appear in § 62.33(e) because part 62 is designed in general to provide housing assistance and supportive services for very low-income veteran families who are occupying permanent housing.

In accordance with section 201(q)(11)(A)(ix)(VI) of the Act, paragraph (f) describes fiduciary and representative payee services, which may consist of acting on behalf of a participant by receiving the participant's paychecks, benefits or other income, and using those funds for the current and foreseeable needs of the participant and saving any remaining funds for the participant's future use in an interest-bearing account or saving bonds. This is consistent with how VA administers the SSVF Program (see 38 CFR 62.33(f)).

In accordance with section 201(q)(11)(A)(ix)(VII) of the Act, paragraph (g) explains that legal services includes those services to assist an eligible individual with issues that may contribute to the risk of suicide, including issues that interfere with the eligible individual's ability to obtain or retain permanent housing, cover basic needs such as food, transportation, medical care, and issues that affect the eligible individual's employability and financial security (such as debt, credit problems, and the lack of a driver's license). These bio-psychosocial stressors are suicide risk factors noted within the VA/DoD Clinical Practice Guidelines for the Assessment and Management of Patients at Risk for Suicide. See *https://www.healthquality.va.gov/guidelines/MH/srb/VADoDSuicideRiskFullCPGFinal5088212019.pdf.*

However, with the exception of legal assistance with resolving outstanding warrants, fines, expungements, and drivers' license revocations symptomatic of reentry obstacles in employment or housing, authorized legal services do not include legal assistance with criminal matters nor matters in which the eligible individual is taking or has taken any adversarial legal action against the United States (that is, the Federal government). Authorized legal services also do not include legal assistance with matters in which the United States (that is, the Federal government) is prosecuting an eligible individual. Thus, even with respect to the limited legal assistance for certain criminal matters otherwise permitted (for example, legal assistance

with resolving outstanding warrants), legal services do not include legal assistance in those criminal matters in which the United States is prosecuting the eligible individual.

Legal services under § 78.80(g) are described in this manner to include those types of services VA believes are most relevant and applicable to the legal needs of eligible individuals. VA will limit these legal services to issues that contribute to the risk of suicide, which is consistent with the overall intent of this grant program. VA will authorize those services that support the legal needs of the eligible individual to address those issues that contribute to their risk of suicide, such as issues with housing, employability, and financial security.

With certain exceptions as noted and explained above, VA excludes legal assistance with most criminal matters and excludes all matters in which the eligible individual is taking or has taken any adversarial legal action against the United States, as VA does not believe it is reasonable to expect VA to pay for such services, especially for those situations in which an eligible individual takes adversarial legal action against the Federal government, including VA and other Federal agencies or in situations in which the Federal government is prosecuting an eligible individual. If VA covered such legal services, it could result in conflicts of interest. This restriction does not include non-adversarial legal assistance provided in pursuit of VA benefits or appeals to the Board of Veterans' Appeals. If legal assistance is needed with a matter for which grant funds are not authorized, the grantee should make referrals to other organizations, such as Legal Aid and local Bar Associations, to ensure that legal needs can be met.

In accordance with section 201(q)(11)(A)(ix)(VIII) of the Act, paragraph (h) describes the provision of child care, consistent with how VA administers these services in the SSVF Program (see 38 CFR 62.33(h)). Child care will be authorized for children under the age of 13, unless the child is disabled. Disabled children must be under the age of 18 to receive assistance under this paragraph. This is consistent with the SSVF Program's regulations at § 62.33(h) as well as similar regulations issued by the Department of Housing and Urban Development. See 24 CFR 576.102(a)(1)(ii).

Child care includes the: (1) Referral of a participant, as appropriate, to an eligible child care provider that provides child care with sufficient hours of operation and serves appropriate ages, as needed by the participant; and (2) payment by a grantee on behalf of a participant for child care by an eligible child care provider. Consistent with the financial cap in section 201(q)(11)(A)(ix)(VIII) of the Act, payment may not exceed $5,000 per family of an eligible individual per Federal fiscal year.

In paragraphs (h)(2)(i) through (iii), certain limitations for payments for child care services are identified, which is consistent with the SSVF Program's regulations at 38 CFR 62.33(h). Pursuant to paragraph (h)(2)(i), payments for child care services must be paid by the grantee directly to an eligible child care provider. Unlike § 62.33(h), VA would not include the language that payments for child care services cannot exceed a maximum of 6 months in a 12-month period, and 10 months during a 2-year period. As payments are capped at $5,000 per family per Federal fiscal year under section 201(q)(11)(A)(ix)(VIII) of the Act, VA believes the financial cap imposed by the statute is a sufficient constraint to ensure proper use of resources for these services.

Under paragraph (h)(2)(ii), payments for child care services will not be provided on behalf of participants for the same period of time and for the same cost types that are being provided through another Federal (including VA), State or local subsidy program. The reference to the ''same period of time'' means the same dates and times in which child care benefits are being provided under another program. For example, a participant may be eligible for Arkansas's Child Care Assistance Program, which provides financial assistance for quality child care to certain individuals. If that participant was using those benefits under Arkansas's Child Care Assistance Program on a specific date and time, it would not render the participant ineligible for child care support generally under the suicide prevention services grant program. The only result would be that the individual could not receive a subsidy under VA's program for the same period of time for which child care services were being provided under the Arkansas program.

Paragraph (h)(2)(iii) further explains that as a condition of providing payments for child care services, the grantee must help the participant develop a reasonable plan to address the participant's future ability to pay for child care services. Grantees must assist the participant to implement such plan by providing any necessary assistance or helping the participant to obtain any necessary public or private benefits or services. Because the payments for child care services provided under paragraph (h) are intended to be temporary, VA would require that grantees assist in developing and implementing such plan to ensure that participants are able to plan for such services in the long-term as needed.

78.85 Suicide Prevention Services: Nontraditional and Innovative Approaches and Treatment Practices

Section 78.85 explains that grantees providing or coordinating the provision of nontraditional and innovative approaches and treatment practices may provide or coordinate the provision of nontraditional and innovative approaches and treatment, including but not limited to complementary or alternative interventions with some evidence for effectiveness of improving mental health or mitigating a risk factor for suicidal thoughts and behavior, as set forth in the NOFO or as approved by VA that are consistent with SSG Fox SPGP. Applicants may propose nontraditional and innovative approaches and treatment practices in their suicide prevention services grant application, and grantees may propose these additional approaches and treatment practices by submitting a written request to modify the suicide prevention services grant in accordance with § 78.125.

VA is authorized under section 201(f)(1) of the Act to include such commitments as it considers necessary to carry out this section. VA is exercising this authority here by reserving the right to approve or disapprove nontraditional and innovative approaches and treatment practices to be provided or coordinated to be provided using funds authorized under SSG Fox SPGP. These approaches and treatment practices can evolve, and by maintaining the right to approve or disapprove these treatment practices or approaches, VA can ensure that participants receive approaches and treatment practices that are safe and effective. VA is not providing a broad list of approved innovative approaches and treatment practices to allow for emerging services with some evidence in suicide risk reduction the opportunity for review and selection. It is also important for VA to note that any approaches and treatment practices approved will need to be consistent with applicable Federal law. For example, the use of grant funds to provide or coordinate the provision of marijuana to eligible individuals and their families will be prohibited, as marijuana is currently illegal under Federal law.

78.90 Suicide Prevention Services: Other Services

The definition of suicide prevention services in section 201(q)(11)(A)(xi) of the Act includes other services necessary for improving the mental health status and wellbeing and reducing the suicide risk of eligible individuals and their families as the Secretary considers appropriate.

Consistent with section 201(q)(11)(A)(xi) of the Act, section 78.90(a) explains general suicide prevention assistance that may be provided under this grant program. Pursuant to paragraph (a), a grantee may pay directly to a third party (and not to a participant), in an amount not to exceed $750 per participant during any 1-year period, beginning on the date that the grantee first submits a payment to a third party, the following types of expenses: (i) Expenses associated with gaining or keeping employment, such as uniforms, tools, certificates, and licenses; and (ii) expenses associated with lethal means safety and secure storage, such as gun locks and locked medication storage.

A limit of $750 per participant per year is an appropriate amount because such items as gun storage and locks can cost anywhere from $20 to several hundred dollars. Similarly, for purposes of employment, licenses and uniforms can range from several dollars to several hundred dollars. The amount of $750 per year also is consistent with the amount of similar assistance authorized under the SSVF program of $1,500 every 2 years. See 38 CFR 62.34(e)(2).

VA would allow payment for expenses associated with gaining or keeping employment as extended unemployment may lead to mental health issues and financial hardship. See Haw, C., K. Hawton, D. Gunnell, and S. Platt. 2015. Economic recession and suicidal behavior: Possible mechanisms and ameliorating factors. *International Journal of Social Psychiatry* 61, no. 1:73–81. Thus, it would be appropriate to cover these as other services as these would be necessary for improving the mental health status and wellbeing and reducing the suicide risk of eligible individuals and their families.

VA would also allow payment for expenses associated with lethal means safety and secure storage, as these would also be services necessary for improving the wellbeing and reducing the suicide risk of eligible individuals and their families. In 2018, 68.2 percent of Veteran suicide deaths were due to a self-inflicted firearm injury, while 48.2 percent of non-Veteran adult suicides resulted from a firearm injury. In 2018, 69.4 percent of male veteran suicide deaths and 41.9 percent of female veteran suicide deaths resulted from a firearm injury. In 2018, firearms were used in 41.9 percent of suicide deaths among women veterans, compared to 31.7 percent of suicide deaths among non-veteran women. See VA's 2020 National Veteran Suicide Prevention Annual Report. (Available online: *https://www.mentalhealth.va.gov/docs/data-sheets/2020/2020-National-Veteran-Suicide-Prevention-Annual-Report-11-2020-508.pdf.*) Research has shown that when lethal means are made less accessible or lethal, suicide rates by those means decline. See, Gunnell D and Eddleston M. Suicide by intentional ingestion of pesticides: A continuing tragedy in developing countries. International Journal of Epidemiology. 2003;32:902–909; Gunnell D, Fernando R, Hewagama M, Priyangika WD, Konradsen F, Eddleston M. The impact of pesticide regulations on suicide in Sri Lanka. Int J Epidemiol. 2007;36(6):1235–42; Kreitman N. The coal gas story. United Kingdom suicide rates, 1960–71. Br J Prev Soc Med. 1976 Jun;30(2):86–93; Hawton K. United Kingdom legislation on pack sizes of analgesics: Background, rationale, and effects on suicide and deliberate self-harm. Suicide and Life-Threatening Behavior. 2002;32(3):223–229. Furthermore, increasing time and space between individuals facing a suicidal crisis and a firearm has been shown to prevent suicide. Lubin, G., Werbeloff, N., Halperin, D., Shmushkevitch, M., Weise, M, & Knobler, H. (2010), *Suicide & Life-Threatening Behavior,* 40(5), 421–424. Thus, VA believes it is appropriate to allow payment for expenses associated with lethal means safety and secure storage, as these would also be services necessary for improving the wellbeing and reducing the suicide risk of eligible individuals and their families.

Paragraph (b) explains that grantees providing or coordinating the provision of other suicide prevention services may provide or coordinate the provision of other services as set forth in the NOFO or as approved by VA that are consistent with SSG Fox SPGP. Applicants may propose additional services in their suicide prevention services grant application, and grantees may propose additional services by submitting a written request to modify the suicide prevention services grant program in accordance with § 78.125. VA reserves the right to approve or disapprove other suicide prevention services to be provided or coordinated to be provided using funds authorized under SSG Fox SPGP. This is consistent with how VA authorizes additional services for the SSVF Program (see 38 CFR 62.34) and is authorized by the statute as noted above.

Section 201(q)(11)(A)(xi) includes as examples of services the Secretary may include adaptive sports, equine assisted therapy, or in-place or outdoor recreational therapy; substance use reduction programming; individual, group, or family counseling; and relationship coaching. VA is not identifying these services as expressly covered in its regulations, but applicants may propose these services in their grant application. VA believes Congress included these as examples of other services to ensure that applicants proposing to furnish these services would be able to do so if VA determines that such services are appropriate and likely for the purpose of reducing veteran suicide. VA believes the list in section 201(q)(11)(A)(xi) also is indicative of the types of other services that may be approved. VA believes the intent of this section of law is to provide flexibility for different approaches; thus, VA is not regulating these services further to preserve that flexibility. Paragraph (b) will control the disposition of any requests by applicants and grantees to offer these or other services.

78.95 General Operation Requirements

In § 78.95, VA establishes requirements for the general operation of suicide prevention services programs. Paragraph (a) explains that prior to providing suicide prevention services, grantees must verify, document, and classify each participant's eligibility for suicide prevention services and determine and document each participant's degree of risk of suicide using tools identified in the suicide prevention services grant agreement. Such documentation must be maintained consistent with § 78.150. This ensures that grantees are providing services and using grant funds for those who are eligible for such services under this grant program and consistent with the Act.

Paragraph (b) explains that prior to services ending, grantees must provide or coordinate the provision of a mental health screening to all participants they serve, when possible. This screening must be conducted with the same tool used to conduct the baseline mental health screening under § 78.50. Having this screening occur at the beginning (pursuant to § 78.50) and prior to services ending is important in evaluating the effectiveness of the

services provided, when possible. VA acknowledges that some participants may leave services early or opt out of screening so meeting this requirement may not always be possible. Thus, the language ''when possible'' is included in paragraph (b).

Under paragraph (c), for each participant who receives suicide prevention services from the grantee, the grantee must document the suicide prevention services provided or coordinated, how such services are provided or coordinated, the duration of the services provided or coordinated, and any goals for the provision or coordination of such services. Such documentation must be maintained consistent with § 78.150. This is information eligible entities typically maintain regarding the provision or coordination of these or similar services. Additionally, this information may be requested by VA for purposes of monitoring the grantee's operation and compliance with these regulations (under §§ 78.135 and 78.145), will be collected as part of the grantee's reporting requirements in § 78.145, and will be required to be maintained for at least three years (consistent with the recordkeeping requirements in § 78.150), and may be requested by VA for auditing and evaluation purposes.

Consistent with section 201(e) of the Act, in paragraph (d)(1), prior to initially providing or coordinating suicide prevention services to an eligible individual and their family, the grantee is required to notify each eligible individual and their family that the suicide prevention services are being paid for, in whole or in part, by VA; the suicide prevention services available to the eligible individual and their family through the grantee's program; any conditions or restrictions on the receipt of suicide prevention services by the eligible individual and their family; and in the instance of an eligible individual who receives assistance from the grantee under this program, that the eligible individual is able to apply for enrollment in VA health care pursuant to 38 CFR 17.36. If the eligible individual wishes to enroll in VA health care, the grantee must inform the eligible individual of a VA point of contact for assistance in enrollment. These requirements concerning information about enrollment are consistent with section 201(e)(3) of the Act. While not every eligible individual may be able to enroll in VA health care under § 17.36, they can apply to determine their eligibility. It may not be possible to know at the time the eligible individual expresses an interest in enrolling in VA health care whether or not the person is a veteran under 38 U.S.C. 101(2), so VA is using the term eligible individual, as it is more inclusive and potentially a more accurate description of the person at the point of time this information is provided. Other than members of the Armed Forces who are included as an eligible individual through reference to 38 U.S.C. 1712A(a)(1)(C)(i)–(iv), eligible individuals may be able to enroll in VA health care. Consequently, VA includes an exception in paragraph (d)(1)(iv) stating that the requirements in this clause do not apply to eligible individuals who are members of the Armed Forces described in section 1712A(a)(1)(C)(i)–(iv) of title 38, United States Code.

In paragraph (d)(2), grantees must provide each participant with a satisfaction survey, which the participant can submit directly to VA, within 30 days of such participant's pending exit from the grantee's program. This is required to assist VA in evaluating grantees' performance and participants' satisfaction with the suicide prevention services they receive. This is consistent with the SSVF Program (see 38 CFR 62.36(c)(2)).

Paragraph (e) requires that grantees regularly assess how suicide prevention services grant funds can be used in conjunction with other available funds and services to assist participants. This is consistent with the SSVF Program (see § 62.36(d)) and encourages grantees to leverage other financial resources to ensure continuity of program operations and assistance to participants.

Paragraph (f) requires that for each participant, grantees must develop and document an individualized a plan with respect to the provision of suicide prevention services provided under this part. Consistent with section 201(e)(2) of the Act, this plan must be developed in consultation with the participant and must be maintained consistent with § 78.150. This requirement would ensure that a plan is developed to address the needs of participants. Such plan would include, but not be limited to, the suicide prevention services needed, the goals and objectives of the plan, and the applicable services. This plan would allow grantees and VA to monitor the delivery of suicide prevention services to participants. VA would include information about the suicide prevention services plan in the program guide developed for grantees. This requirement for a suicide prevention services plan is also authorized under section 201(f)(1) of the Act, as VA has authority to include such commitments as it considers necessary to carry out this section.

In paragraph (g), VA requires grantees to coordinate with VA with respect to the provision of health care and other services to eligible individuals under 38 U.S.C. Chapters 17 and 20. This is consistent with the requirements in section 201(e)(3)(A), (m), and (n) of the Act. VA expects that grantees will work with local VA facilities on a regular basis to coordinate care when needed for eligible individuals.

Consistent with section 201(e)(4) of the Act, VA requires in paragraph (h) that the grantee submit to VA a description of the tools and assessments the grantee uses or will use to determine the effectiveness of the suicide prevention services furnished by the grantee. These include any measures and metrics developed and provided by VA for the purposes of measuring the effectiveness of the programming to be provided in improving mental health status and wellbeing, and reducing suicide risk and suicide deaths of eligible individuals. While the Act uses the phrase ''completed suicides'', VA uses the term ''suicide deaths'', as that is the terminology commonly used by VA. VA recognizes that messaging and language around suicide attempts and suicide death has an impact on beliefs and attitudes related to suicide. Thus, VA has developed a Safe Messaging Best Practices guide for public use regarding this topic. See *https://www.mentalhealth.va.gov/suicide_prevention/docs/OMH-086-VA-OMHSP-Safe-Messaging-Factsheet-4-9-2019.pdf.*

Consistent with section 201(o) of the Act, under paragraph (i), only grantees that are a State or local government or an Indian tribe are able to use grant funds to enter into an agreement with a community partner under which the grantee may provide funds to the community partner for the provision of suicide prevention services to eligible individuals and their families.

Paragraph (j) explains that grantees may enter into contracts for goods or services under this part. Section 201(o)(2) of the Act states that the ability of a grantee to provide grant funds to a community partner is limited to grantees that are a State or local government or an Indian tribe. VA does not interpret section 201(o)(2) of the Act to prohibit a grantee from using funds provided under this part to pay vendors or contractors for certain services, as VA does not interpret the term ''community partner'' to limit such arrangements. Indeed, VA believes that if the term ''community partner'' prohibited the use of grant funds to be used to pay vendors and other contractors, section 201(o)(2) of the Act would effectively bar any entity that was not a State or local

government, or an Indian tribe, from participating in the grant program, or at least from providing many of the suicide prevention services defined in this rule. VA understands that the intent behind section 201(o)(2) of the Act was to clarify that only State or local governments and Indian tribes are able to provide sub-grants to community partners. VA's interpretation, which permits grantees to use grant funds to pay vendors and contractors for goods and services, is consistent with this intent and is necessary for effective operation of the program. No non-governmental entity, and likely no governmental entity, would be able to provide the full range of services identified as suicide prevention services in section 201(q)(11) of the Act absent the ability to pay vendors and contractors for goods and services. For example, assistance with emergent needs related to transportation services under section 201(q)(11)(A)(ix) often involves the provision of tokens or vouchers for use of transportation services such as buses or rail. However, no non-governmental entity, and few governmental entities, actually operate the transportation systems that would be needed to provide this assistance, so any effort to provide support with transportation services would require the use of grant funds to obtain goods or services from another party that is not a community partner. Similarly, Congress authorized up to $5,000 in assistance per family of an eligible individual per fiscal year for child care in section 201(q)(11)(A)(ix)(VIII) of the Act. Including a cap on the amount of funds that could be used for such services would not make sense unless Congress intended for grantees to be able to use grant funds to purchase goods and services like child care. Taken to its logical extreme, if section 201(o)(2) of the Act were to prohibit non-governmental grantees from providing any grant funds to any other party, these grantees would be prohibited from using grant funds to pay their utility bills, purchase office supplies, or pay rent. VA does not believe that such a result could possibly have been intended by Congress.

VA further believes that existing Federal regulations concerning the use of grants, set forth in 2 CFR part 200, support VA's interpretation. For example, 2 CFR 200.1 provides definitions applicable to the uniform administrative requirements, cost principles, and audit requirements for Federal awards. These regulations define the term ''contract'', for purposes of Federal financial assistance, as a legal instrument by which a recipient or subrecipient purchases property or services needed to carry out the project or program under a Federal award. This is clearly distinguished from a subaward, which is an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity; subawards do not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. In this context, VA interprets section 201(o)(2) of the Act as limiting the use of subawards but not contracts by grantees. Grantees may choose to enter into contracts because in some situations, resources may be more readily available at a lower cost, or they may only be available, from another party in the community.

Lastly, in paragraph (k), VA requires grantees to ensure that suicide prevention services grants are administered in accordance with the requirements of part 78, the suicide prevention services grant agreement, and other applicable Federal, State, and local laws and regulations, including Federal civil rights laws. Grantees must ensure that any community partners carry out activities in compliance with this part. This is consistent with how VA administers the SSVF Program (see § 62.36(e)).

78.100 Fee Prohibition

In § 78.100, VA prohibits grantees from charging a fee to participants for providing suicide prevention services that are funded with amounts from a suicide prevention services grant. VA believes this prohibition is appropriate because charging a fee could be a barrier to receiving care and services. There may be eligible individuals who may not be able to afford to pay any fees or those who do not otherwise seek care and services under this grant program because they do not want to pay a fee. Because of the importance of the services, including referrals to VA care as appropriate, provided under this grant program to eligible individuals at risk of suicide, VA does not want financial liability for fees to result in an eligible individual not receiving such critical services that may save such individual's life, as doing so would be inconsistent with the purpose of this grant program under section 201 of the Act to reduce suicide among veterans. This prohibition is authorized by section 201(f)(1) of the Act, which permits VA to include such commitments as the Secretary considers necessary to carry out this section. This is also similar to other prohibitions that have been implemented for other, similar grant programs, such as the SSVF Program (see 38 CFR 62.37). VA also notes that collecting and processing fees would increase administrative costs and time for the grantee, which would negatively affect the provision of services to eligible individuals.

78.105 Ineligible Activities

Section 78.105 sets forth certain activities for which grantees will not be authorized to use suicide prevention services grant funds. Pursuant to section 201(q)(11)(B) of the Act, direct cash assistance to participants is prohibited, which is reflected in paragraph (a). Other prohibited activities are set forth in paragraphs (b) through (d) to include those legal services prohibited pursuant to § 78.80(g); medical or dental care and medicines except for clinical services for emergency treatment authorized pursuant to § 78.60; and any activities considered illegal under Federal law. Some of the items on this list of ineligible activities are consistent with those prohibited under the SSVF Program (see 38 CFR 62.38). However, VA does not feel it is necessary to include all of the activities that are ineligible under the SSVF program as these programs have distinct purposes, and many of those ineligible activities (for example, mortgage costs) are not necessarily applicable to the suicide prevention grant program. If VA wanted to include any of those activities under this grant program, such activities would be subject to § 78.90. Similarly, VA does not think it is necessary to list every ineligible activity as all activities would be subject to the requirements in part 78. VA also notes that 2 CFR part 200 prohibits the use of grant awards for certain activities, such as entertainment. Such prohibitions are applicable to suicide prevention services grants awarded under part 78. However, it is unnecessary to include that language in § 78.105 because 2 CFR part 200 controls the administration of these grants regardless of whether explicit language exists in part 78.

78.110 Notice of Funding Opportunity

Consistent with existing processes for other VA grant programs, VA will notify the public, through a NOFO, when funds for this grant program are available. Section 78.110 explains that when funds are available for the grant program, VA will publish a NOFO on *grants.gov.* It also describes the information that will be included in such NOFO, including the location for obtaining suicide prevention services grant applications; the date, time, and place for submitting completed suicide

prevention services grant applications; the estimated amount and type of suicide prevention services grant funding available; any priorities for or exclusions from funding to meet the statutory mandates of section 201 of the Act and VA's goals for SSG Fox SPGP; the length of term for the suicide prevention services grant award; the minimum number of total points and points per category that an applicant or grantee, as applicable, must receive for a suicide prevention services grant to be funded; any maximum uses of suicide prevention services grant funds for specific suicide prevention services; the timeframes and manner for payments under the suicide prevention services grant; and other information necessary for the suicide prevention services grant application process as determined by VA.

This is consistent with the requirements and recommendations within 2 CFR part 200 regarding notices of funding opportunity (see 2 CFR 200.204).

78.115 Suicide Prevention Services Grant Agreements

Consistent with other the SSVF Program (see 38 CFR 62.50) and 2 CFR 200.201, section 78.115 explains that VA and the selected applicant will enter into an agreement prior to obligating funds under part 78 and sets forth requirements that will be included in such agreement. Section 200.201 requires that Federal awarding agencies must decide on the appropriate instrument for Federal awards. Such appropriate instruments include grant agreements, which VA uses for the SSVF Program (see 38 CFR 62.50). This is also authorized by section 201(f)(1) of the Act, which permits VA to include such commitments as the Secretary considers necessary to carry out this section.

This agreement will be enforceable against the grantee, providing VA assurance that the grantee will use the suicide prevention services grant funds in the manner described in the application and in accordance with the requirements of part 78.

Paragraph (a) states that after an applicant is selected for a suicide prevention services grant in accordance with § 78.30, VA will draft a suicide prevention services grant agreement to be executed by VA and the applicant. Upon execution of the suicide prevention services grant agreement, VA will obligate suicide prevention services grant funds to cover the amount of the approved suicide prevention services grant, subject to the availability of funding. Such agreement will provide that the grantee agrees, and will ensure that each community partner agrees, to operate the program in accordance with the provisions of part 78 and the applicant's suicide prevention services grant application; comply with such other terms and conditions, including recordkeeping and reports for program monitoring and evaluation purposes, as VA may establish for purposes of carrying out SSG Fox SPGP, in an effective and efficient manner; and provide such additional information as deemed appropriate by VA.

Paragraph (b) explains that after a grantee is selected for renewal of a suicide prevention services grant in accordance with § 78.40, VA will draft a suicide prevention services grant agreement to be executed by VA and the grantee. Upon execution of the suicide prevention services grant agreement, VA will obligate suicide prevention services grant funds to cover the amount of the approved suicide prevention services grant, subject to the availability of funding. Such grant agreement will contain the same provisions described in paragraph (a) of this section.

Pursuant to paragraph (c), no funds provided under part 78 may be used to replace Federal, State, tribal, or local funds previously used, or designated for use, to assist eligible individuals and their families.

78.120 Amount and Payment of Grants

Consistent with section 201(c)(2)(A) of the Act, § 78.120(a) states that the maximum funding that a grantee may be awarded under part 78 is $750,000 per fiscal year. VA may provide less than $750,000 per award per its discretion under section 201 of the Act. As explained in § 78.110, the NOFO will identify the estimated amount of grant funding available. However, because of the statutory restriction, VA will not provide more than $750,000 per grantee per fiscal year.

Section 78.120(b) explains that grantees are to be paid in accordance with the timeframes and manner set forth in the NOFO. Section 201(c)(2)(B) of the Act authorizes VA to establish intervals of payment for purposes of this grant program, and VA will do so in the NOFO, which is consistent with how VA establishes payment in other grant programs. See 38 CFR 62.51. Including such information in the NOFO provides VA with the flexibility to determine the time and manner of payment for suicide prevention services grants that is appropriate for each funding cycle.

78.125 Program or Budget Changes and Corrective Action Plans

Section 78.125 sets forth the requirements if there are changes to the program or budget that alter the grantee's suicide prevention services grant program. This section is consistent with 2 CFR 200.308 which establishes policy and processes for revision of budget and program plans for Federal awards. These requirements are authorized by section 201(f)(1) of the Act, which permits VA to include such commitments as the Secretary considers necessary to carry out this section. These requirements are also consistent with how VA handles program and budget changes and corrective action plans in the SSVF Program (see 62 CFR 62.60) and allow VA to ensure that grant funds are used appropriately and to maintain control over the quality of suicide prevention services provided by the grantee.

Paragraph (a) states that a grantee must submit to VA a written request to modify a suicide prevention services grant for any proposed significant change that will alter the suicide prevention services grant program. It further explains that if VA approves such change, it will issue a written amendment to the suicide prevention services grant agreement. A grantee must receive VA's approval prior to implementing a significant change. Significant changes include, but are not limited to, a change in the grantee or any community partners identified in the suicide prevention services grant agreement; a change in the area served by the grantee; additions or deletions of suicide prevention services provided by the grantee; a change in category of participants to be served; and a change in budget line items that are more than 10 percent of the total suicide prevention services grant award. VA's approval of changes will be contingent upon the grantee's amended application retaining a sufficient rank to have been competitively selected for funding in the year that the application was granted, and each suicide prevention services grant modification request will be required to contain a description of, and justification for, the revised proposed use of suicide prevention services grant funds.

Under paragraph (b), VA may require that the grantee initiate, develop, and submit to VA for approval a Corrective Action Plan (CAP) if, on a quarterly basis, actual suicide prevention services grant expenditures vary from the amount disbursed to a grantee for that same quarter or actual suicide prevention services grant activities vary

from the grantee's program description provided in the suicide prevention services grant agreement. Paragraph (b) also sets forth specific requirements related to the CAP. These include that the CAP must identify the expenditure or activity source that has caused the deviation, describe the reason(s) for the variance, provide specific proposed corrective action(s), and provide a timetable for accomplishment of the corrective action. After receipt of the CAP, VA will send a letter to the grantee indicating that the CAP is approved or disapproved. If disapproved, VA will make beneficial suggestions to improve the proposed CAP and request resubmission or take other actions in accordance with this part.

Paragraph (c) explains that grantees are required to inform VA in writing of any key personnel changes (*e.g.,* new executive director, suicide prevention services grant program director, or chief financial officer) and grantee address changes within 30 days of the change.

78.130 Faith-Based Organizations

As VA anticipates that religious or faith-based organizations may apply for grants under part 78, § 78.130 explains that religious or faith-based organizations are eligible for suicide prevention services grants and describes the conditions for use of these grants as they relate to religious activities. This is similar to the language used in the Homeless Providers Grant and Per Diem Program (38 CFR 61.64) and the SSVF Program (38 CFR 61.62). However, VA has moved the definitions of indirect financial assistance and direct federal financial assistance to the definitions section of part 78.

Under paragraph (a), organizations that are faith-based will be eligible, on the same basis as any other organization, to participate in SSG Fox SPGP under part 78. Decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of religion or religious belief or lack thereof.

Paragraph (b)(1) states that no organization may use direct financial assistance from VA under this part to pay for any of the following: (i) Explicitly religious activities such as, religious worship, instruction, or proselytization; or (ii) equipment or supplies to be used for any of those activities. Paragraph (b)(2) states that references to financial assistance are deemed to be references to direct Federal financial assistance, unless the referenced assistance meets the definition of indirect Federal financial assistance in part 78.

Under paragraph (c), organizations that engage in explicitly religious activities, such as worship, religious instruction, or proselytization, must offer those services separately in time or location from any programs or services funded with direct financial assistance from VA under this part, and participation in any of the organization's explicitly religious activities must be voluntary for the participants in a program or service funded by direct financial assistance from VA under part 78.

Paragraph (d) states that a faith-based organization that participates in SSG Fox SPGP under part 78 will retain its independence from Federal, State, or local governments. It further states that such organizations may continue to carry out its mission, including the definition, practice and expression of its religious beliefs, so long as the organization does not use direct financial assistance from VA under part 78 to support any explicitly religious activities, such as worship, religious instruction, or proselytization. Faith-based organizations may use space in their facilities to provide VA-funded services under part 78, without concealing, removing, or altering religious art, icons, scripture, or other religious symbols. In addition, a VA-funded faith-based organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members and otherwise govern itself on a religious basis, and include religious reference in its organization's mission statements and other governing documents.

Under paragraph (e), an organization that participates in a VA program under this part must not, in providing direct program assistance, discriminate against a program participant or prospective program participant on the basis of religion or religious belief.

Under paragraph (f), if a State or local government voluntarily contributes its own funds to supplement Federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this provision applies to all of the commingled funds.

Under paragraph (g), to the extent otherwise permitted by Federal law, the restrictions on explicitly religious activities set forth in this section do not apply where VA funds are provided to faith-based organizations through indirect assistance as a result of a genuine and independent private choice of a participant, provided the faith-based organizations otherwise satisfy the requirements of this part. A faith-based organization may receive such funds as the result of a participant's genuine and independent choice if, for example, a participant redeems a voucher, coupon, or certificate, allowing the participant to direct where funds are to be paid, or a similar funding mechanism provided to that participant and designed to give that participant a choice among providers.

78.135 Visits to Monitor Operation and Compliance

Section 78.135(a) authorizes VA, at all reasonable times, to make visits to all grantee locations where a grantee is using suicide prevention services grant funds to review grantee accomplishments and management control systems and to provide such technical assistance as may be required. VA may also conduct inspections of all program locations and records of a grantee at such times as are deemed necessary to determine compliance with the provisions of this part. In the event that a grantee delivers services in a participant's home, or at a location away from the grantee's place of business, VA may accompany the grantee. If the grantee's visit is to the participant's home, VA will only accompany the grantee with the consent of the participant. If any visit is made by VA on the premises of the grantee or a community partner under the suicide prevention services grant, the grantee must provide, and must require its community partners to provide, all reasonable facilities and assistance for the safety and convenience of the VA representatives in the performance of their duties. All visits and evaluations will be performed in such a manner as will not unduly delay services.

Paragraph (b) explains that the authority to inspect carries with it no authority over the management or control of any applicant or grantee under this part.

These provisions are critical for VA oversight over suicide prevention services grants and are consistent with how VA administers other grant programs (see 38 CFR 61.65 and 62.63). These provisions are authorized by section 201(f)(1) and 201(g) of the Act, which authorize VA to require eligible entities seeking grants to provide such commitments and information as VA considers necessary and require VA to provide training and technical assistance to eligible entities in receipt of grants. These provisions are also consistent with 2 CFR 200.329 regarding

monitoring and reporting program performance for Federal awards.

78.140 Financial Management and Administrative Costs

Section 78.140 sets forth requirements with which grantees must comply and ensures that grantees are aware of these requirements. These requirements are consistent with other grant programs, such as the SSVF Program (see 38 CFR 62.70) and the Homeless Providers Grant and Per Diem Program (see 38 CFR 61.66).

Paragraph (a) requires grantees to comply with applicable requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR part 200. Part 200 of 2 CFR establishes the uniform administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities.

Paragraph (b) requires grantees use a financial management system that provides adequate fiscal control and accounting records and meets the requirements set forth in 2 CFR part 200.

Under paragraph (c), payment up to the amount specified in the suicide prevention services grant must be made only for allowable, allocable, and reasonable costs in conducting the work under the suicide prevention services grant, and the determination of allowable costs must be made in accordance with the applicable Federal Cost Principles set forth in 2 CFR part 200.

Paragraph (d) prohibits costs for administration by a grantee from exceeding 10 percent of the total amount of the suicide prevention services grant. Administrative costs include all costs associated with the management of the program and include the administrative costs of community partners.

VA has determined this limitation on administrative costs to be reasonable and consistent with the purpose of SSG Fox SPGP, as VA believes it is important that almost all of funding provided by VA goes towards providing services for participants. This requirement ensures that the vast majority of suicide prevention services grant funds (at least 90 percent) are used to provide suicide prevention services to participants. These requirements are also consistent with the SSVF Program, which allows only 10 percent of the grant funds to be used for specified administrative costs. See 38 CFR 62.10. VA has not identified any issues with this limitation in the context of the SSVF program. VA believes that 10 percent is a reasonable maximum for administrative costs, and any additional funds needed by grantees to administer the suicide prevention services should be provided by non-VA funds.

78.145 Grantee Reporting Requirements

Section 78.145 sets forth reporting requirements regarding the projects carried out using grant funds provided under part 78. Such reporting requirements ensure that grants funds are being properly used in accordance with the Act and with part 78, and that VA is being a good fiscal steward of the taxpayer dollar. These reporting requirements are consistent with subsections (e)(5) and (k) of section 201 of the Act. Section 201(e)(5)(A) mandates that VA require each entity receiving a suicide prevention services grant to submit to VA an annual report that describes the projects carried out with such grant during the year covered by the report. Section 201(e)(5)(C) further authorizes VA to require each such entity to submit to VA such additional reports as VA considers appropriate. Section 201(k) of the Act requires VA to submit an interim report and final report on the provision of grants to eligible entities under part 78 to the appropriate committees of Congress. Subsection (k)(1)(C) further provides VA with the authority to require eligible entities to provide to Congress such information as VA determines necessary regarding certain information that must be included in such reports. These provisions of section 201 of the Act are implemented in paragraphs (b) and (c), as explained in more detail below. Additionally, these reporting requirements are consistent with how VA administers the SSVF Program. See 38 CFR 62.71.

In paragraph (a), VA reserves the right to require grantees to provide, in any form as may be prescribed, such reports or answers in writing to specific questions, surveys, or questionnaires as VA determines necessary to carry out SSG Fox SPGP.

Consistent with section 201(e)(5)(A) of the Act, paragraph (b) requires that at least once per year, each grantee must submit to VA a report that describes the projects carried out with such grant during the year covered by the report; and information relating to operational effectiveness, fiscal responsibility, suicide prevention services grant agreement compliance, and legal and regulatory compliance, including a description of the use of suicide prevention grant funds, the number of participants assisted, the types of suicide prevention services provided, and any other information that VA may request. The information gathered in this report should also support VA in carrying out its responsibilities under section 201(k) of the Act in providing necessary information to Congress to facilitate its oversight of this program.

Under paragraph (c), VA retains the discretion to request additional reports or information to be able to fully assess the provision or coordination of the provision of suicide prevention services under part 78. This is a catch-all provision to allow VA to request additional reports or information that it may need to further assess the project and the pilot program. These will vary on a case-by-case basis dependent on the project and its progression. Additionally, if VA is required to submit additional reports to Congress on this pilot program, VA reserves the right under this paragraph to request such information as needed to respond to Congress. This also provides a safeguard in instances where there may be confusing, misleading, inconsistent, or unclear statements in submitted reports. VA reserves the right to request additional reports to clarify any such information it receives in other reports that are submitted by a grantee. This requirement is authorized by section 201(f)(1) of the Act, which authorizes VA to require applicants to provide such commitments and information as VA considers necessary, and by section 201(e)(5)(C) of the Act, which authorizes VA to require eligible entities to submit to VA such additional reports as VA considers appropriate.

Paragraph (d) requires that all pages of the reports must cite the assigned suicide prevention services grant number and be submitted in a timely manner as set forth in the grant agreement. Including the assigned grant number on each page of the report is important for tracking reports and to ensure that all pages of the relevant report are received by VA for each grant.

Paragraph (e) further requires that grantees provide VA with consent to post information from reports on the internet and use such information in other ways deemed appropriate by VA. Grantees shall clearly mark information that is confidential to individual participants. This is consistent with the SSVF program (see 38 CFR 62.71(f)).

78.150 Recordkeeping

Section 78.150 requires grantees, consistent with 2 CFR 200.334, to keep records and maintain such records for at least a three-year period, to document compliance with SSG Fox SPGP requirements in part 78. Grantees will need to produce these records at VA's

request. This will assist VA in providing oversight of grantees and is consistent with section 201(k)(1)(B)(i) of the Act, which requires VA to assess the effectiveness of this grant program, as well as the requirements for recordkeeping in 2 CFR 200.334.

78.155 Technical Assistance

Consistent with section 201(g) of the Act, § 78.155 explains that VA will provide technical assistance, as necessary, to applicants and grantees to meet the requirements of part 78. Section 201(g) of the Act specifically requires VA to provide training and technical assistance, in coordination with the Centers for Disease Control and Prevention (CDC), to grantees regarding (1) suicide risk identification and management, (2) the data required to be collected and shared with VA, (3) the means of data collection and sharing, (4) familiarization with and appropriate use of any tool to be used to measure the effectiveness of the use of grants, and (5) the requirements for reporting on services provided via such grants. Section 78.155 further explains that such technical assistance will be provided either directly by VA or through contracts with appropriate public or non-profit private entities. Technical assistance may consist of activities related to the planning, development, and provision of suicide prevention services to participants.

In addition to other forms of technical assistance that will be provided, such as training and assistance with the five categories described above, VA will develop a program guide to be used by applicants, grantees, VA staff members, and other interested third parties to assist with understanding and implementing SSG Fox SPGP. This technical assistance will be conducted in coordination with the CDC, as required by section 201(g)(1) of the Act. CDC will be available on technical assistance calls, including those relating to the availability of data on suicide in grantees' local areas. This is consistent with the technical assistance VA provides in the SSVF Program. See 38 CFR 62.73.

78.160 Withholding, Suspension, Deobligation, Termination, and Recovery of Funds by VA

Section 78.160 explains that VA will enforce part 78 through such actions as may be appropriate. Appropriate actions include withholding, suspension, deobligation, termination, recovery of funds by VA, and actions in accordance with 2 CFR part 200.

As suicide prevention services grants are subject to the requirements of 2 CFR part 200, VA explicitly references 2 CFR part 200 in § 78.160 to ensure that grantees understand and know where to locate these requirements related to withholding, suspension, deobligation, termination, and recovery of funds. The specific sections of 2 CFR part 200 on withholding, suspension, deobligation, termination, and recovery of funds are 2 CFR 200.208, 200.305, and 200.339 through 200.343, and 200.346, respectively. VA refers to 2 CFR part 200 rather than include those requirements in this section as those requirements in 2 CFR part 200 may change. Referencing 2 CFR part 200 provides VA the ability to implement those changes without having to conduct further rulemaking.

VA acknowledges that when certain actions (such as suspension and termination) are taken against grantees pursuant to this section and 2 CFR part 200, a disruption in services to participants may occur. While VA is not regulating responsibilities for grantees to continue to provide services or to coordinate the transfer of participants to other sources of support, VA will include such requirements and responsibilities in the grant agreement that VA and the grantee enter into pursuant to this part. This will ensure that the disruption and impact upon participants is minimized as much as possible.

78.165 Suicide Prevention Services Grant Closeout Procedures

Section 78.165 explains that suicide prevention services grants will be closed out in accordance with 2 CFR part 200. Procedures for closing out Federal awards are currently located at 2 CFR 200.344 and 200.345. As suicide prevention services grants are subject to the requirements of 2 CFR part 200, VA explicitly references 2 CFR part 200 in § 78.165 to ensure that grantees understand and know where to locate these requirements. VA refers to 2 CFR part 200 rather than include those requirements in this section as those requirements in 2 CFR part 200 may change, and referencing 2 CFR part 200 provides VA ability to implement those changes without having to conduct further rulemaking.

Administrative Procedure Act

The Administrative Procedure Act (APA), codified in part at 5 U.S.C. 553, generally requires agencies publish substantive rules in the **Federal Register** for notice and comment. These notice and comment requirements generally do not apply to ''a matter relating to agency management or personnel or to public property, loans, grants, benefits or contracts.'' 5 U.S.C. 553(a)(2). However, 38 U.S.C. 501(d) requires VA comply with the notice and comment requirements in 5 U.S.C. 553 for matters relating to grants, notwithstanding section 553(a)(2). Thus, as this rulemaking relates to the grant program required by section 201 of the Act, VA is required to comply with the notice and comment requirements of 5 U.S.C. 553.

However, pursuant to 5 U.S.C. 553(b)(B), 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.''

In accordance with 5 U.S.C. 553(b)(B), the Secretary has concluded that there is good cause to publish this rule without prior opportunity for public comment. This rule implements the mandates of section 201 of the Act to establish a new suicide prevention services grant program. This new grant program, SSG Fox SPGP, will provide eligible individuals and their families with suicide prevention services that will aim to reduce and prevent suicide by providing outreach, mental health screenings, education on suicide risk and prevention, clinical services for emergency treatment, case management services, peer support services, and assistance with obtaining VA and other government benefits, among other services.

Suicide is a national public health concern, and it is preventable. The rate of veteran suicide in the United States remains high, despite great effort. It is critical that this rulemaking publish without delay, as these grants will result in increased engagement with a specific population at risk of suicide, which is especially needed during the Coronavirus Disease–2019 (COVID–19) pandemic and the immediate period following this pandemic. The COVID–19 pandemic has caused significant psychological distress related to economic hardships, physical safety concerns, illness, and death of family and friends, uncertainty about the future, and isolation from social supports. See Panchal, N., Kamal, R., Orgera, K., Cox, C., Garfield, R., Hamel, L., Muñana, C. & Chidambaram, P. (2021). The implications of COVID–19 for mental health and substance use. Kaiser Family Foundation. *https://www.kff.org/coronavirus-covid-19/issuebrief/the-implications-of-covid-19-for-mental-health-and-substance-use;*

See also, Brooks, S.K., Webster, R.K., Smith, L.E., Woodland, L., Wessely, S., Greenberg, N., & Rubin, G.J., (2020). The psychological impact of quarantine and how to reduce it: Rapid review of the evidence. Lancet, 395, 912–920. COVID–19 has had a detrimental effect on mental health in the United States. See id.; *see also,* Czeisler, MÉ, Lane, RI, Petroski, E, et al. Mental Health, Substance Use, and Suicidal Ideation During the COVID–19 Pandemic—United States, June 24–30, 2020. MMWR Morb Mortal Wkly Rep 2020;69:1049; *See also,* National Center for Health Statistics (2021). Anxiety and depression: Household Pulse Survey. U.S. Centers for Disease Control and Prevention. *https://www.cdc.gov/nchs/covid19/pulse/mental-health.htm* (Last accessed May 17, 2021).

According to a recent CDC report, more Americans are reporting negative mental health impacts, including higher rates of suicidal thoughts, during the COVID–19 pandemic. Czeisler MÉ, Lane RI, Petrosky E, et al. Mental Health, Substance Use, and Suicidal Ideation During the COVID–19 Pandemic—United States, June 24–30, 2020. MMWR Morb Mortal Wkly Rep 2020;69:1049–1057. DOI: *http://dx.doi.org/10.15585/mmwr.mm6932a1.* While this report examined the general population of America, there is also evidence of increased distress among the veteran population. For instance, there has been an increase in call volume to the Veterans Crisis Line (VCL). In fiscal year (FY) 2019, VCL answered an average daily call volume of 1590.67 calls compared with 1765.02 FY 2020 and 1807.52 in FY 2021, with VCL call volume increasing over 22% in direct-date comparisons from FY 2019 to FY 2021.

Veterans, in particular, may be uniquely vulnerable to negative mental health effects of the pandemic such as suicidality due to their older age, previous trauma exposures, and higher pre-pandemic prevalence of physical and psychiatric risk factors and conditions. Na, P.J., Tsai, J., Hill, M.L., Nichter, B., Norman, S.B., Southwick, S.M., & Pietrzak, R.H. (2021). Prevalence, risk and protective factors associated with suicidal ideation during the COVID–19 pandemic in U.S. military veterans with pre-existing psychiatric conditions. *Journal of Psychiatric Research, 137,* 351–359. In an analysis of data from the National Health and Resilience in Veterans Study, researchers found that 19.2% of veterans screened positive for suicidal ideation peri-pandemic, and such veterans had lower income, were more likely to have been infected with COVID–19, reported greater COVID–19-related financial and social restriction stress, and increases in psychiatric symptoms and loneliness during the pandemic when compared to veterans without suicidal ideation. Id. Additionally, they found that among veterans who were infected with COVID–19, those aged 45 or older and who reported lower purpose in life were more likely to endorse suicidal ideation. Id. These researchers noted that monitoring for suicide risk and worsening psychiatric symptoms in older veterans who have been infected with COVID–19 may be important, and that interventions that enhance purpose in life may help protect against suicidal ideation in this population. Consistent with the recommendations of this research, SSG Fox SPGP will support monitoring for suicide risk and worsening psychiatric symptoms by providing support to more organizations who can reach veterans who do not seek or obtain care through VA. Through this grant program, organizations' efforts can also help protect this population against suicidal ideation by enhancing purpose in life.

Furthermore, studies have shown increased suicide after pandemics such as the 1918 Influenza (H1N1) pandemic and the 2003 Severe Acute Respiratory Syndrome (SARS) outbreak, in which increased risk factors associated with negative impacts of epidemics were believed to contribute to suicide. See Wasserman IM. The impact of epidemic, war, prohibition and media on suicide: United States, 1910–1920. Suicide Life Threat Behav. 1992 Summer;22(2):240–54. PMID: 1626335.; *See also,* Cheung YT., Chau PH., and Yip PS. A revisit on older adults suicides and severe acute respiratory syndrome (SARS) epidemic in Hong Kong. Int J Geriatr Psychiatry. 2008; 23: 1231–1238. Thus, increased suicide death could occur after the COVID–19 pandemic unless action is taken. See Gunnell, D., Appleby, L., Arensman, E., Hawton, K., John, A., Kapur, N., Khan, M., O'Connor, R.C., & Pirkis, J. (2020). Suicide risk and prevention during the COVID–19 pandemic. The Lancet Psychiatry, 7(6), 468–471.

It is therefore critical that VA publish this rulemaking without delay to ensure the services provided through this grant program will assist the growing number of eligible individuals who are suffering from mental health concerns and may be at risk of suicide as a result of the COVID–19 pandemic, particularly as the period immediately following a pandemic can result in elevated risk of suicide. Publishing this rulemaking without delay will help ensure that services under this grant program can be provided to eligible individuals during the pandemic or in the immediate aftermath of it when they can have the most impact. As noted earlier in this section, efforts and actions supported through this grant program will be consistent with recent findings and recommendations on the impact of the COVID–19 pandemic on veterans and can help protect this population against suicidal ideation. See, Na, P.J., Tsai, J., Hill, M.L., Nichter, B., Norman, S.B., Southwick, S.M., & Pietrzak, R.H. (2021). Prevalence, risk and protective factors associated with suicidal ideation during the COVID–19 pandemic in U.S. military veterans with pre-existing psychiatric conditions. *Journal of Psychiatric Research, 137,* 351–359.

VA believes that increased engagement with veterans and their families from VA and community partners through this grant program will help prevent veteran suicide. As detailed in VA's 2021 National Veteran Suicide Prevention Annual Report, the average number of veteran suicide deaths per day in 2019 was 17.2. (Available online: *https://www.mentalhealth.va.gov/docs/data-sheets/2021/2021-National-Veteran-Suicide-Prevention-Annual-Report-FINAL-9-8-21.pdf*). Of those, 6.8 were veterans who recently used VA health care (that is, these veterans had received VA health care services within the preceding two years) and 10.4 were veterans who had not recently used VA health care. See id. Furthermore, from 2005 to 2018, suicide rates fell among veterans with depression, anxiety, and substance use disorders who were in VA care. See VA's 2020 National Veteran Suicide Prevention Annual Report. (Available online: *https://www.mentalhealth.va.gov/docs/data-sheets/2020/2020-National-Veteran-Suicide-Prevention-Annual-Report-11-2020-508.pdf.* In addition to VA engagement and services reducing suicide rates, studies have shown that community-based and public health suicide prevention have been effective in reducing suicide rates in diverse communities. See Hegerl, U., Althaus, D., Schmidtke, A., & Niklewski, G. (2006); The alliance against depression: 2-year evaluation of a community-based intervention to reduce suicidality. *Psychological Medicine,* 36(9), 1225–1233. These statistics and studies support VA's contention that increased engagement from VA and community partners through this grant program can help reduce suicide risk among eligible individuals by providing critical

services connecting veterans with VA care and services.

Additionally, this rulemaking is not entirely without public input. VA reiterates that as described earlier in this document, VA published a request for information on this rulemaking and held multiple listening sessions to obtain input from the public as part of the consultation required by section 201 of the Act. Conducting consultation in this manner is consistent with VA's past practice and interpretation of consultation requirements under Federal law. VA received 124 comments in response to the request for information and had 32 speakers at the listening sessions. This public input has been reviewed and incorporated, as appropriate, into this rulemaking.

For these reasons, the Secretary has concluded that ordinary notice and comment procedures would be impracticable and contrary to the public interest and is accordingly issuing this rule as an interim final rule. The Secretary will consider and address comments that are received within 60 days after the date that this interim final rule is published in the **Federal Register** and address them in a subsequent **Federal Register** document announcing a final rule incorporating any changes made in response to the public comments.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, is not applicable to this rulemaking because notice of proposed rulemaking is not required. 5 U.S.C. 601(2), 603(a), 604(a).

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This interim final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This interim final rule includes provisions constituting new collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that require approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review.

OMB assigns control numbers to collections of information it approves. VA 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. Sections 78.10, 78.15, 78.95, 78.125, 78.145 contain new collections of information under the Paperwork Reduction Act of 1995. If OMB does not approve the collections of information as requested, VA will immediately remove the provisions containing a collection of information or take such other action as is directed by OMB.

Comments on the new collection of information contained in this rulemaking should be submitted through *www.regulations.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AR16—Staff Sergeant Parker Gordon Fox Suicide Prevention Grant Program'' and should be sent within 30 days of publication of this rulemaking. The collection of information associated with this rulemaking can be viewed at: *www.reginfo.gov/public/do/PRAMain.*

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the interim final rule.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The collections of information contained in 38 CFR 78.10, 78.15, 78.95, 78.125, and 78.145 are described immediately following this paragraph, under their respective titles.

Title: Eligibility Screening.
OMB Control No: 2900–TBD (New).
CFR Provision: 38 CFR 78.10.

- *Summary of collection of information:* This new collection of information in 38 CFR 78.10 requires grantees to determine eligibility for purposes of this grant program using screening tools.
- *Description of need for information and proposed use of information:* This collection of information is necessary to evaluate and determine eligibility for suicide prevention services and ensure that VA resources are directed at the intended population, in an efficient equitable method.
- *Description of likely respondents:* Grantees.
- *Estimated number of respondents:* 90.
- *Estimated frequency of responses:* 67.
- *Estimated average burden per response:* 30 minutes.
- *Estimated total annual reporting and recordkeeping burden:* 3,015 hours.
- **Estimated annual cost to respondents for the hour burdens for collections of information:* $81,616.05.

Title: Suicide Risk Screening.
OMB Control No: 2900–TBD (New).
CFR Provision: 38 CFR 78.10.

- *Summary of collection of information:* This new collection of information in 38 CFR 78.10 requires grantees to use screening tools to assess risk of suicide among program participants for purposes of implementing this grant program.
- *Description of need for information and proposed use of information:* This collection of information is necessary to assess risk of suicide and ensure that VA resources are directed at the intended population, in an efficient equitable method.
- *Description of likely respondents:* Grantees.

- *Estimated number of respondents:* 90.
- *Estimated frequency of responses:* 67.
- *Estimated average burden per response:* 15 minutes.
- *Estimated total annual reporting and recordkeeping burden:* 1,507.5 hours.
- **Estimated annual cost to respondents for the hour burdens for collections of information:* $40,808.03.

Title: Application Provisions for the Staff Sergeant Gordon Parker Fox Suicide Prevention Grant Program.
OMB Control No: 2900–TBD (New).
CFR Provision: 38 CFR 78.15.

- *Summary of collection of information:* The new collection of information in 38 CFR 78.15 requires applications be submitted to be evaluated and considered for a grant under this new part 78. Applications require specific information so that VA can properly evaluate such applications for grants.
- *Description of need for information and proposed use of information:* This collection of information is necessary to award suicide prevention services grants to eligible entities.
- *Description of likely respondents:* Eligible entities.
- *Estimated number of respondents:* 250.
- *Estimated frequency of responses:* 1.
- *Estimated average burden per response:* 2,100 minutes.
- *Estimated total annual reporting and recordkeeping burden:* 8,750 hours.
- **Estimated annual cost to respondents for the hour burdens for collections of information:* $236,862.50.

Title: Suicide Prevention Services Grant Renewal Applications.
OMB Control No: 2900–TBD (New).
CFR Provision: 38 CFR 78.15.

- *Summary of collection of information:* The new collection of information in 38 CFR 78.15 requires that renewal applications be submitted to be evaluated and receive a renewal of a grant under this new part 78. Applications require specific information so that VA can properly evaluate such applications for renewal of grants.
- *Description of need for information and proposed use of information:* This collection of information is necessary to award suicide prevention services grants to eligible entities.
- *Description of likely respondents:* Grantees that seek renewal of their grants.
- *Estimated number of respondents:* 90.
- *Estimated frequency of responses:* 1.
- *Estimated average burden per response:* 600 minutes.
- *Estimated total annual reporting and recordkeeping burden:* 900 hours.
- **Estimated annual cost to respondents for the hour burdens for collections of information:* $24,363.

Title: Participant Satisfaction Surveys.
OMB Control No: 2900–TBD (New).
CFR Provision: 38 CFR 78.95.

- *Summary of collection of information:* The new collection of information in 38 CFR 78.95 requires grantees to conduct satisfaction surveys from participants.
- *Description of need for information and proposed use of information:* The collection of information is necessary to evaluate whether participants are satisfied with the suicide prevention services provided by the grantee and the effectiveness of such services.
- *Description of likely respondents:* Eligible individuals and their families who receive suicide prevention services.
- *Estimated number of respondents:* 5,000.
- *Estimated frequency of responses:* 1.
- *Estimated average burden per response:* 15 minutes.
- *Estimated total annual reporting and recordkeeping burden:* 1,250 hours.
- **Estimated annual cost to respondents for the hour burdens for collections of information:* $33,837.50.

Title: Intake Form.
OMB Control No: 2900–TBD (New).
CFR Provision: 38 CFR 78.95.

- *Summary of collection of information:* The new collection of information in 38 CFR 78.95 requires grantees to use tools and assessments (that is, an intake form) to determine the effectiveness of the suicide prevention services furnished by the grantee.
- *Description of need for information and proposed use of information:* The collection of information is necessary to ensure that the appropriate services are offered to participants, and the data collected will be used by VA to determine the participant's baseline with regards to mood-related symptoms, overall wellbeing, and financial stressors and social supports. This will enable VA to measure the effectiveness of the programming provided in improving mental health status, wellbeing, and reducing suicide risk and suicide deaths of eligible individuals.
- *Description of likely respondents:* Grantees.
- *Estimated number of respondents:* 90.
- *Estimated frequency of responses:* 67.
- *Estimated average burden per response:* 30 minutes.
- *Estimated total annual reporting and recordkeeping burden:* 3,015 hours.
- **Estimated annual cost to respondents for the hour burdens for collections of information:* $81,616.05.

Title: Program Exit Checklist.
OMB Control No: 2900–TBD (New).
CFR Provision: 38 CFR 78.95.

- *Summary of collection of information:* The new collection of information in 38 CFR 78.95 requires grantees to use tools and assessments (that is, a program exit checklist) to determine the effectiveness of the suicide prevention services furnished by the grantee.
- *Description of need for information and proposed use of information:* The collection of information is necessary to determine whether there was a reduction of the participant's mood-related symptoms, an overall improved wellbeing, and mitigation of any financial and social support stressors. This will enable VA to measure the effectiveness of the programming provided in improving mental health status, wellbeing, and reducing suicide risk and suicide deaths of eligible individuals.
- *Description of likely respondents:* Grantees.
- *Estimated number of respondents:* 90.
- *Estimated frequency of responses:* 67.
- *Estimated average burden per response:* 30 minutes.
- *Estimated total annual reporting and recordkeeping burden:* 3,015 hours.
- **Estimated annual cost to respondents for the hour burdens for collections of information:* $81,616.05.

Title: Program and Budget Changes.
OMB Control No: 2900–TBD (New).
CFR Provision: 38 CFR 78.125.

- *Summary of collection of information:* The new collection of information in 38 CFR 78.125 requires certain grantees to provide VA with program and/or budget changes.
- *Description of need for information and proposed use of information:* Reporting of program/budget changes is necessary for VA to approve and ensure that such changes are consistent with proposed 38 CFR part 78 and the goals and intent of the Staff Sergeant Parker Gordon Fox Suicide Prevention Grant Program. These collections are not required of every grantee and are needed only in limited instances.
- *Description of likely respondents:* Grantees.

- *Estimated number of respondents:* 90.
- *Estimated frequency of responses:* 2.
- *Estimated average burden per response:* 15 minutes.
- *Estimated total annual reporting and recordkeeping burden:* 45 hours.
- **Estimated annual cost to respondents for the hour burdens for collections of information:* $1,218.15.

Title: Annual Performance Compliance Reports for Suicide Prevention Services Program.

OMB Control No: 2900–TBD (New).

CFR Provision: 38 CFR 78.145.

- *Summary of collection of information:* The new collection of information in 38 CFR 78.145 requires grantees to provide annual reports to assess the provision of services under this grant program.
- *Description of need for information and proposed use of information:* The collection of information is necessary to determining compliance with the requirements for a suicide prevention services grant and to assess the provision of services under this grant program.
- *Description of likely respondents:* Grantees.
- *Estimated number of respondents:* 90.
- *Estimated frequency of responses:* 1.
- *Estimated average burden per response:* 45 minutes.
- *Estimated total annual reporting and recordkeeping burden:* 67.50 hours.
- **Estimated annual cost to respondents for the hour burdens for collections of information:* $1,827.23.

Title: Other Performance Compliance Reports for Suicide Prevention Services Program.

OMB Control No.: 2900–TBD (New).

CFR Provision: 38 CFR 78.145.

- *Summary of collection of information:* The new collection of information in 38 CFR 78.145 requires grantees to provide two performance reports to assess the provision of services under this grant program.
- *Description of need for information and proposed use of information:* The collection of information is necessary to determining compliance with the requirements for a suicide prevention services grant and to assess the provision of services under this grant program.
- *Description of likely respondents:* Grantees.
- *Estimated number of respondents:* 90.
- *Estimated frequency of responses:* 2.
- *Estimated average burden per response:* 30 minutes.
- *Estimated total annual reporting and recordkeeping burden:* 90 hours.
- **Estimated annual cost to respondents for the hour burdens for collections of information:* $2,436.30.

Title: Other Financial Compliance Reports for Suicide Prevention Services Program.

OMB Control No.: 2900–TBD (New).

CFR Provision: 38 CFR 78.145.

- *Summary of collection of information:* The new collection of information in 38 CFR 78.145 requires grantees to provide two reports to assess financial compliance under this grant program.
- *Description of need for information and proposed use of information:* The collection of information is necessary to determining compliance with the financial requirements for a suicide prevention services grant.
- *Description of likely respondents:* Grantees.
- *Estimated number of respondents:* 90.
- *Estimated frequency of responses:* 2.
- *Estimated average burden per response:* 30 minutes.
- *Estimated total annual reporting and recordkeeping burden:* 90 hours.
- **Estimated annual cost to respondents for the hour burdens for collections of information:* $2,436.30.

Title: Annual Financial Expenditure Reports for Suicide Prevention Services Program.

OMB Control No.: 2900–TBD (New).

CFR Provision: 38 CFR 78.145.

- *Summary of collection of information:* The new collection of information in 38 CFR 17.145 requires grantees to provide annual reports to assess financial expenditure compliance under this grant program.
- *Description of need for information and proposed use of information:* The collection of information is necessary to determining compliance with the financial expenditure requirements for a suicide prevention services grant.
- *Description of likely respondents:* Grantees.
- *Estimated number of respondents:* 90.
- *Estimated frequency of responses:* 1.
- *Estimated average burden per response:* 45 minutes.
- *Estimated total annual reporting and recordkeeping burden:* 67.5 hours.
- **Estimated annual cost to respondents for the hour burdens for collections of information:* $1,827.23.

Title: Compliance—Corrective Action Plan.

OMB Control No.: 2900–TBD (New).

CFR Provision: 38 CFR 17.145.

- *Summary of collection of information:* The new collection of information in 38 CFR 78.145 requires grantees to provide ad hoc compliance corrective action plans under this grant program.
- *Description of need for information and proposed use of information:* The collection of information is necessary to determining compliance with any necessary corrective action plans for a suicide prevention services grant.
- *Description of likely respondents:* Grantees.
- *Estimated number of respondents:* 25.
- *Estimated frequency of responses:* 1.
- *Estimated average burden per response:* 30 minutes.
- *Estimated total annual reporting and recordkeeping burden:* 12.5 hours.
- **Estimated annual cost to respondents for the hour burdens for collections of information:* $338.38.

* To estimate the total information collection burden cost, VA used the Bureau of Labor Statistics (BLS) median hourly wage for hourly wage for ''all occupations'' of $27.07 per hour. This information is available at *https://www.bls.gov/oes/current/oes_nat.htm#13-0000.*

Assistance Listing

The Assistance Listing number and title for the program affected by this document is 64.009, Veterans Medical Care Benefits.

Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

List of Subjects in 38 CFR Part 78

Administrative practice and procedure; Grant programs—health; Grant programs—veterans; Health care; Mental health programs; Reporting and recordkeeping requirements; Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on November 24, 2021, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication

electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

■ For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR chapter I by adding part 78 to read as follows:

PART 78—STAFF SERGEANT PARKER GORDON FOX SUICIDE PREVENTION GRANT PROGRAM

Sec.

Authority: 38 U.S.C. 501, 38 U.S.C. 1720F (note), sec. 201, Pub. L. 116–171, and as noted in specific sections.

§ 78.0 Purpose and scope.

(a) *Purpose.* This part implements the Staff Sergeant Parker Gordon Fox Suicide Prevention Grant Program (SSG Fox SPGP) with the purpose of reducing veteran suicide by expanding suicide prevention programs for veterans through the award of suicide prevention services grants to eligible entities to provide or coordinate the provision of suicide prevention services to eligible individuals and their families.

(b) *Scope.* Suicide prevention services covered by this part are those services that address the needs of eligible individuals and their families and are necessary for improving the mental health status and wellbeing and reducing the suicide risk of eligible individuals and their families.

§ 78.5 Definitions.

For purposes of this part and any Notice of Funding Opportunity (NOFO) issued under this part:

Applicant means an eligible entity that submits an application for a suicide prevention services grant announced in a NOFO.

Direct Federal financial assistance means Federal financial assistance received by an entity selected by the Government or a pass-through entity as defined in 38 CFR 50.1(d) to provide or carry out a service (*e.g.,* by contract, grant, or cooperative agreement).

Eligible child care provider means a provider of child care services for compensation, including a provider of care for a school-age child during non-school hours, that—

(1) Is licensed, regulated, registered, or otherwise legally operating, under State and local law; and

(2) Satisfies the State and local requirements, applicable to the child care services the provider providers.

Eligible entity means an entity that meets the definition of an eligible entity in section 201(q) of Public Law 116–171.

Eligible individual means an individual that meets the requirements of § 78.10(a).

Family means any of the following: A parent, spouse, child, sibling, step-family member, extended family member, and any other individual who lives with the eligible individual.

Grantee means an eligible entity that is awarded a suicide prevention services grant under this part.

Indian tribe means an Indian tribe as defined in 25 U.S.C. 4103.

Indirect Federal financial assistance means Federal financial assistance in which a service provider receives program funds through a voucher, certificate, agreement or other form of disbursement, as a result of the genuine, independent choice of a participant.

Medically underserved area means an area that is designated as a medically underserved population under 42 U.S.C. 254b(b)(3).

Notice of Funding Opportunity (NOFO) means a Notice of Funding Opportunity published on *grants.gov* in accordance with § 78.110.

Participant means an eligible individual or their family who is receiving suicide prevention services for which they are eligible from a grantee.

Rural communities means those communities considered rural according to the Rural-Urban Commuting Area (RUCA) system as determined by the United States Department of Agriculture.

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.

Suicide prevention services includes the following services provided to address the needs of a participant:

(1) Outreach as specified under § 78.45.

(2) Baseline mental health screening as specified under § 78.50.

(3) Education as specified under § 78.55.

(4) Clinical services for emergency treatment as specified under § 78.60.

(5) Case management services as specified under § 78.65.

(6) Peer support services as specified under § 78.70.

(7) Assistance in obtaining VA benefits as specified under § 78.75.

(8) Assistance in obtaining and coordinating other public benefits and assistance with emergent needs as specified under § 78.80.

(9) Nontraditional and innovative approaches and treatment practices as specified under § 78.85.

(10) Other services as specified under § 78.90.

Suicide prevention services grant means a grant awarded under this part.

Suicide prevention services grant agreement means the agreement executed between VA and a grantee as specified under § 78.115.

Suspension means an action by VA that temporarily withdraws VA funding under a suicide prevention services grant, pending corrective action by the grantee or pending a decision to

terminate the suicide prevention services grant by VA. Suspension of a suicide prevention services grant is a separate action from suspension under VA regulations or guidance implementing Executive Orders 12549 and 12689, ''Debarment and Suspension.''

Territories means the territories of the United States, including Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, and the Northern Mariana Islands.

Veterans means a veteran as defined under 38 U.S.C. 101(2).

Veterans Crisis Line means the toll-free hotline for veterans in crisis and their families and friends established under 38 U.S.C. 1720F(h).

Withholding means that payment of a suicide prevention services grant will not be paid until such time as VA determines that the grantee provides sufficiently adequate documentation and/or actions to correct a deficiency for the suicide prevention services grant.

§ 78.10 Eligible individuals.

(a) To be an eligible individual under this part, a person must be at risk of suicide and further meet the definition of eligible individual in section 201(q) of Public Law 116–171.

(b) For purposes of paragraph (a) of this section, risk of suicide means exposure to, or the existence of, any of the following factors, to any degree, that increase the risk for suicidal ideation and/or behaviors:

(1) Health risk factors, including mental health challenges, substance use disorder, serious or chronic health conditions or pain, and traumatic brain injury.

(2) Environmental risk factors, including prolonged stress, stressful life events, unemployment, homelessness, recent loss, and legal or financial challenges.

(3) Historical risk factors, including previous suicide attempts, family history of suicide, and history of abuse, neglect, or trauma, including military sexual trauma.

Note 1 to paragraph (b): Grantees must use these risk factors and the impact thereof to determine the degree of risk of suicide for eligible individuals using a screening tool approved by the Department. The degree of risk depends on the presence of one or more suicide risk factors and the impact of those factors on an individual's mental health and wellbeing.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–TBD.)

§ 78.15 Applications for suicide prevention services grants.

(a) To apply for a suicide prevention services grant, an applicant must submit to VA a complete suicide prevention services grant application package, as described in the NOFO. A complete suicide prevention services grant application package includes the following:

(1) Documentation evidencing the experience of the applicant and any identified community partners in providing or coordinating the provision of suicide prevention services to eligible individuals and their families.

(2) A description of the suicide prevention services proposed to be provided or coordinated by the applicant and the identified need for those services.

(3) A detailed plan describing how the applicant proposes to coordinate or deliver suicide prevention services to eligible individuals, including:

(i) If the applicant is a State or local government or an Indian tribe, an identification of the community partners, if any, with which the applicant proposes to work in delivering such services;

(ii) A description of the arrangements currently in place between the applicant and such partners with regard to the provision or coordination the provision of suicide prevention services;

(iii) An identification of how long such arrangements have been in place;

(iv) A description of the suicide prevention services provided by such partners that the applicant must coordinate, if any; and

(v) An identification of local VA suicide prevention coordinators and a description of how the applicant will communicate with local VA suicide prevention coordinators.

(4) A description of the location and population of eligible individuals and their families proposed to be provided suicide prevention services.

(5) An estimate of the number of eligible individuals at risk of suicide and their families proposed to be provided suicide prevention services, including the percentage of those eligible individuals who are not currently receiving care furnished by VA.

(6) Evidence of measurable outcomes related to reductions in suicide risk and mood-related symptoms utilizing validated instruments by the applicant (and the proposed partners of the applicant, if any) in providing suicide prevention services to individuals at risk of suicide, particularly to eligible individuals and their families.

(7) A description of the managerial and technological capacity of the applicant to:

(i) Coordinate the provision of suicide prevention services with the provision of other services;

(ii) Assess on an ongoing basis the needs of eligible individuals and their families for suicide prevention services;

(iii) Coordinate the provision of suicide prevention services with VA services for which eligible individuals are also eligible;

(iv) Tailor (*i.e.,* provide individualized) suicide prevention services to the needs of eligible individuals and their families;

(v) Seek continuously new sources of assistance to ensure the continuity of suicide prevention services for eligible individuals and their families as long as the eligible individuals are determined to be at risk of suicide; and

(vi) Measure the effects of suicide prevention services provided by applicant or partner organization on the lives of eligible individuals and their families who receive such services provided by the organization using pre- and post-evaluations on validated measures of suicide risk and mood-related symptoms.

(8) Clearly defined objectives for the provision of suicide prevention services.

(9) A description and physical address of the primary location of the applicant.

(10) A description of the geographic area the applicant plans to serve during the grant award period for which the application applies.

(11) If the applicant is a State or local government or an Indian tribe, the amount of grant funds proposed to be made available to community partners, if any, through agreements.

(12) A description of how the applicant will assess the effectiveness of the provision of grants under this part.

(13) An agreement to use the measures and metrics provided by VA for the purposes of measuring the effectiveness of the programming to be provided in improving mental health status, wellbeing, and reducing suicide risk and suicide deaths of eligible individuals and their families.

(14) An agreement to comply with and implement the requirements of this part throughout the term of the suicide prevention services grant.

(15) Any additional information as deemed appropriate by VA.

(b) Subject to funding availability, grantees may submit an application for renewal of a suicide prevention services grant if the grantee's program will remain substantially the same. To apply for renewal of a suicide prevention

services grant, a grantee must submit to VA a complete suicide prevention services grant renewal application package, as described in the NOFO.

(c) VA may request in writing that an applicant or grantee, as applicable, submit other information or documentation relevant to the suicide prevention services grant application.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–TBD.)

§ 78.20 Threshold requirements prior to scoring suicide prevention services grant applicants.

VA will only score applicants who meet the following threshold requirements:

(a) The application is filed within the time period established in the NOFO, and any additional information or documentation requested by VA under § 78.15(c) is provided within the time frame established by VA;

(b) The application is completed in all parts;

(c) The activities for which the suicide prevention services grant is requested are eligible for funding under this part;

(d) The applicant's proposed participants are eligible to receive suicide prevention services under this part;

(e) The applicant agrees to comply with the requirements of this part;

(f) The applicant does not have an outstanding obligation to the Federal government that is in arrears and does not have an overdue or unsatisfactory response to an audit; and

(g) The applicant is not in default by failing to meet the requirements for any previous Federal assistance.

§ 78.25 Scoring criteria for awarding grants.

VA will score applicants who are applying for a suicide prevention services grant. VA will set forth specific point values to be awarded for each criterion in the NOFO. VA will use the following criteria to score these applicants:

(a) VA will award points based on the background, qualifications, experience, and past performance of the applicant, and any community partners identified by the applicant in the suicide prevention services grant application, as demonstrated by the following:

(1) *Background and organizational history.* (i) Applicant's, and any identified community partners', background and organizational history are relevant to the program.

(ii) Applicant, and any identified community partners, maintain organizational structures with clear lines of reporting and defined responsibilities.

(iii) Applicant, and any identified community partners, have a history of complying with agreements and not defaulting on financial obligations.

(2) *Staff qualifications.* (i) Applicant's staff, and any identified community partners' staff, have experience providing services to, or coordinating services for, eligible individuals and their families.

(ii) Applicant's staff, and any identified community partners' staff, have experience administering programs similar to SSG Fox SPGP.

(3) *Organizational qualifications and past performance, including experience with veterans services.* (i) Applicant, and any identified community partners, have organizational experience providing suicide prevention services to, or coordinating suicide prevention services for, eligible individuals and their families.

(ii) Applicant, and any identified community partners, have organizational experience coordinating services for eligible individuals and their families among multiple organizations, and Federal, State, local and tribal governmental entities.

(iii) Applicant, and any identified community partners, have organizational experience administering a program similar in type and scale to SSG Fox SPGP to eligible individuals and their families.

(iv) Applicant, and any identified community partners, have organizational experience working with veterans and their families.

(b) VA will award points based on the applicant's program concept and suicide prevention services plan, as demonstrated by the following:

(1) *Need for program.* (i) Applicant has shown a need amongst eligible individuals and their families in the area where the program will be based.

(ii) Applicant demonstrates an understanding of the unique needs for suicide prevention services of eligible individuals and their families.

(2) *Outreach and screening plan.* (i) Applicant has a feasible plan for outreach, consistent with § 78.45, and referral to identify and assist individuals and their families that may be eligible for suicide prevention services and are most in need of suicide prevention services.

(ii) Applicant has a feasible plan to process and receive participant referrals.

(iii) Applicant has a feasible plan to assess and accommodate the needs of incoming participants, including language assistance needs of limited English proficient individuals.

(3) *Program concept.* (i) Applicant's program concept, size, scope, and staffing plan are feasible.

(ii) Applicant's program is designed to meet the needs of eligible individuals and their families.

(4) *Program implementation timeline.* (i) Applicant's program will be implemented in a timely manner and suicide prevention services will be delivered to participants as quickly as possible and within a specified timeline.

(ii) Applicant has a feasible staffing plan in place to meet the applicant's program timeline or has existing staff to meet such timeline.

(5) *Coordination with VA.* Applicant has a feasible plan to coordinate outreach and services with local VA facilities.

(6) *Ability to meet VA's requirements, goals, and objectives for SSG Fox SPGP.* Applicant demonstrates commitment to ensuring that its program meets VA's requirements, goals, and objectives for SSG Fox SPGP as identified in this part and the NOFO.

(7) *Capacity to undertake program.* Applicant has sufficient capacity, including staff resources, to undertake the program.

(c) VA will award points based on the applicant's quality assurance and evaluation plan, as demonstrated by the following:

(1) *Program evaluation.* (i) Applicant has created clear, realistic, and measurable goals that reflect SSG Fox SPGP's aim of reducing and preventing suicide among veterans against which the applicant's program performance can be evaluated.

(ii) Applicant has a clear plan to continually assess the program.

(2) *Monitoring.* (i) Applicant has adequate controls in place to regularly monitor the program, including any community partners, for compliance with all applicable laws, regulations, and guidelines.

(ii) Applicant has adequate financial and operational controls in place to ensure the proper use of suicide prevention services grant funds.

(iii) Applicant has a feasible plan for ensuring that the applicant's staff and any community partners are appropriately trained and stay informed of SSG Fox SPGP policy, evidence-informed suicide prevention practices, and the requirements of this part.

(3) *Remediation.* Applicant has an appropriate plan to establish a system to remediate non-compliant aspects of the program if and when they are identified.

(4) *Management and reporting.* Applicant's program management team has the capability and a system in place to provide to VA timely and accurate reports at the frequency set by VA.

(d) VA will award points based on the applicant's financial capability and plan, as demonstrated by the following:

(1) *Organizational finances.* Applicant, and any identified community partners, are financially stable.

(2) *Financial feasibility of program.* (i) Applicant has a realistic plan for obtaining all funding required to operate the program for the time period of the suicide prevention services grant.

(ii) Applicant's program is cost-effective and can be effectively implemented on-budget.

(e) VA will award points based on the applicant's area linkages and relations, as demonstrated by the following:

(1) *Area linkages.* Applicant has a feasible plan for developing or relying on existing linkages with Federal (including VA), State, local, and tribal government agencies, and private entities for the purposes of providing additional services to participants within a given geographic area.

(2) *Past working relationships.* Applicant (or applicant's staff), and any identified community partners (or community partners' staff), have fostered similar and successful working relationships and linkages with public and private organizations providing services to veterans or their families in need of services.

(3) *Local presence and knowledge.* (i) Applicant has a presence in the area to be served by the applicant.

(ii) Applicant understands the dynamics of the area to be served by the applicant.

(4) *Integration of linkages and program concept.* Applicant's linkages to the area to be served by the applicant enhance the effectiveness of the applicant's program.

§ 78.30 Selection of grantees.

VA will use the following process to select applicants to receive suicide prevention services grants:

(a) VA will score all applicants that meet the threshold requirements set forth in § 78.20 using the scoring criteria set forth in § 78.25.

(b) VA will group applicants within the applicable funding priorities if funding priorities are set forth in the NOFO.

(c) VA will rank those applicants that receive at least the minimum amount of total points and points per category set forth in the NOFO, within their respective funding priority group, if any. The applicants will be ranked in order from highest to lowest scores, within their respective funding priority group, if any.

(d) VA will use the applicant's ranking as the primary basis for selection for funding. However, VA will also use the following considerations to select applicants for funding:

(1) VA will give preference to applicants that have demonstrated the ability to provide or coordinate suicide prevention services;

(2) VA may prioritize the distribution of suicide prevention services grants to:

(i) Rural communities;

(ii) Tribal lands;

(iii) Territories of the United States;

(iv) Medically underserved areas;

(v) Areas with a high number or percentage of minority veterans or women veterans; and

(vi) Areas with a high number or percentage of calls to the Veterans Crisis Line.

(3) To the extent practicable, VA will ensure that suicide prevention services grants are distributed to:

(i) Provide services in areas of the United States that have experienced high rates of suicide by eligible individuals, including suicide attempts; and

(ii) Applicants that can assist eligible individuals at risk of suicide who are not currently receiving health care furnished by VA.

(iii) Ensure services are provided in as many areas as possible.

(e) Subject to paragraph (d) of this section, VA will fund the highest-ranked applicants for which funding is available, within the highest funding priority group, if any. If funding priorities have been established, to the extent funding is available and subject to paragraph (d) of this section, VA will select applicants in the next highest funding priority group based on their rank within that group.

(f) If an applicant would have been selected but for a procedural error committed by VA, VA may select that applicant for funding when sufficient funds become available if there is no material change in the information that would have resulted in the applicant's selection. A new application will not be required for this purpose.

§ 78.35 Scoring criteria for grantees applying for renewal of suicide prevention service grants.

VA will score grantees who are applying for a renewal of suicide prevention services grant. VA will set forth specific point values to be awarded for each criterion in the NOFO. VA will use the following criteria to score grantees applying for renewal of a suicide prevention services grant:

(a) VA will award points based on the success of the grantee's program, as demonstrated by the following:

(1) The grantee made progress in reducing veteran suicide deaths and attempts, reducing all-cause mortality, reducing suicidal ideation, increasing financial stability; improving mental health status, well-being, and social supports; and engaging in best practices for suicide prevention services.

(2) Participants were satisfied with the suicide prevention services provided or coordinated by the grantee, as reflected by the satisfaction survey conducted under § 78.95(d).

(3) The grantee implemented the program by delivering or coordinating suicide prevention services to participants in a timely manner consistent with SSG Fox SPGP policy, the NOFO, and the grant agreement.

(4) The grantee was effective in conducting outreach to eligible individuals and their families and increasing engagement of eligible individuals and their families in suicide prevention services, as assessed through SSG Fox SPGP grant evaluation.

(b) VA will award points based on the cost-effectiveness of the grantee's program, as demonstrated by the following:

(1) The cost per participant was reasonable.

(2) The grantee's program was effectively implemented on-budget.

(c) VA will award points based on the extent to which the grantee's program complies with SSG Fox SPGP goals and requirements, as demonstrated by the following:

(1) The grantee's program was administered in accordance with VA's goals for SSG Fox SPGP as noted in the NOFO.

(2) The grantee's program was administered in accordance with all applicable laws, regulations, and guidelines.

(3) The grantee's program was administered in accordance with the grantee's suicide prevention services grant agreement.

§ 78.40 Selection of grantees for renewal of suicide prevention services grants.

VA will use the following process to select grantees applying for renewal of suicide prevention services grants:

(a) So long as the grantee continues to meet the threshold requirements set forth in § 78.20, VA will score the grantee using the scoring criteria set forth in § 78.35.

(b) VA will rank those grantees who receive at least the minimum amount of

total points and points per category set forth in the NOFO. The grantees will be ranked in order from highest to lowest scores.

(c) VA will use the grantee's ranking as the basis for selection for funding. VA will fund the highest-ranked grantees for which funding is available.

(d) At its discretion, VA may award any non-renewed funds to an applicant or existing grantee. If VA chooses to award non-renewed funds to an applicant or existing grantee, funds will be awarded as follows:

(1) VA will first offer to award the non-renewed funds to the applicant or grantee with the highest grant score under the relevant NOFO that applies for, or is awarded a renewal grant in, the same area as, or a proximate area to, the affected area if available. Such applicant or grantee must have the capacity and agree to provide prompt services to the affected area. Under this section, the relevant NOFO is the most recently published NOFO which covers the affected area, or for multi-year grant awards, the NOFO for which the grantee, who is offered the additional funds, received the multi-year award.

(2) If the first such applicant or grantee offered the non-renewed funds refuses the funds, VA will offer to award the funds to the next highest-ranked such applicant or grantee, per the criteria in paragraph (d)(1) of this section, and continue on in rank order until the non-renewed funds are awarded.

(e) If an applicant would have been selected but for a procedural error committed by VA, VA may select that applicant for funding when sufficient funds become available if there is no material change in the information that would have resulted in the applicant's selection. A new application will not be required for this purpose.

§ 78.45 Suicide prevention services: Outreach.

(a) Grantees providing or coordinating the provision of outreach must use their best efforts to ensure that eligible individuals, including those who are at highest risk of suicide or who are not receiving health care or other services furnished by VA, and their families are identified, engaged, and provided suicide prevention services.

(b) Outreach must include active liaison with local VA facilities; State, local, or tribal government (if any); and private agencies and organizations providing suicide prevention services to eligible individuals and their families in the area to be served by the grantee.

§ 78.50 Suicide prevention services: Baseline mental health screening.

(a) Grantees must provide or coordinate the provision of a baseline mental health screening to all participants they serve at the time those services begin. This mental health screening must be provided using a validated screening tool that assesses suicide risk and mental and behavioral health conditions. Information on the specific tool or tools to be used will be included in the NOFO.

(b) If an eligible individual is at risk of suicide or other mental or behavioral health condition pursuant to the baseline mental health screening conducted under paragraph (a) of this section, the grantee must refer such individual to VA for care. If the eligible individual refuses the grantee's referral to VA, any ongoing clinical services provided to the eligible individual by the grantee is at the expense of the grantee.

(c) If a participant other than an eligible individual is at risk of suicide or other mental or behavioral health condition pursuant to the baseline mental health screening conducted under paragraph (a) of this section, the grantee must refer such participant to appropriate health care services in the area unless the grantee is capable of furnishing such care. Any ongoing clinical services provided to the participant by the grantee is at the expense of the grantee.

(d) Except as provided for under § 78.60(a), funds provided under this grant program may not be used to provide clinical services to participants, and any ongoing clinical services provided to such individuals by the grantee is at the expense of the grantee. The grantee may not charge, bill, or otherwise hold liable participants for the receipt of such care or services.

§ 78.55 Suicide prevention services: Education.

Grantees providing or coordinating the provision of education must provide or coordinate the provision of suicide prevention education programs to educate communities, veterans, and families on how to identify those at risk of suicide, how and when to make referrals for care, and the types of suicide prevention resources available within the area. Education can include gatekeeper training, lethal means safety training, or specific educations programs that assist with identification, assessment, or prevention of suicide.

§ 78.60 Suicide prevention services: Clinical services for emergency treatment.

(a) Grantees providing or coordinating the provision of clinical services for emergency treatment must provide or coordinate the provision of clinical services for emergency treatment of a participant.

(b) If an eligible individual is furnished clinical services for emergency treatment under paragraph (a) of this section and the grantee determines that the eligible individual requires ongoing services, the grantee must refer the eligible individual to VA for additional care. If the eligible individual refuses the grantee's referral to VA, any ongoing clinical services provided to the eligible individual by the grantee is at the expense of the grantee. The grantee may not charge, bill, or otherwise hold liable eligible individuals for the receipt of such care or services.

(c) If a participant other than an eligible individual is furnished clinical services for emergency treatment under paragraph (a) of this section and the grantee determines that the participant requires ongoing services, the grantee must refer the participant to appropriate health care services in the area for additional care. Except as provided for under paragraph (a) of this section, funds provided under this grant program may not be used to provide ongoing clinical services to such participants, and any ongoing clinical services provided to the participant by the grantee is at the expense of the grantee. The grantee may not charge, bill, or otherwise hold liable such participants for the receipt of such care or services.

(d) For purposes of this section, emergency treatment means medical services, professional services, ambulance services, ancillary care and medication (including a short course of medication related to and necessary for the treatment of the emergency condition that is provided directly to or prescribed for the patient for use after the emergency condition is stabilized and the patient is discharged) was rendered in a medical emergency of such nature that a prudent layperson would have reasonably expected that delay in seeking immediate medical attention would have been hazardous to life or health. This standard is met by an emergency medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in placing

the health of the individual in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

(e) The direct provision of clinical services for emergency treatment by grantees under this section is not prohibited by § 78.80(a).

§ 78.65 Suicide prevention services: Case management services.

Grantees providing or coordinating the provision of case management services must provide or coordinate the provision of case management services that include, at a minimum:

(a) Performing a careful assessment of participants, and developing and monitoring case plans in coordination with a formal assessment of suicide prevention services needed, including necessary follow-up activities, to ensure that the participant's needs are adequately addressed;

(b) Establishing linkages with appropriate agencies and service providers in the area to help participants obtain needed suicide prevention services;

(c) Providing referrals to participants and related activities (such as scheduling appointments for participants) to help participants obtain needed suicide prevention services, such as medical, social, and educational assistance or other suicide prevention services to address participants' identified needs and goals;

(d) Deciding how resources and services are allocated to participants on the basis of need;

(e) Educating participants on issues, including, but not limited to, suicide prevention services availability and participant rights; and

(f) Other activities, as approved by VA, to serve the comprehensive needs of participants for the purpose of reducing suicide risk.

§ 78.70 Suicide prevention services: Peer support services.

(a) Grantees providing or coordinating the provision of peer support services must provide or coordinate the provision of peer support services to help participants understand what resources and supports are available in their area for suicide prevention. Peer support services must be provided by veterans trained in peer support with similar lived experiences related to suicide or mental health. Peer support specialists serve as role models and a resource to assist participants with their mental health recovery.

(b) Each grantee providing or coordinating the provision of peer support services must ensure that veterans providing such services to participants meet the requirements of 38 U.S.C. 7402(b)(13) and meet qualification standards for appointment; or have completed peer support training, are pursuing credentials to meet the minimum qualification standards for appointment, and are under the supervision of an individual who meets the requirements of 38 U.S.C. 7402(b)(13). Grant funds may be used to provide education and training for employees of the grantee or the community partner who provide peer support services consistent with the terms set forth in the grant agreement.

§ 78.75 Suicide prevention services: Assistance in obtaining VA benefits.

(a) Grantees assisting participants in obtaining VA benefits must assist participants in obtaining any benefits from VA for which the participants are eligible. Such benefits include but are not limited to:

(1) Vocational and rehabilitation counseling;

(2) Supportive services for homeless veterans;

(3) Employment and training services;

(4) Educational assistance; and

(5) Health care services.

(b) Grantees are not permitted to represent participants before VA with respect to a claim for VA benefits unless they are recognized for that purpose pursuant to 38 U.S.C. 5902. Employees and members of grantees are not permitted to provide such representation unless the individual providing representation is accredited pursuant to 38 U.S.C. chapter 59.

§ 78.80 Suicide prevention services: Assistance in obtaining and coordinating other public benefits and assistance with emergent needs.

Grantees assisting in obtaining and coordinating other public benefits or assisting with emergent needs must assist participants with obtaining and coordinating the provision of other public benefits, including at a minimum those listed in paragraphs (a) through (h) of this section, that are being provided by Federal, State, local, or tribal agencies, or any other grantee in the area served by the grantee by referring the participant to and coordinating with such entity. If a public benefit is not being provided by Federal, State, local, or tribal agencies, or any other grantee in the area, the grantee is not required to obtain, coordinate, or provide such public benefit. Grantees may elect to provide directly to participants the public benefits identified in paragraphs (c) through (h) of this section.

(a) Health care services, which include:

(1) Health insurance; and

(2) Referral to a governmental entity or grantee that provides any of the following services:

(i) Hospital care, nursing home care, outpatient care, mental health care, preventive care, habilitative and rehabilitative care, case management, respite care, and home care;

(ii) The training of any eligible individual's family in the care of any eligible individual; and

(iii) The provision of pharmaceuticals, supplies, equipment, devices, appliances, and assistive technology.

(b) Referral of a participant, as appropriate, to an entity that provides daily living services relating to the functions or tasks for self-care usually performed in the normal course of a day, including, but not limited to, eating, bathing, grooming, dressing, and home management activities.

(c) Personal financial planning services, which include, at a minimum, providing recommendations regarding day-to-day finances and achieving long-term budgeting and financial goals. Grant funds may pay for credit counseling and other services necessary to assist participants with critical skills related to household budgeting, managing money, accessing a free personal credit report, and resolving credit problems.

(d) Transportation services:

(1) The grantee may provide temporary transportation services directly to participants if the grantee determines such assistance is necessary; however, the preferred method of direct provision of transportation services is the provision of tokens, vouchers, or other appropriate instruments so that participants may use available public transportation options.

(2) If public transportation options are not sufficient within an area, costs related to the lease of vehicle(s) may be included in a suicide prevention services grant application if the applicant or grantee, as applicable, agrees that:

(i) The vehicle(s) will be safe, accessible, and equipped to meet the needs of the participants;

(ii) The vehicle(s) will be maintained in accordance with the manufacturer's recommendations; and

(iii) All transportation personnel (employees and community partners) will be licensed, insured, and trained in managing any special needs of participants and handling emergency situations.

(3) Transportation services furnished under this paragraph may include

reimbursement for transportation furnished through ride sharing services, taxi services, or similar sources, but only if:

(i) The participant lacks any other means of transportation, including transportation or reimbursement for transportation from the Department under part 70 of this title; and

(ii) The grantee documents the participant's lack of other means.

(e) Temporary income support services, which may consist of providing assistance in obtaining other Federal, State, tribal and local assistance, in the form of, but not limited to, mental health benefits, food assistance, housing assistance, employment counseling, medical assistance, veterans' benefits, and income support assistance.

(f) Fiduciary and representative payee services, which may consist of acting on behalf of a participant by receiving the participant's paychecks, benefits or other income, and using those funds for the current and foreseeable needs of the participant and saving any remaining funds for the participant's future use in an interest bearing account or saving bonds.

(g) Legal services to assist eligible individuals with issues that may contribute to the risk of suicide. This may include issues that interfere with the eligible individual's ability to obtain or retain permanent housing, cover basic needs such as food, transportation, medical care, and issues that affect the eligible individual's employability and financial security (such as debt, credit problems, and lacking a driver's license).

(1) Except for legal assistance with resolving outstanding warrants, fines, expungements, and drivers' license revocations symptomatic of reentry obstacles in employment or housing, legal services do not include legal assistance with criminal matters nor matters in which the eligible individual is taking or has taken any adversarial legal action against the United States.

(2) Legal services do not include matters in which the United States is prosecuting an eligible individual.

(h) Child care for children under the age of 13, unless the child is disabled. Disabled children must be under the age of 18 to receive assistance under this paragraph. Child care includes the:

(1) Referral of a participant, as appropriate, to an eligible child care provider that provides child care with sufficient hours of operation and serves appropriate ages, as needed by the participant; and

(2) Payment by a grantee on behalf of a participant for child care by an eligible child care provider. Payment may not exceed $5,000 per family of an eligible individual per Federal fiscal year.

(i) Payments for child care services must be paid by the grantee directly to an eligible child care provider.

(ii) Payments for child care services cannot be provided on behalf of participants for the same period of time and for the same cost types that are being provided through another Federal (including VA), State or local subsidy program.

(iii) As a condition of providing payments for child care services, the grantee must help the participant develop a reasonable plan to address the participant's future ability to pay for child care services. Grantees must assist the participant to implement such plan by providing any necessary assistance or helping the participant to obtain any necessary public or private benefits or services.

§ 78.85 Suicide prevention services: Nontraditional and innovative approaches and treatment practices.

Grantees providing or coordinating the provision of nontraditional and innovative approaches and treatment practices may provide or coordinate the provision of nontraditional and innovative approaches and treatment, including but not limited to complementary or alternative interventions with some evidence for effectiveness of improving mental health or mitigating a risk factor for suicidal thoughts and behaviors, as set forth in the NOFO or as approved by VA that are consistent with SSG Fox SPGP. Applicants may propose nontraditional and innovative approaches and treatment practices in their suicide prevention services grant application, and grantees may propose these additional approaches and treatment practices by submitting a written request to modify the suicide prevention services grant in accordance with § 78.125. VA reserves the right to approve or disapprove nontraditional and innovative approaches and treatment practices to be provided or coordinate to be provided using funds authorized under SSG Fox SPGP. VA will only approve approaches and treatment practices consistent with applicable Federal law.

§ 78.90 Suicide prevention services: Other services.

(a) *General suicide prevention assistance.* A grantee may pay directly to a third party (and not to a participant), in an amount not to exceed $750 per participant during any 1-year period, beginning on the date that the grantee first submits a payment to a third party, the following types of expenses:

(i) Expenses associated with gaining or keeping employment, such as uniforms, tools, certificates, and licenses.

(ii) Expenses associated with lethal means safety and secure storage, such as gun locks and locked medication storage.

(b) *Other.* Grantees providing or coordinating the provision of other suicide prevention services may provide or coordinate the provision of the other services as set forth in the NOFO or as approved by VA that are consistent with SSG Fox SPGP. Applicants may propose additional services in their suicide prevention services grant application, and grantees may propose additional services by submitting a written request to modify the suicide prevention services grant program in accordance with § 78.125. VA reserves the right to approve or disapprove other suicide prevention services to be provided or coordinate to be provided using funds authorized under SSG Fox SPGP.

§ 78.95 General operation requirements.

(a) *Eligibility documentation.* Prior to providing suicide prevention services, grantees must verify, document, and classify each participant's eligibility for suicide prevention services, and determine and document each participant's degree of risk of suicide using tools identified in the suicide prevention services grant agreement. Documentation must be maintained consistent with § 78.150.

(b) *Required screening prior to services ending.* Prior to services ending, grantees must provide or coordinate the provision of a mental health screening using the screening tool described in § 78.50(a) to all participants they serve, when possible.

(c) *Suicide prevention services documentation.* For each participant who receives suicide prevention services from the grantee, the grantee must document the suicide prevention services provided or coordinated, how such services are provided or coordinated, the duration of the services provided or coordinated, and any goals for the provision or coordination of such services. Such documentation must be maintained consistent with § 78.150.

(d) *Notifications to participants.* (1) Prior to initially providing or coordinating suicide prevention services to an eligible individual and their family, the grantee must notify each eligible individual and their family of the following:

(i) The suicide prevention services are being paid for, in whole or in part, by VA;

(ii) The suicide prevention services available to the eligible individual and their family through the grantee's program;

(iii) Any conditions or restrictions on the receipt of suicide prevention services by the eligible individual and their family; and

(iv) In the instance of an eligible individual who receives assistance from the grantee under this program, that the eligible individual is able to apply for enrollment in VA health care pursuant to 38 CFR 17.36. If the eligible individual wishes to enroll in VA health care, the grantee must inform the eligible individual of a VA point of contact for assistance with enrollment. The requirements in this clause do not apply to eligible individuals who are members of the Armed Forces described in 38 U.S.C. 1712A(a)(1)(C)(i)–(iv).

(2) The grantee must provide each participant with a satisfaction survey, which the participant can submit directly to VA, within 30 days of such participant's pending exit from the grantee's program.

(e) *Assessment of funds.* Grantees must regularly assess how suicide prevention services grant funds can be used in conjunction with other available funds and services to assist participants.

(f) *Development of a suicide prevention services plan.* For each participant, grantees must develop and document an individualized plan with respect to the provision of suicide prevention services provided under this part. This plan must be developed in consultation with the participant and must be maintained consistent with § 78.150.

(g) *Coordination with VA.* The grantee will coordinate with VA with respect to the provision of health care and other services to eligible individuals pursuant to 38 U.S.C. chapters 17 and 20.

(h) *Measurement and monitoring.* The grantee will submit to VA a description of the tools and assessments the grantee uses or will use to determine the effectiveness of the suicide prevention services furnished by the grantee. These will include any measures and metrics developed and provided by VA for the purposes of measuring the effectiveness of the programming to be provided in improving mental health status, wellbeing, and reducing suicide risk and suicide deaths of eligible individuals.

(i) *Agreements with community partners.* Only grantees that are a State or local government or an Indian tribe may use grant funds to enter into an agreement with a community partner under which the grantee may provide funds to the community partner for the provision of suicide prevention services to eligible individuals and their families.

(j) *Contracts for goods and services under this part.* Grantees may enter into contracts for good or services under this part.

(k) *Administration of suicide prevention services grants.* Grantees must ensure that suicide prevention services grants are administered in accordance with the requirements of this part, the suicide prevention services grant agreement, and other applicable Federal, State, and local laws and regulations, including Federal civil rights laws. Grantees are responsible for ensuring that any community partners carry out activities in compliance with this part.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–TBD.)

§ 78.100 Fee prohibition.

Grantees must not charge a fee to participants for providing suicide prevention services that are funded with amounts from a suicide prevention services grant.

§ 78.105 Ineligible activities.

Notwithstanding any other section in this part, grantees are not authorized to use suicide prevention services grant funds to pay for the following:

(a) Direct cash assistance to participants.

(b) Those legal services prohibited pursuant to § 78.80(g).

(c) Medical or dental care and medicines except for clinical services authorized pursuant to § 78.60.

(d) Any activities considered illegal under Federal law.

§ 78.110 Notice of Funding Opportunity.

When funds are available for suicide prevention services grants, VA will publish a NOFO on *grants.gov.* The NOFO will identify:

(a) The location for obtaining suicide prevention services grant applications;

(b) The date, time, and place for submitting completed suicide prevention services grant applications;

(c) The estimated amount and type of suicide prevention services grant funding available;

(d) Any priorities for or exclusions from funding to meet the statutory mandates of section 201 of Public Law 116–171 and VA's goals for SSG Fox SPGP;

(e) The length of term for the suicide prevention services grant award;

(f) The minimum number of total points and points per category that an applicant or grantee, as applicable, must receive for a suicide prevention services grant to be funded;

(g) Any maximum uses of suicide prevention services grant funds for specific suicide prevention services;

(h) The timeframes and manner for payments under the suicide prevention services grant; and

(i) Other information necessary for the suicide prevention services grant application process as determined by VA.

§ 78.115 Suicide prevention services grant agreements.

(a) After an applicant is selected for a suicide prevention services grant in accordance with § 78.30, VA will draft a suicide prevention services grant agreement to be executed by VA and the applicant. Upon execution of the suicide prevention services grant agreement, VA will obligate suicide prevention services grant funds to cover the amount of the approved suicide prevention services grant, subject to the availability of funding. The suicide prevention services grant agreement will provide that the grantee agrees, and will ensure that each community partner agrees, to:

(1) Operate the program in accordance with the provisions of this part and the applicant's suicide prevention services grant application;

(2) Comply with such other terms and conditions, including recordkeeping and reports for program monitoring and evaluation purposes, as VA may establish for purposes of carrying out SSG Fox SPGP, in an effective and efficient manner; and

(3) Provide such additional information as deemed appropriate by VA.

(b) After a grantee is selected for renewal of a suicide prevention services grant in accordance with § 78.40, VA will draft a suicide prevention services grant agreement to be executed by VA and the grantee. Upon execution of the suicide prevention services grant agreement, VA will obligate suicide prevention services grant funds to cover the amount of the approved suicide prevention services grant, subject to the availability of funding. The suicide prevention services grant agreement will contain the same provisions described in paragraph (a) of this section.

(c) No funds provided under this part may be used to replace Federal, State, tribal, or local funds previously used, or designated for use, to assist eligible individuals and their families.

§ 78.120 Amount and payment of grants.

(a) *Amount of grants.* The maximum funding that a grantee may be awarded under this part is $750,000 per fiscal year.

(b) *Payment of grants.* Grantees are to be paid in accordance with the timeframes and manner set forth in the NOFO.

§ 78.125 Program or budget changes and corrective action plans.

(a) A grantee must submit to VA a written request to modify a suicide prevention services grant for any proposed significant change that will alter the suicide prevention services grant program. If VA approves such change, VA will issue a written amendment to the suicide prevention services grant agreement. A grantee must receive VA's approval prior to implementing a significant change. Significant changes include, but are not limited to, a change in the grantee or any community partners identified in the suicide prevention services grant agreement; a change in the area served by the grantee; additions or deletions of suicide prevention services provided by the grantee; a change in category of participants to be served; and a change in budget line items that are more than 10 percent of the total suicide prevention services grant award.

(1) VA's approval of changes is contingent upon the grantee's amended application retaining a sufficient rank to have been competitively selected for funding in the year that the application was granted.

(2) Each suicide prevention services grant modification request must contain a description of, and justification for, the revised proposed use of suicide prevention services grant funds.

(b) VA may require that the grantee initiate, develop, and submit to VA for approval a Corrective Action Plan (CAP) if, on a quarterly basis, actual suicide prevention services grant expenditures vary from the amount disbursed to a grantee for that same quarter or actual suicide prevention services grant activities vary from the grantee's program description provided in the suicide prevention services grant agreement.

(1) The CAP must identify the expenditure or activity source that has caused the deviation, describe the reason(s) for the variance, provide specific proposed corrective action(s), and provide a timetable for accomplishment of the corrective action.

(2) After receipt of the CAP, VA will send a letter to the grantee indicating that the CAP is approved or disapproved. If disapproved, VA will make beneficial suggestions to improve the proposed CAP and request resubmission or take other actions in accordance with this part.

(c) Grantees must inform VA in writing of any key personnel changes (*e.g.,* new executive director, the suicide prevention services grant program director, or chief financial officer) and grantee address changes within 30 days of the change.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–TBD.)

§ 78.130 Faith-based organizations.

(a) Organizations that are faith-based are eligible, on the same basis as any other organization, to participate in SSG Fox SPGP under this part. Decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of religion or religious belief or lack thereof.

(b)(1) No organization may use direct financial assistance from VA under this part to pay for any of the following:

(i) Explicitly religious activities such as, religious worship, instruction, or proselytization; or

(ii) Equipment or supplies to be used for any of those activities.

(2) References to ''financial assistance'' will be deemed to be references to direct Federal financial assistance, unless the referenced assistance meets the definition of ''indirect Federal financial assistance'' in this part.

(c) Organizations that engage in explicitly religious activities, such as worship, religious instruction, or proselytization, must offer those services separately in time or location from any programs or services funded with direct financial assistance from VA under this part, and participation in any of the organization's explicitly religious activities must be voluntary for the participants of a program or service funded by direct financial assistance from VA under this part.

(d) A faith-based organization that participates in SSG Fox SPGP under this part will retain its independence from Federal, State, or local governments and may continue to carry out its mission, including the definition, practice and expression of its religious beliefs, provided that it does not use direct financial assistance from VA under this part to support any explicitly religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide VA-funded services under this part, without concealing, removing, or altering religious art, icons, scripture, or other religious symbols. In addition, a VA-funded faith-based organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members and otherwise govern itself on a religious basis, and include religious reference in its organization's mission statements and other governing documents.

(e) An organization that participates in a VA program under this part must not, in providing direct program assistance, discriminate against a program participant or prospective program participant on the basis of religion or religious belief.

(f) If a State or local government voluntarily contributes its own funds to supplement Federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this provision applies to all of the commingled funds.

(g) To the extent otherwise permitted by Federal law, the restrictions on explicitly religious activities set forth in this section do not apply where VA funds are provided to faith-based organizations through indirect assistance as a result of a genuine and independent private choice of a participant, provided the faith-based organizations otherwise satisfy the requirements of this part. A faith-based organization may receive such funds as the result of a participant's genuine and independent choice if, for example, a participant redeems a voucher, coupon, or certificate, allowing the participant to direct where funds are to be paid, or a similar funding mechanism provided to that participant and designed to give that participant a choice among providers.

§ 78.135 Visits to monitor operation and compliance.

(a) VA has the right, at all reasonable times, to make visits to all grantee locations where a grantee is using suicide prevention services grant funds to review grantee accomplishments and management control systems and to provide such technical assistance as may be required. VA may conduct inspections of all program locations and records of a grantee at such times as are deemed necessary to determine compliance with the provisions of this part. In the event that a grantee delivers services in a participant's home, or at a

location away from the grantee's place of business, VA may accompany the grantee. If the grantee's visit is to the participant's home, VA will only accompany the grantee with the consent of the participant. If any visit is made by VA on the premises of the grantee or a community partner under the suicide prevention services grant, the grantee must provide, and must require its community partners to provide, all reasonable facilities and assistance for the safety and convenience of the VA representatives in the performance of their duties. All visits and evaluations will be performed in such a manner as will not unduly delay services.

(b) The authority to inspect carries with it no authority over the management or control of any applicant or grantee under this part.

§ 78.140 Financial management and administrative costs.

(a) Grantees must comply with applicable requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR part 200.

(b) Grantees must use a financial management system that provides adequate fiscal control and accounting records and meets the requirements set forth in 2 CFR part 200.

(c) Payment up to the amount specified in the suicide prevention services grant must be made only for allowable, allocable, and reasonable costs in conducting the work under the suicide prevention services grant. The determination of allowable costs must be made in accordance with the applicable Federal Cost Principles set forth in 2 CFR part 200.

(d) Costs for administration by a grantee must not exceed 10 percent of the total amount of the suicide prevention services grant. Administrative costs will consist of all costs associated with the management of the program. These costs will include the administrative costs of community partners.

§ 78.145 Grantee reporting requirements.

(a) VA may require grantees to provide, in any form as may be prescribed, such reports or answers in writing to specific questions, surveys, or questionnaires as VA determines necessary to carry out SSG Fox SPGP.

(b) At least once per year, each grantee must submit to VA a report that describes the projects carried out with such grant during the year covered by the report; and information relating to operational effectiveness, fiscal responsibility, suicide prevention services grant agreement compliance, and legal and regulatory compliance, including a description of the use of suicide prevention grant funds, the number of participants assisted, the types of suicide prevention services provided, and any other information that VA may request.

(c) VA may request additional reports or information to allow VA to fully assess the provision or coordination of the provision of suicide prevention services under this part.

(d) All pages of the reports must cite the assigned suicide prevention services grant number and be submitted in a timely manner as set forth in the grant agreement.

(e) Grantees must provide VA with consent to post information from reports on the internet and use such information in other ways deemed appropriate by VA. Grantees shall clearly mark information that is confidential to individual participants.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–TBD.)

§ 78.150 Recordkeeping.

Grantees must ensure that records are maintained for at least a 3-year period to document compliance with this part. Grantees must produce such records at VA's request.

§ 78.155 Technical assistance.

VA will provide technical assistance, as necessary, to applicants and grantees to meet the requirements of this part. Such technical assistance will be provided either directly by VA or through contracts with appropriate public or non-profit private entities.

§ 78.160 Withholding, suspension, deobligation, termination, and recovery of funds by VA.

VA will enforce this part through such actions as may be appropriate. Appropriate actions include withholding, suspension, deobligation, termination, recovery of funds by VA, and actions in accordance with 2 CFR part 200.

§ 78.165 Suicide prevention services grant closeout procedures.

Suicide prevention services grants will be closed out in accordance with 2 CFR part 200.

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Part III

Securities and Exchange Commission

17 CFR Parts 232 and 240
Modernization of Beneficial Ownership Reporting; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 232 and 240

[Release Nos. 33–11030; 34–94211; File No. S7–06–22]

RIN 3235–AM93

Modernization of Beneficial Ownership Reporting

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is proposing to amend certain rules that govern beneficial ownership reporting. The proposed amendments would modernize the filing deadlines for initial and amended beneficial ownership reports filed on Schedules 13D and 13G. The proposed amendments also would deem holders of certain cash-settled derivative securities as beneficial owners of the reference equity securities and clarify the disclosure requirements of Schedule 13D with respect to derivative securities. In addition, the proposed amendments would clarify and affirm the operation of the regulation as applied to two or more persons that form a group under the Securities Exchange Act of 1934, and provide new exemptions to permit such persons to communicate and consult with each other, jointly engage issuers and execute certain transactions without being subject to regulation as a group. We also are proposing to amend provisions regarding the date on which Schedules 13D and 13G filings are deemed to have been made. Finally, we are proposing to require that Schedules 13D and 13G be filed using a structured, machine-readable data language.

DATES: Comments should be received on or before April 11, 2022.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/submitcomments.htm*); or

Paper Comments

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–06–22. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all submitted comments on its website (*https://www.sec.gov/rules/proposed.shtml*). Typically, comments also are 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. Operating conditions may limit access to the Commission's public reference room. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information. You should submit only information that you wish to make publicly available.

Studies, memoranda or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Nicholas Panos, Senior Special Counsel, and Valian Afshar, Special Counsel, in the Office of Mergers and Acquisitions, Division of Corporation Finance, at (202) 551–3440, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are proposing amendments to 17 CFR 240.13d–1 (''Rule 13d–1''), 17 CFR 240.13d–2 (''Rule 13d–2''), 17 CFR 240.13d–3 (''Rule 13d–3''), 17 CFR 240.13d–5 (''Rule 13d–5''), 17 CFR 240.13d–6 (''Rule 13d–6'') and 17 CFR 240.13d–101 (''Rule 13d–101''), under the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*] (''Exchange Act'').[1] We also are proposing amendments to 17 CFR 232.13 (''Rule 13 of Regulation S–T'') and 17 CFR 232.201 (''Rule 201 of Regulation S–T'') under 17 CFR part 232 (''Regulation S–T'').[2]

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[1] Unless otherwise noted, when we refer to the Exchange Act, or any paragraph of the Exchange Act, we are referring to 15 U.S.C. 78a of the United States Code, at which the Exchange Act is codified, and when we refer to rules under the Exchange Act, or any paragraph of these rules, we are referring to title 17, part 240 of the Code of Federal Regulations [17 CFR part 240], in which these rules are published.

[2] Unless otherwise noted, when we refer to Regulation S–T, or any paragraph of the rules thereunder, we are referring to title 17, part 232 of the Code of Federal Regulations [17 CFR part 232], in which these rules are published.

VII. Statutory Authority

I. Introduction

We are proposing comprehensive changes to 17 CFR 240.13d–1 through 240.13d–102 (''Regulation 13D–G'') and Regulation S–T to modernize the beneficial ownership reporting requirements and improve their operation and efficacy. Specifically, we are proposing to: (1) Revise the current deadlines for Schedule 13D and Schedule 13G filings; (2) amend Rule 13d–3 to deem holders of certain cash-settled derivative securities as beneficial owners of the reference covered class; (3) align the text of Rule 13d–5, as applicable to two or more persons who act as a group, with the statutory language in Sections 13(d)(3) and (g)(3) of the Exchange Act; and (4) set forth the circumstances under which two or more persons may communicate and consult with one another and engage with an issuer without concern that they will be subject to regulation as a group with respect to the issuer's equity securities. We also are proposing certain related technical changes to Regulation S–T in connection with these proposed amendments. Finally, we are proposing to require that Schedules 13D and 13G be filed using a structured, machine-readable data language.

To address concerns that the current deadlines for Schedule 13D and Schedule 13G filings are creating information asymmetries in today's market, we are proposing to:

- Revise the Rule 13d–1(a) filing deadline for the initial Schedule 13D to five days [3] after the date on which a person acquires more than 5% of a covered class of equity securities; [4]
- Amend Rules 13d–1(e), (f) and (g) to shorten the filing deadline for the initial Schedule 13D required to be filed by certain persons who forfeit their eligibility to report on Schedule 13G in lieu of Schedule 13D to five days after the event that causes the ineligibility;
- Revise the filing deadline under Rule 13d–2(a) for amendments to Schedule 13D to one business day [5] after the date on which a material change occurs;
- Amend Rules 13d–1(b) and (d) to shorten the deadline for the initial Schedule 13G filing for Qualified Institutional Investors (''QIIs'') [6] and Exempt Investors [7] to within five business days after the last day of the month in which beneficial ownership first exceeds 5% of a covered class;
- Amend the deadline in Rule 13d–1(c), which permits Passive Investors [8] to file an initial Schedule 13G in lieu of Schedule 13D within 10 days after acquiring beneficial ownership of more than 5% of a covered class, to five days after the date of such an acquisition;
- Revise the filing deadlines required for amendments to Schedule 13G in Rule 13d–2(b) to five business days after the end of the month in which a reportable change occurs;
- Amend Rule 13d–2(c) to shorten the filing deadline for Schedule 13G amendments filed pursuant to that provision to five days after the date on which beneficial ownership first exceeds 10% of a covered class, and thereafter upon any deviation by more than 5% of the covered class, with these requirements applying if the thresholds were crossed at any time during a month; and
- Amend Rule 13d–2(d) to revise the filing deadline for Schedule 13G amendments filed pursuant to that provision from a ''promptly'' standard to one business day after the date on which beneficial ownership exceeds 10% of a covered class, and thereafter upon any deviation by more than 5% of the covered class.

In addition, instead of an amendment obligation arising for Schedule 13G filers upon the occurrence of ''any change'' in the facts previously reported regardless of the materiality of such change, we are proposing to revise Rule 13d–2(b) to require that an amendment to a Schedule 13G be filed only if a ''material change'' occurs. Further, we are proposing to amend Rule 13(a) of Regulation S–T to permit Schedules 13D and 13G, and any amendments thereto, that are submitted by direct transmission on or before 10 p.m. eastern time on a given business day to be deemed to have been filed on the same business day. This amendment would provide additional time for beneficial owners to prepare and submit their Schedule 13D or Schedule 13G filings. [9]

The following table summarizes the changes we are proposing, as described more fully in Section II.A:

[3] Consistent with the current ''10-day'' deadline in Rule 13d–1(a), the proposed ''five-day'' deadline for filing the initial Schedule 13D would be measured in calendar days. If the last day of the initial Schedule 13D deadline falls on a Federal holiday, a Saturday or a Sunday, then such filing may be made on the next business day thereafter. 17 CFR 240.0–3 (''[I]f the last day on which [a filing] can be accepted as timely filed falls on a Saturday, Sunday or holiday, such [filing] may be [made] on the first business day following.''). Any reference to ''days'' in either this release or any of our proposed amendments means ''calendar days,'' and any reference to ''business days'' means ''business days,'' as we are proposing to define that term. *See infra* note 5 for a discussion of our proposed definition of ''business days.''

[4] As used in this release, a ''covered class'' is a class of equity securities described in Section 13(d)(1) of the Exchange Act and Rule 13d–1(i) and generally means, with limited exception, a voting class of equity securities registered under Section 12 of the Exchange Act.

[5] The term ''business day'' is not defined in Section 13(d) or 13(g) or any rule of Regulation 13D–G. Accordingly, we are proposing to define ''business day'' for purposes of Regulation 13D–G to mean any day, other than Saturday, Sunday or a Federal holiday, from 6 a.m. to 10 p.m. eastern time.

[6] The institutional investors qualified to report on Schedule 13G, in lieu of Schedule 13D and in reliance upon Rule 13d–1(b), include a broker or dealer registered under Section 15(b) of the Exchange Act, a bank as defined in Section 3(a)(6) of the Exchange Act, an insurance company as defined in Section 3(a)(19) of the Exchange Act, an investment company registered under Section 8 of the Investment Company Act of 1940, an investment adviser registered under Section 203 of the Investment Advisers Act of 1940, a parent holding company or control person (if certain conditions are met), an employee benefit plan or pension fund that is subject to the provisions of the Employee Retirement Income Security Act of 1974, a savings association as defined in Section 3(b) of the Federal Deposit Insurance Act, a church plan that is excluded from the definition of an investment company under Section 3(c)(14) of the Investment Company Act of 1940, non-U.S. institutions that are the functional equivalent of any of the institutions listed in Rules 13d–1(b)(1)(ii)(A) through (I), so long as the non-U.S. institution is subject to a regulatory scheme that is substantially comparable to the regulatory scheme applicable to the equivalent U.S. institution, and related holding companies and groups (collectively, ''Qualified Institutional Investors'' or ''QIIs''). 17 CFR 240.13d–1(b)(1)(ii).

[7] The term ''Exempt Investor'' as used in this release refers to persons holding beneficial ownership of more than 5% of a covered class at the end of the calendar year, but who have not made an acquisition of beneficial ownership subject to Section 13(d). For example, persons who acquire all their securities prior to the issuer registering the subject securities under the Exchange Act are not subject to Section 13(d) and persons who acquire not more than two percent of a covered class within a 12-month period are exempted from Section 13(d) by Section 13(d)(6)(B), but in both cases are subject to Section 13(g). Section 13(d)(6)(A) exempts acquisitions of subject securities acquired in a stock-for-stock exchange that is registered under the Securities Act of 1933.

[8] The term ''Passive Investors'' as used in this release refers to beneficial owners of more than 5% but less than 20% of a covered class who can certify under Item 10 of Schedule 13G that the subject securities were not acquired or held for the purpose or effect of changing or influencing the control of the issuer of such securities and were not acquired in connection with or as a participant in any transaction having such purpose or effect. These investors are ineligible to report beneficial ownership pursuant to Rules 13d–1(b) or (d) but are eligible to report beneficial ownership on Schedule 13G in reliance upon Rule 13d–1(c).

[9] *See* Rule 13(a)(2) of Regulation S–T. We also are proposing to amend Rule 201(a) of Regulation S–T to make the temporary hardship exemption set forth in that rule—which applies to unanticipated technical difficulties preventing the timely preparation and submission of an electronic filing—unavailable to Schedules 13D and 13G, including any amendments thereto.

Issue	Current Schedule 13D	Proposed New Schedule 13D	Current Schedule 13G	Proposed New Schedule 13G
Initial Filing Deadline	Within 10 days after acquiring beneficial ownership of more than 5% or losing eligibility to file on Schedule 13G. Rules 13d–1(a), (e), (f) and (g).	Within five days after acquiring beneficial ownership of more than 5% or losing eligibility to file on Schedule 13G. Rules 13d–1(a), (e), (f) and (g).	*QIIs & Exempt Investors:* 45 days after calendar year-end in which beneficial ownership exceeds 5%. Rules 13d–1(b) and (d). *Passive Investors:* Within 10 days after acquiring beneficial ownership of more than 5%. Rule 13d–1(c).	*QIIs & Exempt Investors:* Five business days after month-end in which beneficial ownership exceeds 5%. Rules 13d–1(b) and (d). *Passive Investors:* Within five days after acquiring beneficial ownership of more than 5%. Rule 13d–1(c).
Amendment Triggering Event	Material change in the facts set forth in the previous Schedule 13D. Rule 13d–2(a).	No amendment proposed—material change in the facts set forth in the previous Schedule 13D). Rule 13d–2(a).	*All Schedule 13G Filers:* Any change in the information previously reported on Schedule 13G. Rule 13d–2(b). *QIIs & Passive Investors:* Upon exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership. Rules 13d–2(c) and (d).	*All Schedule 13G Filers:* Material change in the information previously reported on Schedule 13G. Rule 13d–2(b). *QIIs & Passive Investors:* No amendment proposed—upon exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership. Rules 13d–2(c) and (d).
Amendment Filing Deadline	Promptly after the triggering event. Rule 13d–2(a).	Within one business day after the triggering event. Rule 13d–2(a).	*All Schedule 13G Filers:* 45 days after calendar year-end in which any change occurred. Rule 13d–2(b). *QIIs:* 10 days after month-end in which beneficial ownership exceeded 10% or there was, as of the month-end, a 5% increase or decrease in beneficial ownership. Rule 13d–2(c). *Passive Investors:* Promptly after exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership. Rule 13d–2(d).	*All Schedule 13G Filers:* Five business days after month-end in which a material change occurred. Rule 13d–2(b). *QIIs:* Five days after exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership. Rule 13d–2(c). *Passive Investors:* One business day after exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership. Rule 13d–2(d).
Filing ''Cut-Off'' Time	5:30 p.m. eastern time. Rule 13(a)(2) of Regulation S–T.	10 p.m. eastern time. Rule 13(a)(4) of Regulation S–T.	*All Schedule 13G Filers:* 5:30 p.m. eastern time. Rule 13(a)(2) of Regulation S–T.	*All Schedule 13G Filers:* 10 p.m. eastern time. Rule 13(a)(4) of Regulation S–T.

We also are proposing to add new paragraph (e) to Rule 13d–3 to deem holders of certain cash-settled derivative securities as beneficial owners of the reference covered class. Holders of derivative securities settled exclusively in cash do not have enforceable rights or any other entitlements with respect to the reference security under the terms of the agreement governing the derivative. Under certain circumstances described more fully below, however, holders of such derivative securities may have both the incentive and ability to influence or control the issuer of the reference securities. Accordingly, the proposed amendment would ''deem'' holders of such derivative securities to beneficially own the reference securities just as if they held such securities directly.

The new means of determining who is a beneficial owner proposed in Rule 13d–3(e) would be applied separately from, and in addition to, Rules 13d–3(a) and (b), which provisions may, depending upon the facts and circumstances, apply independently from proposed Rule 13d–3(e) to persons who purchase or sell cash-settled derivatives. The application of proposed Rule 13d–3(e) would be limited to those persons who hold cash-settled derivatives in the context of changing or influencing control of the issuer of the reference security. By contrast, security-based swaps, as defined by Exchange Act Section 3(a)(68) and the rules and regulations thereunder, would not be included among the derivative securities covered by proposed Rule 13d–3(e).

We are proposing amendments that would align the text of Rule 13d–5, as applicable to two or more persons who act as a group, with the statutory language in Sections 13(d)(3) and (g)(3) of the Exchange Act.[10] By conforming the rule text to Sections 13(d)(3) and 13(g)(3), the proposed amendments to Rule 13d–5 are intended to remove the potential implication that an express or implied agreement among group members is a necessary precondition to the formation of a group under those provisions of the Exchange Act and, by extension, Regulation 13D–G.[11] In connection with those proposed amendments, we also are proposing to add a new provision in Rule 13d–5 that would affirm that if a person, in advance of filing a Schedule 13D, discloses to any other person that such filing will be made and such other person acquires securities in the covered class for which the Schedule

[10] *See* 15 U.S.C. 78m(d)(3) and (g)(3) (''When two or more persons act as a . . . group for the purpose of acquiring, holding, or disposing of securities of an issuer, such . . . group shall be deemed a 'person' for the purposes of this subsection.''). The determination of whether two or more persons act as a group under these statutory provisions depends upon the particular facts and circumstances and may vary on a case-by-case basis.

[11] Further, to reinforce that Rule 13d–5, which is currently titled ''Acquisition of securities,'' is intended to set forth the circumstances under which an acquisition is deemed to occur for purposes of Section 13(d)(1) and Rule 13d–1, we also propose to delete Rule 13d–5(b)(2)—which provides that, under certain conditions, a group shall not be deemed to have made an acquisition if persons take concerted action to make purchases in a covered class directly from an issuer—and to redesignate it as new Rule 13d–6(b). Rule 13d–6, titled ''Exemption of certain acquisitions,'' exempts certain acquisitions from the scope of Section 13(d). Because Rule 13d–5(b)(2) operates as the equivalent of an exemption, moving Rule 13d–5(b)(2) to Rule 13d–6 would harmonize the subject matter of those rules.

13D will be filed, then those persons are deemed to have formed a group within the meaning of Section 13(d)(3).

In addition, we are proposing amendments that would revise Rule 13d–6 to set forth additional exemptions from Sections 13(d) and (g). Specifically, new Rule 13d–6(c) would set forth the circumstances under which two or more persons may communicate and consult with one another and engage with an issuer without concern that they will be subject to regulation as a group with respect to the issuer's equity securities. New Rule 13d–6(d) would set forth the circumstances under which two or more persons may enter into an agreement governing a derivative security in the ordinary course of business without concern that they will become subject to regulation as a group with respect to the derivative's reference equity securities. These two exemptions are designed to provide greater certainty regarding the application of Sections 13(d)(3) and (g)(3), while ensuring that the proposed amendments to Rules 13d–3 and 13d–5 will not have a chilling effect on shareholder communications or engagement or impair certain financial institutions' capacity to execute strictly commercial transactions in the ordinary course of their business.

In addition, we are proposing amendments that would revise Schedule 13D to clarify the disclosure requirements with respect to derivative securities held by a person reporting on that schedule. Specifically, we are proposing to amend Item 6 to Schedule 13D, codified at Rule 13d–101, to remove any implication that a person is not required to disclose interests in all derivative securities that use a covered class as a reference security. This proposed amendment is intended to eliminate any ambiguity regarding the scope of the disclosure obligations of Item 6 of Schedule 13D as to derivative securities, including with respect to derivatives not originating with the issuer, such as cash-settled options not offered or sold by the issuer and security-based swaps.

Finally, we are proposing to require that Schedules 13D and 13G be filed using a structured, machine-readable data language. Specifically, we are proposing to require that all disclosures, including quantitative disclosures, textual narratives, and identification checkboxes, on Schedules 13D and 13G to be filed using an XML-based language to make it easier for investors and markets to access, compile and analyze information that is disclosed on Schedules 13D and 13G. Only the exhibits to Schedules 13D and 13G would remain unstructured.

We invite and encourage interested parties to submit comments on any aspect of the proposed rule amendments. When commenting, please include the reasoning in support of your position or recommendation and provide any supporting documentation or data.

II. Discussion of the Proposed Amendments

A. Proposed Amendments to Rules 13d–1 and 13d–2 and Rules 13 and 201 of Regulation S–T To Revise Filing Deadlines and Filing Date Assignment

We are proposing a series of amendments that would revise the deadlines for filing the initial and amended beneficial ownership reports on Schedules 13D and 13G and expanding the timeframe within a given business day in which such filings may be timely made. Specifically, we are proposing amendments to the following rules:

- Rule 13d–1(a) to shorten the filing deadline for the initial Schedule 13D;
- Rules 13d–1(e), (f), and (g) to shorten the filing deadlines for the initial Schedule 13D for certain persons who forfeit their eligibility to report on Schedule 13G in lieu of Schedule 13D;
- Rules 13d–1(b), (c), and (d) to shorten the filing deadlines for the initial Schedule 13G;
- Rules 13d–2(a) and (b) to revise the filing deadline for amendments to Schedule 13D and Schedule 13G, respectively, and to align the legal standard that dictates when amendments to Schedule 13G are required with the relevant statutory provision;
- Rules 13d–2(c) and (d) to revise the filing deadlines for certain other amendments to Schedule 13G; and
- Rules 13(a) and 201(a) of Regulation S–T to revise the time by which Schedule 13D and 13G filings, including amendments thereto, must be submitted on a given business day in order to be deemed to have been filed on the same business day and to make a temporary hardship exemption unavailable to those filings.

These proposed amendments are discussed in more detail below.

1. Rule 13d–1(a)

a. Background

Section 13(d)(1) of the Exchange Act requires a disclosure statement to be filed ''within ten days after [an] acquisition [of more than 5% of a covered class] or within such shorter time as the Commission may establish by rule.'' [12] Consistent with this provision, Rule 13d–1(a) sets forth the 10-day filing deadline for the initial Schedule 13D.[13] Although the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act'') amended Section 13(d)(1) to grant the Commission the authority to shorten the deadline for filing the initial Schedule 13D,[14] the 10-day deadline has not been updated since it was enacted more than 50 years ago.[15]

Technological advances since 1968, such as the ability to submit filings electronically through the Commission's Electronic Data Gathering, Analysis and Retrieval (''EDGAR'') system and the use of modern information technology in today's financial markets, have led to calls for a reassessment of the 10-day initial filing deadline,[16] while others disagree that such advances warrant any change to the deadline.[17] For example,

[12] 15 U.S.C. 78m(d)(1).

[13] 17 CFR 240.13d–1(a) (requiring that a Schedule 13D be filed ''within 10 days after the acquisition'' of beneficial ownership of more than 5% of a covered class).

[14] Public Law 111–203, 124 Stat. 1900 929R(a)(1)(A) (2010).

[15] Section 13(d)(1) of the Exchange Act was enacted by the Ninetieth Congress in 1968 through the approval of Senate Bill 510.

[16] *See, e.g.,* Leo E. Strine, Jr., *Who Bleeds When the Wolves Bite? A Flesh-and-Blood Perspective on Hedge Fund Activism and Our Strange Corporate Governance System,* 126 Yale L.J. 1870, 1895, 1960–61 (2017) (describing the ''disclosure regime under Section 13 of the Securities Exchange Act'' as ''antiquated'' and stating that ''[i]t seems entirely clear to me that the idea of Section 13 was that an investor should come public as soon as reasonably possible after hitting the 5% threshold and that the reporting deadline was due to what it took to type up, proof, and deliver to Washington the required filing in 1968, when word processors and electronic filing with a button push did not exist''); David Benoit, *Congress Asked to Act on Activist Investor Disclosures,* The Wall Street Journal (Apr. 15, 2015), *https://www.wsj.com/articles/congress-asked-to-act-on-activist-investor-disclosures-1429107089* (noting that Citizens for Responsibility and Ethics in Washington, the Government Accountability Project and New Rules for Global Finance sent a letter to members of Congress requesting that the Schedule 13D filing deadline be shortened from 10 days to one day); Adam O. Emmerich et al., *Fair Markets and Fair Disclosure: Some Thoughts on the Law and Economics of Blockholder Disclosure, and the Use and Abuse of Shareholder Power,* 3 Harv. Bus. L. Rev. 135, 143 (2013) (noting that the 10-day Schedule 13D filing deadline reflected ''commercial and technological realities that existed in 1968, [which] would have included the time required to mail the Schedule 13D to the SEC's office''); letter from Wachtell, Lipton, Rosen & Katz to Elizabeth M. Murphy, Sec'y, U.S. Sec. & Exch. Comm'n (Mar. 7, 2011) (''Wachtell Petition'') at 1–7, *available at http://www.sec.gov/rules/petitions/2011/petn4-624.pdf* (petitioning the Commission to propose amendments to the beneficial ownership reporting rules to, among other things, shorten the Schedule 13D filing deadline from 10 days to one business day).

[17] *See, e.g.,* Lucian A. Bebchuk et al., *Pre-Disclosure Accumulations by Activist Investors: Evidence and Policy,* 39 J. Corp. L. 1, 14–17 (2013)

Continued

the Commission currently requires all Schedule 13D filings to be submitted electronically through its EDGAR system.[18] Mandated electronic submissions relieve filers of the need to arrange for delivery in-person or through the U.S. mails. Furthermore, given the advances in the information technologies used by market professionals today, less time is needed to compile the necessary data and prepare and transmit the Schedule 13D to the Commission than was required in 1968.

The 10-day filing deadline raises concerns that material information about potential change of control transactions is not being disseminated to the public in a manner that would be considered timely in today's financial markets. The delay in reporting this material information contributes to information asymmetries that could harm investors.[19] In enacting Section 13(d), including its original mandate of a 10-day filing deadline in 1968, Congress considered the need to strike an appropriate balance between, on the one hand, providing adequate disclosures to investors and, on the other hand, not unduly burdening those engaging in change of control transactions.[20] In 2010, Congress reassessed the 10-day deadline established in 1968 and subsequently amended Section 13(d) to authorize the Commission to shorten the 10-day deadline.[21] This grant of statutory authority by Congress to establish a shorter deadline clearly indicates that the current 10-day deadline is not immutable and that the Commission is empowered to shorten that deadline to address the needs of today's investors and other market participants, particularly in light of the technological advancements and other developments in the financial markets that have occurred since 1968.[22] In reassessing whether or not the current 10-day deadline still serves the primary purposes of Section 13(d), which are to provide information to the public and the subject issuer about accumulations of a covered class by persons who had the potential to change or influence control of such issuer[23] and to regulate rapid accumulations of beneficial ownership that occurred within a short period of time,[24] we have determined that an amendment to Rule 13d–1(a) is needed to adequately support those regulatory objectives.

(noting that the authors ''are not familiar . . . with any research establishing [the] claim'' that technological developments and changes in the capital markets since 1968 have rendered the 10-day Schedule 13D filing deadline obsolete); Ronald Gilson and Jeffery Gordon, *The Agency Costs of Agency Capitalism: Activist Investors and the Revaluation of Governance Rights,* 113 Colum. L. Rev. 863, 904 (2013) (explaining that shortening the deadline would ''reduce the economic stake that an activist shareholder can accumulate before mandatory disclosure of its holding drives up the price of the target company's stock'' which would cause the ''activist sector [to] shrink, fewer firms [to] be identified as targets for strategic initiatives, and the activists [to] reduce costly campaign efforts''); Lucian A. Bebchuk and Robert J. Jackson Jr., *The Law and Economics of Blockholder Disclosure,* 2 Harv. Bus. L. Rev. 39, 44–47 (2012) (noting that Schedule 13D's 10-day filing deadline ''reflects a careful balance that Congress struck, after extensive debate, between the need to provide information to investors and the importance of preserving the governance benefits associated with outside blockholders'').

[18] In mandating that all Schedules 13D and 13G be filed electronically, the Commission reasoned that such a transition was necessary to facilitate ''more rapid dissemination of, and easier access to, financial and other material information . . . than under our current paper filing system'' while also citing to ''increased efficiencies in the filing process, which will significantly reduce the filing time required under traditional methods of paper delivery.'' *See* Rulemaking for EDGAR System, Release No. 34–35113 (Dec. 19, 1994) [59 FR 67752 (Dec. 30, 1994)]; Mandated EDGAR Filing for Foreign Issuers, Release No. 34–45922 (May 14, 2002) [67 FR 36678 (May 24, 2002)].

[19] *See, e.g.,* John C. Coffee, Jr. and Darius Palia, *The Wolf at the Door: The Impact of Hedge Fund Activism on Corporate Governance,* 41 J. Corp. L. 545, 597 (2016) (''[T]he gains that activists make in trading on asymmetric information—before the Schedule 13D's filing—come at the expense of selling shareholders. . . . Disclosure that is delayed ten days enables activists to profit from trading on asymmetric information over that period . . . .''); Adam O. Emmerich et al., *supra* note 17, at 142–46 (''[N]othing in the words or legislative history of the Williams Act suggests that the ten-day disclosure window established in 1968 was designed to allow activists to accumulate large stakes at discounted prices, unbeknownst to and to the detriment of counterparties and the market. To the contrary, the purpose of the Williams Act was to promptly arm market participants with information concerning potential changes in corporate control in order to allow them to make more informed investment decisions. The stealth accumulations at below-market prices . . . transfer value from public investors to activists . . . .''); Wachtell Petition, *supra* note 17, at 3 (''[T]he ten-day [Schedule 13D] reporting lag leaves a substantial gap after the reporting threshold has been crossed during which the market is deprived of material information and creates incentives for abusive tactics on the part of aggressive investor prior to making a filing.''). *But see, e.g.,* Ronald J. Gilson and Jeffrey N. Gordon, *The Agency Costs of Agency Capitalism: Activist Investors and the Revaluation of Governance Rights,* 113 Colum. L. Rev. 863, 907–09 (2013) (''A shareholder's decision to sell results either from liquidity needs or the shareholder's reservation price for the security in question. Any asymmetry of information involved in the transaction arises from the activist's private information about its own intentions, which may include a forecast as to the likely target firm response. Why does the selling shareholder have an entitlement to share in the value of information created by the analysis of other investors?''); Lucian A. Bebchuk et al., *supra* note 17, at 17–19 (contending that shortening the Schedule 13D filing deadline ''would carry significant costs for public-company shareholders'' because ''requiring activist investors to disclose their ownership in public companies more quickly will reduce these investors' returns—thereby reducing the incidence and magnitude of outside blockholdings in large public companies''); Lucian A. Bebchuk and Robert J. Jackson Jr., *supra* note 17, at 47–51 (describing the ''substantial body of empirical evidence that is consistent with the view that outside blockholders improve corporate governance and benefit public investors'' and noting that shortening the Schedule 13D filing deadline could ''reduce the returns to outside shareholders considering acquiring a block and, in turn, . . . result in a reduction in the incidence and size of outside blocks'').

[20] *See, e.g.,* Full Disclosure of Corporate Equity Ownership and in Corporate Takeover Bids: Hearing on S. 510 Before the Subcomm. on Securities of the S. Comm. on Banking and Currency, 90th Cong. 1 (1967) (statement of Manuel F. Cohen, Chairman, Securities and Exchange Commission) (''It must be emphasized again that in establishing requirements which will make this important information available to stockholders, we must be careful not to tip the scales to favor either incumbent management or those who would seek to oust them. We believe that the provisions of the present bill . . . reflect an appropriate balance among competing interests which, at the same time, will fulfill the need of public stockholders to be fully informed about the control and potential control of the company in which they have invested.''); H.R. Rep. No. 1711, at 4 (1968) (''The bill avoids tipping the balance of regulation either in favor of management or in favor of the person making the takeover bid. It is designed to require full and fair disclosure for the benefit of investors while at the same time providing the offeror and management equal opportunity to fairly present their case.''); S. Rep. No. 550, at 3 (1968) (same); *see also infra* note 35 and accompanying text.

[21] *See supra* note 14 and accompanying text.

[22] At the same time, however, we recognize significant state law changes have occurred since the enactment of the Williams Act that have resulted in legal impediments being imposed upon blockholders in the market for corporate control. *See* Lucian A. Bebchuk and Robert J. Jackson Jr. *supra* note 17, at n.54 and accompanying text. These state law impediments have decreased the incidence of hostile takeover bids and, as a result, ''active outside blockholders filing a Schedule 13D are commonly not expected to seek to acquire control, but rather to monitor and engage with management and fellow shareholders.'' *Id.* at 56.

[23] *See* Reporting of Beneficial Ownership in Publicly-Held Companies, Release No. 34–26598 (Mar. 14, 1989) [54 FR 10552 at text accompanying n.20 (Mar. 14, 1989)] (''Section 13(d) was intended to provide information to the public and the subject company about accumulations of its equity securities in the hands of persons who then would have the potential to change or influence control of the issuer.'') (citing S. Rep. No. 550, 90th Cong., 1st Sess. 7 (1967); H.R. Rep. No. 1711, 90th Cong., 2nd Sess. 8 (1968); Hearings on S. 510 before the Subcomm. on Securities of the Senate Comm. on Banking and Currency, 90th Cong., 1st Sess. (1967)).

[24] H.R. Rep. No. 90–1711 (1968) (''The purpose of section 13(d) is to require disclosure of information by persons who have acquired a substantial interest, or increased their interest in the equity securities of a company by a substantial amount, within a relatively short period of time.''); *see also* Filing and Disclosure Requirements Relating to Beneficial Ownership, Release No. 34–17353 (Dec. 4, 1980) [45 FR 81556 at text accompanying n.5 (Dec. 11, 1980)] (''The legislative history of [Section 13(d)] indicates that it was intended to provide information to the public and the affected issuer about rapid accumulations of its equity securities by persons who would then have the potential to change or influence control of the issuer.'') (citing S. Rep. No. 550, 90th Cong., 1st Sess. 7 (1967); Hearings on S.510 before the Subcomm. on Securities of the Senate Comm. on Banking and Currency, 90th Cong., 1st Sess. (1967)).

b. Proposed Amendments

We believe the 10-day filing deadline for the initial Schedule 13D filing should be revised in light of advances in technology and developments in the financial markets. Our proposal to shorten the initial filing deadline for Schedule 13D is consistent with previous Congressional and Commission efforts to accelerate public disclosures of material information to the market.[25] For example, when the Commission accelerated the deadlines for issuers to submit their periodic reports, it reasoned that ''[s]ignificant technological advances over the last three decades have both increased the market's demand for more timely corporate disclosure and the ability of companies to capture, process and disseminate this information.'' [26]

The Commission has long recognized the benefits of more expedient reporting, stating, for example, that ''a lengthy delay before . . . information becomes available makes the information less valuable to investors.'' [27] Nonetheless, the deadline for filing an initial Schedule 13D has remained unchanged for over 50 years.[28] We continue to appreciate the need for a balance to be struck between the requirement that material information be timely disseminated and the competing interest that undue burdens not be imposed in the change of control context.[29] We recognize the chilling effect that a shortening of the initial Schedule 13D filing deadline could have on a shareholder's ability and incentive to effect changes at companies that may benefit all shareholders, particularly where the shortened deadline may increase the costs and reduce the incentives for those shareholders attempting such change of control efforts.[30] We do not believe, however, that a shortening of the deadline would unduly disrupt that balance, as many Schedule 13D filers currently do not avail themselves of the full 10-day filing period.[31] In recognition of the need to strike the appropriate balance between these interests, however, we also solicit public comment on this point in Section III.F below.

As noted above, Rule 13d–1(a) currently requires the initial Schedule 13D to be filed within 10 days after the date on which a person acquires beneficial ownership of more than 5% of a covered class.[32] We are proposing to amend Rule 13d–1(a) to require a Schedule 13D to be filed within five days after the date of such acquisition. For purposes of determining the filing deadline under this proposed amendment, the Commission must receive the filing on the fifth day *after* the date of the acquisition in order for the filing to be considered timely. Under the current rules, the Commission would have to receive that filing on or before 5:30 p.m. eastern time on the due date.[33] As described in Section II.A.6

[25] For example, the Sarbanes-Oxley Act of 2002 amended Section 16(a) to require that change of beneficial ownership reports under Section 16(a) of Exchange Act be filed by officers, directors and beneficial owners of more than 10% of a covered class ''before the end of the second business day following the day on which the subject transaction has been executed.'' On August 27, 2002, the Commission adopted amendments to implement the accelerated deadline for Form 4 filings. *See* Ownership Reports and Trading by Officers, Directors and Principal Security Holders, Release No. 34–46421 (Aug. 27, 2002) [67 FR 56461 (Sept. 3, 2002)]. On March 16, 2004, the Commission amended Form 8–K to generally require that such filings be made within four business days of a triggering event. In adopting the accelerated timeline, the Commission explained the amended requirement ''should enhance investor confidence in the financial markets.'' Additional Form 8–K Disclosure Requirements and Acceleration of Filing Date, Release No. 34–49424 (Mar. 16, 2004) [69 FR 15593 at 15611 (Mar. 25, 2004)]. The Commission further explained that ''[t]he requirement of enhanced, timely disclosure should raise investors' expectations regarding the amount and timing of information that reporting companies must make available to the public'' and that ''[c]onfidence in the expectation of such enhanced disclosure should provide more certainty to those investors that they are making investment decisions in a more transparent market, which should reduce market volatility as a result of uncertainty of the availability of accurate timely information about public companies.'' *Id.*

[26] Acceleration of Periodic Report Filing Dates and Disclosure Concerning website Access to Reports, Release No. 34–46464 (Sept. 5, 2002) [67 FR 58479 (Sept. 16, 2002)]. We recognize that these accelerated deadlines applied to periodic filings made by issuers, whereas Sections 13(d) and (g) relate to filings made by investors. We also recognize that the acceleration of these deadlines was prompted, in part, by Section 409 of the Sarbanes-Oxley Act of 2002, which ''added Section 13(l) of the Exchange Act . . . [to] require[ ] disclosure on a *rapid and current* basis of such additional information concerning material changes in the financial condition or operations of the issuer,'' *id.* at n.15 and accompanying text (emphasis added), whereas no such ''rapid and current'' language exists in Sections 13(d) and 13(g). Nonetheless, the technological advances that have increased both the market's demand for more timely disclosure and the ability of issuers to file more rapidly are equally applicable to the information disclosed on Schedule 13D and available to investors making Schedule 13D filings. For example, Congress recognized the market's demand for more timely disclosure of non-issuer filings by accelerating deadline for Section 16 filings in the Sarbanes-Oxley Act. *See supra* note 25. As such, we believe that these technological advances also support accelerating the initial Schedule 13D filing deadline.

[27] *Id.; see also* H.R. Rep. 90–550 (1967) (''The persons seeking control, however, have information about themselves and about their plans which, if known to investors, might substantially change the assumptions on which the market price is based. The bill is designed to make relevant facts known so that shareholders have a fair opportunity to make their decision.'').

[28] Although the initial Schedule 13D deadline has not been changed, the idea of shortening the deadline for beneficial ownership reports has been previously recommended. For example, then-Chairman David S. Ruder recommended to Congress that the filing deadline for an initial beneficial ownership report be reduced from ten days to five business days and that the filing person be prohibited from acquiring additional securities until the filing was made. *See* Statement of David S. Ruder, Chairman of the Securities and Exchange Commission, Before the House Subcommittee on Telecommunications and Finance, Sept. 17, 1987; Statement of Charles C. Cox, Acting Chairman of the Securities and Exchange Commission, Before the Senate Committee on Banking, Housing and Urban Affairs, June 23, 1987 (''[The] Commission could also support legislation to require that a Schedule 13D be filed within five business days of crossing the 5 percent threshold, and that a prohibition on further purchases be imposed until the filing requirement is satisfied.'').

[29] *See supra* note 20 and accompanying text; *see also* 113 Cong. Rec. 24,664 (1967) (noting that ''takeover bids should not be discouraged, since they often serve a useful purpose by providing a check on entrenched but inefficient management'') (statement of Sen. Harrison A. Williams, Jr.).

[30] Academic research indicates that large blockholders may improve the share price and the corporate governance of the companies in which they invest, and these benefits are enjoyed by all of the company's shareholders. *See infra* Section III.C.b.i. This research also suggests that if the initial Schedule 13D filing deadline is shortened, it could reduce the profitability of such investments to large blockholders, making them less inclined to make those investments or engage with the companies in ways that produce such share price and corporate governance benefits. *Id.*

[31] *See infra* notes 203–205 and accompanying text (noting that 22.97% of the initial Schedule 13D filings in the data set were filed on the 10th day).

[32] Failure to comply with this deadline, as well as other deadlines for beneficial ownership filings, could lead to significant penalties. Under Section 21 of the Exchange Act, the Commission has the authority to investigate and enforce violations of Section 13(d)(1) and Rule 13d–1(a), and may seek to impose various remedies for late filings, such as injunctive relief, cease-and-desist orders or civil monetary penalties. The Commission also may assert and refer criminal violations for prosecutions under Section 32(a) of the Exchange Act. Importantly, no state of mind requirement exists for violations of Section 13(d)(1) and corresponding Rule 13d–1(a). *See SEC* v. *Levy,* 706 F. Supp. 61, 63–69 (D.D.C. 1989) (holding a defendant liable notwithstanding the defendant's assertion that his attorney ''misinformed defendant about his obligation to disclose'' information on Schedule 13D because scienter is not an element of such violations). In addition, a Schedule 13D filing obligation is not dependent on the investor intending to gain control of the company, but instead is based on a numerical beneficial ownership threshold. *See SEC* v. *Savoy Indus., Inc.,* 587 F.2d 1149, 1167 (D.C. Cir. 1978) (''Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct.''); *see also Oppenheimer & Co., Inc.,* 47 SEC 286, 1980 WL 26901, at *1–2 (May 19, 1980) (''We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation.'').

[33] See Rule 13 of Regulation S–T, titled ''Date of filing; adjustment of filing date.'' 17 CFR 232.13.

Continued

below, however, we also are proposing to extend that cut-off time to 10 p.m. eastern time for Schedule 13D and 13G filings, including amendments thereto.[34]

In proposing to establish new timeframes for filing reports, we are mindful of the need to balance the market's demand for timely information against the administrative burden placed upon a filer to adequately and accurately prepare that information. We also recognize that when enacting Section 13(d)(1), Congress considered the interests of both issuers of securities and the large shareholders who sought to exert influence or control over issuers, and took an even-handed approach.[35] The proposed five-day deadline reflects our attempt to maintain that balance and similarly undertake an even-handed approach, especially when compared with considerably shorter initial filing deadlines some parties have recommended.[36] However, in light of the technological advances and the rapid pace with which trading activities and large accumulations of beneficial ownership can occur in the financial markets today as compared to when the deadline was enacted in 1968, we are concerned that the current delay in reporting market-moving information on Schedule 13D raises investor protection concerns.[37] Under current Rule 13d–1(a), large shareholders may acquire more shares without contemporaneously disclosing their beneficial ownership during the 10-day period that follows the date that a Schedule 13D filing obligation arises. Although the 10-day period may facilitate opportunities for certain shareholders to acquire stakes large enough to incentivize them to engage in corporate activism that could benefit all shareholders,[38] the informational imbalance between a buyer and seller during that period may result in transactions being consummated based on mispriced securities.[39]

Congress enacted Section 13(d) as a means of requiring timely disclosures needed for informed investment decisions that ultimately could contribute to the accurate valuation of securities.[40] The proposed shortening of the initial Schedule 13D filing deadline is consistent with those legislative objectives while holding the potential to benefit investors and improve the efficiency of U.S. capital markets. Market-moving information, such as the accumulation of a significant equity stake,[41] would be made available more quickly, improving opportunities for more efficient and more accurate price discovery.[42] In addition to more closely aligning the initial Schedule 13D filing deadline with the reporting deadline on Form 8–K for issuers and Form 4 for officers, directors and beneficial owners of more than 10% of a covered class, a shorter filing deadline for the initial Schedule 13D also would be consistent with the filing deadlines for similar beneficial ownership reports in foreign jurisdictions.[43] The increase in transparency and corresponding assurance given to investors that transactions are not being made based on mispriced securities caused by a prolonged lag in the dissemination of market-moving information should increase investor confidence. By increasing the certainty offered to shareholders that their trades are not being made on the basis of incomplete or outdated information, the proposed amendment to Rule 13d–1(a) could in turn enhance market efficiency and liquidity.

Rule 13(a)(2) provides that ''all filings submitted by direct transmission commencing on or before 5:30 p.m. [eastern time] shall be deemed filed on the same business day, and all filings submitted by direct transmission commencing after 5:30 p.m. [eastern time] shall be deemed filed as of the next business day.'' *Id.*

[34] *See infra* Section II.A.6.

[35] In discussing the Williams Act, one Senator stated that ''the committee has carefully weighed both the advantages and disadvantages to the public of the cash tender offer. We have taken extreme care to avoid tipping the scales either in favor of management or in favor of the person making the takeover bids. S. 510 is designed solely to require full and fair disclosure for the benefit of investors.'' 113 Cong. Rec. S12557 (daily ed. Aug. 30, 1967) (statement of Sen. Harrison A. Williams, Jr.). The Senator further stated that ''[t]he bill will at the same time provide the offeror and management with equal opportunity to present their case.'' *Id.; see also* Full Disclosure of Corporate Equity Ownership and in Corporate Takeover Bids: Hearing on S. 510 Before the Subcomm. on Securities of the S. Comm. on Banking and Currency, 90th Cong. 1 (1967) (statement of Manuel F. Cohen, Chairman, Securities and Exchange Commission) (''But the principal point is that we are not concerned with assisting or hurting either side. We are concerned with the investor who today is just a pawn in a form of industrial warfare.'').

[36] *See, e.g., supra* note 17.

[37] The Commission has long recognized that additional purchases made after a filing obligation arises under Section 13(d)(1) and corresponding Rule 13d–1(a) constitutes a ''disclosure gap [that] may deprive security holders of a fair opportunity to adjust their evaluation of the securities of a company with respect to [a] potential change in control . . . .'' Report of the Securities and Exchange Commission on Beneficial Ownership Reporting Requirements pursuant to Section 13(h) of the Securities Exchange Act of 1934 (June 27, 1980); *see also* supra note 17. Following a review of the effectiveness of Section 13(d) conducted more than four decades ago, the Commission evaluated the then ''increasingly prevalent practice of [large blockholders] acquiring additional securities of [a covered] class during the 10-day period after the acquisition which results in the beneficial ownership of more than 5 percent and before the disclosure statement is required to be, and normally is, filed . . . .'' Securities and Exchange Commission Report on Tender Offer Laws, Printed for the use of the Committee on Banking, Housing and Urban Affairs—United States Senate (Mar. 1980). The Commission provided multiple illustrative examples in which ''the existing notification system often does not provide shareholders with relevant information in a timely manner.'' *Id.*

[38] *See supra* notes 17 and 19.

[39] H.R. Rep. 90–1711 (1968) (''But where no information is available about persons seeking control, or their plans, the shareholder is forced to make a decision on the basis of a market price which reflects evaluation of the company based on the assumption that the present management and its policies will continue.'').

[40] *See GAF Corp.* v. *Milstein,* 453 F.2d 709, 717 (2d. Cir. 1971), *cert. denied,* 406 U.S. 910 (1972) (noting that without prompt disclosure, ''investors cannot assess the potential for changes in corporate control and adequately evaluate the company's worth'').

[41] The materiality of such information is supported by academic literature indicating that economically significant price changes occur in response to news about changes in corporate control, including the filing of a Schedule 13D. *See infra* note 215 and accompanying text.

[42] *See* Takeover Bids: Hearing on H.R. 14475 and S. 510 Before the H. Subcomm. on Commerce and Finance of the H. Comm. on Interstate and Foreign Commerce, 90th Cong. 10 (1968) (statement of Manuel F. Cohen, Chairman, Securities and Exchange Commission) (''Now it is argued by some that the basic factor which influences shareholders to accept a tender offer is the adequacy of the price. But, I might ask, how can an investor evaluate the adequacy of the price if he cannot assess the possible impact of a change in control? Certainly without such information he cannot judge its adequacy by the current or recent market price. That price presumably reflects the assumption that the company's present business, control and management will continue. If that assumption is changed, is it not likely that the market price might change?''). The potential gains in market efficiency and price discovery that could be achieved with a shorter initial reporting deadline, however, could be offset by the costs imposed upon shareholders who seek to influence or change management. *See supra* note 38 and accompanying text.

[43] For example, Australia requires disclosure of any position of 5% or more within two business days if any transaction affects or is likely to affect control or potential control of the issuer. *See* Corporations Act 2001 (Cth) sec. 671B (Austl.). The United Kingdom imposes a two-trading-day deadline for disclosure of acquisitions in excess of 3% of an issuer's securities. *See* Disclosure Rules and Transparency Rules, Ch. 5 (U.K.). Germany requires a report ''immediately,'' but in no event later than four days after crossing the acquisition threshold. *See* Securities Trading Act, Sept. 9, 1998, BGBL. I at 2708, as amended, pt. 5 (Ger.). Hong Kong securities laws require a report within three business days of the acquisition of a ''notifiable interest'' under the law. *See* Part XV of the Securities and Futures Ordinance (promulgated by the Securities and Futures Commission, effective Apr. 1, 2003) (H.K.). This comparative analysis suggests that a shortened deadline is workable based on the experience of these foreign jurisdictions. We note, however, that this comparative analysis may be imperfect given the relevant differences in the legal systems in the U.S. and these foreign jurisdictions, including anti-takeover devices that are legal under certain states' corporate laws (*e.g.,* low-threshold poison pills that are permitted under Delaware law) that may not be legal in these foreign jurisdictions.

Request for Comment

1. Should we amend Rule 13d–1(a) as proposed?

2. How has the market for corporate control changed since the enactment of the Williams Act? To the extent those changes are significant, how should we consider them in our analysis of shortening the reporting window?

3. Should we amend Rule 13d–1(a), but have the initial Schedule 13D due within a different number of days than proposed (*e.g.,* five business days rather than five days) after the date of acquisition? Should we use business days instead of days for purposes of the Rule 13d–1(a) deadline for the initial Schedule 13D filing?

4. Rather than shorten the deadline under Rule 13d–1(a) in all instances, should we offer a tiered approach, such as maintaining the 10-day deadline for acquisitions of greater than 5% but no more than 10% while instituting a shorter deadline if beneficial ownership exceeds 10%? Should a person who ''stands still'' (*i.e.,* chooses to make no further acquisitions of beneficial ownership) after crossing the 5% threshold be subject to a longer filing deadline than those persons who continue to make acquisitions after crossing the 5% threshold? If so, how much extra time to file should such person be given? In addition, if a tiered deadline is recommended, should any limit be placed upon the amount that can be acquired during the day on which the 5% threshold is crossed? If any acquisition limits should be imposed on the day the 5% threshold is crossed under a scenario where we move to adopt tiered deadlines, what should be the maximum amount that a person could acquire and still be eligible for an extended filing deadline?

5. Should the deadline for the initial Schedule 13D filing vary based on a particular characteristic of the issuer (such as its market capitalization or trading volume)? If so, please explain the justification for why the deadline for reporting beneficial ownership in certain types of issuers should be either shorter or longer based on any such characteristic.

6. Would the costs associated with preparing and filing an initial Schedule 13D within the proposed five-day deadline substantially differ from current costs of filing, and if so, why?

7. Would the proposed amendments improve price discovery of a covered class, and, in turn, reinforce investors' confidence in the integrity of the capital markets?

8. Are there costs other than routine filing and preparation costs that we should consider in setting the initial Schedule 13D filing deadline, and if so, what are those costs and can they be quantified? For example, would shortening the deadline necessarily limit the amount of a covered class that a beneficial owner could acquire before the initial Schedule 13D filing is due? If so, please identify such limit or limitations. To the extent that any limit or limitations exist on the amount of beneficial ownership in a covered class that can be acquired on the same day on which the 5% reporting threshold is crossed, how would any such limit or limitations impose actual or anticipated costs upon shareholders in the covered class, including those who would be acquiring reportable positions for the first time?

9. Other than administrative burden or liquidity concerns, what other potential drawbacks should be considered in setting a new filing deadline? For example, would there be observable decreases in shareholder activism?

10. As a means of offsetting any incremental cost increases associated with the proposed change, should we amend Schedule 13D, codified at Rule 13d–101, to include pre-populated disclosure fields under each line item disclosure requirement that reduce the amount of narrative that the filer would be required to prepare and review? For example, rather than requiring filers to describe any plans or proposals that would result in the issuer undertaking an extraordinary transaction (*e.g.,* a sale or transfer of a material amount of assets of the issuer or any of its subsidiaries), such a transaction type would be listed along with a box that could be ''checked'' by the filer to indicate the existence of any plan or proposal for the issuer to engage in such a transaction.

11. Have any change of control transactions followed large accumulations of beneficial ownership that occurred after the 5% threshold was crossed but before the initial Schedule 13D was filed, and if so, what were those transactions?

12. Is there evidence of shareholder harm that occurred as a result of purchases made by a large shareholder after the 5% threshold was crossed but before the Schedule 13D was filed? If so, please describe the impact of such accumulations (including any quantifiable harms).

13. Have any corporate actions been prevented from occurring, or been forced to occur, as a result of the current 10-day filing deadline for an initial Schedule 13D? If so, what were those instances and how did the delay in reporting interfere with or otherwise impact the normal operation of the corporation? For example, were any issuers coerced or pressured to execute a settlement agreement or undertake a buyback of their securities as a direct consequence of the initially undisclosed amount of a covered class acquired once the 5% threshold was crossed? Aside from transactions that occur based upon an imbalance of information, are there any other specific difficulties that arise from information asymmetries in the days leading up to a Schedule 13D filing?

14. Shares purchased during the 10-day window in advance of a Schedule 13D filing are purchased from shareholders who already have made the decision to exit or reduce their investment. It is possible that some or all of those shareholders would have sold their shares regardless of whether a Schedule 13D had been filed earlier. Is there evidence that a Schedule 13D filing impacts the liquidity of an issuer's shares or otherwise indicates that a Schedule 13D filing impacts shareholders' decisions to sell their shares?

2. Rules 13d–1(e), (f), and (g)

a. Background

Rules 13d–1(e), (f), and (g) were adopted in 1998.[44] Those rules are designed to ensure that initial Schedule 13D filing obligations are identical, regardless of whether the beneficial owners were previously eligible to file a Schedule 13G in lieu of the Schedule 13D. Specifically, Rules 13d–1(e), (f), and (g) set forth the initial Schedule 13D filing obligations for investors who are no longer eligible to rely upon Rule 13d–1(b)[45] or (c).[46] Rules 13d–1(b) and (c) permit investors to file a comparatively abbreviated Schedule 13G in lieu of the longer-form Schedule 13D and to have more time to make amended filings.

Rule 13d–1(e) applies to persons who have been filing a Schedule 13G in lieu of Schedule 13D in reliance upon either Rule 13d–1(b) or (c). Rules 13d–1(b) and (c) both provide that a person may not rely on those provisions if he or she beneficially owns the relevant equity securities with the purpose or effect of changing or influencing the control of the issuer. Institutional and non-institutional beneficial owners who are unable to certify that they do not hold beneficial ownership with the intent to change or influence control of the issuer

[44] Amendments to Beneficial Ownership Reporting Requirements, Release No. 34–39538 (Jan. 12, 1998) [63 FR 2854 (Jan. 16, 1998)].

[45] 17 CFR 240.13d–1(b).

[46] 17 CFR 240.13d–1(c).

or in connection with any transaction that would have such purpose or effect, as described more fully under Item 10 of Schedule 13G, or certain institutional investors that also acquire or hold beneficial ownership outside of the ordinary course of business are considered to have, for purposes of this release, a ''disqualifying purpose or effect.'' [47] Rule 13d–1(e)(1) currently requires that such persons file their initial Schedule 13D within 10 days of losing their Schedule 13G eligibility because they beneficially own a covered class with a disqualifying purpose or effect.

Similarly, Rule 13d–1(f) applies to persons who have been filing a Schedule 13G in lieu of Schedule 13D in reliance on Rule 13d–1(c). Rule 13d–1(c) provides that persons may not rely on that provision if they beneficially own 20% or more of a covered class. Rule 13d–1(f)(1) currently requires that such persons file their initial Schedule 13D within 10 days of losing their Schedule 13G eligibility because they beneficially own 20% or more of a covered class.

Finally, Rule 13d–1(g) applies to persons who have been filing a Schedule 13G in lieu of Schedule 13D in reliance upon Rule 13d–1(b). Only QIIs may rely on Rule 13d–1(b). Further, in order to rely on Rule 13d–1(b), a QII must beneficially own the relevant equity securities in the ordinary course of its business. Rule 13d–1(g) currently requires that such persons either file their initial Schedule 13D or amend their Schedule 13G to indicate that they are now relying on Rule 13d–1(c) (assuming they are eligible to rely on that rule) within 10 days of losing their Schedule 13G eligibility under Rule 13d–1(b) because they either no longer are a QII or no longer beneficially own the relevant equity securities in the ordinary course of their business.

Rules 13d–1(e), (f), and (g) operate as regulatory safeguards that reestablish the application of Rule 13d–1(a) to beneficial owners who previously relied on Rule 13d–1(b) or (c) to indefinitely suspend application of Rule 13d–1(a) and its attendant 10-day initial Schedule 13D filing deadline. Under Rules 13d–1(e), (f), and (g), beneficial owners ''shall immediately become subject to'' Rules 13d–1(a) and 13d–2(a), which provisions are reinstated anew with respect to those persons the moment they become ineligible to rely upon Rules 13d–1(b) and (c). Due to the importance of Schedule 13D's disclosure requirements and the regulatory purposes served by the timely dissemination of that material information, we have preliminarily concluded that no compelling reason exists to treat persons who become ineligible to file on Schedule 13G differently from persons who initially have no option other than to file on Schedule 13D.

b. Proposed Amendments

For largely the same reasons that we are proposing to amend Rule 13d–1(a) to shorten the initial Schedule 13D filing deadline thereunder, we also are proposing to amend the initial Schedule 13D filing deadline under Rules 13d–1(e)(1), (f)(1), and (g). Specifically, we are proposing to make conforming revisions to Rules 13d–1(e), (f), and (g) so that the Schedule 13D required to be filed by persons who initially elected to report beneficial ownership on Schedule 13G but subsequently lost their eligibility are treated no differently from persons who make a Schedule 13D their initial filing. Accordingly, we propose to amend Rules 13d–1(e), (f), and (g) to make the required Schedule 13D—or, in the case of Rule 13d–1(g), the amendment to Schedule 13G indicating that the filer is now relying on Rule 13d–1(c), if applicable—due no later than five days after the date on which the person became ineligible to report on Schedule 13G.

Request for Comment

15. Given the proposed amendment to Rule 13d–1(a), should we make conforming changes to Rules 13d–1(e), (f), and (g) as proposed?

16. Should we amend Rules 13d–1(e), (f), and (g) but have the initial Schedule 13D due within a different number of days than proposed (*e.g.,* five business days rather than five days)? Should we use business days instead of days for purposes of the deadlines in Rules 13d–1(e), (f), and (g)?

17. Are there any reasons why Schedule 13G filers submitting an initial Schedule 13D pursuant to Rules 13d–1(e), (f), and (g) should be required to file on a different timetable from those investors who file an initial Schedule 13D pursuant to the deadline in the proposed amendment to Rule 13d–1(a)?

18. Rather than make conforming changes to Rules 13d–1(e), (f), and (g), should the Commission rescind Schedule 13G and rely on Section 13(g)(5) of the Exchange Act to consolidate beneficial ownership reporting on a single form, Schedule 13D, with different disclosure requirements applicable to beneficial owners who can certify that they did not acquire and do not hold the beneficial ownership with a disqualifying purpose or effect?

19. With respect to the proposed amendment to Rule 13d–1(g), if a filer who is no longer eligible to rely on Rule 13d–1(b) may instead rely on Rule 13d–1(c), should the deadline for filing an amended Schedule 13G in this instance differ from the deadline for filing an initial Schedule 13D pursuant to Rule 13d–1(g) given that the filer would continue to be able to certify that it does not hold beneficial ownership with a disqualifying purpose or effect? Would five business days after the month-end in which such change occurred be appropriate and consistent with our proposed change to Rule 13d–2(b)?

3. Rules 13d–1(b), (c), and (d)

a. Background

Section 13(g) was added to the Exchange Act in 1977.[48] Congress enacted Section 13(g) to address the absence of beneficial ownership reporting by persons who had accumulated large amounts of stock in a public issuer but who were not required to file a beneficial ownership report under Section 13(d).[49] Section 13(g) was intended to ''supplement the current statutory scheme by providing legislative authority for certain additional disclosure requirements that in some cases could not be imposed administratively.'' [50] Beneficial owners who currently report on Schedule 13G pursuant to Section 13(g) and corresponding Rule 13d–1(d) are not subject to Section 13(d) because they either made an exempt acquisition or an acquisition otherwise not covered by the statute. Section 13(d), in contrast to Section 13(g), applies only to beneficial owners who make non-exempt acquisitions of more than 5% of a

[47] Whether investors are engaged in activity with the purpose or effect of changing or influencing control of an issuer, and thus holding beneficial ownership with a disqualifying purpose or effect, ordinarily is a determination that would be based upon the specific facts and circumstances. For that reason, the Commission has not provided extensive guidance on this issue. The Commission has previously opined that most solicitations in support of a proposal specifically calling for a change of control of the company (*e.g.,* a proposal to seek a buyer for the company or a contested election of directors or a sale of a significant amount of assets or a restructuring of a corporation) would clearly have that purpose and effect. For a more expansive discussion of the Commission's reasoning and factors to consider when making this determination, see Amendments to Beneficial Ownership Reporting Requirements, Release No. 34–39538 (Jan. 12, 1998) [63 FR 2854 (Jan. 16, 1998)].

[48] Domestic and Foreign Investment Improved Disclosure Act of 1977, Public Law 95–214, sec. 203, 91. Stat. 1494.

[49] S. Rep. No. 114, 95th Cong. 1st Sess. 13 (1977).

[50] S. Rep. No. 95–114, at 13 (1977), reprinted in 1977 U.S. Code Cong. & Admin. News. 4098, 4111.

covered class. Section 13(g) was intended to close this gap.

In response to the enactment of Section 13(g), the Commission adopted Schedule 13G to serve two purposes: (1) Provide an optional short form disclosure statement for certain persons subject to Section 13(d); and (2) provide a mandatory disclosure statement for persons subject to Section 13(g).[51] Together with Section 13(d), Section 13(g) was intended to provide a ''comprehensive disclosure system of corporate ownership'' applicable to all persons who are the beneficial owners of more than 5% of a covered class.[52]

The deadline for the initial Schedule 13G filing depends on whether the person is a QII, Exempt Investor or Passive Investor. Rule 13d–1(b) currently provides that a QII must file an initial Schedule 13G only if such QII beneficially owns more than 5% of a covered class at the end of a calendar year.[53] A person relying upon Rule 13d–1(b) is obligated under current Rule 13d–1(b)(2) to file a Schedule 13G ''within 45 days after the end of the calendar year in which the person became obligated'' to report beneficial ownership. If the QII beneficially owns more than 10% of a covered class as of the last day of any month, then the initial Schedule 13G must be filed within 10 days after the end of that month. A QII relying on Rule 13d–1(b), therefore, may have beneficial ownership in excess of 5% during the calendar year without incurring a filing obligation unless the QII beneficially owns more than 10% of a covered class at the end of any month during the calendar year.

Rule 13d–1(d),[54] as with Rule 13d–1(b), imposes an initial Schedule 13G filing deadline of 45 days after the end of the calendar year, but only for investors who have become beneficial owners without having made an acquisition recognized under Section 13(d)(1). Given that these investors did not make the requisite acquisition that would have subjected them to Section 13(d), the Commission has previously referred to this type of beneficial owner as an ''Exempt Investor.'' Unlike the QIIs and Passive Investors—discussed below, in the context of Rule 13d–1(c)—who file a Schedule 13G in lieu of Schedule 13D and at all times remain subject to Section 13(d), Exempt Investors are subject to Section 13(g) at the time their initial filing obligation arises. Exempt Investors reporting pursuant to Rule 13d–1(d) today may include persons such as founders of companies and early investors in an issuer's class of equity securities who made their acquisition before the class was registered under Section 12 of the Exchange Act.[55] These beneficial owners may continue to influence or control the issuer. Accordingly, the Commission has emphasized that the disclosures required under Section 13(g) are obtained in connection with the overall regulatory purposes served by Section 13(d).[56]

Finally, Rule 13d–1(c) was adopted by the Commission on January 12, 1998.[57] The rulemaking created a new class of investor, commonly referred to as ''Passive Investors,'' eligible to report on a Schedule 13G in lieu of the Schedule 13D that is otherwise required to be filed given that the person has made an acquisition subject to Section 13(d). Passive Investors are required under current Rule 13d–1(c) to file a Schedule 13G within 10 days after acquiring beneficial ownership of more than 5% of a covered class. Passive Investors electing to report on Schedule 13G in lieu of Schedule 13D are required under current Rule 13d–1(c) to file within 10 days after acquiring beneficial ownership of more than 5% of a covered class. A person is only eligible to file on Schedule 13G under Rule 13d–1(c) if such person is not seeking to acquire or influence control of an issuer and beneficially owns less than 20% of a covered class. Persons unable or unwilling to certify under Item 10 of Schedule 13G that they do not have a disqualifying purpose or effect because, for example, the possibility exists that they may seek to exercise or influence control, are ineligible to file a Schedule 13G and must instead file a Schedule 13D.

b. Proposed Amendments

We believe that the current initial Schedule 13G filing deadlines for all three types of Schedule 13G filers warrant reassessment. The current initial Schedule 13G filing deadlines' length and manner of applicability to QIIs and Exempt Investors together could, in certain circumstances, frustrate the purposes of Section 13(d) and Section 13(g). Investors reporting pursuant to current Rules 13d–1(b) and (d) may avoid beneficial ownership reporting by selling down their positions before the end of the calendar year, and, in the case of QIIs, selling down before the end of a month if ownership exceeds 10%. Amendments to the filing deadlines for initial Schedule 13G submissions required to be made by QIIs and Exempt Investors may therefore be needed to improve transparency consistent with the intent of Congress when enacting Section 13(d) and Section 13(g). The existing deadlines and manner of applicability not only could give rise to a gap in reporting for persons who possess the potential to change control of an issuer—or, in the case of Exempt Investors, may already control an issuer—but also risk devaluing the importance of the disclosures when

[51] Filing and Disclosure Requirements Relating to Beneficial Ownership, Release No. 34–14692 (Apr. 21, 1978) [43 FR 18484 (Apr. 28, 1978)].

[52] *Id.* at 18486; *see also* Senate Report No. 114, 95th Cong. lst Sess. 14 (1977).

[53] First adopted as Rule 13d–5 in 1977 and subsequently redesignated as Rule 13d–1(b)(1) in 1978, the predecessor to current Rule 13d–1(b)(2) established that an institution eligible to report on the newly adopted Schedule 13G had until 45 days after the end of the calendar year to report beneficial ownership to the extent the amount held exceeded 5% at the end of the last day of the calendar year. *See* Filing and Disclosure Requirements Relating to Beneficial Ownership, Release No. 34–14692 (Apr. 21, 1978) [43 FR 18484 at 18486 (Apr. 28, 1978)] (explaining that ''the first provision in new Rule 13d–1(b) has been added to make clear that the obligation to file a Schedule 13G need be determined only on the last day of the calendar year'' and that ''filing [a] Schedule 13G to disclose a beneficial ownership interest of more than five but not more than ten percent will be required forty-five days after the end of the calendar year''); *see also* Adoption of Beneficial Ownership Disclosure Requirements, Release No. 34–13291 (Feb. 24, 1977) [42 FR 12342 (Mar. 3, 1977)] (describing the Commission's adoption of new Rule 13d–5 and related new Form 13D–5, which permitted brokers, dealers, banks, investment companies, investment advisers, and employee benefit plans to utilize an abbreviated disclosure notice).

[54] 17 CFR 240.13d–1(d).

[55] The Commission has explained that certain ''persons who are not required to file under Rule 13d–1(a) . . . would be required to file a Schedule 13G pursuant to the amendments herein proposed.'' Filing and Disclosure Requirements Relating to Beneficial Ownership, Release No. 34–14693 (Apr. 21, 1978) [43 FR 18501 at 18502 (Apr. 28, 1978)]. Such persons may include ''persons who acquired not more than two percent of a class of securities within a twelve month period, who are exempt from Rule 13d–1(a) by Section 13(d)(6)(B).'' *Id.* The Commission also stated that ''Regulation 13D–G . . . would require any person 'otherwise' not required to report pursuant to Section 13(d), but who is a beneficial owner of more than five percent of a specified class of equity securities to report on Schedule 13G.'' *Id.*

[56] Filing and Disclosure Requirements Relating to Beneficial Ownership, Release No. 34–14692 (Apr. 21, 1978) [43 FR 18484 at 18486 (Apr. 28, 1978)] (stating that ''the enactment of [S]ection 13(g) has rendered moot the issue of whether obtaining'' disclosure from institutional investors in the ordinary course of their business and without any control intent ''under [S]ection 13(d)(5) is within the primary purpose of [S]ection 13(d)''). The Commission also emphasized ''the importance of disclosing to the public the location of rapidly accumulated blocks of stock, even though they have been acquired not with the purpose or with the effect of changing or influencing control'' as a predicate for its position. *Id.*

[57] Amendments to Beneficial Ownership Reporting Requirements, Release No. 34–39538 (Jan. 12, 1998) [63 FR 2854 (Jan. 16, 1998)].

made, if made at all.[58] The very gap in reporting that Congress sought to close by enacting Section 13(g) may now be effectively just as wide given that large, undisclosed accumulations could be occurring and may be reported considerably later than is useful to investors and the market, if reported at all.[59]

In addition, at the time Rule 13d–1(c) was first adopted, Passive Investors may not have had reasonable access to advanced technologies to make more immediate filings possible. Consistent with our justification for proposing to shorten the initial Schedule 13D filing deadline under Rule 13d–1(a), we believe Passive Investors today not only have gained valuable experience complying with these reporting provisions, but also have ready access to the necessary filing technology. As such, while the 10-day filing deadline in Rule 13d–1(c) may have been appropriate in 1998, technological advancements in the intervening two decades, as well as our proposed amendment to the analogous filing deadline in Rule 13d–1(a), support a reconsideration and recalibration of that deadline.

Accordingly, we propose to amend Rules 13d–1(b) and (d) to shorten the filing deadline for the initial Schedule 13G to be filed by QIIs and Exempt Investors to five business days[60] after the end of the month in which beneficial ownership exceeds 5% of a covered class. The proposed acceleration of these deadlines is expected to result in more timely disclosures while minimizing any additional burdens. We believe that these investors should already have well-established compliance systems in place to monitor Schedule 13G ownership levels to determine whether filing obligations have been triggered. For example, compliance operations at QIIs currently need to monitor beneficial ownership levels at least on a monthly basis in case their holdings exceed more than 10% at the end of the month and trigger an initial Schedule 13G filing pursuant to Rule 13d–1(b)(2). Similarly, Exempt Investors already need to monitor the level of their beneficial ownership continuously or periodically to ensure that the amount of their beneficial ownership does not unintentionally exceed 2% in a 12-month period and trigger application of Section 13(d).[61]

Given the proposal to shorten the initial reporting deadline to five business days after the end of the month, the current provision of Rule 13d–1(b)(2) that operates to accelerate that initial filing deadline if beneficial ownership exceeds 10% at the end of any month would be unnecessary in light of Rule 13d–2(c)'s overlapping Schedule 13G amendment requirement.[62] Accordingly, we propose to further amend Rule 13d–1(b)(2) to delete the language that imposes an initial reporting obligation on QIIs after exceeding 10% of a covered class.

We also are proposing to amend the filing deadline in Rule 13d–1(c) to five days after the date the person becomes obligated to file an initial Schedule 13G and amendment thereto, respectively, under those two provisions. We believe it is appropriate to amend the initial Schedule 13G filing deadline in Rule 13d–1(c) to match the proposed initial Schedule 13D filing deadline in Rule 13d–1(a) in order to maintain the historical regulatory consistency between the deadlines in Rules 13d–1(c) and (a) and to facilitate the overall goal of increasing transparency in beneficial ownership.

Request for Comment

20. Should we amend Rules 13d–1(b), (c), and (d) as proposed?

21. Should we amend Rules 13d–1(b) and (d) but require a different deadline for an initial Schedule 13G filing than we proposed? For example, should we require a shorter or longer deadline than our proposed deadline of within five business days after the end of the month in which beneficial ownership exceeded 5% in a covered class? Alternatively, should the deadline be expressed in days rather than business days to conform to the proposed deadlines in Rules 13d–1(a), (e), (f), and (g)?

22. Do costs other than routine filing and preparation costs exist that we should consider in setting the initial Schedule 13G filing deadlines? If any such costs exist, please identify and quantify to the extent practicable. For example, would shorter deadlines inhibit beneficial owners' opportunities to verify the number of outstanding securities of a covered class for purposes of determining whether their beneficial ownership exceeds 5%? Such verification could include any internal processes that a beneficial owner may have in place to independently corroborate the accuracy of the number of shares disclosed in an issuer's most recent annual, quarterly or current report notwithstanding the absence of such an affirmative obligation under Rule 13d–1(j).[63]

[58] *See infra* note 221 and accompanying text (noting the importance to the market of information regarding beneficial ownership, regardless whether it is disclosed on Schedule 13D or 13G, based on evidence that the initial filing of Schedule 13G, like that of Schedule 13D, generates a positive stock price reaction, albeit smaller in magnitude).

[59] *See, e.g.,* Kristin Giglia, *A Little Letter, a Big Difference: An Empirical Inquiry into Possible Misuse of Schedule 13G/13D Filings,* 116 Colum. L. Rev. 105, 115–16 (2015) (explaining that the availability of Schedule 13G may allow investors to ''intentionally structure their acquisition strategies to exploit the gaps created by the current reporting regime, to their own short-term benefit and to the overall detriment of market transparency and investor confidence'' (internal quotations omitted)); In the Matter of Perry Corp., Release No. 34–60351 (July 21, 2009) (illustrating how an institutional investor improperly relied upon Rule 13d–1(b) to defer reporting its beneficial ownership of nearly 10% of a covered class). QIIs in particular may be able to amass sizeable amounts of beneficial ownership without reporting such positions. Rule 13d–1(b)(2) provides in relevant part that ''it shall not be necessary to file a Schedule 13G unless the percentage of [a covered class] beneficially owned as of the end of the calendar year is more than five percent.'' As such, a QII may beneficially own in excess of 5% of a covered class for the entire year, sell down its position to 5% or below on the last day of the calendar year and bypass having to report at all under the current regulatory framework assuming that its beneficial ownership continues to be held in the ordinary course of business, without a disqualifying purpose or effect, and does not exceed 10% of a covered class.

[60] Our proposed definition of ''business day'' would be consistent with how that term is defined under other rule provisions adopted under the Exchange Act, such as 17 CFR 240.14d–1 (''Rule 14d–1(g)(3)''), which defines the term ''business day'' to mean ''any day, other than Saturday, Sunday or a Federal holiday, and shall consist of the time period from 12:01 a.m. through 12:00 midnight Eastern time.'' Unlike Rule 14d–1(g), which defines the term for purposes of Regulations 14D and 14E, the proposed amendments to Rules 13d–1 and 13d–2 that use the term ''business day'' are indifferent as to whether or not the date of the event that triggers a Schedule 13D or Schedule 13G filing obligation falls on a Saturday, Sunday or Federal holiday versus a business day. For example, under the proposed amendments to Rules 13d–1(b) and (d), the initial Schedule 13G would be due the fifth business day after the last day of the month in which beneficial ownership exceeds 5% of a covered class. In addition, as stated at the outset of Regulation 13D–G, Regulation S–T governs the preparation and submissions of filings in electronic format and should be read in conjunction with the rules contained within Regulation 13D–G, including Rules 13d–1 and 13d–2.

[61] Exempt Investors can jeopardize their eligibility to report on Schedule 13G by voluntarily or involuntarily making an acquisition, or acquisitions, by purchase or otherwise as determined under Rule 13d–5(a), that exceed(s) 2% of a covered class in a consecutive 12-month period and thus render unavailable the Section 13(d)(6)(B) exemption.

[62] Specifically, current Rule 13d–2(c) would still require QIIs to file an amendment to their Schedule 13G within 10 days after the end of the first month in which their beneficial ownership exceeds 10% of a covered class, calculated as of the last day of the month. If the proposed amendment to Rule 13d–2(c) is adopted, however, QIIs would be required to make such disclosure within five days after the date on which the person's direct or indirect beneficial ownership exceeds 10%.

[63] Rule 13d–1(j) provides that a beneficial owner may rely upon information in an issuer's most recent periodic or current report unless the beneficial owner knows or has reason to believe that the information contained in the report is inaccurate. 17 CFR 240.13d–1(j).

23. Our proposed amendment to Rule 13d–1(b)(2) would only require QIIs to determine the amount of their beneficial ownership as of the last day of a month for purposes of their initial Schedule 13G filing obligation under that rule. Should QIIs be required to determine the amount of their beneficial ownership as of *any* day during a month rather than only as of the *last* day of a month, and if so, what practical challenges or other burdens are associated with monitoring the level of beneficial ownership on a daily basis?

24. Should we treat the initial Schedule 13G reporting deadline applicable to QIIs differently from the deadline applicable to Exempt Investors, and if so, why? For example, would any ''front running'' concerns exist with the proposed amendments for reporting deadlines applicable to QIIs?

25. Section 13(g)(5) requires the Commission to ''achieve centralized reporting of information regarding ownership'' and ''avoid unnecessarily duplicative reporting.'' As a means of pursuing these goals, should the Commission eliminate Schedule 13G and consolidate beneficial ownership reporting into one form, Schedule 13D? Under this alternative, beneficial owners that previously would have been eligible to report on Schedule 13G could, for example, be required to satisfy less burdensome disclosure requirements on a new, consolidated form.

26. Although Passive Investors certify that they did not acquire and do not hold beneficial ownership with a disqualifying purpose or effect, they are currently required to file their initial Schedule 13G by the same deadline as Schedule 13D filers. If we adopt our proposed amendment to the initial Schedule 13D filing deadline under Rule 13d–1(a), are there any reasons why we should not make a corresponding change to the initial Schedule 13G filing deadline under Rule 13d–1(c) given that the same technological advancements equally enable Passive Investors to make a Schedule 13G filing on an accelerated basis?

4. Rules 13d–2(a) and (b)

a. Background

Section 13(d)(2) requires that an amendment must be filed to the statement required under Section 13(d)(1) if any material change occurs in the facts set forth in the statement filed, but does not identify a specific deadline by which such amendment must be filed. Instead, Rule 13d–2(a) provides, as its predecessor Rule 13d–2 did when first adopted in 1968,[64] that such amendment must be filed with the Commission ''promptly.'' [65] The initial adopting release did not provide an explanation as to why ''promptly,'' as opposed to a specified deadline, was chosen. As a factual matter, the ''promptly'' standard may, under certain conditions, allow for more time to report a complex disclosure issue or material development based on an involuntary change in circumstances that nevertheless triggers an amendment obligation. The obligation to file an amendment under current Rule 13d–2(a) is not limited to acquisitions. Instead, changes in the disclosure narrative that are material also have to be reported in an amendment, as do material changes in the level of beneficial ownership caused by an involuntary change in circumstances, such as a reduction in the amount of beneficial ownership caused solely by an increase in the number of shares outstanding.[66]

Section 13(g)(2) requires that an amendment be filed to the statement required under Section 13(g)(1) if any material change occurs in the facts set forth in the statement filed, but like Section 13(d)(2), does not identify a deadline by which such amendment must be filed. Rule 13d–2(b), however, does specify a deadline and provides that for all persons who report beneficial ownership on Schedule 13G, an amendment shall be filed ''within forty-five days after the end of each calendar year if, as of the end of the calendar year, there are any changes in the information reported in the previous filing on that Schedule [13G].''

b. Proposed Amendments

We propose to amend Rule 13d–2(a) to require that all amendments to Schedule 13D be filed within one business day after the material change that triggers the amendment obligation. This change from the current ''promptly'' standard would establish a specified filing deadline, remove any uncertainty as to the date on which an amendment is due and help ensure that beneficial owners amend their filings in a more uniform and consistent manner. In light of the technological advances discussed in Section II.A.1 above, and for many of the same reasons we are proposing to shorten the initial Schedule 13D filing deadline, we do not believe that requiring Schedule 13D amendments to be filed within one business day after the date on which a material change occurs will place those filers at a disadvantage.[67] Further, because an amendment to a Schedule 13D only requires that the material change be reported and not a complete set of new narrative responses to each of the disclosure form's individual line items,[68] those amendments should present a lower administrative burden than the initial Schedule 13D filing.

We also are proposing to amend Rule 13d–2(b) to require a Schedule 13G to be amended within five business days of the end of the month in which a material change occurs in the information previously reported. Accelerating the deadline for amendments from the current standard of 45 days after the end of the calendar year would help ensure that the information reported is timely and useful. In addition, this proposed deadline would be consistent with the proposed five business day deadline from the end of the month applicable to QIIs' and Exempt Investors' initial Schedule 13G filing obligations arising under Rules 13d–1(b) and (d). To partially mitigate the time pressures resulting from the reduction of the current 45-day deadline and the need to meet these new deadlines, if adopted, we have proposed a ''business day'' standard in specifying the date on which the Schedule 13G filing would be due after an event that triggers a reporting obligation.[69]

We further believe the text of Rule 13d–2(b) regarding the legal standard that triggers an amendment obligation should be conformed to the statutory language. Sections 13(d)(2) and 13(g)(2) require such an amendment if a ''material change'' occurs to the facts in the statement previously filed. Unlike Sections 13(d)(2) and 13(g)(2), Rule

[64] Acquisitions, Tender Offers, and Solicitations, Release No. 34–8370 (July 30, 1968) [33 FR 11015 (Aug. 2, 1968)].

[65] 17 CFR 240.13d–2(a).

[66] *See id.* (requiring an amendment ''[i]f any material change occurs in the facts set forth in the Schedule 13D'' including ''any material increase or decrease in the percentage of the class beneficially owned'').

[67] Our proposed amendment also would be consistent with the Commission's existing view that, under the current ''promptly'' standard in Rule 13d–2(a), ''[a]ny delay beyond the date the filing reasonably can be filed may not be prompt'' and that an amendment to a Schedule 13D reasonably could be filed in as little as one day following the material change. *In re Cooper Laboratories,* Release No. 34–22171 (June 26, 1985).

[68] Under Rule 13d–2(a), the Schedule 13D filer only has an obligation to ''file or cause to be filed with the Commission an amendment disclosing that [material] change.'' See also 17 CFR 240.12b–15, titled ''Amendments,'' which explains that ''[a]mendments filed pursuant to this section must set forth the complete text of each item as amended.''

[69] For a discussion of our proposed definition of ''business day'' for purposes of Regulation 13D–G, see *supra* note 5.

13d–2(b) does not include an express materiality qualifier for Schedule 13G amendments and simply requires an amendment for ''any change.'' At the time Rule 13d–2(b) was adopted, however, the Commission stated that there is a materiality standard inherent in the provisions governing Schedule 13G filings. This inherent materiality standard is based on the fact that any disclosure provided by a Schedule 13G filer, in light of the infrequency of the reports and comparatively minimal statements required to be made, is effectively material.[70] Our proposed change would, therefore, merely codify this view in the text of Rule 13d–2(b). As such, we are proposing to amend Rule 13d–2(b) to substitute the term ''material'' in place of the term ''any'' to serve as the standard for determining the type of change that will trigger an amendment obligation under Rule 13d–2(b).

Request for Comment

27. Should we amend Rules 13d–2(a) and (b) as proposed?

28. Should we amend the filing deadlines contained within Rules 13d–2(a) and (b) but specify filing deadlines other than the ones which have been proposed? For example, should we specify a filing deadline of two or three business days from the date of a material change for Schedule 13D amendments and 10 or 15 business days from the end of the month in which a material change occurs for Schedule 13G amendments? Instead of using ''business day'' as the standard for calculating these filing deadlines, should we instead use a certain number of days as we have proposed for revisions to Rules 13d–1(a), (c), (e)(1), (f)(1), and (g) and 13d–2(c)? Should all reporting deadlines for Schedule 13D and Schedule 13G filings be uniformly expressed in days, the standard in use now, or should we express the filing deadlines uniformly in terms of business days?

29. Will the costs associated with preparing and filing an amended Schedule 13D or Schedule 13G within the proposed deadlines substantially differ from those costs now, and if so, why?

30. Should we amend the filing deadline in Rule 13d–2(b) as proposed but instead retain the rule text that requires a Schedule 13G amendment to be filed if ''any change'' exists in the information previously reported, rather than a ''material change,'' as proposed? Under this alternative, the changes reported would continue to be viewed as material disclosures given their inherent materiality as the Commission described in the release adopting Rule 13d–2(b).[71]

5. Rules 13d–2(c) and (d)

a. Background

Rule 13d–2(c) governs the amendment obligation for QIIs whose beneficial ownership exceeds 10% of a covered class. Under Rule 13d–2(c), QIIs are required to file an amendment to their Schedule 13G within 10 days after the end of the first month in which their beneficial ownership exceeds 10% of a covered class, calculated as of the last day of the month. Once across the 10% threshold, QIIs are further required under current Rule 13d–2(c) to file additional amendments 10 days after the first month in which they increase or decrease their beneficial ownership by more than 5% of the covered class, calculated as of the last day of the month.

Rule 13d–2(d) governs the amendment obligation for Passive Investors whose beneficial ownership exceeds 10% of a covered class. Under current Rule 13d–2(d), Passive Investors are required to ''promptly'' file an amendment to their Schedule 13G upon acquiring greater than 10% of a covered class. Once across the 10% threshold, Passive Investors are further required under current Rule 13d–2(d) to file additional amendments ''promptly'' if they increase or decrease their beneficial ownership by more than 5% of the covered class.

The amendment obligations arising under Rules 13d–2(c) and (d) are in addition to the requirement in Rule 13d–2(b) that a Schedule 13G be amended within 45 days after each calendar year end if, as of the end of the calendar year, any changes occur to the information previously reported on the Schedule 13G. As such, Rules 13d–2(c) and (d) supplement the amendment obligation under Rule 13d–2(b), which only arises if the person's beneficial ownership exceeds 5% of a covered class at the end of a calendar year. To comply with Rules 13d–2(c) and (d), QIIs and Passive Investors, depending on their beneficial ownership levels, may have to amend their Schedule 13G filings more frequently and do so throughout the year.

b. Proposed Amendments

In connection with our proposed amendment to Rule 13d–2(b), we are proposing to amend Rule 13d–2(c) to require that QIIs file an amendment to their Schedule 13G within five days after the date on which their beneficial ownership exceeds 10% of a covered class, rather than the current requirement of 10 days after the end of the month. Similarly, once across the 10% threshold, QIIs would be required to file additional amendments five days after the date on which they increase or decrease their beneficial ownership by more than 5% of the covered class, rather than the current requirement of 10 days after the end of the month. These amendments, when considered in the context of our proposed amendment to Rule 13d–2(b), preserve the utility of Rule 13d–2(c) as a provision that provides the market with earlier notice of QIIs' beneficial ownership exceeding 10% of a covered class and, thereafter, upon their beneficial ownership of the covered class increasing or decreasing by more than 5%. We believe the imposition of such an accelerated deadline is appropriate in the context of our proposed amendment to Rule 13d–2(c) because the high thresholds in that rule—10% beneficial ownership of a covered class and any subsequent 5% increase or decrease in beneficial ownership—warrant that the amendment be rapidly disseminated to the market. Consistent with our rationale for proposing to shorten the other deadlines, we believe QIIs have access to the same technology as other Schedule 13D and 13G filers to satisfy this deadline, especially given the size and sophistication of the persons eligible to file as QIIs.

We also are proposing to amend Rule 13d–2(d) to change the amendment filing deadline from the current ''promptly'' standard to one business day after the date on which an amendment obligation arises. We are proposing to amend the ''promptly'' standard used in Rule 13d–2(d) for substantially the same reasons we are proposing to shorten the filing deadline for the initial Schedule 13G[72] and change the filing deadline for Schedule 13D amendments.[73]

Request for Comment

31. Should we amend the filing deadlines in Rules 13d–2(c) and (d) as proposed?

[70] Filing and Disclosure Requirements Relating to Beneficial Ownership, Release No. 34–14692 (Apr. 21, 1978) [43 FR 18484 at 18489 (Apr. 28, 1978)] (stating the Commission's belief that because ''the information required by Schedule 13G has been reduced to the minimum necessary to satisfy the statutory purpose, . . . a materiality standard is inherent in those requirements'' and ''it is unnecessary to further minimize it by the insertion of an express materiality standard'').

[71] *See supra* note 70 and accompanying text.

[72] *See supra* Section II.A.3.

[73] *See supra* Section II.A.4.

32. Should we amend the filing deadlines in Rules 13d–2(c) and (d) but specify filing deadlines other than those we have proposed? For example, should the deadline in Rule 13d–2(c) be expressed in business days rather than days (and vice versa for the deadline in Rule 13d–2(d))?

33. If we adopt our proposed amendment to Rule 13d–2(b), should we retain Rule 13d–2(c)'s amendment obligation for QIIs as proposed? Or does the proposed shortened filing deadline in Rule 13d–2(b) obviate the need for Rule 13d–2(c)'s additional amendment obligation, even with the proposed shorter filing deadline?

34. Should the amendment filing deadline applicable to Passive Investors differ from the amendment filing deadline applicable to QIIs and Exempt Investors, as well as persons who must make their initial filing on Schedule 13D? If so, why?

6. Rules 13(a)(4) and 201(a) of Regulation S–T

a. Background

Regulation 13D–G states that Schedules 13D and 13G should be prepared in accordance with Regulation S–T, which governs the preparation and submission of documents filed electronically on the Commission's EDGAR system. In accordance with 17 CFR 232.12, EDGAR accepts electronic submissions Monday through Friday, except Federal holidays, from 6 a.m. to 10 p.m. eastern time.[74] Under Rule 13(a)(2) of Regulation S–T, however, most filings not accepted by 5:30 p.m. will not be credited with having been received by the Commission on that business day.[75] Instead, filings accepted after 5:30 p.m. but on or before 10 p.m. will be reflected on EDGAR as having been received on the *next* business day.[76] Rule 13(a)(4) of Regulation S–T, however, sets forth certain exceptions from that 5:30 p.m. ''cut-off'' time. Specifically, it provides that certain filings—namely, Forms 3, 4 and 5 and Schedule 14N—''submitted by direct transmission on or before 10 p.m. [eastern time] shall be deemed filed on the same business day.'' [77] Rule 13(a)(4), therefore, effectively extends the ''cut-off'' time for these filings from 5:30 p.m. to 10 p.m.

In addition, Rule 201 of Regulation S–T and 17 CFR 232.202 (''Rule 202 of Regulation S–T'') address hardship exemptions from EDGAR filing requirements, and Rule 13(b) of Regulation S–T addresses the related issue of filing date adjustments. A filer may obtain a temporary hardship exemption under Rule 201 of Regulation S–T if it experiences unanticipated technical difficulties that prevent the timely submission of an electronic filing by submitting a properly formatted paper copy of the filing under cover of Form TH.[78] Alternatively, instead of pursuing a hardship exemption, a filer may request a filing date adjustment under Rule 13(b) of Regulation S–T. This rule addresses circumstances in which a filer attempts in good faith to file a document with the Commission in a timely manner, but the filing is delayed due to technical difficulties beyond the filer's control.[79] In those instances, the filer may request a filing date adjustment.[80] The staff may grant the request if it appears that the adjustment is appropriate and consistent with the public interest and the protection of investors.[81]

b. Proposed Amendments

We recognize the administrative challenges that could arise if we accelerate the Schedules 13D and 13G filing deadlines. Specifically, Schedule 13D and 13G filers would be required to prepare their filings in a more compressed timeframe while maintaining the accuracy and completeness of the information set forth in those filings. These challenges would be more acute for filers located in different time zones whose business hours do not overlap with the Commission's. In addition, institutional filers with more complex business organizations, including those with sub-advisory relationships common in the investment management industry, may have difficulty assembling all of the required data within the timeframe that will be necessary in order to comply with the proposed filing deadlines. We also recognize that if the proposed changes to those reporting deadlines are implemented, under the current rules, a Schedule 13D or 13G must be filed on and accepted by EDGAR by no later than 5:30 p.m. on a business day on which such a report would be due in order to have the submission be considered timely. We propose, therefore, to amend Rule 13(a)(4) of Regulation S–T to provide that any Schedule 13D or Schedule 13G, including any amendments thereto, submitted by direct transmission on or before 10 p.m. eastern time on a given business day will be deemed filed on the same business day.[82] Conversely, any Schedule 13D or 13G submission not accepted by 10 p.m. on its due date will be assigned a filing date of the next business day, and for purposes of compliance with the applicable reporting requirements, would be considered late.[83] Given the accelerated filing deadlines we propose for Schedule 13D and 13G filings, we anticipate the proposed extension in the ''cut-off'' time would ease filers' administrative burdens, including those located in different time zones, by giving them an additional four and a half hours during which they could timely file their Schedules 13D and 13G.

We also propose to amend Rule 201(a) of Regulation S–T to remove the opportunity for a Schedule 13D or 13G filer to pursue a temporary hardship exemption under that rule. This proposed treatment is consistent with our treatment of Forms 3, 4, and 5, each of which has a 10 p.m. ''cut-off'' time under Rule 13(a)(4) of Regulation S–T and is ineligible for a temporary hardship exemption under Rule 201(a) of Regulation S–T. We are proposing to amend Rule 201(a) of Regulation S–T to make temporary hardship exemptions unavailable to filers of Schedules 13D and 13G because of: The relative ease of using the EDGAR on-line filing system; the proposed extended 10 p.m. eastern

[74] 17 CFR 232.12(a). When we refer to ''eastern time'' in this release, we mean eastern standard time or eastern daylight saving time, whichever is currently in effect.

[75] 17 CFR 232.13(a)(2).

[76] *Id.*

[77] 17 CFR 232.13(a)(4). Rule 13(a)(3) also provides the same accommodation for registration statements or any post-effective amendment thereto filed pursuant to Rule 462(b). *See* 17 CFR 232.13(a)(3).

[78] 17 CFR 232.201(a).

[79] 17 CFR 232.13(b).

[80] *Id.*

[81] *Id.*

[82] Notwithstanding the proposed extension of the time period in which accepted Schedule 13D and 13G filings may be made and still be considered timely, filer support hours would not be extended. Filer support would continue to remain available only until 6 p.m. eastern time as is currently the case notwithstanding EDGAR's availability for the submission of Section 16 filings through 10 p.m.

[83] Once transmitted, a Schedule 13D or 13G submission will be automatically processed by EDGAR and, if accepted by EDGAR, immediately disseminated to the public. While filings will receive an accession number upon transmission, the accession number only confirms receipt of the submission, not that it was actually accepted by EDGAR. Transmission without acceptance does not constitute an official filing. Under 17 CFR 232.11, an ''official filing'' means any filing that is received and accepted by the Commission. At present, a transmission that has commenced on a given business day will only receive that business day's filing date if ''accepted'' at or before 5:30 p.m., meaning that it has successfully passed an acceptance review. An official filing has not been made unless and until the filer receives an acceptance message that includes a filing date. Accordingly, the filer is responsible for ensuring a transmission commences early enough in the business day to correct any errors in the transmittal process so that time-sensitive filings can be accepted by the applicable deadline.

time filing deadline; the limited value to the public of paper filings; and the availability of a filing date adjustment under the same circumstances as a temporary hardship exemption would have been available but for the proposed amendment.[84]

Request for Comment

35. Should we amend Rule 13(a)(4) of Regulation S–T as proposed to extend the ''cut-off'' times for Schedule 13D or 13G filings, including any amendments thereto, to 10 p.m. eastern time?

36. If we amend Rule 13(a)(4) of Regulation S–T as proposed, should we also extend EDGAR filer support hours beyond 6 p.m. eastern time?

37. Would the proposed amendment to Rule 13(a)(4) of Regulation S–T be appropriate in light of the proposed accelerated filing deadlines applicable to persons who are required to make Schedule 13D and 13G filings, or do reasons exist to distinguish these filers from those who file Section 16 reports or Schedule 14N?

38. Does the importance of the information required to be reported within a Schedule 13D or 13G justify a continuation of the requirement that these forms be filed by 5:30 p.m. on the due date, the same deadline as almost all other Commission filings?

39. Should we amend Rule 201 of Regulation S–T as proposed?

40. Are there reasons to permit filers of Schedules 13D and 13G to continue to petition the Commission for a temporary hardship exemption under Rule 201 of Regulation S–T, especially if we were to adopt the proposed amendment to Rule 13(a)(4) of Regulation S–T to extend the ''cut-off'' times for Schedules 13D and 13G?

41. If we do not adopt some or all of our proposed amendments to the filing deadlines applicable to beneficial owners who make Schedule 13D and Schedule 13G filings, should we still adopt the proposed amendments to Rules 13 and 201 of Regulation S–T?

B. Proposed Amendment to Rule 13d–3 To Regulate the Use of Cash-Settled Derivative Securities

We are proposing to amend Rule 13d–3 to deem holders of certain cash-settled derivative securities to be the beneficial owners of the reference covered class. Specifically, we are proposing to add new paragraph (e) to Rule 13d–3. As discussed in more detail below, in addition to setting forth the circumstances under which a holder of a cash-settled derivative security will be deemed the beneficial owner of the reference equity securities, proposed Rule 13d–3(e) also includes provisions describing how to calculate the number of reference equity securities that a holder of a cash-settled derivative will be deemed to beneficially own.

1. Background

Neither Section 3(a) nor Section 13(d) of the Exchange Act define the term ''beneficial owner'' or ''beneficial ownership.'' Regulation 13D–G similarly does not expressly define those terms. To provide clarity, the Commission adopted Rule 13d–3, which provides standards for the purpose of determining whether a person is a beneficial owner subject to Section 13(d).[85] For example, Rule 13d–3(a) provides that a person who directly or indirectly has or shares voting or investment power is a beneficial owner. The Commission also recognized the importance of accounting for contingent interests in equity securities arising from investor use of derivatives, such as options, warrants or rights. The Commission therefore chose to include holders of certain derivatives as beneficial owners under Rule 13d–3: Those derivatives that would be settled ''in-kind'' or otherwise convey a right to acquire a covered class.[86] Specifically, under Rule 13d–3(d)(1), a person is ''deemed'' a beneficial owner of a covered class if that person holds a right to acquire the covered class—for example, through the exercise of an option or warrant or conversion of a security—that is exercisable or convertible within 60 days. Similarly, under Rule 13d–3(d)(1), if a right has been acquired for the purpose or with the effect of changing or influencing control of the issuer of securities, that person is treated as a beneficial owner of the underlying class of equity securities regardless of when that right may be exercisable, exchangeable or convertible. At the same time, however, holding derivatives that, by their terms, entitle the holder to nothing more than economic exposure to a covered class historically has not been considered sufficient to constitute beneficial ownership.[87]

Over the years, commenters have raised concerns about the fact that current Rule 13d–3 fails to explicitly address the circumstances in which an investor in a cash-settled derivative may influence or control an issuer by pressuring a counterparty to make certain decisions regarding the voting and disposition of substantial blocks of securities.[88] An investor in a cash-settled derivative may be positioned, by virtue of its commercial relationship with a counterparty, to acquire any reference securities that the

[84] Filing date adjustments, as would have been true of temporary hardship exemptions, should be few in number given the relative ease with which filings are now made through EDGAR and the strong public interest in timely and readily available disclosures provided by Schedules 13D and 13G. As is also the case with other forms required to be filed on EDGAR, our filing desk would not accept in paper format any Schedule 13D or 13G filings except in the highly unlikely event that the filing satisfies the requirements for a continuing hardship exemption under Rule 202 of Regulation S–T. Filing date adjustments may, however, be made if a filer is unable to submit its Schedule 13D or 13G as a result of an EDGAR outage. In such circumstances, if a filer attempts in good faith to file its Schedule 13D or 13G in a timely manner but is delayed because of an EDGAR outage, that filer may request a filing date adjustment under Rule 13(b) of Regulation S–T on the grounds that such outage constitutes technical difficulties beyond the filer's control. 17 CFR 232.13(b). Alternatively, the Commission may, under 17 CFR 232.15(a)(3), correct the filing date of a Schedule 13D or 13G filing if it determines that such filing has not been processed by EDGAR or was processed incorrectly by EDGAR.

[85] Adoption of Beneficial Ownership Disclosure Requirements, Release No. 34–13291 (Feb. 24, 1977) [42 FR 12342 (Mar. 3, 1977)]. The Commission emphasized that ''[a]n analysis of all relevant facts and circumstances in a particular situation is essential in order to identify each person possessing the requisite voting power or investment power.'' *Id.* at 12344.

[86] Acquisitions, Tender Offers, and Solicitations, Release No. 34–8392 (Aug. 30, 1968) [33 FR 14109 (Sept. 18, 1968)].

[87] Commission Guidance on the Application of Certain Provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, and Rules thereunder to Trading in Security Futures Products, Release No. 34–46101 (June 21, 2002) [67 FR 43234 (June 27, 2002)] (stating the interpretive view that economic exposure through cash-settled securities futures does not confer beneficial ownership); Adoption of Beneficial Ownership Disclosure Requirements, Release No. 34–13291 (Feb. 24, 1977) [42 FR 12342 at 12348 (Mar. 3, 1977)] (indicating that amended Rule 13d–3 ''does not expressly encompass those proposals relative to economic interests—such as the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of securities''); Filing and Disclosure Requirements Relating to Beneficial Ownership, Release No. 34–14692 (Apr. 21, 1978) [43 FR 18484 at 18493 (Apr. 28, 1978)] (stating that ''traditional economic benefits—*i.e.,* the right to receive dividends or sale proceeds—are not included as criteria for defining beneficial ownership'').

[88] *See, e.g.,* Maria Lucia Passador, *The Woeful Inadequacy of Section 13(d): Time for a Paradigm Shift,* 13 Va. L. & Bus. Rev. 279, 296–99 (2019) (''[I]n the recent past, cash-settled equity derivatives—mainly call and security-based options—were frequently used not only with a speculative and hedging purpose, but also with the immediate, explicit, and specific aim of silently accumulating a leading (or even control) position in public companies.''); Wachtell Petition, *supra* note 17, at 8 (''Even in the absence of voting or dispositive power, participants in large hedging transactions gain influence in a number of ways. . . . [V]oting of the shares may be subject to counterparty influence or control, either directly or because the counterparty is motivated to vote the hedged shares in a way that will please the investor and induce them to continue to transact with such counterparty. . . . Even those derivatives that are characterized as 'cash-settled' may ultimately be settled in kind, creating further market pressure as the participants need to acquire shares for such settlement.'').

counterparty may acquire to hedge the economic risk of that transaction, including any obligations that may arise in connection with settlement.[89] Entry into the agreement governing the derivative may, therefore, result in a rapid accumulation of a covered class by a counterparty similar to the types of accumulations that prompted Congress to enact Section 13(d). In addition, if institutional counterparties hold sizable positions of reference securities with a view toward future sales to holders of cash-settled derivative securities, a regulatory concern arises under Rule 13d–3(b).[90] For example, if an arrangement or understanding exists outside of the terms of a derivative instrument that enables an investor to acquire the reference securities from a counterparty, the reference securities could be viewed as having been impermissibly ''parked'' with the counterparty on behalf of the derivative holder.[91]

The use of cash-settled derivative securities in the change of control context also may serve as a catalyst for related acquisitions of beneficial ownership by institutional counterparties that ultimately could contribute to a shift in corporate control.[92] The Commission previously determined that the ''concentration of voting power in a single block and its transferability are material information to the market.'' [93] Holders of cash-settled derivatives also may have incentives to influence or control outcomes at the issuer of the reference security just as they would if they directly owned the reference security outright. Although holders of derivatives settled exclusively in cash ordinarily would lack the express legal power under the terms of such instruments to direct the voting or disposition of a covered class, such holders may possess economic power that can be used to produce desired outcomes through engagement with a counterparty or the issuer of the reference security and potentially could impact the stock price.[94] An unwinding of agreements governing cash-settled derivatives also could adversely impact the stock price of an issuer, just as if the holder of the cash-settled derivative held the stock directly, instead of the counterparty, and sold sizable blocks of such shares. Consequently, counterparty dispositions of reference securities at the conclusion of a cash-settled derivative agreement, should they occur all together or involve high concentrations of beneficial ownership, may impair the orderly operation and efficiency of our capital markets. In the event of a default, these derivative positions could not only adversely impact counterparties, but also issuers of reference securities, the markets and other market participants. At a minimum, greater transparency could influence counterparties' risk management decisions. Proposed Rule 13d–3(e) is thus designed to make information available about any large positions in cash-settled derivative securities and, by implication, the related reference securities. Under specified conditions, if holders of cash-settled derivatives were deemed beneficial owners of the reference securities in combination with the other amendments proposed in this release, the resulting disclosures could alert issuers and the market to the possibility of rapid accumulations of, and high concentrations in, a covered class.[95]

By extending Rule 13d–3 to include certain persons who purchase cash-settled equity-based derivatives, investors, issuers and other market participants should have greater transparency regarding persons with significant interests in an issuer's equity securities and potential control intent. In particular, the proposed amendment to Rule 13d–3 could address concerns that financial product innovation has outpaced the reach of a rule provision first adopted by the Commission in 1968. Cash-settled derivatives imitate the economic performance of a direct investment in an issuer's equity securities and, in turn, may economically empower the holders of such derivatives to influence the issuer or the price of its securities.[96] Under current Rule 13d–3, however, the holder of the cash-settled derivative generally is not subject to beneficial ownership reporting obligations. Given such person's potential to influence or change control of the issuer, we are proposing an amendment that would, in specified circumstances, deem the holder of a cash-settled derivative security to be the beneficial owner of the reference security. For the reasons set forth above and as explained more fully below, we believe such an amendment is necessary for the protection of investors and appropriate in order to achieve the purpose of Section 13(d). We also believe that requiring reporting based wholly or partly upon the holding of such positions would be in the public interest.

2. Proposed Amendment

As noted above, we are proposing to amend Rule 13d–3 to add new paragraph (e). Like Rules 13d–3(b) and (d)(1), proposed Rule 13d–3(e) would provide that holders of certain cash-settled derivative securities will be ''deemed'' a beneficial owner of the reference securities in a covered class.[97]

[89] *See infra* Section III.C.2.a.

[90] Rule 13d–3(b) deems persons to be the beneficial owners of a covered class if they have used an arrangement that otherwise prevented the vesting of beneficial ownership as part of a plan or scheme to evade Section 13(d) or 13(g). 17 CFR 240.13d–3(b).

[91] The Commission has pursued beneficial ownership reporting violations at least twice based on the unreported ''parking'' of equity securities with another party where such securities are essentially held in reserve for the benefit of the party with the intention to control or ultimately acquire them. *See SEC* v. *First City Financial Corp.,* 890 F.2d 1215 (D.C. Cir. 1989). In that case, the Commission charged First City Financial Corp. with using a parking arrangement with Bear, Stearns Cos. to avoid filing a Schedule 13D. After First City had acquired 4.9 percent of the stock of Ashland Oil, Inc., Bear Stearns agreed to acquire stock on behalf of First City and to sell the stock to First City once a sizable position was obtained. The district court concluded that First City deliberately attempted to circumvent the law. *See SEC* v. *First City Fin. Corp.,* 688 F. Supp. 705 (D.D.C. 1988); *see also SEC* v. *Boyd L. Jefferies,* Lit. Rel. No. 11370 (Mar. 19, 1987).

[92] Filing and Disclosure Requirements Relating to Beneficial Ownership, Release No. 34–14692 (Apr. 21, 1978) [43 FR 18484 at 18486 (Apr. 28, 1978)] (explaining that the need for disclosure had been recently underscored by the pivotal role played by investment managers holding large blocks of stock in surprise tender offers).

[93] *See* Reporting of Beneficial Ownership in Publicly-Held Companies, Release No. 34–26598 (Mar. 6, 1989) [54 FR 10552 (Mar. 6, 1989)].

[94] *See supra* note 88; *see also* Theodore N. Mirvis et al., *Beneficial Ownership of Equity Derivatives and Short Positions—A Modest Proposal to Bring the 13D Reporting System into the 21st Century,* Wachtell, Lipton, Rosen & Katz (Mar. 3, 2008) at 2–3, *available at http://www.wlrk.com/webdocs/wlrknew/WLRKMemos/WLRK/WLRK.15395.08.pdf* (noting that derivative securities ''often have substantial effects on the securities and issuers involved'' and that ''[t]he counterparties to these arrangements will often hedge their positions by buying or selling the underlying securities, which may have material effects in the trading of the relevant security'').

[95] Section 13(d) was intended to ''alert the market place to every large, rapid aggregation or accumulation of securities, regardless of technique employed, which might represent a potential shift in corporate control.'' *GAF Corp.* v. *Milstein,* 453 F.2d 709, 717 (2d. Cir. 1971), cert denied, 406 U.S. 910 (1972).

[96] *See supra* note 88.

[97] It is possible under our current regulatory framework that a holder of a cash-settled derivative security could be deemed the beneficial owner of the reference securities under Rule 13d–3(b) by virtue of their counterparty relationships if such relationships constitute ''a plan or scheme to evade the reporting requirements of section 13(d) or (g).'' 17 CFR 240.13d–3(b). Application of that rule, however, would require an examination of the facts and circumstances surrounding the relationship between the holder of a cash-settled derivative security and its counterparty, the intentions of the parties with respect to such relationship and the effect of such relationship on the holder's beneficial ownership of the reference securities. *Id.* By contrast, proposed Rule 13d–3(e) would require a comparatively less extensive and more streamlined inquiry in order for a holder of a cash-settled derivative security to be deemed the beneficial

Continued

Specifically, proposed Rule 13d–3(e)(1) would provide that a holder of a cash-settled derivative security [98] shall be deemed the beneficial owner of equity securities in the covered class referenced by the derivative security if such person holds the derivative security with the purpose or effect of changing or influencing the control of the issuer of such class of equity securities, or in connection with or as a participant in any transaction having such purpose or effect.[99] As discussed in more detail below, the concept ''purpose or effect of changing or influencing the control of the issuer'' is a familiar one under Regulation 13D–G,[100] both in the context of determining whether a person is a beneficial owner under Rule 13d–3 [101] and for purposes of determining whether a beneficial owner is eligible to report on Schedule 13G in lieu of Schedule 13D under Rule 13d–1.[102] As such, we believe that use of this phrase in proposed Rule 13d–3(e) would ease the administrative burdens associated with application of this proposed provision.

Persons who acquire and hold cash-settled derivative securities with the purpose or effect of changing or influencing control of the issuer may seek to use their position to influence the voting, acquisition or disposition of any shares the counterparty may have acquired in a hedge, proprietary investment or otherwise. Moreover, the economic realities of the counterparty relationship mean that, even absent an express right to direct the voting, acquisition or disposition of such shares, the holders of cash-settled derivative securities could be well-positioned to pursue a change in control. The derivative holder's counterparty may have a business relationship to develop and protect, and thus may ultimately cast votes in accordance with the preference of the derivative holder. Even if any counterparty shares are not voted, the derivative holder's probability of success in exerting influence or control over the issuer of the reference security may increase given that any voting power the derivative holder held would be magnified by minimizing the number of shares that potentially could be voted against its plans or proposals. Similarly, while the terms of the derivative instrument may only provide for settlement in cash, these types of derivative holders could remain in a position to acquire any reference securities that the counterparty may acquire to hedge the economic risk of that transaction. In recognition that an investment in a cash-settled derivative instrument could be converted into direct holdings of the reference security via an amendment to the instrument or otherwise, persons who use cash-settled derivatives also may present these economic positions to an issuer or its shareholders as a basis on which they should engage with them.[103] These persons, therefore, hold their cash-settled derivative securities in a manner that implicates the policies underlying Section 13(d).[104]

Proposing that application of Rule 13d–3(e) be conditioned on a person holding the derivative security with the purpose or effect of changing or influencing the control of the issuer of such class of equity securities, or in connection with or as a participant in any transaction having such purpose or effect is consistent with other provisions of our beneficial ownership rules. Rule 13d–3(d)(1) contains this same condition. Specifically, Rule 13d–3(d)(1) provides that if a right has been acquired for the purpose or with the effect of changing or influencing control of the issuer of securities, the holder of that right is immediately treated as a beneficial owner of the underlying class of equity securities regardless of when that right may be exercisable, exchangeable or convertible. In such instances, the holder of such a right would not be entitled to voting or investment power over the underlying security for a substantial period of time that may extend far beyond 60 days. Nonetheless, the Commission believed it appropriate to immediately deem these persons to be the beneficial owners of such underlying securities because it recognized that such a right, when acquired for the purpose or with the effect of changing or influencing control, can be used to influence the control of the issuer even before the right is exercisable.[105] We recognize that cash-settled derivative securities differ from the rights covered under Rule 13d–3(d)(1) in that they ordinarily do not entitle their holders to acquire the reference securities. To the extent such derivative security is held with the purpose or effect of changing or influencing the control of the issuer, however, we believe that the potential for a holder of a cash-settled derivative security to exert influence on a counterparty that may directly hold the reference securities implicates the same concerns that the Commission articulated in adopting Rule 13d–3(d)(1). Thus, we believe that deeming such holders to be beneficial owners of the reference securities would be consistent with the Commission's longstanding view of the right to acquire beneficial ownership as described in Rule 13d–3(d)(1).

In addition, as with the treatment of in-kind-settled derivative securities under Rule 13d–3(d)(1)(i), proposed paragraph (e)(1) also would include a provision stating that any securities that are not outstanding but are referenced by the relevant cash-settled derivative security will be deemed to be

owner of the reference securities, focusing predominantly on whether the derivative security is held with the purpose or effect of changing or influencing the control of the issuer of the reference securities.

[98] For purposes of proposed Rule 13d–3(e), the term ''derivative security'' would have the meaning set forth in 17 CFR 240.16a–1(c) (''Rule 16a–1(c)''). *See* Rule 16a–1(c) (defining ''derivative securities'' as including certain rights, such as options, warrants, convertible securities, stock appreciation rights or similar rights ''with an exercise or conversion privilege at a price related to an equity security, or similar securities with a value derived from the value of an equity security,'' excluding certain enumerated rights, obligations, interests and options). As discussed *infra* notes 110–114 and the accompanying text, however, for purposes of proposed Rule 13d–3(e), the term ''derivative security'' does not include security-based swaps, as defined in Section 3(a)(68) of the Exchange Act and the rules and regulations thereunder.

[99] The provision at 17 CFR 240.12b-2 (''Rule 12b-2 of Regulation 12B'') defines the term ''control'' to mean ''the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.'' The provision at 17 CFR 240.12b–1 sets forth the scope of Regulation 12B, and provides that all rules contained in Regulation 12B ''shall govern . . . all reports filed pursuant to section[ ] 13.''

[100] *See, e.g.,* 17 CFR 240.13d–102. Under Item 10 of Schedule 13G, QIIs and Passive Investors must certify that the ''securities . . . were not acquired and are not held for the purpose of or with the effect of changing or influencing the control of the issuer.'' *Id.*

[101] *See* 17 CFR 240.13d–3(d)(1)(i) (providing that ''any person who acquires a security or power specified in paragraph[ ] (d)(1)(i) . . . with the purpose or effect of changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having such purpose or effect'' shall be deemed a beneficial owner immediately upon such acquisition).

[102] *See* 17 CFR 240.13d–1(b)(1)(i), (c)(1) and (e)(1)(i). In addition to these provisions, Rules 13d–3(b) and 13d–5(b)(2)(ii) also incorporate a ''purpose or effect'' standard.

[103] *See infra* note 263 and accompanying text.

[104] *See* Filing and Disclosure Requirements Relating to Beneficial Ownership, Release No. 34–14692 (Apr. 21, 1978) [43 FR 18484 at 18484 (Apr. 28, 1978)] (noting that Section 13(d)'s legislative history indicates that the purpose of that section is ''to provide information to the public and the affected issuer about rapid accumulations of its equity securities'' by ''persons who would then have the potential to change or influence control of the issuer'').

[105] *Id.* at 18490 (stating that ''the acquisition of [such a right] offers a distinct possibility for actions which are for the purpose or with the effect of changing or influencing control'' including, for example, ''obtaining an interest in a block of securities large enough to influence control, or in coupling an option with an agreement concerning the composition of the board of directors'').

outstanding for the purpose of calculating the percentage of the relevant covered class beneficially owned by the holder of the derivative security. Those reference securities, however, will not be deemed to be outstanding for the purpose of any other person's calculation of the percentage of the covered class it beneficially owns.

The disclosures that would be made in a Schedule 13D as a result of treating holders of cash-settled derivative securities as beneficial owners would provide needed transparency regarding the potential to influence or control the issuer of the reference security. If cash-settled derivative holders with an intent to influence or control the issuer become Schedule 13D filers based on their economic exposure to the reference security as a result of the proposed amendment to Rule 13d–3, then their plans or proposals would become publicly available. At present, such intentions remain undisclosed unless the person is determined to be a beneficial owner under Rule 13d–3 on other grounds.

Proposed paragraph (e)(2) of Rule 13d–3 would set forth the formula for calculating the number of equity securities that a holder of a cash-settled derivative will be deemed to beneficially own pursuant to paragraph (e)(1). This provision is necessary because derivatives may not always have a perfect ''one-to-one'' relationship to the reference security. Instead, the value of the derivative security, although based on the value of a reference security, may change at a multiple or fraction to any change in value of the reference security, particularly in the case of a security option. This difference in the amount by which the value of a derivative security changes as compared to the amount by which the value of the reference security changes is referred to as the ''delta.'' For example, a $1 change in the value of the reference security may result in a $2 change in the value of the derivative security. In that case, the delta of the derivative security would be equal to two. If the delta of a derivative security is equal to one, then the value of the derivative security perfectly tracks the changes in value of the reference security. Calculation of beneficial ownership pursuant to a derivative security is easier in these circumstances because of the perfect one-to-one relationship between the derivative security and the reference security.

Proposed paragraph (e)(2) applies these concepts for purposes of determining the number of securities that a holder of a cash-settled derivative will be deemed to beneficially own pursuant to paragraph (e)(1). Proposed paragraph (e)(2)(ii) of Rule 13d–3 defines ''delta'' to mean, with respect to a derivative security, the ratio that that is obtained by comparing (x) the change in the value of the derivative security to (y) the change in the value of the reference equity security. Proposed paragraph (e)(2)(i) provides that the number of securities that a holder of such derivative security will be deemed to beneficially own pursuant to paragraph (e)(1) will be the larger of two calculations, set forth in proposed paragraphs (e)(2)(i)(A) and (B), in each case as applicable. If applicable, proposed paragraph (e)(2)(i)(A) would calculate the number of securities as the product of (x) the number of securities by reference to which the amount payable under the derivative security is determined multiplied by (y) the delta of the derivative security.[106] Proposed paragraph (e)(2)(i)(B), if applicable, would calculate the number of securities by (x) dividing the notional amount of the derivative security by the most recent closing market price of the reference equity security, and then (y) multiplying such quotient by the delta of the derivative security.[107]

Proposed paragraph (e)(2)(i)(A) would be applicable if the agreement governing the terms of the derivative security provides a way to calculate the number of reference securities on which the amount payable pursuant to that security is based. Proposed paragraph (e)(2)(i)(B) would be applicable if the agreement governing the terms of the derivative security does not provide such a methodology for determining the applicable number of reference securities. Thus, there will be some derivative securities to which proposed paragraph (e)(2)(i)(A) will be inapplicable (*i.e.,* those derivative securities for which the agreement does not provide a way to calculate the number of reference securities on which the amount payable pursuant to that security is based). On the other hand, proposed paragraph (e)(2)(i)(B) will be applicable to all derivative securities (*i.e.,* because the calculation set forth in that paragraph can be performed regardless of whether the agreement governing the terms of the derivative security provides a methodology for determining the applicable number of reference securities). As such, to address those scenarios in which both paragraphs (e)(2)(i)(A) and (B) apply, paragraph (e)(2)(i) provides that the number of securities that a holder of a derivative security will be deemed to beneficially own pursuant to paragraph (e)(1) will be the larger of the two amounts yielded by those paragraphs.

The proposed amendment to Rule 13d–3 also includes three notes to paragraph (e)(2). The first note provides that, for purposes of determining the number of equity securities that a holder of a cash-settled derivative security will be deemed to beneficially own, only long positions in derivative securities should be counted. Short positions, whether held directly against a covered class or synthetically through a cash-settled derivative security, should not be netted against long positions or otherwise taken into account.[108] The second note provides that, when calculating the number of securities that a holder of such derivative security will be deemed to beneficially own pursuant

[106] As an illustration of the application of this proposed rule, a holder of a derivative security with a delta equal to one that references 100 shares of a covered class of common stock would be deemed to beneficially own 100 shares of such covered class. If, however, that derivative security had a delta equal to two, then such holder would be deemed to beneficially own 200 shares of such covered class, calculated as (x) the 100 shares of common stock referenced by the derivative security multiplied by (y) the derivative security's delta of two.

[107] As an illustration of the application of this proposed rule, if a person holds a derivative security with a notional amount of $100 and a delta equal to one that references a covered class of common stock with a most recent closing market price of $10 per share, then that person would be deemed to beneficially own 10 shares of such covered class. If, however, that same derivative security had a delta equal to two, then such person would be deemed to beneficially own 20 shares of such covered class, calculated as (x) the quotient obtained by dividing the $100 notional amount of the derivative security by the $10 per share most recent closing market price, (y) multiplied by the derivative security's delta of two.

[108] ''Short positions,'' such as those within the meaning of the term as defined in 17 CFR 240. 14e–4(a)(1)(ii) (''Rule 14e–4(a)(1)(ii)''), are not treated as beneficial ownership under current Rule 13d–3. In addition, Section 13(d)(1) applies to persons who ''acquire'' beneficial ownership, and the aggregate amount of beneficial ownership held, as determined under Rule 13d–3(c), including certain contingent interests in a covered class, is required to be reported. As such, a beneficial owner subject to Section 13(d) or 13(g) reports its capacity to vote or dispose of a covered class whether through power it directly or indirectly holds or is deemed to hold under Rule 13d–3(d) by virtue of its contingent interest. The regulatory framework, therefore, only applies to persons who hold the equivalent of a ''long position'' within the meaning of the term as defined in Rule 14e–4(a)(1)(i). Persons who hold ''short positions'' have no such capacity to vote or dispose of a covered class and thus are beyond the scope of Sections 13(d) and 13(g) and Regulation 13D–G with the exception that a beneficial owner that otherwise must report on Schedule 13D may incur disclosure obligations with respect to any short sale activity, such as those arising under Item 6 of Schedule 13D. *See* 17 CFR 240.13d–101 (requiring disclosure of ''any contracts . . . with respect to . . . any securities of the issuer''). A beneficial owner is not required to report its ''net long position'' within the meaning of such term as defined in Rule 14e–4(a)(1), and we are not currently proposing any changes in this regard.

to paragraph (e)(1), the calculation in paragraph (e)(2)(i)(B) should be performed on a daily basis. Similarly, the third note provides that if a derivative security does not have a fixed delta (*i.e.,* if the delta is variable and changes over the term of the derivative security), then a person who holds such derivative security should calculate the delta on a daily basis, for purposes of determining the number of equity securities that such person will be deemed to beneficially own, based on the closing market price of the reference equity security on that day. Although we recognize that such daily calculations may impose administrative burdens on holders of derivative securities, this approach will help to ensure the accuracy of beneficial ownership reporting and is consistent with the approach taken by at least one foreign jurisdiction.[109]

Finally, proposed Rule 13d–3(e) would exclude from its purview security-based swaps, as defined in Section 3(a)(68) of the Exchange Act and the rules and regulations thereunder.[110] In a separate rulemaking, the Commission has proposed to require disclosure of security-based swap positions.[111] Specifically, proposed 17 CFR 240.10B–1 (''Rule 10B–1'') would require public reporting on Schedule 10B of, among other things: (1) Certain large positions in security-based swaps; (2) positions in any security or loan underlying the security-based swap position; and (3) any other instrument relating to the underlying security or loan or group or index of securities or loans.[112] As described in more detail in the related proposing release, proposed Rule 10B–1 would include specific quantitative thresholds for when public reporting is required and include a schedule of all of the information that must be reported.[113] We believe that the position disclosures with respect to cash-settled security-based swaps required under our proposed Rule 10B–1, if adopted, would provide sufficient information regarding holdings of security-based swaps such that additional regulation under Regulation 13D–G at this time would be unnecessarily duplicative.[114] Further, to the extent that investors seek to use cash-settled derivatives other than security-based swaps in order to bypass the disclosures that Rule 10B–1 would require, Rule 13d–3(e), if adopted, would help prevent the exploitation of any regulatory gap between Schedule 10B and Schedule 13D that might otherwise exist.

Request for Comment

42. Should we amend Rule 13d–3 as proposed to deem persons who acquire or hold cash-settled derivative securities with the purpose or effect of changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having such purpose or effect, as beneficial owners? Would the proposed rule sufficiently reduce the opportunities for persons to utilize cash-settled derivative securities to evade reporting under Section 13(d)?

43. Would the circumstances in which a holder acquires or holds a cash-settled derivative security with the purpose or effect of changing or influencing the control of the issuer be reasonably determinable? Should we provide further guidance on this point? Rather than amending Rule 13d–3 to deem as beneficial owners persons who acquire or hold cash-settled derivative securities with the purpose or effect of changing or influencing the control of the issuer, should we incorporate standards for establishing when a person becomes a beneficial owner that are more objectively determinable? For example, should we identify more specific indicia such as any of the plans described in Item 4 of Schedule 13D?

44. Can a cash-settled derivative be used to influence or change the control of an issuer? If so, please explain how the terms of the derivative security or the derivative investor's relationship with a counterparty can effectuate that influence or change in control. For example, are cash-settled derivative contracts executed on a scale large enough to impact the voting by counterparties and thus the margins of victory on proposals put forth by the issuer of a covered class for shareholder approval?

45. Instead of treating holders of cash-settled derivative securities as beneficial owners, should we instead amend Schedule 13D and Schedule 13G to expressly include more comprehensive line item disclosure requirements concerning the use of cash-settled derivative securities? For example, should Item 6 of Schedule 13D be further revised to ask for a full description of any cash-settled derivative's material terms, and Item 7 of Schedule 13D be revised to explicitly require the filing of cash-settled derivative instruments as an exhibit?

46. Regardless of whether proposed Rule 13d–3(e) is adopted, should the Commission increase the 60-day time period specified in Rule 13d–3(d)(1) so that persons who hold contingent interests in a covered class will be deemed beneficial owners earlier? If so, would 90, 120, 180 or some greater number of days serve as the optimal date by which to deem persons who hold such interests, such as derivative holders, as beneficial owners?

47. For purposes of proposed Rule 13d–3(e), the term ''derivative security'' would have the meaning set forth in Rule 16a–1(c), excluding security-based swaps. Are there other types of derivatives (other than security-based swaps) that should be included within the purview of proposed Rule 13d–3(e) that are not included in the scope of the term ''derivative securities,'' as defined in Rule 16a–1(c)? For purposes of Rule 13d–3(e), should rights with an exercise or conversion privilege at a price that is not fixed, which Rule 16a–1(c)(6) excludes from the term ''derivative securities'' in Rule 16a–1(c), be included?

48. Is our proposed inclusion of the concept of ''delta'' in Rule 13d–3(e) appropriate? If so, are the proposed

[109] *See* DTR 5.3.3C, Recital 7 (Jan. 1, 2021), *available at https://www.handbook.fca.org.uk/handbook/DTR/5/?view=chapter* (''In order to ensure that information about the total number of voting rights accessible to the investor is as accurate as possible, delta should be calculated daily taking into account the last closing price of the underlying share.'').

[110] Proposed Rule 13d–3(e) is not subject to Exchange Act Section 13(o). Section 13(o) provides that a person shall be ''deemed'' a beneficial owner of an equity security based on the purchase or sale of a security-based swap ''only to the extent that the Commission determines after consultation with the prudential regulators and the Secretary of the Treasury, that the purchase or sale of the security-based swap, or class of security-based swap, provides incidents of ownership comparable to direct ownership of the equity security, and that it is necessary to achieve the purposes of this section that the purchase or sale of the security-based swaps, or class of security-based swap, be deemed the acquisition of beneficial ownership of the equity security.'' Section 13(o) applies to security-based swaps and does not apply to other types of derivative securities. Because proposed Rule 13d–3(e) does not cover security-based swaps, Section 13(o) is inapplicable to the proposed requirement.

[111] Prohibition Against Fraud, Manipulation, or Deception in Connection with Security-Based Swaps; Prohibition against Undue Influence over Chief Compliance Officers; Position Reporting of Large Security-Based Swap Positions, Release No. 34–93784 (Dec. 15, 2021) [87 FR 6652 (Feb. 4, 2022)].

[112] *Id.* at 6657.

[113] *Id.* For example, a person would be required to file a Schedule 10B once the ''Security-Based Swap Equivalent Position'' (as described in the proposing release for Rule 10B–1 [87 FR 6652 (Feb. 4, 2022)]) represents more than 5% of a class of equity securities. *Id.* at n.138 and accompanying text.

[114] *But see* Beneficial Ownership Reporting Requirements and Security-Based Swaps, Release No. 34–64628 (June 8, 2011) [76 FR 34579 (June 14, 2011)] (readopting without change the relevant portions of Rules 13d–3 and 16a–1 to preserve the application of those rules to persons who purchased or sold security-based swaps after the effective date of Section 13(o) by making the determinations required by Section 13(o) after consultation with prudential regulators and the Secretary of the Treasury).

application and definition of ''delta'' in Rules 13d–3(e)(2)(i) and (ii), respectively, appropriate for purposes of determining the number of equity securities that a holder of a cash-settled derivative security is deemed to beneficially own?

49. For securities where the ''delta,'' as we propose to define it, is not equal to 1, is our proposed calculation of the number of securities beneficially owned appropriate? Should the calculation be performed in another way? For example, should the calculation be limited to the number of reference securities contemplated by the instrument?

50. Should we include the three proposed notes to Rule 13d–3(e)(2)? Should only long positions in derivative securities be counted for purposes of determining the number of equity securities that a holder of a cash-settled derivative security will be deemed to beneficially own, as proposed? As an alternative to proposed Note 1 to Rule 13d–3(e)(2), should short positions in cash-settled derivative securities be netted against long positions or otherwise taken into account for purposes of determining the number of equity securities that a holder of a cash-settled derivative security will be deemed to beneficially own? If not, how should they be taken into account? For purposes of Notes 2 and 3 to Rule 13d–3(e)(2), is ''daily,'' as proposed, the appropriate frequency, or should those calculations be performed with a different frequency (*e.g.,* on a weekly or monthly basis)? Is the proposed daily frequency of these calculations unduly burdensome on holders of cash-settled derivative securities? Other than the frequency with which the calculation must be performed, are there other difficulties associated with these calculations that would also make them burdensome?

51. For purposes of the calculations in Rule 13d–3(e)(2)(i)(B) and Note 3 to Rule 13d–3(e)(2), is the closing market price of the reference equity security, as proposed, the appropriate basis for those calculations, or is there a different basis that is more appropriate (*e.g.,* the volume-weighted average trading price of the reference equity security throughout a given day)?

52. Could the daily calculation requirements in proposed Notes 2 and 3 to Rule 13d–3(e)(2) result in situations in which a person's beneficial ownership does not exceed 5% of a covered class at the time that person acquires a derivative security, but then exceeds 5% at a later time solely by virtue of the fact that the closing market price of the reference equity security or the delta of the derivative security, as applicable, has changed (*i.e.,* not as a result of any further acquisitions)? If so, would it be appropriate to subject that person to the obligations of the beneficial ownership reporting regime under such circumstances?

53. Would proposed Rule 10B–1 provide sufficient information regarding holdings of cash-settled security-based swaps such that beneficial ownership reporting of cash-settled security-based swaps under Regulation 13D–G is unnecessary, or should beneficial ownership derived from cash-settled security-based swaps be included under Regulation 13D–G? If the information regarding holdings of cash-settled security-based swaps that would be required pursuant to proposed Rule 10B–1 were not available, would there be a need for the beneficial ownership derived from cash-settled security-based swaps to be included under Regulation 13D–G?

C. Proposed Amendments to Rule 13d–5 to Affirm Its Application and Operation

We are proposing a series of amendments to Rule 13d–5 to clarify and affirm its application to two or more persons who ''act as'' a group under Sections 13(d)(3) and (g)(3) of the Exchange Act. Specifically, we are proposing to amend Rule 13d–5 to:

- Change the title of the rule from ''Acquisition of securities'' to ''Acquisition of beneficial ownership'' to more accurately reflect the purpose, application and operation of the rule and ensure its consistency with Section 13(d)(1);
- Revise Rule 13d–5(a) to conform the text to the new title and Section 13(d);
- Redesignate paragraph (b)(1) as paragraph (b)(1)(i) and revise it to remove the potential implication that it sets forth the exclusive legal standard for group formation under Section 13(d)(3) or 13(g)(3);
- Add new paragraph (b)(1)(ii) to specify that if a person, in advance of filing a Schedule 13D, discloses to any other person that such filing will be made and such other person acquires securities in the covered class for which the Schedule 13D will be filed, those persons shall be deemed to have formed a group within the meaning of Section 13(d)(3);
- Add new paragraph (b)(1)(iii) to specify that a group subject to reporting obligations under Section 13(d) shall be deemed to acquire any additional equity securities acquired by a member of the group after the date of the group's formation;
- Add new paragraph (b)(1)(iv) to carve out from paragraph (b)(1)(iii) any intra-group transfers of equity securities;
- Add new paragraph (b)(2)(i) to specify that when two or more persons ''act as'' a group under Section 13(g)(3) of the Act, the group shall be deemed to have become the beneficial owner, for purposes of Sections 13(g)(1) and (2) of the Act, of the beneficial ownership held by its members;
- Add new paragraph (b)(2)(ii) to specify that a group regulated under Section 13(g) shall be deemed to acquire any additional equity securities acquired by a member of the group after the date of the group's formation; and
- Add new paragraph (b)(2)(iii) to carve out from paragraph (b)(2)(ii) any intra-group transfers of equity securities.

In addition, the proposed amendments would redesignate current Rule 13d–5(b)(2) as new Rule 13d–6(b). This change is discussed both in this section and in Section II.D, which describes our proposed amendments to Rule 13d–6.

1. Background

Sections 13(d)(3) and 13(g)(3) are identical, and each of these two provisions provides that ''[w]hen two or more persons act as a . . . group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a 'person.' '' Neither of these two provisions defines the term ''group.'' The determination of whether coordinated efforts among two or more persons constitutes a group subject to regulation as a single ''person'' under these two statutory provisions is a question of fact. Congress enacted these provisions based on two practical considerations. First, Sections 13(d)(1) and 13(g)(1), by their terms, apply to, and impose filing obligations upon, a single ''person.'' Second, Congress recognized the need to protect against the evasion of disclosure requirements by persons who collectively sought to change or influence control of an issuer yet who each acquired and held an amount of beneficial ownership at or just below the reporting threshold.[115]

[115] Section 13(d)(3) was enacted to prevent ''easy avoidance of section 13(d)'s disclosure requirements by a group of investors acting together in their acquisition or holding of securities.'' Senate Report No. 550, 90th Congress, 1st Session 8 (1967); House Report No. 1711, 90th Congress, 2d Session 8–9 (1968); *see also* 113 Cong. Record Proceedings and Debates of the 90th Congress; Bill–S. 510 (Jan. 18, 1967) (noting that the specific provision applicable to groups was added to ''close the loophole that now exists which allows a syndicate, where no member owns more than 10 percent, to escape the reporting requirements of the Securities Exchange Act'').

Congress sought to address this problem of coordinated circumvention by ''deeming'' two or more persons to be one person for purposes of Sections 13(d) and 13(g). Based on the statutory treatment of two or more persons as if they were one person when they ''act as'' a group for at least one of the three purposes specified in the statutory provisions (*i.e.,* acquiring, holding or disposing of securities of an issuer), the beneficial ownership collectively held by the group members is imputed to the group. To the extent the aggregate amount of beneficial ownership exceeds 5% of a covered class, the group may be required to file a beneficial ownership report.

In these situations, a fundamental question arises as to whether the group is subject to Section 13(d) or Section 13(g). The determination of which statutory provision applies to a group depends on whether a non-exempt acquisition of beneficial ownership has been made that can be imputed to the group, and, when on its own or added to any other beneficial ownership held by the group, results in beneficial ownership exceeding 5% of the covered class. If such an acquisition occurs, the group is subject to regulation under Section 13(d).[116] To the extent no such acquisition attributable to the group has occurred, but the collective amount of beneficial ownership held by the group members exceeds 5% of a covered class at the end of a calendar year, the group is subject to Section 13(g).

Congress did not define the term ''acquisition.'' When the Commission proposed the predecessor to the current Rule 13d–5(a),[117] it made clear that purchases would not be the exclusive means of making an acquisition and deemed ''certain persons who become beneficial owners of securities to have acquired such securities,'' even if such person ''had not intended, and had taken no action, to become a beneficial owner.'' [118] The Commission also adopted Rule 13d–5(b) to address situations in which the factual record does not establish the existence of an acquisition attributable to a group. Following Rule 13d–5(b)'s adoption, an acquisition by a group could thus be ''deemed'' to occur even in the absence of an associated market-based purchase or other transaction, as could be the case when a group is formed for the exclusive purpose of voting.[119] Given that the acquisition which triggers the reporting obligation must be made by a single person, acquisitions occurring before the date of group formation are not considered ''acquisitions'' of beneficial ownership that could trigger a filing obligation. The requisite acquisition needed to satisfy the statutory element ''after acquiring,'' therefore, must occur contemporaneously with, or subsequent to, group formation. Without evidence that an acquisition attributable to the group has occurred, the filing deadline for a Schedule 13D also cannot be established under Section 13(d)(1) and corresponding Rule 13d–1(a). To address this concern, the Commission proposed that an acquisition was ''deemed'' to occur if two or more persons agreed to act together for purposes of acquiring, holding or disposing of any securities of the issuer. In adopting Rule 13d–5, the Commission explained it was ''defining acquisition'' and that the new provision ''deems the formation of certain groups of persons for the purpose of acquiring, holding or disposing of securities to be an acquisition which may trigger the reporting requirements of section 13(d), even though the group has not made any purchase or other acquisition subsequent to its formation.'' [120] The new rule therefore provided the Commission with a mechanism by which it could attribute an acquisition to the group for purposes of not only satisfying the ''after acquiring'' element of Section 13(d)(1), but also designating a date of ''acquisition'' needed to commence the 10-day filing deadline for the initial Schedule 13D.[121]

Given that the term ''group'' is not defined under Sections 13(d)(3) and 13(g)(3), investors, issuers and courts historically have considered the circumstances under which two or more persons must operate in order to be found to have formed agroup.[122]

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[116] The operative term ''after acquiring'' in Section 13(d)(1) makes the application of Section 13(d) contingent upon the existence of an acquisition. Determining that an acquisition has occurred is thus necessary to establish the application of Section 13(d).

[117] The predecessor rule, Rule 13d–6, was redesignated Rule 13d–5 in 1978. Filing and Disclosure Requirements Relating to Beneficial Ownership, Release No. 34–14692 (Apr. 21, 1978) [43 FR 18484 (Apr. 28, 1978)]. Unless otherwise noted, references to Rule 13d–5 in this section of the release also refer to the predecessor Rule 13d–6.

[118] Various Proposals Relating to Beneficial Owners and Holders of Record of Voting Securities, Release No. 34–11616 (Aug. 25, 1975) [40 FR 42212 (Sept. 11, 1975)]; *see also* Adoption of Beneficial Ownership Disclosure Requirements, Release No. 34–13291 (Feb. 24, 1977) [42 FR 12342 at 12345 (Mar. 3, 1977)] (explaining that ''[d]onees, executors, trustees and legatees who become beneficial owners will be 'deemed' to have acquired such securities, even though such persons had not so intended and had taken no action to become beneficial owners'').

[119] *See* Adoption of Beneficial Ownership Disclosure Requirements, Release No. 34–13291 (Feb. 24, 1977) [42 FR 12342 (Mar. 3, 1977)] (adopting Rule 13d–6(b), the predecessor to current Rule 13d–5(b)); Filing and Disclosure Requirements Relating to Beneficial Ownership, Release No. 34–14692 (Apr. 21, 1978) [43 FR 18484 (Apr. 28, 1978)] (redesignating Rule 13d–6(b) as current Rule 13d–5(b)). In proposing Rule 13d–6(b), the Commission was acting partly in response to an appellate court ruling issued in connection with private litigation. The appellate court found that it was unnecessary ''for a group to acquire additional securities if their combined holdings, upon formation of the group, were more than five percent of the class'' for purpose of Section 13(d). *See GAF Corp.* v. *Milstein,* 453 F. 2d 709 (2d Cir. 1971), *cert. denied* 400 U.S. 910 (1972). The Milstein group was an informal arrangement in which the individual members were not bound to vote their shares as would be the case if participating in a stock pool. The alleged group also never had an enforceable right to vote. GAF Corporation asserted that certain acts should be considered evidence of a conspiracy, but the evidence did not show any additional purchases. The Second Circuit Court of Appeals held that formation of a group of shareholders alone, where their aggregate holdings exceed 10% of a particular class of securities, and where no further acquisitions are intended by the membership of the group, still required compliance with Section 13(d). In so holding, the Second Circuit refused to follow the ruling in *Bath Industries, Inc.* v. *Blot,* 427 F.2d 97 (7th Cir. 1970) where the Seventh Circuit held that a group owning in excess of 10% of a class of securities must file only when further acquisitions were contemplated. Recognizing that informal associations could be subjected to reporting obligations upon mere formation, the Seventh Circuit adopted an ''additional purchase'' rule. Even identification of the precise date of the alleged group formation as the Second Circuit instructed the district court to find upon remand, however, would not then have determined whether an acquisition occurred that subjected the group to regulation under Section 13(d) or the latest date by which the Schedule 13D could have been timely filed.

[120] Adoption of Beneficial Ownership Reporting Requirements, Release No. 34–13291 (Feb. 24, 1977) [42 FR 12342 (Mar. 3, 1977)].

[121] While the adopting release for Rule 13d–6(b) acknowledges the Commission was providing ''more objective standards'' to help determine the reporting obligation of groups under Section 13(d), it qualified such statement by indicating that the standards were being provided only for ''certain purposes'' rather than in every instance. Adoption of Beneficial Ownership Reporting Requirements, Release No. 34–13291 (Feb. 24, 1977) [42 FR 12342 at 12342 (Mar. 3, 1977)]. The Commission's regulatory objective should be read in the context of the overall impetus for the initial 1975 rule proposal, which did not propose to define the term ''group.'' The Commission further explained at adoption of Rule 13d–6(b) in 1977 that it had previously published, on August 25, 1975, its ''Proposals Relating to Disclosure of Beneficial Owners and Holders of Record of Voting Securities.'' As set forth therein, the Commission's 1975 ownership proposals, if adopted, would have ''deemed certain persons, including members of a group, who become beneficial owners of securities through non-purchase transactions to have 'acquired' such securities.'' *Id.* at 12343.

[122] In Sections 13(d)(3) and 13(g)(3), Congress identified, but did not define, four associations through which collective action may be taken by two or more persons that potentially could subject them to regulation under Sections 13(d) and 13(g) as a single person. In specifying ''partnership, limited partnership, syndicate,'' Congress expressly referenced three types of groupings of persons that, like the term ''group,'' are similarly undefined. To the extent two or more persons could not be found to have ''act[ed] as a partnership, limited

Notwithstanding that the regulatory framework does not require proof of an agreement between two or more persons as a prerequisite to establishing the existence of a group, some courts, in assessing group formation, consider an agreement among group members to be a necessary element.[123]

In rendering opinions regarding group formation, some courts have suggested that a group can only be formed if an agreement exists among its purported members.[124] These cases appear to reflect such courts' attempts to find a workable means of administering the Section 13(d) regulatory framework and making related determinations about when a group may be found to exist under the statute. In addition, some courts have construed the language of Rule 13d–5(b)(1), which provides that a group is formed if an agreement to act together has been reached for one of four purposes, as governing group formation in every instance as opposed to discrete instances.[125] These decisions suggest that a plaintiff must prove, and by extension, a court must affirm, the presence of an agreement for purposes of satisfying the legal standards in Rule 13d–5(b)(1).

2. The Commission's View of Group Formation

Under a plain reading of Sections 13(d)(3) and 13(g)(3), an agreement is not a necessary element of group formation. The text of Rule 13d–5(b), along with the title of Rule 13d–5, also does not indicate that Rule 13d–5(b) was intended to serve as the exclusive definition of the term ''group.'' Rule 13d–5(b) provides a standard applicable only for purposes of deeming an acquisition to have occurred where none otherwise exists. Therefore, the Commission is not required to invoke Rule 13d–5, and by extension, first establish that group members have an agreement to act together as a precondition to asserting that a group exists. Accordingly, the Commission is not precluded from imputing acquisitions to the group through other means, such as physical evidence or reliance upon Rule 13d–5(a), which provides that a person (including a group) is deemed to have acquired beneficial ownership when it becomes a beneficial owner by purchase or otherwise. The existence of an agreement between two or more persons to act together for at least one of the four purposes specified in the rule text is thus a sufficient, but not a necessary, condition for group formation.

Interpreting Rule 13d–5(b) as the exclusive definition of a group also would run counter to the purpose and otherwise impede application of Sections 13(d) and 13(g).[126] Rule 13d–5(b) applies only when the aggregate amount of beneficial ownership held by group members exceeds 5% of a covered class on the date on which the group members enter into an agreement. If the beneficial ownership is 5% or less of a covered class on that date, or the ownership held is not in a covered class because Section 12 registration is not yet effective or otherwise, no statutory coverage exists and Regulation 13D–G does not apply. Consequently, if Rule 13d–5(b) were administered as the exclusive definition of group, there would be no requirement for such groups to report their holdings after their beneficial ownership exceeded 5% of a covered class, even if such groups were to make considerable post-formation acquisitions and ultimately take control of an issuer. Such a reading of Rule 13d–5(b) would produce the equivalent of an exemption from Section 13(d) for a person (*i.e.,* the group) that otherwise may make future non-exempt acquisitions that would result in the beneficial ownership attributable to the group exceeding 5% of a covered class. There is no indication that this was the Commission's intention when it adopted Rule 13d–5(b).[127]

Furthermore, there is no indication that Congress intended for the analysis of whether or not a group had formed to be dependent upon the existence of an express or implied agreement among two or more persons.[128] Sections

partnership [or] syndicate,'' such persons still could be found under the statutes to be jointly operating as any ''other group.'' The reference to ''group,'' therefore, is simply designed to serve as a general classification inclusive of the three specific, named types of associations, and when combined with the term ''other,'' renders the term ''other group'' but one of four types of associations identified by Congress which are susceptible to being regulated as a single person under Section 13(d) or 13(g).

[123] For example, in *CSX Corporation* v. *Children's Inv. Fund Mgmt. (UK) LLP,* 562 F. Supp. 2d 511 (S.D.N.Y. 2008), the district court referred to a ''requisite agreement'' when offering an analytical framework to be applied in assessing whether or not a group had been formed, and cited to *Hallwood Realty Partners, L.P.* v. *Gotham Partners, L.P.,* 95 F. Supp. 2d 169, 176 (S.D.N.Y 2000), *aff'd,* 286 F.3d 613 in support of this proposition.

[124] One early court decision that predates the adoption of Rule 13d–5(b) found that a group had been formed earlier than reported and opined that ''absent an agreement between [the defendants] a 'group' would not exist.'' *Corenco Corp.* v. *Schiavone & Sons, Inc.,* 488 F.2d 207, 217 (2d Cir. 1973). Similarly, another court decision cited the necessity of ''sift[ing] through the record to determine whether there [was] sufficient direct or circumstantial evidence to support the inference of a formal or informal understanding.'' *Wellman* v. *Dickinson,* 682 F.2d 355, 363 (2d Cir. 1979), cert. denied sub. nom. *Dickinson* v. *SEC,* 460 U.S. 1069 (1983). The court ultimately determined that ''direct and circumstantial evidence supports [its] finding of an agreement between'' the alleged group members. *Id.* In another decision, the court reasoned that it was ''not compelled to play ostrich in the face of the strong circumstantial evidence demonstrating the existence of an agreement among [the defendants] . . . . It would require a degree of naivete unbecoming to this Court to believe that the various activities of defendants were not the product of an agreement among the group but, rather, were merely coincidences.'' *Champion Parts Rebuilders, Inc.* v. *Cormier Corp.,* 661 F. Supp. 825, 850 (N.D.Ill. 1987) (citations omitted). The court based its factual finding that an agreement existed on evidence indicating: (a) A common plan and goal; (b) a pattern of parallel and continued purchases over a relatively short and essentially concurrent time period; (c) correlation of defendants' activities and intercommunications, largely through their common agent; and (d) claims of shareholder support at the meeting with the corporation. *Id.*

[125] For example, the Second Circuit, finding that the district court in the above mentioned *CSX Corporation* matter did not make sufficient findings to permit appellate review of a group violation of Section 13(d), stated: ''on remand the District Court will have to make findings as to whether the Defendants formed a group for the purpose of 'acquiring, holding, voting or disposing,' 17 CFR 240.13d–5(b)(1) of [an issuer's] shares owned outright.'' *CSX Corp.* v. *Children's Inv. Fund Mgmt.,* 2011 WL 2750913, at *4 (2d Cir. July 18, 2011). An earlier Second Circuit opinion stated, ''the key inquiry in the present case is whether [the defendants] 'agreed to act together for the purpose of acquiring, holding, voting or disposing of' [an issuer's] common stock. 17 CFR 240.13d–5(b)(1).'' *Morales* v. *Quintel Ent., Inc.,* 249 F.3d I 15 (2d Cir. 2001). In a ruling that concluded the evidence did not establish the existence of a group, a district court, which acknowledged Rule 13d–5(b) when outlining the applicable regulatory framework, found that the plaintiff's complaint ''d[id] not sufficiently allege an agreed-upon common purpose.'' *Roth* v. *Jennings,* 2006 U.S. Dist. LEXIS 4266, 2006 WL 278135 at *5 (S.D.N.Y. Feb. 2, 2006). On appeal, however, the Second Circuit criticized the district court for ascribing undue weight to the defendants' use of a disclaimer in public filings that they were not a group and found that the district court consequently ''gave no recognition to the terms of § 13(d)(3) and Rule 13d–5(b)(1).'' *Roth* v. *Jennings,* 489 F.3d 499, 512 (2d Cir. 2007).

[126] For example, if the Commission were to construe Rule 13d–5(b)(1) as the exclusive definition of the term ''group,'' and thus make an ''agreement'' a necessary element, that would directly conflict with the statutory language and narrow the circumstances in which Sections 13(d) and 13(g) could apply.

[127] When proposing Rule 13d–5(b), the Commission neither framed the rule as a proposed definition of ''group'' nor solicited comment on the sufficiency or any limitations of any such definition. Moreover, the proposed rule text was devoid of any reference to the term ''group.'' *See* Disclosure of Corporate Ownership, Release No. 34–11616 (Aug. 25, 1975) [40 FR 42212 (Sept. 11, 1975)].

[128] According to the legislative history, members of Congress contemplated that the beneficial ownership reporting threshold—which was first enacted as more than 10% of a covered class, but currently is 5% of a covered class—could be bypassed by two or more persons acting in concert in furtherance of a common purpose or goal with each person individually holding an unreportable level of beneficial ownership. Both the House and Senate Reports accompanying the bill reflect an effort to prevent circumvention of the reporting

Continued

13(d)(3) and 13(g)(3) are devoid of any reference to the term ''agree'' or ''agreement.'' The use of ''any,'' ''understanding,'' ''relationship'' and ''arrangement'' in the associated regulatory text of Rule 13d–3(a) also points to a recognition that concerted action need not be formalized in an agreement or otherwise expressed.[129] Section 13(d)(3), given the operative ''act as'' standard, encompasses not only agreements in the classic contractual ''offer'' and ''acceptance'' sense of the term[130] but also pooling arrangements, whether formal or informal, written or unwritten.[131] Congress neither added a state of mind element into Sections 13(d)(3) and 13(g)(3) nor specified that two or more persons must ''act as'' a group pursuant to an agreement. If the term ''agreement'' were read into Sections 13(d)(3) and 13(g)(3) as if it were an unintentionally omitted term, application of Section 13(d) or 13(g) also would be limited to only a subset of persons who otherwise ''act as a group'' within the meaning of Sections 13(d)(3) and 13(g)(3) instead of all persons who act as a group as expressly mandated.

Whether or not a group exists is dependent upon the facts and circumstances.[132] Recognizing that two or more persons may take concerted action informally and without memorializing their intentions in writing, the Commission has relied upon circumstantial evidence instead of an agreement to establish that two or more persons combined in furtherance of a common objective.[133] A contrary approach or interpretation would elevate form over substance and make the regulation of groups in the beneficial ownership context wholly dependent upon evidence proving the existence of an agreement. The purpose of the statute would be frustrated, and a burden not intended by Congress would be placed upon any party alleging the existence of a group, including the Commission.[134]

The absence of a need to prove that a group made an acquisition for purposes of reporting under Section 13(g), in itself, supports our view that the existence of a group is not dependent upon application of Rule 13d–5(b), and by extension, whether such persons had an agreement. The absence of the ''after acquiring'' element in Section 13(g)(1) supports the view that groups may be subject to reporting obligations under Section 13(d), just as they are under Section 13(g), without reference to Rule 13d–5(b). No regulatory purpose would be served by concluding that an agreement among members is a prerequisite to the imposition of a reporting obligation under Section 13(d)(1) but not Section 13(g)(1). Under the current regulatory framework, if an agreement does not exist or cannot be proven, and no acquisitions can otherwise be imputed to the group, Section 13(g) will still apply to require reporting by the group if the collective amount of beneficial ownership held by the group members exceeds 5% at the end of the calendar year.

3. Proposed Amendments

a. Proposed Rules 13d–5(b)(1)(i) and (b)(2)(i)

Our proposal would amend Rule 13d–5 to track the statutory text of Sections 13(d)(3) and (g)(3) and specify that two or more persons who ''act as'' a group for purposes of acquiring, holding or disposing securities are treated as a group. Specifically, Rule 13d–5(b)(1) would be redesignated as Rule 13d–5(b)(1)(i) and would be revised to, among other things, remove the reference to an agreement between two or more persons and instead indicate that when two or more persons act as a group under Section 13(d)(3), the group will be deemed to have acquired beneficial ownership of all of the equity securities of a covered class beneficially owned by each of the group's members as of the date on which the group is formed. In addition, proposed new Rule 13d–5(b)(2)(i) would contain nearly identical language, with conforming changes to address circumstances in which two or more persons act as a group under Section 13(g)(3) and the group is deemed to become the beneficial owner of all of the equity securities of a covered class beneficially owned by each of the group's members as of the date on which the group is formed.

These amendments would make clear that the determination as to whether two or more persons are acting as a group does not depend solely on the presence of an express agreement and that, depending on the particular facts and circumstances, concerted actions by two or more persons for the purpose of acquiring, holding or disposing of securities of an issuer are sufficient to

threshold in this situation with the inclusion of the provision that became Section 13(d)(3). Those reports stated that Section 13(d)(3) ''would prevent a group of persons [w]ho seek to pool their voting or other interests in the securities of an issuer from evading the provisions of the statute because no one individual owns more than 10 percent of the securities.'' S. Rep. No. 550, 90th Cong., 1st Sess. 8 (1967); H.R. Rep. No. 1711, 90th Cong. 2d Sess. 8–9 (1968), Reprinted in (1968) U.S. Code Cong. & Admin. News. 2811, 2818. The reports further stated that ''[t]he group would be deemed to have become the beneficial owner, directly or indirectly, of more than 10 percent of a class of securities at the time [t]hey agreed to act in concert.'' *Id.* As such, the reports noted that Section 13(d)(3) ''is designed to obtain full disclosure of the identity of any person or group obtaining the benefits of ownership [b]y reason of any contract, understanding, relationship, agreement or other arrangement.'' *Id.*

[129] Congress sought to make visible surreptitious purchases executed by persons or entities that were not only not incorporated, but also operating without a formal alliance. The legislation was thus drafted to capture ''informal associations'' that otherwise were not subject to having their joint activities disclosed. *See* Full Disclosure of Corporate Equity Ownership and in Corporate Takeover Bids: Hearing on S. 510 Before the Subcomm. on Securities of the S. Comm. on Banking and Currency, 90th Cong. 1 (1967). Because a group is deemed a single ''person'' once the standards of Section 13(d)(3) or 13(g)(3) have been met, that ''person'' may be considered a beneficial owner under Rule 13d–3(a) regardless of the absence of any contract or agreement.

[130] Section 13(d)(3) was ''designed to obtain full disclosure of the identity of any . . . group obtaining the benefits of ownership of securities by reason of any contract, understanding, relationship, agreement or other arrangement.'' S. Rep. No. 550, 90th Cong., 1st Sess. 8 (1967); H.R. Rep. No. 1711, 90th Cong. 2d Sess. 8–9 (1968), Reprinted in (1968) U.S. Code Cong. & Admin. News. 2811, 2818. During a hearing, an individual testifying before the Senate (who was a member of a corporation's management) observed that in the then-unregulated market of takeovers for corporate control, ''it [was] possible . . . for a group of people who [were] informally associated to each acquire less than 10 percent of the stock without having to report their acquisitions even though they have more than 10 percent as a group.'' Full Disclosure of Corporate Equity Ownership and in Corporate Takeover Bids: Hearing on S. 510 Before the Subcomm. on Securities of the S. Comm. on Banking and Currency, 90th Cong. 1 (1967) (statement of Herbert F. Kahler, Secretary and General Counsel, International Silver Co.).

[131] Some courts and the Commission have not superimposed the term ''agreement'' into the legal standards governing the reporting of beneficial ownership by groups. *See SEC* v. *Levy,* 706 F. Supp. 61 (D.D.C. 1989) (''In order to find that a 'group' exists under Section 13(d)(3), a court must find that two or more people have formed a combination in support of a common objective.''); *see also* In the Matter of John A. Carley, Release No. 34–50695 (Nov. 18, 2004) (''A group need not be formally organized, nor memorialize its intentions in writing. . . . All that is required is that its members combine in furtherance of a common objective.'').

[132] Group activity may be demonstrated by circumstantial evidence, *SEC* v. *Savoy,* 587 F.2d 1149 at 1162, such as: (1) The presence of a common plan or goal, *Fin. Gen. Bankshares, Inc.* v. *Lance,* 1978 WL 1082, at *9 (D.D.C. 1978); (2) ''considerable dissatisfaction'' with certain officers and a ''desire to reduce'' those officers' role in company management, *Id.* at *10; (3) strategy meetings with, among others, attorneys, *Levy,* 706 F. Supp. at 70; (4) a pattern of coordinated stock purchases, *Hallwood Realty Partners, LP* v. *Gotham Partners, LP,* 286 F.3d 613, 618 (2d Cir. 2002); (5) the solicitation of others to join the group, *Wellman,* 682 F.2d at 363–364; and (6) the existence of communications between and among group members. *Gen. Aircraft Corp.* v. *Lampert,* 556 F.2d 90, 95 (1st Cir. 1977).

[133] *SEC* v. *Levy,* 706 F. Supp. 61, 69 (D.D.C. 1989); *see also* In the Matter of John Joslyn, Joseph Marsh, P. David Lucas, Steven Sybesma, Stanley Thomas and Jon Thompson, Release No. 34–50588 (Oct. 26, 2004).

[134] *See Bath Industries, Inc.* v. *Blot,* 427 F.2d 97, 110 (7th Cir. 1970).

constitute the formation of a group.[135] By revising Rule 13d–5(b) as we propose, we intend to eliminate any potential for the rule to be misconstrued and consequently used as a basis to narrow the application of Sections 13(d)(3) and 13(g)(3) to: (1) Two or more persons who first ''agree'' to act as a group, instead of two or more persons who ''act as'' a group as expressly codified in these statutory provisions; and then (2) only an additional subset of those such groups whose beneficial ownership exceeds 5% on the date of an agreement.

b. Proposed Rule 13d–5(b)(1)(ii)

In addition, given that a Schedule 13D filing may affect the market for an issuer's securities, information that a person will make a Schedule 13D filing in the near future can be material.[136] Under certain circumstances, the person that incurs or will incur such a filing obligation may be incentivized to share that information with other investors. For example, a large blockholder may be planning to commence a future campaign to challenge or unseat directors serving on the board of the issuer of the covered class and seek support of its still undisclosed plan.[137] By privately sharing this material information (*i.e.,* the fact that the blockholder is or will be required to make a Schedule 13D filing) in advance of the public filing deadline with a goal of inducing a change in the voting electorate or strengthening a relationship, the blockholder may engender support of, and improve the likelihood of success regarding, any future changes proposed to the issuer. Similarly, by sharing such material information with other investors positioned to act on the information, the blockholder may incentivize those investors to acquire shares in the covered class before such filing is made.[138] Such incentive would be based on the other investors' expectation of an increase in the price of the covered class once the market reacts to the Schedule 13D filing.

These activities raise a question as to whether those investors ''act as'' a ''group for the purpose of acquiring'' the covered class within the meaning of Section 13(d)(3).[139] They also raise investor protection concerns. For example, any near-term gains made by these other investors attributable to this asymmetric information may come at the expense of uninformed shareholders who sell at prices reflective of the *status quo.*[140] Even though the demand to acquire shares in the covered class may increase as a direct result of the blockholder's communications, and in turn increase the prices at which such selling shareholders exit, such prices may be discounted in comparison to the price selling shareholders would have achieved had the information about the impending Schedule 13D filing been public. Consequently, this informational imbalance may result in opportunistic purchases benefitting a favored few.[141]

To provide clarity on this issue, enhance investor confidence and promote accurate price discovery in the capital markets, we are proposing to amend Rule 13d–5 to include a provision, which would be codified in paragraph (b)(1)(ii), that states that a person who shares information about an upcoming Schedule 13D filing that such person will be required to make, to the extent this information is not yet public and communicated with the purpose of causing others to make purchases, and a person who subsequently purchases the issuer's securities based on this information will be deemed to have a formed a group within the meaning of Section 13(d)(3). Proposed Rule 13d–5(b)(1)(ii) further provides that the group formed on the basis of such concerted action will be deemed to acquire beneficial ownership in the covered class. This acquisition by the group, which occurs by operation of Rule 13d–5(b)(1)(ii), would trigger application of Section 13(d)(1), and in turn, establish the filing deadline for the group's disclosure statement on Schedule 13D. The proposed amendment would thus help ensure that appropriate disclosures under Section 13(d) are made in these and similar circumstances.[142]

We believe this proposed rule change is consistent with the purpose of Section 13(d). Section 13(d)(3) was designed to prevent circumvention of Section 13(d). As noted above, under Section 13(d)(3), a group may become subject to regulation even in the absence of any express or implied agreement to act together for the purpose of acquiring a covered class. For example, if a large blockholder shares non-public information about its anticipated obligation to file a Schedule 13D, as would be the case if a tipper were to share its intention to accumulate a stake that would trigger such a filing obligation, and the person who receives such information subsequently makes a purchase based on that information, such information-sharing and purchasing activity is sufficient to satisfy the statutory standards within Section 13(d)(3) to the extent the information was shared with the purpose of causing such additional purchases to be made. While the final determination as to whether two or more persons ''act as'' a group for this purpose ultimately will depend upon the specific facts and circumstances, the advantages inherent to this mutually beneficial relationship between the tipper and the tippee are self-evident. The large blockholder would have shared non-public, potentially market-moving information concerning an impending Schedule 13D filing

[135] The Commission, in adopting Rule 13d–5(b)(1), indicated that it viewed the term ''holding'' as subsuming the term ''voting,'' but nevertheless expressly referenced the term ''voting'' for the avoidance of doubt. *See* Filing and Disclosure Requirements Relating to Beneficial Ownership, Release No. 34–14692 (Apr. 21, 1978) [43 FR 18484 at 18492 (Apr. 28, 1978)].

[136] *See* Alon Brav, Wei Jiang, Frank Partnoy and Randall S. Thomas, *Hedge Fund Activism, Corporate Governance and Firm Performance,* 61 J. Fin. 1729 (2008) (finding on average an abnormal short-term return of 7% over the window surrounding a Schedule 13D filing); Marco Brecht, Julian Franks, Jeremy Grant and Hammes F. Wagner, *The Returns to Hedge Fund Activism: An International Study,* Center for Economic Policy Research Discussion Paper No. 10507 (Mar. 15, 2015).

[137] *See, e.g.,* Susan Pulliam, Juliet Chung, David Benoit and Rob Barry, *Activist Investors Often Leak Their Plans to a Favored Few,* The Wall Street Journal (Mar. 26, 2014), *https://www.wsj.com/articles/SB10001424052702304888404579381250791474792* (''Activists, who push for broad changes at companies or try to move prices with their arguments, sometimes provide word of their campaigns to a favored few fellow investors days or weeks before they announce a big trade, which typically jolts the stock higher or lower.'').

[138] The Commission expresses no opinion as to whether or not such a blockholder owes a fiduciary duty to other shareholders in the covered class.

[139] This question arises regardless of whether such other investors would be independently subject to, and thus incur a stand-alone reporting obligation under, Section 13(d)(1). Under Section 13(d)(3), however, two or more persons may be treated as a single person only if the beneficial ownership collectively held exceeds 5% of the covered class.

[140] *See infra* Sections III.A and III.C.3.

[141] *See* Lucian Bebchuk, Alon Brav, and Wei Jiang, *The Long-Term Effects of Hedge Fund Activism,* 115 Colum. L. Rev. 1085 (2015). The authors find an approximately 6% average abnormal return during the 20-day window before and after a Schedule 13D filing.

[142] Proposed Rule 13d–5(b)(1)(ii), if adopted, would provide that the conduct specified in the rule is sufficient to find that a group had been formed under Section 13(d)(3) and, at the same time, deem that group to have made the acquisition necessary to trigger application of Section 13(d)(1). The proposed rule would serve as an additional, not exclusive, means of establishing that the tipper and tippee formed a group that made an acquisition subject to Section 13(d). The proposed rule would not supersede or replace the existing regulatory provisions under which the tipper-tippee could become subject to Section 13(d). Thus, the Commission would not need to invoke Rule 13d–5(b)(1)(ii) when seeking to enforce violations in the context of every tipper-tippee relationship, but instead could assert other bases for finding that two or more such persons acted as a group for the purpose of acquiring a covered class.

obligation. The blockholder benefits by virtue of the subsequent acquisition of shares by the other investors, which may support or contribute to an increase in the value of the blockholder's investment in the covered class. In addition, the blockholder meaningfully contributes to a relationship, and creates the potential for reciprocal behavior. Such reciprocity could, in turn, prompt additional concerted action that will further implicate the statute.[143] Those investors, acting on the information shared by the blockholder, also benefit by capitalizing on an opportunity to acquire the covered class at a comparative ''discount'' relative to the price they presumably would have paid had more timely public disclosure of the sensitive information in their possession been made. Consequently, in our view, the tipping arrangement described above falls within the scope of activity Congress sought to regulate when it enacted Section 13(d)(3).

Under proposed Rule 13d–5(b)(1)(ii), the group will be deemed to have acquired beneficial ownership of the securities of any market participant with whom the large blockholder has communicated material information regarding its impending filing obligation on the earliest date on which the acquisition by the recipient (or recipients, as the case may be) of the material information occurs.[144] The existence of this acquisition will not alter the blockholder's initial filing obligation in respect of its acquisition of beneficial ownership in excess of 5% of the covered class. Rather, that person will now be obligated to acknowledge the existence of the group under Item 2 of the cover page of Schedule 13D, and provide any other required disclosures as a group member. If other group members make purchases later than the first date on which the blockholder is deemed to have formed a group with another person, proposed Rule 13d–5(b)(1)(iii), discussed below, would operate to deem the group to have acquired any additional shares acquired by any such persons who are considered group members after the date of group formation. Under Rule 13d–1(k), group members have the option of jointly filing a single Schedule 13D or, alternatively, independently filing a Schedule 13D that identifies all members of the group.

No term within proposed Rule 13d–5(b)(1)(ii) prohibits the blockholder from making additional purchases in the covered class or communicating the existence of the filing obligation to other shareholders. As such, the large blockholder and the other investors are free to acquire a larger position in the covered class during the period that remains before the required beneficial ownership report discloses the existence of the group. While the impact of the proposed rule may reduce the number of members within, and beneficial ownership initially held by, a group formed under the described tipping arrangement, or eliminate the practice altogether, we believe the proposed rule is appropriate in light of the possibility for coordinated acquisitions without compliance with Section 13(d). We believe that adding a provision directly addressing the tipping arrangement described above would advance the policy purposes of Section 13(d).

c. Proposed Rules 13d–5(b)(1)(iii) and (b)(2)(ii)

Groups may form at a time when a class of equity securities is not yet registered under Section 12 or the aggregate beneficial ownership held by the membership in the group on the date of its formation is 5% or below of a covered class. Expressly capturing post-formation acquisitions of beneficial ownership by group members therefore can become important for purposes of: Assessing whether a group intentionally tried to evade the reporting process; determining whether an amendment was due for a pre-existing Schedule 13D filing; and evaluating the availability of the Section 13(d)(6)(B) exemption. For example, imputing post-formation acquisitions to a group by rule would make clear that acquisitions by group members that collectively exceed the 2% exemptive threshold over a 12-month period are attributable to the group, thereby resulting in the group becoming ineligible to report pursuant to Section 13(g) and triggering a filing obligation under Section 13(d).[145] The 12-month measurement period therefore extends into the time period where a beneficial owner, including a group, held an amount of beneficial ownership below the statutory threshold or where the group formed on a date when the class of equity was not registered under Section 12.[146]

Absent an express provision that would treat post-formation acquisitions of beneficial ownership by group members as acquisitions by the group, the Commission or other affected parties must prove the acquisition is attributable to the group. For example, if the Commission invoked Rule 13d–5(a), it would have to establish that the group ''became'' a beneficial owner of more shares and thus made an acquisition within the meaning of that rule. To help ensure that acquisitions made by a group member after the date of group formation are attributed to the group once the collective beneficial ownership among group members exceeds 5% of a covered class, and reduce the Commission's evidentiary burden, we propose to amend Rule 13d–5 to expressly impute such acquisitions to the group. Proposed new Rule 13d–5(b)(1)(iii) would provide that a group under Section 13(d)(3) will be deemed to have acquired beneficial ownership of equity securities of a covered class if any member of the group becomes the beneficial owner of additional equity securities of such covered class after the date of the group's formation. Proposed new Rule 13d–5(b)(2)(ii) would contain nearly identical language, with conforming changes to address circumstances in which a member of a group under Section 13(g)(3) becomes the beneficial owner of additional equity securities of a covered class after the date of the group's formation.

d. Proposed Rules 13d–5(b)(1)(iv) and (b)(2)(iii)

We also are proposing amendments to Rule 13d–5 to carve out from the purview of proposed Rules 13d–5(b)(1)(iii) and (b)(2)(ii) intra-group transfers of equity securities of a covered class. Specifically, proposed

[143] *See* John C. Coffee, Jr. and Darius Palia, *supra* note 19, at 596 and n.173 (explaining that ''norms of reciprocity characterize many areas of commercial life'' and ''[f]or prudential reasons, hedge funds may prefer to share the gains among themselves by using an organizational structure that unites a number of funds into a loosely knit organization (*i.e.,* the 'wolf pack') that may acquire 25% or more of the target'' and noting that ''[a]lthough the lead hedge fund does not fully capture all the gains obtainable in the transaction it leads, it reduces its risk and may receive reciprocal treatment from other hedge funds that later invite it to join it to their 'wolf packs' '').

[144] The term ''market participant'' is used in this release to refer to any investor in or trader of a covered class, as determined in this release. The term has been used in order to account for the foreseeable possibility that a large blockholder may need to consult with persons who are not investors or traders, such as outside counsel, broker dealers, filing agents and others in connection with having to make its initial Schedule 13D filing.

[145] Section 13(d)(6)(B) takes into account all acquisitions that occurred during the preceding twelve months.

[146] The Commission has indicated that the 2% exemption operates on ''a rolling twelve-month basis.'' Filing and Disclosure Requirements Relating to Beneficial Ownership, Release No. 34–17353 (Dec. 4, 1980) [45 FR 81556 at 81557 (Dec. 11, 1980)]. In other words, for an acquisition to be exempt under Section 13(d)(6)(B), ''it must, when taken together with all other acquisitions of beneficial ownership by the same person of securities of the same class during the preceding twelve months, not exceed two percent of the class.'' *Id.*

Rule 13d–5(b)(1)(iv) would provide that a group under Section 13(d)(3) will not be deemed to have acquired beneficial ownership in a covered class if a member of the group becomes the beneficial owner of additional equity securities in such covered class through a sale by, or transfer from, another member of the group. Proposed new Rule 13d–5(b)(2)(iii) would contain nearly identical language, with conforming changes to address circumstances in which a member of a group under Section 13(g)(3) becomes the beneficial owner of additional equity securities in a covered class through a sale by, or transfer from, another member of the group.

e. Proposed Amendment to the Title of Rule 13d–5

To further align Rule 13d–5 with Section 13(d)(1), we also propose to amend the title of the rule to ''Acquisitions of beneficial ownership'' to remove the potential implication that Section 13(d) and Rule 13d–1(a) could only apply if a person made an actual acquisition of securities. Under Section 13(d)(1), a person becomes subject to a reporting obligation ''after acquiring'' beneficial ownership, which determination may or may not include an actual acquisition of securities based on whether a person is a beneficial owner under Rule 13d–3. We also are proposing conforming amendments to Rule 13d–5(a) to replace the references to an ''acqui[sition] of securities'' with references to an ''acqui[sition] of beneficial ownership.''

f. Proposed Redesignation of Current Rule 13d–5(b)(2)

Finally, for the avoidance of doubt or confusion as to the regulatory purpose Rule 13d–5 is intended to serve, and to reinforce its operation as a provision that governs acquisitions of beneficial ownership, we propose to relocate Rule 13d–5(b)(2) to neighboring Rule 13d–6, titled ''Exemption of certain acquisitions,'' and redesignate it as new Rule 13d–6(b). No substantive changes would be made to the text of the rule. That amendment is discussed in more detail in Section II.D below.

Request for Comment

54. Should we amend Rule 13d–5 to add new Rules 13d–5(b)(1)(i) and (b)(2)(i), as proposed? Rather than amending the rule as proposed to affirm that an express or implied agreement is not needed to subject a group to reporting under Section 13(d) or 13(g), should we instead issue a Commission interpretation that reiterates this point?

55. Should we amend Rule 13d–5 to add new Rule 13d–5(b)(1)(ii), as proposed? Does the current regulatory framework sufficiently address such activity? Would the possible imposition of a Schedule 13D filing obligation adequately remediate the behavior we are seeking to address? Are there any changes to proposed Rule 13d–5(b)(1)(ii) that we should consider, such as further clarification to address situations where the non-public information about the Schedule 13D filing is shared by an employee who is not authorized to do so?

56. Should we amend Rule 13d–5 to add new Rules 13d–5(b)(1)(iii) and (b)(2)(ii), as proposed? Alternatively, should additional acquisitions made by group members after the date of group formation under Section 13(d) be exempted, or should additional persons under Section 13(g) be exempted from regulation as a group, and if so, what would be the grounds upon which such exemptions could be granted?

57. Should we amend Rule 13d–5 to add new Rules 13d–5(b)(1)(iv) and (b)(2)(iii), as proposed?

58. Instead of amending Rule 13d–5 as proposed, should we propose a definition of the term ''group'' and, if so, how should the term be defined?

59. Should we propose a rule or amendments to existing rules that would require groups to report exclusively on Schedule 13D, and if so, why should groups not be able to avail themselves of reporting on Schedule 13G in lieu of Schedule 13D as they do today? For example, Rule 13d–1(b)(1)(ii)(K) identifies a group as being among the qualified institutions eligible to report on Schedule 13G in lieu of Schedule 13D provided that every member of the group is a qualified institution. Should this provision be rescinded and other revisions be made to ensure that groups would be ineligible to qualify as QIIs or Passive Investors that report beneficial ownership on Schedule 13G?

60. Have shareholders suffered quantifiable harm as a result of any weakness in the current regulatory framework as applied to groups, and if so, would new rules or amendments beyond what we have already proposed prevent such harm caused by undisclosed group activity from recurring?

61. Is certain group activity going unreported under the current regulatory framework because it does not involve acquiring, holding or disposing of a covered class, and if so, what additional rule proposals or modifications could be made to address such activity?

62. Do instances exist in which shareholders in a covered class were harmed as a result of the tipping arrangements described above, and if so, could such harm be quantified? To the extent any such shareholder harm has occurred, please explain how such harm occurred.

63. Would Rule 13d–5(b)(1)(ii) unduly chill communications between shareholders and market participants, such as investment advisers? If so, what modifications to the proposed rule should we consider? For example, should application of the rule be conditioned on the recipient of the tip intending to coordinate with the tipper or making its purchases in reliance on the non-public information that the tipper provided so as to avoid a scenario in which such recipient is unwittingly deemed a member of a group simply by virtue of the tipper's independent communications or actions?

64. Given that Rule 13d–5(b)(1)(ii) would operate and apply in addition to, and not to the exclusion of, Section 13(d)(3),[147] should the Commission issue guidance about the facts and circumstances under which it would find that two or more persons ''act as a group'' under Section 13(d)(3) in the context of a tipper-tippee relationship or otherwise?

65. Should the scope of proposed Rule 13d–5(b)(1)(ii) be expanded to include the group formation standards under Section 13(g)(3) as well, and if so, why? Would other investors be incentivized to take a position in a covered class upon learning that a Schedule 13G filing was expected to be made by an Exempt Investor? For example, have any individual investors or groups filed a Schedule 13G as an Exempt Investor while also advocating for change without disclosure given the absence of an analogue to Item 4 of Schedule 13D or requirement under Item 10 of Schedule 13G for an Exempt Investor to certify as to its passivity? Similarly, should the scope of proposed Rule 13d–5(b)(1)(ii) be expanded to cover Schedule 13G filings made by a group of QIIs or Passive Investors given that such groups—like Schedule 13D filers—still will have made an acquisition subject to Section 13(d)?

66. For purposes of this release, ''market participant'' means any investor in or trader of a covered class.[148] Should any modifications be made to our interpretation of the term ''market participant''? Alternatively, should we adopt a definition of the term ''market participant'' in Regulation

[147] *See supra* note 142.

[148] *See supra* note 144.

13D–G? If so, should Regulation 13D–G be amended to include a provision dedicated to providing defined terms used throughout the regulation?

D. Proposed Amendments to Rule 13d–6 To Create Certain Exemptions

We are proposing a series of amendments to Rule 13d–6 to reorganize the rule and exempt certain circumstances from resulting in a person being deemed to have acquired beneficial ownership of, or otherwise to beneficially own, equity securities of a covered class for purposes of Sections 13(d) and 13(g). Specifically, we are proposing to amend Rule 13d–6 to:

- Redesignate the current text of Rule 13d–6 as Rule 13d–6(a);
- Redesignate the current text of Rule 13d–5(b)(2) as Rule 13d–6(b);
- Add new paragraph (c) to create an exemption from Sections 13(d)(3) and 13(g)(3) for certain circumstances in which two or more persons take concerted actions with respect to an issuer or a covered class; and
- Add new paragraph (d) to create an exemption from Sections 13(d)(3) and 13(g)(3) for certain circumstances in which two or more persons enter into an agreement setting forth the terms of a derivative security.

These proposed amendments are discussed in further detail below.

1. Background

Congress granted the Commission the authority to issue exemptions from the application of Sections 13(d) and 13(g). The Commission can, under Section 13(d)(6)(D), exempt, by rule, acquisitions ''as not entered into for the purpose of, and not having the effect of, changing or influencing the control of the issuer or otherwise as not comprehended within the purposes of [Section 13(d)].'' Congress similarly granted the Commission authority under Section 13(g)(6) to exempt any person or class of persons from Section 13(g) ''as it deems necessary or appropriate in the public interest or for the protection of investors.'' The Commission exercised this authority when it adopted Rule 13d–6, which exempts certain acquisitions. Currently, it sets forth one exemption from Section 13(d) for the acquisition of securities of an issuer by a person who, prior to such acquisition, was a beneficial owner of more than 5% of the outstanding securities of the same class as those acquired, provided that certain conditions are met.

We recognize that our proposal to amend Rule 13d–5, as discussed above, may raise concerns among investors as to whether their communications and other activities with other investors would constitute the formation of a group. We also recognize the possibility that additional exemptions may be warranted to address situations in which beneficial ownership reporting under Section 13(d) or 13(g) by a group would be unnecessary from an investor protection standpoint or even contrary to the public interest. Specifically, we are aware that activity exists among shareholders, investors, holders of derivatives and other market participants that may, absent an exemption, implicate Sections 13(d)(3) and 13(g)(3). For example, institutional investors or shareholder proponents may wish to communicate and consult with one another regarding an issuer's performance or certain corporate policy matters involving one or more issuers. Subsequently, those investors and proponents may take similar action with respect to the issuer or its securities, such as engaging directly with the issuer's management or coordinating their voting of shares at the issuer's annual meeting with respect to one or more company or shareholder proposals.

The beneficial ownership reporting system is not intended to impede communications among shareholders or between proponents and issuers that are not undertaken with the purpose or effect of changing or influencing control of an issuer. Accordingly, the regulatory purposes of Sections 13(d) and 13(g) would not be served by treating investors and proponents under those circumstances as a single person that ''act[s] as'' a group by virtue of its ''holding'' of a covered class within the meaning of Sections 13(d)(3) and 13(g)(3).

Similarly, investors in an equity-based derivative security may need to, in order to acquire the derivative security, enter into an agreement governing the terms of such instrument with a financial institution that, in the ordinary course of its business, acts as a counterparty to such investors. To offset any risk exposure to that derivative security, including any obligations that may arise at settlement, the financial institution may accumulate the reference equity security in a covered class and hold such reference security for the duration of the agreement. But for the joint actions of the parties in entering into the agreement, that specific acquisition of beneficial ownership in the covered class by the financial institution would not have occurred. As such, entry into such an agreement may implicate Sections 13(d)(3) and (g)(3) because two persons may be viewed as ''act[ing] as'' a group given the financial institution's foreseeable acquisition of a covered class. Assuming that the investor and the financial institution did not enter into the agreement with the purpose or effect of changing or influencing control of the issuer, the regulatory purposes of Sections 13(d) and 13(g) would not be furthered by treating the investor and the financial institution as members of a group under Sections 13(d)(3) and 13(g)(3) solely by virtue of their entrance—for strictly commercial purposes and not for purposes of acquiring, holding or disposing of a covered class—into that agreement.

2. Proposed Amendments

We are proposing amendments to Rule 13d–6 to exempt certain actions taken by two or more persons from the scope of Sections 13(d)(3) and 13(g)(3) if those actions do not have the purpose or effect of changing or influencing the control of an issuer and thus are not within the purpose of Section 13(d).

As an initial matter, we are proposing to redesignate current Rule 13d–6 as Rule 13d–6(a) to allow for new exemptions to be added as subsequent paragraphs of Rule 13d–6. The text of current Rule 13d–6 would not be changed in any way.

In light of our proposed amendments to Rule 13d–5, we also are proposing to add new paragraph (c) to Rule 13d–6 to avoid chilling communications among shareholders or impeding shareholders' engagement with issuers where those activities are undertaken without the purpose or effect of changing or influencing control of the issuer (and are not made in connection with or as a participant in any transaction having such purpose or effect).[149] Proposed

[149] The Commission has previously articulated policy concerns similar to those that underlie this proposed exemption. For example, in a rulemaking effort in the late 1990s, the Commission took steps to ensure that ''the Section 13(d) reporting obligations [do not] restrict a shareholder's ability to engage in proxy related activities,'' including their ''ability to use the proxy rule exemptions that were adopted in 1992 to facilitate communications among shareholders.'' Amendments to Beneficial Ownership Reporting Requirements, Release No. 34–39538 (Jan. 12, 1998) [63 FR 2854 at 2858 (Jan. 16, 1998)]. In adopting those proxy rule exemptions, the Commission noted that ''[t]he purposes of the proxy rules themselves are better served by promoting free discussion, debate and learning among shareholders and interested persons.'' Regulation of Communications Among Shareholders, Release No. 34–31326 (Oct. 16, 1992) [57 FR 48276 at 48279 (Oct. 22, 1992)]. Finally, as discussed *supra* note 47, our proposal, if adopted, would not change the existing standards for determining whether a person is engaging in an activity that would have the purpose or effect of changing or influencing the control of the issuer. For example, our proposal would not change the Commission's existing view that most proxy solicitations in support of a proposal specifically calling for a change of control of an issuer (*e.g.,* a

Rule 13d–6(c) would provide that two or more persons will not be deemed to have acquired beneficial ownership of, or otherwise beneficially own, an issuer's equity securities as a group solely because of their concerted actions related to an issuer or its equity securities, including engagement with one another or the issuer, provided they meet certain conditions. Such interactions, depending upon the level of coordination and degree to which the persons advocate in furtherance of a common purpose or goal, could be found to satisfy the ''act as'' a group standard under Section 13(d)(3) or 13(g)(3) for the purpose of ''holding'' a covered class. To help ensure that the exemption is available only where such persons independently determine to take concerted actions, the proposed exemption would be available only if such persons are not directly or indirectly obligated to take such actions (*e.g.,* pursuant to the terms of a cooperation agreement or joint voting agreement).

In addition, we are proposing to add new paragraph (d) to Rule 13d–6, in light of proposed new Rule 13d–3(e), to avoid impediments to certain financial institutions' ability to conduct their business in the ordinary course. Proposed Rule 13d–6(d) would provide that two or more persons will not be deemed to have formed a group under Section 13(d)(3) or 13(g)(3) solely by virtue of their entrance into an agreement governing the terms of a derivative security. This exemption would only be available if the agreement is a bona fide purchase and sale agreement entered into in the ordinary course of business. Further, the exemption would only be available if such persons do not enter into the agreement with the purpose or effect of changing or influencing control of the issuer, or in connection with or as a participant in any transaction having such purpose or effect.

Finally, as noted above, we are proposing to redesignate current Rule 13d–5(b)(2) as new Rule 13d–6(b). Current Rule 13d–5(b)(2) was first adopted in 1978 as a means to effectively exempt acquisitions from being attributed to a group within the meaning of Section 13(d)(3) solely by virtue of concerted actions by QIIs relating to the purchase of equity securities in a private offering.[150] As such, our proposed placement of this provision, which operates to exempt an actual purchase transaction by a group from otherwise being treated as an acquisition under Rule 13d–5(b)(1), into Rule 13d–6, should add to administrative convenience as the provision would appear alongside another acquisition transaction already so exempted.

Request for Comment

67. Should we amend Rule 13d–6 as proposed?

68. Should we add new Rule 13d–6(c), as proposed, to exempt certain concerted actions by two or more persons from serving as the basis for group formation? Are the proposed conditions for reliance on this exemption appropriate? For example, is there another way that we can ensure that persons seeking to rely upon the exemption would independently reach decisions that result in concerted action being taken other than by requiring that such persons not be directly or indirectly obligated to take concerted actions, as proposed in Rule 13d–6(c)(2)? Alternatively, if we adopt proposed Rule 13d–6(c), should we omit proposed paragraph (c)(2) and, therefore, only condition availability of the exemption on the requirement set forth in proposed paragraph (c)(1)?

69. Is the proposed Rule 13d–6(c) exemption broad enough to exempt activity by shareholders who coordinate to make non-binding proposals under 17 CFR 240.14a–8 or otherwise, or is an express exemption needed for shareholders who act together in introducing such proposals?

70. Should we add new Rule 13d–6(d), as proposed, to exempt the entrance by two or more persons into an agreement governing the terms of a derivative security from serving as the basis for group formation? Are the proposed conditions for reliance on this exemption appropriate? For example, does the condition that the agreement must be a bona fide purchase and sale agreement entered into in the ordinary course of business mitigate the concerns underlying Sections 13(d)(3) and 13(g)(3)?

71. Will the proposed new exemptions in Rule 13d–6 facilitate any actions that would be contrary to the intent of Sections 13(d) and 13(g)?

72. Congress broadly determined that when two or more persons ''act as'' a group for the purpose of acquiring, holding or disposing of a covered class, the persons would be treated as a single person for purposes of reporting beneficial ownership. Are there actions taken among shareholders other than the ones that we have proposed to exempt that the Commission should consider exempting?

73. To the extent that a group would qualify to report on Schedule 13G pursuant to Rule 13d–1(b), (c), or (d), do the costs of such a group complying with the beneficial ownership reporting requirements outweigh the benefits? For example, how would a Schedule 13G filed by a group contribute to price discovery? Should the Commission wholly exempt any group that qualifies to file a Schedule 13G from having to report at all, and if so, under what other conditions, if any, should such an exemption be available?

74. Should we redesignate current Rule 13d–5(b)(2) as new Rule 13d–6(b), as proposed? Would the relocation of that exemption, without altering the substance of that exemption, alter its availability or use or have any other collateral effects?

E. Proposed Amendments to Schedule 13D To Clarify Disclosure Requirements Regarding Derivative Securities

We are proposing to amend Schedule 13D, codified at Rule 13d–101, to clarify the disclosure requirements with respect to derivative securities held by a person reporting on that schedule. Specifically, we are proposing to amend Item 6 to Schedule 13D to remove any implication that a person is not required to disclose interests in all derivative securities that use a covered class as a reference security.

1. Background

In enacting Sections 13(d)(1)(A) through (E),[151] Congress specified certain information that beneficial owners must report once they incur a filing obligation. Under Section 13(d)(1)(E), Congress provided that a beneficial owner must report ''information as to any contracts, arrangements, or understandings with any person with respect to any securities of the issuer, including [the] transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guaranties of loans,

contested election of directors, a sale of the issuer or the restructuring of the issuer) would clearly have the purpose and effect of changing or influencing control. *See* Amendments to Beneficial Ownership Reporting Requirements, Release No. 34–39538 (Jan. 12, 1998) [63 FR 2854 at 2859 (Jan. 16, 1998)]. See also *supra* note 99 for the definition of ''control'' under Rule 12b–2 of Regulation 12B.

[150] Current Rule 13d–5(b), by its terms, acknowledges that the joint, concerted action by institutional investors specified in Rule 13d–1(b) to purchase an issuer's equity securities pursuant to an agreement among QIIs would constitute an acquisition by a group subject to Section 13(d) absent a regulatory accommodation. The Commission therefore adopted the equivalent of an exemption by codifying its view within Rule 13d–5(b)(2) that the ''group shall be deemed not to have acquired any equity securities beneficially owned by the other members of the group.''

[151] 15 U.S.C. 78m(d)(1).

guaranties against loss or guaranties of profits, division of losses or profits, or the giving or with holding of proxies . . . .'' Consistent with the mandate of Section 13(d)(1)(E), this baseline disclosure requirement has existed within Schedule 13D since 1968.

Schedule 13D sets forth the information that beneficial owners reporting pursuant to Rule 13d–1(a) or 13d–2(a) must disclose. In addition to the information specified by Sections 13(d)(1)(A) through (E), Congress also authorized the Commission to require disclosure of ''such additional information'' it prescribes as ''necessary or appropriate in the public interest or for the protection of investors.''

Item 6 of Schedule 13D requires beneficial owners to ''[d]escribe any contracts, arrangements, understandings or relationships (legal or otherwise) among the persons named in Item 2 [of Schedule 13D] and between such persons and any person with respect to any securities of the issuer'' and sets forth a non-exclusive list of examples of such contracts, arrangements, understandings or relationships.[152] Because cash-settled derivative securities were not expressly included among these examples, questions may arise as to whether beneficial owners should report contracts, arrangements, understandings or relationships ''with respect to'' an issuer's securities given that (1) only a purely economic, but no legal, interest is held through such derivatives in any class of an issuer's securities and (2) the issuer's securities are only used as a reference security.[153] Further, the current requirement could be interpreted as excluding the use of cash-settled options not offered or sold by the issuer, or other derivatives not originating with the issuer, including other cash-settled derivatives such as security-based swaps.

2. Proposed Amendments

We are proposing to amend to Item 6 of Schedule 13D to clarify that a person is required to disclose interests in all derivative securities that use the issuer's equity security as a reference security. The proposed amendment would expressly state that such derivative contracts, arrangements, understandings and relationships with respect to an issuer's securities, including cash-settled security-based swaps and other derivatives which are settled exclusively in cash, would need to be disclosed under Item 6 of Schedule 13D in order to comply with Rules 13d–1(a) and 13d–101.

The proposed amendment also would clarify that the derivative security need not have originated with the issuer or otherwise be part of its capital structure in order for a disclosure obligation to arise. At present, the formulation ''with respect to securities of the issuer'' in Item 6 might be read to suggest that contracts, arrangements, understandings or relationships that only create economic exposure to the issuer's equity securities or are otherwise considered synthetic could be excluded. Accordingly, to remove any ambiguity as to the scope of the required disclosures, we propose to revise Item 6 to expressly state that the use of derivative instruments, including cash-settled security-based swaps and other derivatives settled exclusively in cash, which use the issuer's securities as a reference security are included among the types of contracts, arrangements, understandings and relationships which must be disclosed. To further minimize any potential ambiguity regarding what interests need to be disclosed, we also propose to eliminate the ''including but not limited to'' regulatory text that precedes the itemization of the instruments or arrangements covered.

Request for Comment

75. Should we amend Item 6 of Schedule 13D as proposed?

76. Are there any reasons not to expressly require disclosure of contracts, arrangements, understandings or relationships involving cash-settled derivative securities, including security-based swaps, under Item 6? To the extent that any such derivative instruments should not be subject to disclosure, why would excluding such instruments be appropriate given the statutory mandate in Section 13(d)(1)(E)?

77. Do any other modifications need to be made to Item 6 in order to clarify the types of instruments or arrangements that are required to be disclosed, and, if so, what clarifications should we make and why? For example, should we include a general ''catch-all'' provision that requires disclosure of any contracts, arrangements, understandings or relationships substantially similar to the ones listed?

78. Should the ''including but not limited to language'' under Item 6 be eliminated, as proposed? Would this serve to remove ambiguity about what is required by the Item? Should the language be retained, and if so, why? Do any interests in a class of an issuer's securities exist that derive from sources not considered to be contracts, arrangements, understandings or relationships that should be subject to disclosure under Item 6, and if so, what are those sources? Conversely, are there reasons to exclude any particular instrument or class of instrument from Item 6 of Schedule 13D?

F. Proposed Structured Data Requirement for Schedules 13D and 13G

We are proposing to require that beneficial ownership reports on Schedules 13D and 13G be filed using a structured, machine-readable data language. In particular, we are proposing to require that Schedules 13D and 13G be filed in part using an XML-based language specific to Schedules 13D and 13G (''13D/G-specific XML'').[154] For both Schedules, all disclosures, including quantitative disclosures, textual narratives, and identification checkboxes, would be structured in 13D/G-specific XML under the proposal, with the exception of the exhibits to the Schedules, which would remain unstructured.

1. Background

Currently, the EDGAR Filer Manual requires Schedules 13D and 13G to be filed electronically on the Commission's EDGAR system in HTML or ASCII.[155] HTML and ASCII are both unstructured data languages; thus, the disclosures reported on Schedules 13D and 13G are

[152] 17 CFR 240.13d–101. This rule codifies Schedule 13D, and Instruction A thereto provides, in relevant part, that a filer must ''[a]nswer every item. If an item is inapplicable or the answer is in the negative, so state.'' *Id.* To the extent the initial disclosure provided indicates that the item was inapplicable or that there were no contracts, arrangements, understandings or relationships to report, the filer remains obligated under Section 13(d)(2) and corresponding Rule 13d–2(a) to report material changes to such a response.

[153] As used in this release and the proposed revision to Item 6 of Schedule 13D, the term ''reference security'' means the class of securities into which a derivative security is convertible, exchangeable or exercisable for, or, alternatively, if not convertible into or exchangeable or exercisable for, the class of securities from which the derivative security has economic exposure and has its value determined according to the terms of the derivative's governing instrument.

[154] This would be consistent with the approach used for other XML-based structured data languages created by the Commission for certain EDGAR Forms, including the data languages used for reports on each of Form 13F, Form D and the Section 16 beneficial ownership reports (Forms 3, 4 and 5).

[155] *See supra* Section II.A.6.a; EDGAR Filer Manual (Volume II) version 59 (Sept. 2021) (''EDGAR Filer Manual''), at 5–1 (requiring EDGAR filers generally to use ASCII or HTML for their document submissions, subject to certain exceptions). Schedule 13D and 13G filers are required, by rule, to comply with the requirements of the EDGAR Filer Manual. *See* 17 CFR 232.301 (''Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets forth the technical formatting requirements for electronic submissions.'').

not currently machine-readable.[156] As a result, information disclosed on Schedules 13D and 13G is more difficult for investors and markets to access, compile and analyze as compared to information that is submitted in a machine-readable data language.

While the majority of EDGAR filings are submitted in HTML or ASCII, certain EDGAR filings are submitted using machine-readable, XML-based languages that are each specific to the particular EDGAR document type being submitted.[157] This includes filings that, like Schedules 13D and 13G, are submitted by individuals and entities other than the registrant.[158] For these EDGAR XML filings, filers are typically provided the option to either submit the filing directly to EDGAR in XML, or manually input their disclosures in an online web application and/or web form developed by the Commission that converts the completed form into an EDGAR-specific XML document.

2. Proposed Amendments

We are proposing to replace the current HTML or ASCII requirement for Schedules 13D and 13G in the EDGAR Filer Manual with a structured data language requirement—specifically, with a requirement to use Schedule 13D/G-specific XML—for the disclosures reported on those Schedules. As is the case with other EDGAR Form-specific XML filings, reporting persons would be able to, at their option, submit filings directly to EDGAR in Schedule 13D/G-specific XML or use a web-based reporting application developed by the Commission that would generate the Schedule in 13D/G-specific XML.[159] We believe that a structured data requirement for the disclosures reported on Schedules 13D and 13G would greatly improve the accessibility and usability of the disclosures, allowing investors to access, aggregate and analyze the reported information in a much more timely and efficient manner.[160]

Request for Comment

79. Should we replace the current HTML or ASCII requirement for Schedules 13D and 13G with a structured data requirement for the disclosures reported on those Schedules, as proposed?

80. Rather than adding a structured data requirement for all disclosures (other than exhibits) reported on Schedules 13D and 13G, should we narrow the requirement to cover only a subset of the disclosures, such as the quantitative disclosures?

81. Should we require the disclosures on Schedules 13D and 13G to be submitted using a different structured data language than 13D/G-specific XML? Why or why not? If another structured data language would be more appropriate, please identify which one, and explain why.

82. Would this proposed requirement yield reported data that is more useful to investors, compared with maintaining the current HTML or ASCII requirement for Schedules 13D and 13G, or requiring Schedules 13D and 13G to be filed in a structured data language other than a 13D/G-specific XML?

G. Implications of the Proposed Amendments on Section 16

Section 16 of the Exchange Act was designed both to provide the public with information about securities transactions and holdings of every person who is the beneficial owner of more than 10% of a class of equity security registered under Exchange Act Section 12[161] (''10% holder''), and each officer and director (collectively, ''insiders'') of the issuer of such a security, and to deter such insiders from profiting from short-term trading in issuer securities while in possession of material, non-public information. Upon becoming an insider, or upon Section 12 registration of the class of equity security, Section 16(a)[162] requires an insider to file an initial report with the Commission disclosing his or her beneficial ownership of all equity securities of the issuer.[163] Section 16(a) also requires insiders to report subsequent changes in such ownership.[164] To prevent misuse of inside information by insiders, Section 16(b)[165] provides the issuer (or shareholders suing on the issuer's behalf) a private right of action to recover any profit realized by an insider from any purchase and sale (or sale and purchase) of any equity security of the issuer within a period of less than six months.[166]

As applied to 10% holders, Congress intended Section 16 to reach persons presumed to have access to information because they can influence or control the issuer as a result of their equity ownership.[167] Because Section 13(d) addresses these types of relationships, the Commission adopted Rule 16a–1(a)(1) to define 10% holders under Section 16 as persons deemed 10% beneficial owners under Section 13(d) and the rules thereunder.[168] The Section 13(d) analysis, such as counting beneficial ownership of the equity securities underlying derivative securities exercisable or convertible within 60 days,[169] is therefore imported into the 10% holder determination for Section 16 purposes. The application of Rule 16a–1(a)(1) is straightforward; if a person is a 10% beneficial owner as determined pursuant to Section 13(d) and the rules thereunder, the person is deemed a 10% holder under Section 16.[170]

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[156] The term ''machine-readable'' is defined in 44 U.S.C. 3502 as ''data in a format that can be easily processed by a computer without human intervention while ensuring no semantic meaning is lost.''

[157] *See* Current and Draft Technical Specifications, *available at https://www.sec.gov/edgar/filer-information/current-edgar-technical-specifications.*

[158] Examples include the Section 16 beneficial ownership reports (Form 3, 4 and 5) and Form 13F. *See id.*

[159] In addition, the Commission would develop electronic ''style sheets'' that, when applied to the reported XML data, would represent that data in human-readable form on EDGAR.

[160] Section 13(g)(5) of the Exchange Act provides, in part, that ''the Commission shall take such steps as it deems necessary or appropriate in the public interest or for the protection of investors . . . to tabulate and promptly make available the information contained in any report filed pursuant to this subsection in a manner which will, in the view of the Commission, maximize the usefulness of the information to . . . the public.'' 15 U.S.C. 78m(g)(5). The requirements proposed in this section would be consistent with this mandate. Although this statutory language applies only to beneficial ownership reports filed pursuant to Section 13(g)—*i.e.,* a Schedule 13G filed by an Exempt Investor—we believe these public benefits would be furthered by applying the requirements proposed in this section to all Schedule 13D and 13G filers.

[161] 15 U.S.C. 78l.

[162] 15 U.S.C. 78p(a).

[163] Insiders file these reports on Form 3. 17 CFR 249.103.

[164] Insiders file transaction reports on Forms 4 and 5. 17 CFR 249.104 and 249.105.

[165] 15 U.S.C. 78p(b).

[166] In addition, insiders are subject to the short sale prohibitions of Section 16(c).

[167] *See* S. Rep. No. 1455, at 55, 68 (1934); *see also* S. Rep. No. 792, at 20–1 (1934); S. Rep. No. 379, at 21–2 (1963).

[168] Ownership Reports and Trading By Officers, Directors and Principal Security Holders, Release No. 34–28869 (Feb. 21, 1991) [56 FR 7242 (Feb. 21, 1991)] (stating that as applied to 10% holders, Section 16 ''is intended to reach those persons who can be presumed to have access to inside information because they can influence or control the issuer as a result of their equity ownership'' and noting that Section 13(d) of the Exchange Act ''specifically addresses such relationships'').

[169] 17 CFR 240.13d–3(d).

[170] For example, the Commission applied an analysis derived from Rule 13d–3(d)(1) in publishing its views regarding when equity securities underlying a security future that requires physical settlement should be counted for purposes of determining whether the purchaser of the security future is subject to Section 16 as a 10% holder by operation of Rule 16a–1(a)(1). Commission Guidance on the Application of Certain Provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, and Rules thereunder to Trading in Security Futures Products, Release No. 34–46101 (June 21, 2002) [67 FR 43234 at Q 7 (June 27, 2002)].

Thus, the proposed amendments to Rules 13d–3, 13d–5 and 13d–6 would directly impact the analysis under Rule 16a–1(a)(1) as to whether a person is a 10% holder. For example, because proposed Rule 13d–3(e) would provide that holders of cash-settled derivative securities in specified circumstances will be ''deemed'' beneficial owners of the reference securities in a covered class for purposes of Sections 13(d) and (g), those holders also would be deemed beneficial owners of such reference securities for purposes of determining whether that person is a 10% holder under Section 16. By expanding the meaning of ''beneficial owner'' under Rule 16a–1(a)(1) to include persons who hold cash-settled derivatives in specified circumstances, proposed Rule 13d–3(e) could increase the number of 10% holders and, in turn, the number of persons subject to Section 16(a)'s disclosure obligations,[171] Section 16(b)'s short-swing profit liability [172] and Section 16(c)'s short sale prohibitions.[173] Similarly, two or more persons may be deemed to have formed a group that beneficially owns more than 10% of a covered class as a result of the application of our proposed amendments to Rule 13d–5, particularly with respect to the tipper-tippee relationships that are the subject of proposed Rule 13d–5(b)(1)(ii). Under this circumstance, each group member would be considered a 10% holder subject to Sections 16(a), (b), and (c).[174] By contrast, the proposed amendments to Rule 13d–6 would create new exemptions under which two or more persons will not be deemed to have acquired beneficial ownership of an issuer's equity securities as a group. To the extent beneficial owners qualify for and rely on the proposed exemptions in Rule 13d–6, those exemptions may offset any potential increase in the number of persons who become 10% holders as a result of our proposed amendments to Rule 13d–5.

Given that Rule 16a–1(a)(1) has the same purpose as Regulation 13D–G—*i.e.,* to identify persons who can influence or control the issuer as the result of equity ownership—it appears appropriate to continue to apply the standards of Regulation 13D–G, as proposed to be amended, to identify 10% holders subject to Section 16. Accordingly, we believe it is not necessary to propose any amendments to Rule 16a–1(a)(1) in this release, but solicit public comment on the Section 16 implications resulting from our proposed amendments to Rules 13d–3, 13d–5, and 13d–6.

Request for Comment

83. Should Rule 16a–1(a)(1) import the beneficial ownership determinations of proposed Rule 13d–3(e) to determine who is a 10% holder for purposes of Section 16?

84. Conversely, should we exclude holdings of cash-settled derivative securities with the purpose or effect of changing or influencing control of the issuer that would be included for the purposes of proposed Rule 13d–3(e) from 10% holder identification for purposes of Section 16? If so, should all types of such derivative holdings be excluded or only certain types of instruments? For example, under proposed Rule 13d–3(e), only long positions in such securities would be counted, and short positions would not be netted against long positions or otherwise taken into account. Similarly, as proposed, if a derivative security does not have a fixed delta (*i.e.,* if the delta is variable and changes over the term of the derivative security), then a person who holds such derivative security would calculate the delta on a daily basis based on the closing market price of the reference equity security on that day for purposes of determining whether such person is a 10% holder. Are these criteria appropriate to apply to 10% holder determinations under Section 16?

85. Would including ownership of cash-settled derivative securities held with the purpose or effect of changing or influencing the control of the issuer for purposes of 10% holder determinations be consistent with the purposes of Section 16? Should inclusion of these securities result in persons becoming 10% holders subject to Section 16(b)'s short-swing profit liability and Section 16(c)'s short sale prohibitions, as well as Section 16(a)'s disclosure obligations? If not, please explain why.

86. Would the inclusion of such securities for purposes of Section 16 10% holder determinations cause practical issues for any type of business? For example, would this potentially impair the capability of financial institutions to execute transactions using derivative securities, including as counterparties to clients, in the ordinary course of their business? If so, please explain why.

87. Are there reasons why a holder of the cash-settled derivative securities covered by proposed Rule 13d–3(e) should be deemed the beneficial owner of the reference securities in a covered class for purposes of Sections 13(d) and (g) but not the beneficial owner of those reference securities for purposes of determining whether that person is a 10% holder under Section 16? If so, should we amend Rule 16a–1(a)(1) to avoid the application of proposed Rule 13d–3(e) to the determination as to whether a person is a 10% holder under Section 16? For example, should we amend Rule 16a–1(a)(1) such that it defines 10% holders under Section 16 as persons deemed 10% beneficial owners under Section 13(d) and the rules thereunder other than Rule 13d–3(e)?

88. Could the requirement in proposed Note 2 to Rule 13d–3(e)(2) (*i.e.,* that the holder of a derivative security without a fixed delta calculate the delta on a daily basis) result in situations in which a person's beneficial ownership does not exceed 10% of a covered class at the time that person acquires a derivative security, but then exceeds 10% at a later time solely by virtue of the fact that the delta of the derivative security changed (*i.e.,* not as a result of any further acquisitions)? If so, would it be appropriate to subject that person to the requirements of Section 16 under such circumstances?

89. Should Rule 16a–1(a)(1) import the group formation and beneficial ownership acquisition standards of Rule 13d–5, as altered by our proposed amendments, for purposes of determining who is a 10% holder for purposes of Section 16?

90. Should Rule 16a–1(a)(1) import the acquisition exemptions set forth in Rule 13d–6, as altered by our proposed amendments, for purposes of determining who is a 10% holder for purposes of Section 16?

91. Would importing the proposed amendments to Rules 13d–5 and 13d–6, as would be the case under Rule 16a–1(a)(1), be inconsistent with the purposes of Section 16? If so, please explain.

III. Economic Analysis

A. Introduction

Section 13(d) was enacted in 1968 with the intent to alert the marketplace to rapid accumulations of equity securities which might represent a shift

[171] *See supra* notes 163–164 and accompanying text.

[172] *See supra* note 165 and accompanying text.

[173] *See supra* note 166.

[174] Ownership Reports and Trading By Officers, Directors and Principal Security Holders, Release No. 34–28869 (Feb. 21, 1991) [56 FR 7242 at n.54 (Feb. 21, 1991)] (noting that ''[i]n contrast to Section 13(d), which requires a group filing, the group itself would not be a separate person for Section 16 purposes'' and that, instead, ''for purposes of determining status as a ten percent holder under Section 16, the securities beneficially owned by the group must be included in the calculation by each individual member of the group'').

in corporate control.[175] Together with Regulation 13D–G,[176] these regulatory provisions have existed for more than 50 years. As discussed above, technological advances since 1968, such as the ability to submit filings electronically through the Commission's EDGAR system and the use of modern information technology in today's financial markets, have reduced the time needed to prepare and file Schedules 13D and 13G.[177] Financial product innovation over the past half-century, such as the use of cash-settled derivative securities and the advent of electronic trading, have outpaced the reach of the regulation when first adopted.[178] These developments can provide large investors with opportunities to acquire substantial stakes in companies that exceed the Section 13(d) and (g) reporting threshold that may not have existed previously.[179] In addition, the legal landscape has evolved since the passage of the Williams Act. Hostile tender offers, once a prominent hallmark of the takeover wave in the 1980s, have become comparatively rare since the development and widespread adoption of the ''poison pill'' shareholder rights plan in the 1980s as an anti-takeover device.[180] Today's market for corporate control features activist investors, particularly activist hedge funds, who seek to influence governance through accumulation of strict minority equity stakes instead of full control.[181] As a result, less share accumulation is needed for large investors to exert influence. To modernize the beneficial ownership reporting requirements and improve their operation and efficacy, and to provide investors and market participants with more timely disclosure of information related to corporate control, we are proposing amendments to Regulation 13D–G and related technical changes to Regulation S–T. Specifically, we are proposing to (1) revise the current deadlines for Schedule 13D and Schedule 13G filings; (2) amend Rule 13d–3 to deem holders of certain cash-settled derivative securities as beneficial owners of the reference covered class; (3) align the text of Rule 13d–5, as applicable to two or more persons who act as a group, with the statutory language in Sections 13(d)(3) and (g)(3) of the Exchange Act; and (4) set forth the circumstances under which two or more persons may communicate and consult with one another and engage with an issuer without concern that they will be subject to regulation as a group with respect to the issuer's equity securities. We also are proposing certain related technical changes to Regulation S–T in connection with these proposed amendments and requirements that Schedules 13D and 13G be filed using a structured, machine-readable data language.

Overall, we believe the proposed amendments would benefit investors and market participants by providing more timely information relating to significant stockholders as well as potential changes in corporate control, facilitating investor decision-making and reducing information asymmetry in the market. We also recognize that these amendments could increase costs for investors and issuers. For example, the amendments could increase costs for blockholders seeking to influence or control an issuer, and therefore potentially inhibit shareholder activism and the improvement of corporate efficiency.

We are mindful of the costs and benefits of the proposed amendments. The discussion below discusses in detail the potential economic effects of the proposed amendments, including the likely benefits and costs, as well as the likely effects on efficiency, competition and capital formation.[182] At the outset, we note that, where possible, we have attempted to quantify the benefits, costs and effects on efficiency, competition and capital formation expected to result from the proposed amendments. However, we are unable to quantify all potential economic effects because we lack information necessary to provide reasonable estimates for those effects. For example, the Commission is unable to reasonably quantify the potential harm to investors as a result of mispricing under the current rules, or the reduction in trading costs due to improvements to liquidity or capital formation that may arise from more efficient pricing under the proposed amendments. We also are unable to quantify, with precision, the increased costs for blockholders to initiate corporate change as a result of the shortened Schedule 13D filing deadlines and, therefore, the reduction of the costs and benefits the presence of such blockholders bring. To estimate such costs, we would need to know, for example, how many potential blockholders would reduce their share accumulation prior to disclosure after the proposed rule change, and the amount of any such reduction. The ability for blockholders to achieve their target accumulation level prior to disclosure depends on such target level, the liquidity of the targeted covered class, their acquisition plans and their ability to adapt the plans. Because we do not have all the inputs for these variables, we cannot provide a reasonable estimate of the effects of the proposed amendments. Where we are unable to quantify the economic effects of the proposed amendments, we provide a qualitative assessment of the potential effects and encourage commenters to provide data and information that would help quantify

[175] *See* H.R. Rep. No. 90–1711 (1968), *supra* note 24; *see also supra* note 95.

[176] The Commission adopted Regulation 13D, the predecessor to Regulation 13D–G, in 1968. *See* 33 FR 11015 (Aug. 2, 1968), *supra* note 64.

[177] *See supra* Section II.A.1.

[178] *See supra* Section II.B.

[179] We note that while the reporting obligations under Exchange Act Section 16 and the Hart-Scott-Rodino Antitrust Improvements Act of 1976 could reduce incentives for large shareholders to accumulate substantial stakes that exceed the Section 13(d) and (g) reporting threshold, they do not eliminate those incentives or the need for more timely beneficial ownership reporting, as proposed. *See infra* Section III.B.1.

[180] *See* Kahan and Rock (2019), *infra* note 260 at 922–23 (''In effect, the poison pill moved the decision on the success of a hostile bid from shareholders voting with their feet (by tendering their shares in a tender offer) to shareholders voting by ballot (by replacing a majority of the board). . . . To get a rough sense of the current prevalence of toeholds, we collected data from Thompson Reuters on proposed takeovers that were classified as hostile. There were twenty-four such proposals between 2010 and 2015.''); *see also supra* note 22.

[181] *See* Brav, Jiang and Li (2021), *infra* note 215 (noting that ''[a]ctivist hedge funds also differ from corporate raiders that operated in the 1980s, as they tend to accumulate strict minority equity stakes and do not seek direct control,'' and ''[a]ctivists are both outsiders and insiders, in that they do not seek full control but operate by influencing control''). We also note that today's market for corporate control has seen an increasing use of low-threshold poison pills (threshold of 10%–15%) along with evolving governance practice. Legal scholars have warned that too restrictive pills could negatively affect activist investors' profits and incentives and thereby activism. *See* Kahan and Rock (2019), *infra* note 260 (recommending that ''[w]hether pills with a threshold of 10% or 15% (low-threshold pills) should be permitted against activists [should] depend[ ] on the context,'' and ''pills with a threshold of less than 10% and pills with a 'wolf-pack' trigger [should be regarded as] presumptively invalid'' because ''[s]uch pills are not a reasonable response to any cognizable threat and impose excessive restrictions on the ability of an activist to conduct a credible contest and communicate with other shareholders''); *see also infra* Section III.C.1.b.i.

[182] Section 3(f) of the Exchange Act [15 U.S.C. 78c(f)] requires the Commission, when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. Further, Section 23(a)(2) of the Exchange Act [15 U.S.C. 78w(a)(2)] requires the Commission, when making rules under the Exchange Act, to consider the impact that the rules would have on competition and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the Exchange Act.

the benefits, costs and potential impacts of the proposed amendments on efficiency, competition and capital formation.

B. Economic Baseline

1. Current Regulatory Framework

To understand the effects of the proposed amendments, we first compare them to the current regulatory framework.

a. Filing Deadlines

Section 13(d)(1) and Rule 13d–1(a) together require a person who directly or indirectly acquires ''beneficial ownership'' of more than 5% of a covered class to file a Schedule 13D within 10 days of the acquisition that exceeds 5%.[183] For investors who are eligible to file a Schedule 13G, the filing deadlines for the initial Schedule 13G are 45 days after the end of calendar year for QIIs and Exempt Investors if they beneficially own more than 5% of a covered class as of the last day of the calendar year, and within 10 days of acquiring beneficial ownership of more than 5% of a covered class for Passive Investors, under Rules 13d–1(b), (d), and (c), respectively.[184] Rules 13d–1(e), (f), and (g) set forth the initial Schedule 13D filing obligations for investors who are no longer eligible to file Schedule 13G.[185]

Sections 13(d)(2) and 13(g)(2), together with Rules 13d–2(a), (b), (c), and (d), set forth amendment obligations related to original filings. Rule 13d–2(a) provides that if any material change occurs to the facts reported in the initial Schedule 13D filing, an amendment disclosing that change shall be filed with the Commission ''promptly.'' [186] Rule 13d–2(b) requires that for all persons who report beneficial ownership on Schedule 13G, an amendment shall be filed ''within forty-five days after the end of each calendar year if, as of the end of the calendar year, there are any changes in the information reported in the previous filing on that Schedule [13G].'' [187] In addition, Rule 13d–2(c) requires QIIs to file an amendment to their Schedule 13G within 10 days after the end of the first month in which their beneficial ownership exceeds 10% of a covered class, or increases or decreases by more than 5% of the covered class, once across the 10% threshold.[188] For Passive Investors, current Rule 13d–2(d) requires that they ''promptly'' file an amendment to their Schedule 13G upon acquiring greater than 10% of a covered class, or if, once across the 10% threshold, they increase or decrease their beneficial ownership by more than 5% of the covered class.[189]

In addition to Sections 13(d) and (g), Exchange Act Section 16 provides the public with information about the securities transactions and holdings of an insider of an issuer, including 10% holders.[190] Rule 16a–1(a)(1) defines 10% holders under Section 16 as persons deemed 10% beneficial owners under Section 13(d) and the rules thereunder.[191] Within 10 days of becoming an insider (including within 10 days of becoming a 10% holder), or upon registration of the class of equity security under Section 12, Section 16(a) requires an insider to file an initial report (Form 3) with the Commission disclosing his or her beneficial ownership of all equity securities of the issuer.[192] Section 16(a) also requires insiders (including 10% holders) to report subsequent changes in such ownership by the end of the second business day following the day the transaction was executed (Form 4).[193] These filing requirements are not necessarily duplicative with the Schedule 13D and 13G filing requirements given that, among other things, they only begin to apply to certain beneficial owners once the 10% threshold has been crossed and may require materially different disclosures, such as those relating to pecuniary interests. The reporting obligation under Section 16 could reduce incentives for large shareholders to accumulate stakes exceeding 10%; however, it should not eliminate such incentives, the extent of which would depend on the objectives of the blockholders.

Lastly, certain acquisitions of ownership stakes are reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (''HSR'') [194] via the Notification and Report Form.[195] Instead of requiring public disclosure after acquiring beneficial ownership of a certain percentage of the covered class, HSR requires notification to the Federal Trade Commission and the Department of Justice prior to acquisition of any voting securities or assets if the acquisition will cause value of the acquirer's holdings to exceed certain dollar thresholds (*i.e.,* if the value of equity or assets to be acquired exceeds $368 million, or if it is between $92 million and $368 million and meets some additional criteria).[196] Because the dollar thresholds are not tied to the size of the target company, the category of persons required to report under Sections 13(d) and (g) would not necessarily be identical to those required to give prior notice under HSR. Also, unlike Section 13(d) and (g) reporting, the filing of the Notification and Report Form and the information in it are not publicly disclosed, except in some special circumstances.[197] Similar to Section 16 reporting obligations, reporting obligations under HSR could also reduce incentives for blockholders to accumulate ownership. However, this effect should be relatively smaller than those under Section 16, because the filings under HSR are not publicly disclosed.

b. Beneficial Ownership

Neither Section 3(a) nor Section 13(d) of the Exchange Act defines the term ''beneficial owner'' or ''beneficial ownership.'' Regulation 13D–G similarly does not expressly define those terms. Rule 13d–3(a) provides that a person is a beneficial owner of a security if that person, directly or indirectly, has or shares voting power and/or investment power. In addition, Rule 13d–3 deems certain persons to be beneficial owners even if they lack voting power and investment power. Rule 13d–3(b) deems a person who uses any contract, arrangement or device to divest or prevent the vesting of beneficial ownership of the security as part of a plan or scheme to evade reporting under Section 13(d) to be a beneficial owner. Rule 13d–3(d) deems a person to be a beneficial owner of an equity security if that person holds a right to acquire the security that is exercisable within 60 days or who acquires a right to acquire the security for the purpose or with the effect of changing or influencing control of the issuer of securities regardless of when that right is exercisable. Under the current rule, the scope of beneficial

[183] *See supra* Section II.A.1.

[184] *See supra* Section II.A.3.

[185] *See supra* Section II.A.2.

[186] *See supra* Section II.A.4.a and note 65.

[187] *See supra* Section II.A.4.a.

[188] *See supra* Section II.A.5.a.

[189] *Id.*

[190] *See supra* Section II.G.

[191] *See supra* note 168 and accompanying text.

[192] *See* 15 U.S.C. 78p(a)(2)(B); *see also supra* notes 162–163 and accompanying text.

[193] *See* 15 U.S.C. 78p(a)(2)(C); *see also supra* note 164 and accompanying text.

[194] Public Law 94–435, 90 Stat 1383 (1976).

[195] 16 CFR part 803, appendix A.

[196] *See* 15 U.S.C. 18a(a), (b)(1)(A); 16 CFR 803.1; Revised Jurisdictional Thresholds for Section 7A of the Clayton Act, 86 FR 7870 (Feb. 2, 2021). Specifically, notification is required either by planned acquisition of in excess of $200 million in voting securities or assets as adjusted annually or in excess of $50 million as adjusted annually combined with certain additional factors. Adjusted thresholds are published for each fiscal year to reflect the percentage change in the gross national product for that year compared to the gross national product for the year ending September 30, 2003.

[197] *See* 15 U.S.C. 18a(h).

ownership ordinarily does not include holders of cash-settled derivative securities because those instruments generally do not convey voting or investment power over any equity securities in the reference covered class.[198] As noted above, if a person is deemed a beneficial owner for the purposes of Section 13(d) and the rules thereunder, then he or she also is deemed a beneficial owner for the purposes of Exchange Act Section 16 to the extent the beneficial ownership held exceeds 10% of a covered class.[199]

c. Group Formation

Under Sections 13(d)(3) and (g)(3), two or more persons ''act[ing]'' as a ''group for the purpose of acquiring, holding, or disposing of [equity] securities'' constitute a single person for purposes of those statutory provisions.[200] Rule 13d–5(b) states that when two or more persons ''agree to act together'' for the purpose of acquiring, holding, voting or disposing equity securities, the group formed thereby shall be deemed to have acquired beneficial ownership, for purposes of Sections 13(d) and (g), of all equity securities of the issuer beneficially owned by such persons.

d. Item 6 of Schedule 13D

As discussed in Section II.E.1., Congress set forth a statutory requirement under Section 13(d)(1)(E) that a person disclose ''information as to any contracts, arrangements, or understandings with any person with respect to any securities of the issuer, including [the] transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guaranties of loans, guaranties against loss or guaranties of profits, division of losses or profits, or the giving or with holding of proxies . . . .'' This obligation is codified at Rule 13d–101 and reflected in Item 6 of Schedule 13D. Item 6 provides only an illustrative subset of the types of contracts, arrangements, understandings or relationships that must be disclosed, and cash-settled derivative securities have not been expressly identified in the list of examples, which could create an impression that a person is not required to disclose interests in all derivative securities that use the issuer's equity security as a reference security.

2. Affected Parties

The relevant market participants for purposes of establishing the economic baseline for the proposed rules include: All investors that are required or potentially required to report their beneficial ownership on Schedules 13D and 13G; the issuers of the equity securities beneficially owned; investors that rely on beneficial ownership reports in connection with their investment decisions as to issuers' securities; shareholders of the issuer, particularly the long-term shareholders of the issuer, who might be more affected by shareholder activism; market professionals, such as analysts that valuate securities; the financial institutions that serve as counterparties to cash-settled derivatives; and the management of the issuer. Section 16 filers also are relevant market participants because Section 13(d) and the rules thereunder are used to determine whether a person's beneficial ownership exceeds 10% and must be reported on Forms 3, 4 and 5.

During the calendar year 2020, the Commission received a total of 10,542 Schedule 13D filings[201] and 44,059 Schedule 13G filings,[202] involving 3,940 unique Schedule 13D filers and 8,789 unique Schedule 13G filers, respectively. To understand the extent to which the proposed amendments could affect holders with reporting obligations, we examine their current filing practice. Our preliminary analysis of the 2020 filings[203] shows that Schedule 13D filers reported a median accumulation of 8.4% of shares in their initial Schedule 13D filings. Approximately 20.7% of the initial Schedule 13D filings were filed within the first five days after the acquisition that crossed the 5% threshold. The median number of days between the acquisition that crossed the 5% threshold and the initial Schedule 13D filing was 10 days[204] with 22.9% of the initial Schedule 13D filings being made on the 10th day. A detailed day-by-day breakdown of the percentage of the filings made each day after crossing the 5% threshold is provided in Figure 1 and Table 1 below. For Schedule 13G filers, the median number of days between the date on which the 5% threshold was crossed and the initial filing was 21, and the median reported accumulation was 6.3%.[205]

[198] *See supra* Section II.B.1. Under certain circumstances, investors in security-based swaps may be beneficial owners, as determined under Rule 13d–3, of a covered class. To the extent that a holder of a security-based swap owns that security not exclusively settled in cash, the person could be viewed as a beneficial owner under Rule 13d–3(d)(1). In addition, if a security-based swap is used as part of plan or scheme to evade beneficial ownership reporting, the person could be deemed a beneficial owner as described in Rule 13d–3(b). Finally, if the holder of a security-based swap directly or indirectly holds the power to direct a counterparty how to vote or dispose of shares in a covered class used as a reference security, that person can be a beneficial owner as provided in Rule 13d–3(a). *See* Beneficial Ownership Reporting Requirements and Security-Based Swaps (Confirmation), Release No. 34–64628 (June 8, 2011) [76 FR 34579 (June 14, 2011)].

[199] *See supra* note 168 and accompanying text; *see also supra* Section II.G.

[200] *See supra* Section II.C.1.

[201] Out of all the Schedule 13D filings, there were a total of 2,288 initial filings and 8,254 amendments.

[202] Out of all the Schedule 13G filings, there were a total of 12,838 initial filings and 31,221 amendments.

[203] We were able to collect data for our analysis from 2,236 initial Schedule 13D filings and 12,759 initial Schedule 13G filings. Out of the 2,236 initial Schedule 13D filings, there are 994 unique filings with sufficient data for our subsequent analysis.

[204] We note that approximately 32.9% of the Schedule 13D filings were made after 10 days. However, not all of these filings are considered late by the Commission. By rule, the Commission accepts as timely any filing that, if the calendar due date falls on a weekend or holiday, is received by the next business day. *See supra* note 3. Therefore, after we take into account weekends and holidays, we preliminarily estimate that about 20.1% of the filings are deemed late.

[205] We note that Schedule 13G filers include QIIs, Exempt Investors and Passive Investors. Under the current rules, Passive Investors must file their initial Schedule 13G within 10 days of acquiring more than 5% beneficial ownership, and Exempt Investors and QIIs must file within 45 days of the calendar year end in which their beneficial ownership exceeds 5%. Accordingly, the median filing time for all Schedule 13G filers presented here could be skewed for different types of filers. More specifically, the median of 21 days might be shorter than the actual median for QIIs and Exempt Investors, and longer than the actual median for Passive Investors. It is impracticable to produce statistics for different types of filers at this point because underlying data are not structured into an analyzable format.

Figure 1: Number of days between crossing 5% and the filing of an initial Schedule 13D

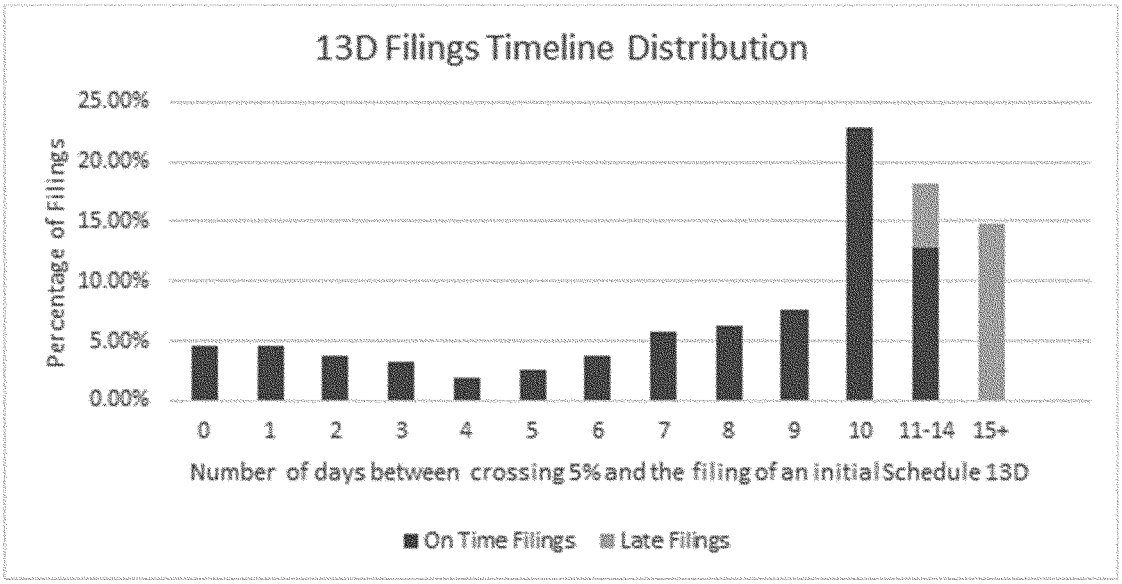

TABLE 1—DISTRIBUTION OF THE NUMBER OF DAYS BETWEEN CROSSING 5% AND THE FILING OF AN INITIAL SCHEDULE 13D

Distribution of Number of Days Between Crossing 5% Threshold and Filing of Schedule 13D							
Day Bin	0	1	2	3	4	5	6
Number of Events	45	45	38	33	19	26	38
Percent of Sample	4.5%	4.5%	3.8%	3.3%	1.9%	2.6%	3.8%
Day Bin	7	8	9	10	11–14	15+	Total
Number of Events	57	62	76	228	180	147	994
Percent of Sample	5.7%	6.2%	7.6%	22.9%	18.1%	14.8%	100.0%

Note: The graph and table are based on staff analysis of 2020 EDGAR initial Schedule 13D filings. Filers are currently required to file within 10 days of the acquisition that exceeds 5% of a covered class.

C. Potential Benefits and Costs of the Proposed Amendments

We have considered the potential costs and benefits associated with the proposed amendments. Overall, we believe the proposed amendments to Regulation 13D–G would benefit investors and market participants by providing more timely information relating to significant stockholders as well as potential changes in corporate control, facilitating investor decision-making, reducing information asymmetry and improving price discovery in the market. We also recognize that the proposed amendments could impose costs on the affected parties. For instance, the proposed amendments could increase the costs for blockholders to influence or control an issuer and potentially inhibit shareholder activism and its goal of improving corporate efficiency. A discussion of the anticipated economic costs and benefits of the proposed amendments is set forth in more detail below. We also expect the proposed amendments to affect compliance burdens. The quantitative estimates of changes in those burdens for purposes of the Paperwork Reduction Act of 1995 (''PRA'') are further discussed in Section IV below. For purposes of the PRA, we estimate that the proposed amendments would result in an increase of 140,799 burden hours from the increase in the number Schedule 13D filings and 13G filings.[206] In addition, the estimated increase in the paperwork burden as a result of the proposed amendments for Forms 3, 4, and 5 will be 1,099 hours, 16,911 hours and 594 hours, respectively.[207]

1. Proposed Amendments to Rules 13d–1 and 13d–2 and Rules 13 and 201 of Regulation S–T

a. Benefits

i. Schedule 13D Filing Deadlines

We are proposing to amend Rule 13d–1(a) to shorten the initial Schedule 13D reporting deadline from 10 days to five days after the date of the acquisition that exceeds 5% of a covered class. We believe the proposed change would benefit investors, issuers and other market participants by providing them more timely disclosure on material information related to potential changes of corporate control. More timely disclosure of such market-moving information could improve transparency, reduce information asymmetry and mispricing in the market, and allow investors to make more informed investment decisions.

As discussed above, significant stock ownership contains market-moving information related to potential changes

[206] *See infra* Section IV.B.

[207] *See infra* Section IV.B.

of corporate control which could influence investors' decision making, and therefore Section 13(d) was enacted with the intention to ''alert the market place to every large, rapid aggregation or accumulation of securities, regardless of technique employed, which might represent a potential shift in corporate control.'' [208] Following technological advances and financial product innovation in the years since Section 13(d)'s enactment,[209] the current 10-day filing deadline under Section 13(d)(1) and Rule 13d–1(a) could be used by shareholders to acquire more—sometimes far more—than 5% of a covered class during the 10-day window before any disclosure, a concern raised by some observers.[210] For example, Barry, Brav and Jiang (2020) has documented that, while blockholders disclosed a median ownership of 6.5% in their Schedule 13D filings, filers in the top 5th percentile of reported ownership disclosed an accumulation of 22.5% of the shares when initial Schedule 13D filings are made,[211] far exceeding the 5% threshold. These statistics suggest that while the reporting obligations under Section 16 and HSR may reduce the incentives for shareholders to accumulate ownership far above the statutory threshold, they do not eliminate such accumulations. However, such practice is also not as pervasive as some have claimed.[212] Nevertheless, the ability or practice for shareholders to accumulate a level of beneficial ownership far exceeding the statutory threshold without timely disclosure could undermine the benefits of beneficial ownership reporting, increasing information asymmetry and mispricing in the market. Thus, by shortening the deadline for initial Schedule 13D filings, the proposed amendment could improve the timeliness of beneficial ownership reporting, benefiting investors and other market participants through improved transparency and reduced information asymmetry in the market.

Schedule 13D contains information related to significant stockholders and potential changes of corporate control. Such information is important to investors' decision making, because the change in control over the issuer of the relevant covered class could directly affect the change in management, its key operational decisions, strategy and financial results, and thereby its valuation.[213] The current 10-day filing deadline leads to a delay of such market moving information being incorporated by the market, leading to less efficient pricing and information asymmetries that would harm investors.[214] It is well documented in the academic literature that economically significant price changes occur in response to news about changes in corporate control, such as the initial filing of a Schedule 13D.[215] For example, Brav et al. (2008) find that the filing of a Schedule 13D is associated with large positive average abnormal returns, in the range of 7% to 8%, during the [−20, +20] announcement window, and about 2% during the filing day and the following day.[216] Similar to Brav et al. (2008), Klein and Zur (2009) document that issuers targeted by hedge funds earn a mean market-adjusted abnormal return of 5.5% over the [−30, +5] window around the initial Schedule 13D filing date and 7.2% for the [−30, +30] period around the filing. Extending the analysis by Brav et al. (2008) to more recent years, Barry, Brav and Jiang (2020) report an average abnormal return about 4.5% over the [−20, 20] window.[217] Therefore, during any delay between a market-moving event and the Schedule 13D filing, securities are likely to be mispriced relative to a full-information benchmark, and information asymmetry between Schedule 13D filers and those with whom they share the information, and the rest of the market, is greater than otherwise. The prolonged delay could, therefore, harm the investors who happen to sell their shares during the 10-day window. As discussed in Section III.A, we are not able to quantify the potential harm to investors due to data limitations. If an initial Schedule 13D were required to be filed more promptly, those investors might be able to sell their shares at a higher price, or they may re-evaluate their investment decisions. Timelier reporting would also allow other market participants, such as analysts and investment advisers, to better value the securities and make better recommendations. We recognize that the benefit of more timely reporting to investors and other market participants could be offset by the costs to blockholders and other investors as a result of the proposed amendment's effect on shareholder activism. We discuss these offsetting costs in more detail below in Section III.C.b.i.

Additionally, academic studies have shown that information asymmetry has a first-order effect on liquidity.[218] Thus, the proposed amendment, by reducing information asymmetry, would provide incremental benefits to investors in general through the increased liquidity of the shares of the companies subject to Schedule 13D filings. The Commission implicitly recognized the importance of this point when it

[208] *See supra* note 95.

[209] *See supra* Section II.A.1 and Section II.B.1.

[210] *See* Wachtell Petition, *supra* note 16; *see also* Guhan Subramanian, *Corporate Governance 2.0,* Harv. Bus. Rev. (Mar. 2015) (using the example of activist shareholders' acquisition of a large stake in J.C. Penney to illustrate that some shareholders are ''disorderly'' and a takeover by such parties could be ''disastrous'' for the company), *available at https://hbr.org/2015/03/corporate-governance-2-0; Williams Cos. Stockholder Litig.,* No. 2020–0707, 2021 WL 754593, at *33–34 (Del. Ch. Feb. 26, 2021), *aff'd.,* No. 139, 2021, 2021 WL 5112495 (Del. Nov. 3, 2021).

[211] *See infra* note 217 (findings are based on based on hedge fund activism events over the period 1994–2016); *see also* Lucian A. Bebchuk, Robert J. Jackson Jr, Alon Brav and Wei Jiang, *Pre-disclosure accumulations by activist investors: Evidence and policy,* 39.1 J. Corp. L. 1–34 (2013) (reporting that filers in top 5th percentile disclosed 21.2% of ownership based on a sample of data includes a total number of 2,040 Schedule 13D filings made by activist hedge funds from 1994 to 2007).

[212] *See supra* note 211.

[213] *See, e.g.,* Brav et al. (2008), *infra* note 215 (finding an increase in issuer's payout, operating performance and CEO turnover after 13D filings).

[214] *See, e.g.,* Wachtell Petition, *supra* note 16 (''[T]he ten-day [Schedule 13D] reporting lag leaves a substantial gap after the reporting threshold has been crossed during which the market is deprived of material information and creates incentives for abusive tactics on the part of aggressive investor prior to making a filing.''); *see also,* Coffee and Palia (2016), *supra* note 19 (''[T]he gains that activists make in trading on asymmetric information—before the Schedule 13D's filing—come at the expense of selling shareholders. . . . Disclosure that is delayed ten days enables activists to profit from trading on asymmetric information over that period . . . .'').

[215] *See, e.g.,* Alon Brav, Wei Jiang, Frank Partnoy, and Randall Thomas, *Hedge Fund Activism, Corporate Governance, and Firm Performance,* 63.4 The Journal of Finance 1729–1775 (2008) (finding ''The abnormal return around the announcement of activism is approximately 7%, with no reversal during the subsequent year.''); *see also* April Klein and Emanuel Zur, *Entrepreneurial Shareholder Activism: Hedge Funds and Other Private Investors,* 64.1 The Journal of Finance 187–229 (2009) (finding ''a significantly positive market reaction for the target firm around the initial Schedule 13D filing date, significantly positive returns over the subsequent year.'')); *see also* Christopher Clifford, *Value Creation or Destruction? Hedge Funds as Shareholder Activists,* 14 The Journal of Corporate Finance 323–336 (2008) (''Firms targeted by activists earn an average cumulative abnormal return of 3.4% during the (−2,+2) window around the filing date''). For a comprehensive survey of literature on hedge fund activism, see also Alon Brav, Wei Jiang, and Rongchen Li, Governance by Persuasion: Hedge Fund Activism and Market-based Shareholder Influence (December 10, 2021), European Corporate Governance Institute—Finance Working Paper No. 797/2021, *available at https://ssrn.com/abstract=3955116* or *http://dx.doi.org/10.2139/ssrn.3955116* (retrieved from SSRN Elsevier database).

[216] *See* Brav et al. (2008), *supra* note 215.

[217] *See* John Barry, Alon Brav, and Wei Jiang, Hedge Fund Activism: Updated tables and figures (Feb. 6, 2020), *available at https://faculty.fuqua.duke.edu/~brav/HFactivism_March_2019.pdf.*

[218] *See, e.g.,* Lawrence Glosten and Paul Milgrom, *Bid, Ask, and Transaction Prices in a Specialist Market with Heterogeneously Informed Investors,* 14 The Journal of Financial Economics 71–100 (1985).

accelerated deadlines for Form 4 and Form 8–K filings, as discussed above.[219]

We also are proposing to amend Rule 13d–2(a) to require that all amendments to Schedule 13D be filed within one business day after the material change that triggers the amendment obligation. Rule 13d–2(a) currently requires a Schedule 13D amendment to be filed ''promptly'' to disclose a material change. The benefits of this proposed amendment to Rule 13d–2(a) are very similar to the benefits of our proposed amendment to Rule 13d–1(a) discussed above. More timely reporting would facilitate price discovery in the market, reduce information asymmetry and mispricing, and therefore allow investors to make more informed investment decisions. In addition, as discussed above, replacing the ''promptly'' requirement with a bright-line requirement would provide greater clarity as to when material changes are to be disclosed, which could reduce filer confusion and improve compliance. The positive economic effect on the information environment and investor decision-making associated with our proposed amendment to Rule 13d–1(a) also apply to our proposed conforming revisions to Rules 13d–1(e), (f), and (g).

ii. Schedule 13G Filing Deadlines

We are also proposing amendments to Rules 13d–1(b), (c), and (d), and Rules 13d–2(b), (c), and (d) to shorten other reporting deadlines under Regulation 13D–G, which govern the deadlines for initial Schedule 13G filings and Schedule 13G amendments.

As discussed above, currently, under Rules 13d–1(b), (c), and (d), for beneficial owners with reporting obligations who are eligible to file a Schedule 13G, the filing deadlines for the initial Schedule 13G are 45 days after the end of calendar year for QIIs and Exempt Investors if they beneficially own more than 5% of a covered class as of the last day of the calendar year, and within 10 days of acquiring beneficial ownership of more than 5% of a covered class for Passive Investors. Under the current rules, QIIs and Exempt Investors may avoid beneficial ownership reporting altogether by selling down their positions before the end of the year. As discussed in Section II.A.4.b., the avoidance of beneficial ownership reporting enabled by these reporting deadlines could undermine the informational benefits of reporting under Sections 13(d) and 13(g). Together with Section 13(d), Section 13(g) was intended to provide a ''comprehensive disclosure system of corporate ownership'' applicable to all persons who are the beneficial owners of more than 5% of a covered class.[220] Information regarding beneficial ownership is important to the market, regardless whether it is disclosed on Schedule 13D or 13G. There is evidence that the initial filing of Schedule 13G, like that of Schedule 13D, generates a positive stock price reaction, albeit smaller in magnitude.[221] Therefore, the avoidance of beneficial ownership reporting on Schedule 13G made possible in part by the extended length of time in which certain beneficial owners have to report, if at all, could contribute to information asymmetry and mispricing in the market. As with the Schedule 13D filings, the prolonged delay in Schedule 13G reporting could harm the investors who happen to sell their shares in the days before the filing. To address this concern, we are proposing to shorten the filing deadlines for an initial Schedule 13G to (1) no more than five business days after the end of the month in which their beneficial ownership exceeds 5% of a covered class for QIIs and Exempt Investors, and (2) five days after acquiring beneficial ownership of more than 5% of a covered class for Passive Investors.

By shortening the initial Schedule 13G deadlines, the proposed amendments would reduce the opportunities for these holders to avoid their reporting obligations and improve transparency. Academic research has provided evidence that Schedule 13G filings contain value-relevant information—*i.e.,* they are shown to lead to positive announcement returns and improvements in firm operating performance.[222] Therefore, timely reporting of value-relevant information would facilitate price discovery and reduce information asymmetry and mispricing in the market, benefiting investors and other market participants similar to our proposed shortening of the initial Schedule 13D filing deadline.

The proposed amendments would also shorten reporting deadlines for Schedule 13G amendments under Rules 13d–2(b), (c), and (d). We believe the potential benefits of shortening initial Schedule 13G filing deadlines discussed above also apply to the accelerated filing of the Schedule 13G amendments.

b. Costs

i. Schedule 13D Filing Deadlines

It could be costly to shorten the deadline for filing the initial Schedule 13D under Rule 13d–1(a) as proposed because it may have a negative impact on corporate control and related shareholder engagement activities. Activists seeking to influence or control an issuer may be deterred from undertaking initiatives to engage management or launch campaigns because of the reduced gains in stockholder value that activists could capture and the earlier warning provided to management as a result of the proposed amendments, according to academic research.[223] We discuss these potential effects and mitigating factors below.

Facilitating the Use of Low-Threshold Poison Pills

There is a concern that a shortened reporting deadline could give early notice to an issuer's management regarding a potential takeover attempt.[224] This accelerated filing deadline thus may provide management with more of an opportunity to quickly deploy defense mechanisms, increasing the costs for blockholders to successfully carry out their initiatives. Bebchuk et al. (2013) argue that shortening the deadline would ''enable incumbents to adopt low-trigger poison pills that make it impossible for outside blockholders to accumulate additional shares after they cross the five-percent threshold,'' and therefore ''deter outside investors from accumulating large blocks of stock in public companies.''

While we recognize the concern that a shortened reporting deadline could aid the use of low-threshold poison pills, the filing deadline's impact on shareholder activism through low-threshold poison pills may be overstated for several reasons. First, while the use

[219] We recognize that the accelerated deadlines apply, in the case of Form 8–K filings, to issuers, and rely on different statutory authorities compared to deadlines for Schedule 13D filings. However, their economic effects on liquidity are similar. *See also supra* note 26.

[220] *See* 43 FR 18484 (Apr. 28, 1978), *supra* notes 51 and 52.

[221] *See, e.g.,* Alex Edmans, Vivian W. Fang, and Emanuel Zur, *The Effect of Liquidity on Governance,* 26.6 The Review of Financial Studies 1443–1482 (2013) (finding that Schedule 13G filings generate on average approximately 0.8% cumulative abnormal return during the (−1,+1) window around the filing date, and more specifically, ''[a] 13G filing leads to a positive market reaction, a positive holding period return, and an improvement in operating performance; all these effects are stronger in more liquid firms''); *see also* Christopher Clifford, *Value Creation or Destruction? Hedge Funds as Shareholder Activists,* 14 The Journal of Corporate Finance 323–336 (2008) (''Firms targeted by passive investors earn an average cumulative abnormal return of 1.6% during the (−2,+2) window around the filing date.'').

[222] *See* Edmans, Fang, and Zur (2013), *supra* note 221.

[223] *See* Bebchuk, Jackson, Brav and Jiang (2013), *supra* note 211.

[224] *See id.*

of low-threshold (10%–15%) poison pills has increased, such poison pills have been scrutinized by courts, academia and industry. Issuers' ability to adopt poison pill plans with low triggering thresholds is limited by the requirements of state law, with courts in Delaware and other jurisdictions scrutinizing poison pill plans under heightened judicial standards and at least one court expressing skepticism of a poison pill plan that had a 5% triggering threshold.[225] In addition, as discussed above, legal scholars have expressed concern that these pills are too restrictive and could negatively affect activist investors' profits and incentives and thereby activism.[226] Kahan and Rock (2019) have stated that pills with a threshold of 10% or 15% should be permitted depending on the context, and that pills with a threshold of less than 10% and pills with a ''wolf-pack'' trigger should be regarded as presumptively invalid, because the latter pills are ''not a reasonable response to any cognizable threat and impose excessive restrictions on the ability of an activist to conduct a credible contest and communicate with other shareholders.'' [227] And the long-standing guidance of the proxy advisory firm Institutional Shareholder Services is that the ownership trigger cannot be so low as to be unduly restrictive and recommending that defensive pills generally should have a trigger no lower than 20%.[228] Pills with 5% triggers are extremely rare in practice.[229]

Second, the median reported ownership on initial Schedule 13D filings are much lower than the historically conventional triggers of about 20%, or recent precedents which tended to cluster in the 10%–15% range.[230] As discussed above, our preliminary analysis of 2020 filings show that the median reported accumulation was 8.4% for all initial Schedule 13D filers. According to Barry, Brav and Jiang (2020), the median reported ownership was 6.3% in their sample of hedge fund filers.[231] Because blockholders could potentially accumulate fewer shares under the shortened reporting deadline, the reported ownership on initial Schedule 13D filings may be even lower than the prevalent poison pill triggers, and therefore unlikely to trigger low-threshold poison pills.[232]

Moreover, the length of the reporting period is not likely to affect the ability of issuers to adopt poison pill plans quickly. For example, issuers today already have the ability to implement a poison pill plan quickly by having a ''shelf'' poison pill plan that could be implemented by the issuer's board as soon as 24 hours after the Schedule 13D filing is made.[233] This would remain true even if we reduce the Schedule 13D deadline from 10 days to five days.

Inhibiting Shareholder Activism

Shortening the deadline may reduce blockholders' profits from stock price increases attributable to corporate governance improvements, and, as a result, reduce incentives for them to seek influence or a change in control. Blockholders have to expend resources to succeed in their bids to replace or influence inefficient management. They bear the costs for such initiatives, but share the improvement in corporate efficiency and security prices with other investors of the issuer upon the disclosure.[234] By shortening the initial Schedule 13D filing deadline, the proposed amendments would reduce opportunities for blockholders to profit from their research and time investments that motivate large share accumulations, which could be used to acquire more shares at lower prices, selectively inform other investors to acquire shares or for other purposes. This inability to benefit from the observable increase in stock price after the announcement of the presence of an activist may reduce their incentive to initiate the change. A five-day deadline would nonetheless still allow blockholders to profit from their additional information, as contrasted, for example, with the original Williams Act amendment requiring prior notification.[235]

In addition to blockholders, the proposed change could also be costly for general shareholders of companies that are potential targets of activist blockholders. There is evidence from the academic literature that the presence of blockholders is associated with improved outcomes for shareholders.[236] If blockholders are disincentivized from seeking corporate control, it is possible that value-increasing corporate changes that could happen otherwise might not take place.[237] The finance literature indicates that companies targeted by activist hedge funds, which are a subset of all blockholders filing Schedule 13D,[238] tend to improve productivity without increases in wages.[239] Activists

[225] *Williams Cos. Stockholder Litig.,* 2021 WL 754593, at *2.

[226] *See* Kahan and Rock (2019), *infra* note 260.

[227] *Id.* at 970.

[228] *See* Paul J. Shim, James E. Langston, and Charles W. Allen, Cleary Gottlieb Steen & Hamilton LLP, *ISS and Glass Lewis Guidances on Poison Pills during COVID–19 Pandemic,* Harvard Law School Forum on Corporate Governance (April 26, 2020), *available at https://corpgov.law.harvard.edu/2020/04/26/iss-and-glass-lewis-guidances-on-poison-pills-during-covid-19-pandemic/.*

[229] These pills are designed to protect a company's net operating loss (''NOL'') and were held to be valid because of tax regulations. *See* Eldar and Wittry (2021), *infra* note 230; *see also Versata Enterprises, Inc.* v. *Selectica, Inc.,* 5 A.3d 586 (Del. 2010).

[230] *See* Ofer Eldar and Michael D. Wittry, *Crisis Poison Pills,* 10 Rev. Corporate Fin. Stud. 204, 204–251 (2021) (reporting that conventional triggers historically have been about 20%, while also documenting a lower average trigger of about 12% in their study of crisis pills adopted during the Covid–19 pandemic); *see also* Shim et al. (2020), *supra* note 228.

[231] *See supra* note 217.

[232] *See also* Adam O. Emmerich et al., *Fair Markets and Fair Disclosure: Some Thoughts on the Law and Economics of Blockholder Disclosure, and the Use and Abuse of Shareholder Power,* 3 Harv. Bus. L. Rev. 135, 154–156 (2013) (''[S]hareholder rights plans play a crucial corporate governance role by, among other things, protecting shareholders from coercive, partial or two-tier tender offers . . . .'').

[233] Francis J. Aquila, *Adopting a Poison Pill in Response to Shareholder Activism* (April 2016) (''[W]hen a threat arises, a shelf pill can be put into action within 24 hours. Without a shelf pill, the Board still has the ability to adopt a poison pill quickly and without the need for a shareholder vote. However, having a shelf pill increases a company's response time because it has prepared all the necessary paperwork in advance.''), *available at https://www.sullcrom.com/files/upload/Apr16_InTheBoardroom.pdf.*

[234] *See, e.g.,* Sanford J. Grossman and Oliver D. Hart, *Takeover Bids, the Free-Rider Problem, and the Theory of the Corporation,* The Bell Journal of Economics 42–64 (1980) (showing that ''shareholders can free ride on the raider's improvement of the corporation, thereby seriously limiting the raider's profit''). Note, however, that the model in this paper assumes immediate price adjustment. *See also* Bebchuk, Jackson, Brav and Jiang (2013), *supra* note 211.

[235] *See* Bebchuk and Jackson, *supra* note 17, at 44 (recounting the history of the Williams Act).

[236] *See, e.g.,* Marianne Bertrand and Sendhil Mullainathan, *Are CEOs Rewarded for Luck? The Ones Without Principals Are,* 116 Quarterly Journal of Economics 901–33 (2001); Lucian A. Bebchuk, Yaniv Grimstein, and Urs Peyer, *Lucky CEOs and Lucky Directors,* 65 Journal of Finance 2363–2401 (2010); James A. Brickley, Ronald Lease, and Clifford Smith, *Ownership Structure and Voting on Antitakeover Amendments,* 20 Journal of Financial Economics 267–91 (1988); Anil Shivdasani, *Board Composition, Ownership Structure, and Hostile Takeovers,* 16 Journal of Accounting and Economics 167–198 (1993).

[237] *See* Lucian Bebchuk, Alma Cohen, and Allen Ferrell, *What Matters in Corporate Governance?* 22.2 The Review of Financial Studies 783–827 (2009) (finding that management entrenchment level is ''monotonically associated with economically significant reductions in firm valuation as well as large negative abnormal returns during the 1990–2003 period''). For more discussion on managerial entrenchment and the costs, see Andrei Shleifer and Robert W. Vishny, *Management entrenchment: The case of manager-specific investments,* 25.1 Journal of Financial Economics 123–139 (1989).

[238] Other subsets of Schedule 13D filers include, for example, mutual funds, pension funds, investment advisers, private individuals and public companies.

[239] *See* Alon Brav, Wei Jiang, and S. Kim, *The Real Effects of Hedge Fund Activism: Productivity, Asset Allocation, and Labor Outcomes,* 28.10 The Review of Financial Studies 2723–2769 (2015).

also tend to relocate underused assets to more productive uses. Additionally, studies show that the mere threat of activism incentivizes potential targets to increase payouts to shareholders and reduce investment in the long term, as well as improve operating performance.[240]

While we recognize that a shortened initial Schedule 13D filing deadline might have the potential to inhibit shareholder activism through reduced incentives, there are several reasons to expect that this effect, including its impact on corporate control, would be limited. First, academic research has shown that the presence of activist blockholders in a company is driven by many factors, including the company's size, the extent to which the company is undervalued, the liquidity of its stock, its leverage and the ownership stake of its officers and directors, among others.[241] Thus, it is reasonable to expect that some of these factors may play a more important role in a blockholder's decision to take a stake in a company compared with the ability to obtain a large block undetected, or to receive compensation in the form of inside knowledge. For example, how undervalued the stock of the company is, or the size of the company, may determine the willingness of a blockholder to obtain a stake in the company.

Second, even with a shortened filing deadline, as proposed, blockholders still stand to gain based on their information on the day of the filing, as well as on additional information they have regarding their plans to acquire more shares. As discussed above, Brav et al. (2008) show that the filing day and the following day see an abnormal return about 2.0%, and that return continues trending up to a total of 7.2% in 20 days.[242] Brav et al. (2008) also suggest that hedge funds adopt different strategies regarding announcing their activist intent. While some launch aggressive activism only after they have filed a Schedule 13D, some hedge funds file a Schedule 13D after publicly announcing their activist intent. These varying practices further indicate that the gains from share accumulation prior to Schedule 13D filings is not the only way for blockholders to profit or succeed in their activism.

Third, based on the statistics shown in academic research, the negative impact from the proposed amendments might not be as severe as some have suggested. For example, according to Barry et al. (2020), approximately 28% of their sample of activist hedge funds filed an initial Schedule 13D within five days after crossing the 5% threshold.[243] Additionally, their subsample analysis shows that the activist hedge funds that filed with 0–1 days and 2–4 days after crossing 5% threshold reported on average 9.6% and 9.7% ownership, both of which are actually slightly higher than the overall average of 9.2% across all activist hedge fund filings.[244] Even for funds that accumulate large percentage ownership before filing, their ownership percentages do not differ by much at the time of the filing. For example, the 95% percentile of activist hedge funds that file within 0–1 days after crossing 5% threshold accumulate 20.5% ownership, which is the same as those that file within 8–10 days after crossing the threshold. These statistics from the study suggest that a non-trivial number of blockholders are already voluntarily filing their initial Schedule 13D in what would be a timely manner under our proposed amendments, and the percent ownership they are able to accumulate is comparable to those who disclose later. These statistics suggest that it may be possible to obtain target percentages within the proposed filing deadline.[245] In addition, academic literature suggests that, unlike the ''corporate raiders'' of the 1980s who sought direct control, today's blockholders' aim is to ''influence'' corporate policies and governance, which requires lower levels of ownership.[246] Namely, it seems possible for blockholders to adapt to the proposed deadline, albeit at a higher cost for some.[247] Although the circumstances were not identical, lowering the statutory reporting threshold from 10% to 5% in 1970 did not appear to inhibit the increase in hostile takeovers and issuer deployment of corresponding defensive measures in the following decades—indeed, corporate America experienced a takeover wave in the 1980s.[248]

Fourth, regarding a shorter reporting window's effects on shareholder activism, some scholars contend that the concerns discussed above are overstated, because a shorter reporting window may negatively affect short-term oriented activism more than the long-term oriented activism. Short-term oriented activism could be suboptimal for long-term shareholders, and therefore the shortened deadline might provide some benefit or incur less costs to long-term shareholders by encouraging more long-term focused activism.[249] Specifically, these scholars assert that blockholders do not always have a superior strategy—sometimes these investors could be short-term focused, and incumbent management does not necessarily embody entrenchment.[250] They argue that

[240] *See, e.g.,* Nikolay Gantchev, Oleg Gredil, and Chotibhak Jotikasthira, *Governance under the Gun: Spillover Effects of Hedge Fund Activism,* The Review of Finance 1031–1068 (2018).

[241] *See, e.g.,* Alex Edmans, Vivian W. Fang and Emanuel Zur, *The Effect of Liquidity on Governance,* 26.6 The Review of Financial Studies 1443–1482 (2013); Christopher Clifford and Laura Lindsey, *Blockholder Heterogeneity, CEO Compensation, and Firm Performance,* 51.5 The Journal of Financial and Quantitative Analysis 1491–1520 (2016); Brav, Jiang, and Li, (2021), *supra* note 215.

[242] *See* Brav et al. (2008), *supra* note 215.

[243] *See* Barry, Brav and Jiang (2020), *supra* note 217 (studying hedge fund activism events over the period 1994–2016).

[244] *Id.* at 12.

[245] The 95th percentile of share accumulation reported in Barry et al. (2020) is approximately 20.5%. Brav et al (2021), in describing trends in activism, note an increased importance of hedge fund activism, characterized by lower stakes than those acquired by ''corporate raiders'' who sought direct control in the 1980s. *See* Brav, Jiang, and Li (2021), *supra* note 215.

[246] *See* Brav, Jiang, and Li (2021), *supra* note 215.

[247] It is possible that larger shareholders are more likely to be able to accumulate target amounts at faster speeds. The speed of accumulation could also depend on the size and liquidity of the target issuer. Therefore, the proposed amendments could affect smaller blockholders, or blockholders who are trying to acquire shares in less liquid firms, more than others.

[248] *See* Andrei Shleifer and Robert W. Vishny, *Takeovers in the '60s and the '80s: Evidence and Implications,* Strategic management journal 12.S2 (1991): 51–59 (''The American economy has experienced two large takeover waves in the postwar period: one in the 1960s and one in the 1980s. Both waves had a profound impact on the structure of corporate America. The dominant trend in the '60s was diversification and conglomeration. The '80s takeovers, in contrast, reversed this process and brought American corporations back to greater specialization.'').

[249] *See* Coffee and Palia (2016), *supra* note 19, at 596 (''To sum up, the arguments against 'closing the window' work only if one assumes both that activists are the hero of the story and that they generate value for all shareholders. Neither assumption seems sound, at least without substantial qualification. Nor does the fear that closing the window will chill activism sound convincing. Activists are reaping record returns at present; the number of such campaigns is accelerating, and fears for their future seem premature.'').

[250] *See* Coffee and Palia (2016), *supra* note 19, at 592 (''[A]ctivists do not always need to have a superior strategy; indeed, some may seek to launch an activist campaign largely to roil the waters on the premise that noisy activism will be read by the market as signaling a possible takeover or restructuring. Even when the proposed change is flawed, those who purchase shares in the target firm before the filing of a Schedule 13D and exit at an early point will likely profit handsomely.''), and at 593 (''If management is in fact motivated today to maximize the firm's stock price, attempts to limit management's discretion through sudden and concealed activist campaigns would not necessarily lead to optimal outcomes. Also, because management generally has better information than outsiders—coupled with a strong incentive to maximize the firm's stock price—one can no longer begin from the premise that investment projects favored by management are the product of an

shortening the reporting window would not necessarily disincentivize shareholder activism *per se*—while it might disincentivize short-term focused shareholder activism because blockholders could experience reduced profit in the short-term, it should matter less to blockholders who truly believe they could improve the firm value in the long-term. Shortening the initial Schedule 13D reporting window has thus been recommended as an approach to encourage longer-term holdings and deter short-term activists without necessarily insulating managements from shareholder accountability.[251] Therefore, from this viewpoint, to the extent that the proposed amendments could encourage blockholders to focus on long-term value creation, they could improve corporate control.[252] We note that while the literature shows that a price increase in a window around a Schedule 13D reporting event does not reverse in the long term, providing evidence opposite to this view,[253] the determination of long-term returns (*e.g.,* over a year or more after the Schedule 13D filing), and whether there is indeed an increase in value in the long term that can be attributed to a particular filing, is inherently more complicated.

Shortening the initial Schedule 13D filing deadline could also increase compliance costs for beneficial owners who have an obligation to file an initial Schedule 13D. These beneficial owners could incur a one-time cost to update their information technology system to monitor the share accumulations and generate alerts and reports in time to accommodate the rule change. They may also need to allocate more resources on an ongoing basis to monitor their holdings so that they can meet their obligation to file an initial Schedule 13D. These compliance costs could be significant for certain filers (*e.g.,* those whose share accumulations need to be aggregated across different time zones or jurisdictions).

We believe the proposed amendment to Rule 13(a)(4) of Regulation S–T, which would extend the Schedule 13D and 13G filing ''cut-off'' time from 5:30 p.m. to 10 p.m., should mitigate the additional compliance costs for Schedule 13D filers resulting from the proposed amendments to Rules 13d–1(a), (e), (f), and (g). We do not think the proposed amendment to Rule 201(a) of Regulation S–T would have any significant cost or benefit. While the proposed amendment would make temporary hardship exemptions unavailable to filers of Schedules 13D and 13G, as discussed in Section II.A.6.b., the proposed treatment is consistent our treatment of Forms 3, 4 and 5, and the proposed amendments to Rule 13(a)(4) should avoid the need for such hardship exemptions.

Finally, we note that the compliance costs and mitigating factors discussed above also would apply to our proposed amendments to Rule 13d–2(a) that would shorten the filing deadline for Schedule 13D amendments.

ii. Schedule 13G Filing Deadlines

Accelerated Schedule 13G filings (for both initial filings and amendments) under our proposed amendments to Rules 13d–1(b), (c), and (d) and Rules 13d–2(b), (c), and (d) could potentially impose costs on filers. These costs may appear to be significant for QIIs because the proposed amendments to Rules 13d–1(b) and 13d–2(b) and (c) would significantly shorten the filing deadlines for these holders and potentially increase their filing frequency. Under the proposed amendments to Rules 13d–1(b) and 13d–2(b), QIIs would be required to file an initial and amended Schedule 13G, respectively, no more than five business days after the end of the month in which their beneficial ownership exceeds 5% of a covered class or a material change occurs. This deadline is significantly shorter than the current deadline of 45 days after the end of the calendar year for both an initial and amended Schedule 13G filing. In addition, under the proposed amendments to Rule 13d–2(c), QIIs would be required to file an amendment to their Schedule 13G within five days after the date on which their beneficial ownership exceeds 10% of a covered class, or increases or decreases by more than 5% of the covered class once across the 10% threshold, rather than the current requirement of 10 days after the end of the relevant month.

While shortening the filing deadlines could improve the timeliness of Schedule 13G reporting and market efficiency, it could also negatively impact some filers, particularly some QIIs (*e.g.,* mutual funds or hedge funds). The existing academic literature identifies free riding and front running as explanations for why more timely disclosure would negatively impact fund performance, and provides evidence that mutual funds experienced reduced returns after the Commission required more frequent portfolio disclosure.[254] The finding of a reduction in returns may be attributable to several factors, according to the literature. First, more timely filings may reveal a fund's proprietary information or trading strategies to other market participants, thus allowing those participants to free ride by copying the fund's strategies without incurring a cost to research, identify and devise profitable strategies.[255] Funds typically need to expend considerable resources to research and identify promising investments, and profits from the research take time to accrue. For example, it is estimated that it could take 12 to 18 months for mutual funds to profit after the date a newly acquired stock is first added to a fund's portfolio. Therefore, more timely disclosure would provide free-riding opportunities for other investors to mimic or reverse engineer a fund's strategy, which could ultimately diminish a fund's return.[256] Second, more timely disclosure could increase the risk that funds would be front run by outside investors. Specifically, more timely disclosure could potentially allow professional investors to better understand a fund's strategies and anticipate trades of the fund. Therefore, those professional investors may attempt to trade ahead of the funds to capture the temporary

inefficient preference for 'empire-building.' If that premise was justified in its time that time is now past.'').

[251] *Id.* at 594.

[252] *See* Coffee and Palia (2016), *supra* notes 249 and 250.

[253] *See supra* note 215.

[254] *See infra* notes 255–257 for academic literature; *see also* Final Rule: Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, 17 CFR parts 210, 239, 249, 270, and 274, Release Nos. 33–8393; 34–49333; IC–26372; File No. S7–51–02 [69 FR 11244 (March 9, 2004)], *available at https://www.sec.gov/rules/final/33-8393.htm#IIB4.* Notably, the Commission decided to adopt the quarterly disclosure requirement with a 60-day delay as opposed to the 45-day delay or monthly reporting as some had suggested, citing the concerns that ''more frequent portfolio holdings disclosure and/or a shorter delay for release of this information may expand the opportunities for predatory trading practices that harm fund shareholders.''

[255] *See* Russ Wermers, *The Potential Effects of More Frequent Portfolio Disclosure on Mutual Fund Performance,* 7.3 Perspective 1–11 (2001).

[256] *Id.; see also* Mary Margaret Frank, James M. Poterba, Douglas A. Shackelford, and John B. Shoven, *Copycat Funds: Information Disclosure Regulation and the Returns to Active Management in the Mutual Fund Industry,* 47.2 The Journal of Law and Economics 515–541 (2004) (''[W]hile these actively managed funds earned higher returns before expenses than their associated copycat funds, after expenses copycat funds earned statistically indistinguishable, and possibly higher, returns.''); Vikas Agarwal, Kevin A. Mullally, Yuehua Tang, and Baozhong Yang, *Mandatory Portfolio Disclosure, Stock liquidity, and Mutual Fund Performance,* 70.6 The Journal of Finance 2733–76 (2015) (finding that more informed mutual funds, especially those holding stocks with greater information asymmetry, experience greater performance deterioration after the Commission increased mutual fund periodical filing from semi-annual to quarterly in 2004).

impact on prices of traded securities.[257] As a result, funds could see an increase in trading costs and a decrease in returns.

While most of the literature focuses on mutual fund portfolio disclosure when discussing the tradeoff between timely reporting and fund performance, we believe the tradeoff between timely reporting and fund performance can be applied to the Schedule 13G reporting by QIIs. The proposed amendment to the initial Schedule 13G deadline (shortening the deadline to five business days after the end of the applicable month) would be a significant change for QIIs considering both the current deadline (45 days after the applicable calendar year) and the filing requirements for other forms that QIIs generally file (including the 60-day deadline for Form N–Q as discussed above, and the 45-day deadline for Form 13F). The accelerated deadline under the proposed amendments could reveal valuable information about a fund's investment strategies, facilitate free riding and front running behaviors, and therefore potentially reduce a fund's returns and harm fund shareholders. In the long run, the proposed accelerated disclosure requirements could reduce incentives for funds to collect and process information, leading to market inefficiency.

We recognize that the proposed accelerated filing requirements could potentially increase the risks of free riding or front running for certain Schedule 13G filers. However, we also note that Schedule 13G filings are different from portfolio disclosures such as Form N–Q or Form 13F. Schedule 13G filings do not have a set frequency and do not require a disclosure of a fund's entire portfolio. Thus, these filings are unlikely to provide information with the level of precision and predictability needed for free riding or front running purposes. Therefore, we believe the risks of increased free riding and front running as a result of the proposed amendments are likely to be low.

Shortening Schedule 13G filing deadlines could also generate compliance costs for filers. QIIs may incur a one-time cost to update their information technology systems to monitor share accumulations and generate alerts and reports in time to accommodate the rule change. They may also need to allocate more resources on an ongoing basis to monitor material changes so they can meet their obligations to file amendments to Schedule 13G. However, as mentioned in Section II.A.3.b., because these holders with reporting obligations typically have compliance systems to monitor Schedule 13G filing obligations on at least a monthly basis (*e.g.,* in case their holdings exceed more than 10% at the end of the month), the ongoing cost could be mitigated. Overall, we believe the compliance costs to QIIs should be minor.

For Passive Investors, the filing deadline for an initial Schedule 13G would be shortened from 10 days to five days under the proposed amendment to Rule 13d–1(c). The proposed amendment to Rule 13d–2(b) would accelerate the filing deadline for Schedule 13G amendments from the current standard of 45 days after the end of the calendar year to within five business days of the end of the month in which a material change occurs. In addition, the proposed amendment to Rule 13d–2(d) would change the Schedule 13G amendment deadline for Passive Investors from the current ''promptly'' standard to five days after the date on which their beneficial ownership exceeds 10% of a covered class, or increases or decreases by more than 5% once across the 10% threshold. Similar to QIIs, Passive Investors may incur a one-time cost to update their information technology systems to monitor share accumulations in order to accommodate the rule change. They may also need to allocate more resources to monitor material changes on an ongoing basis so they can meet their obligations to file amendments to Schedule 13G in a more timely manner.

Exempt Investors would be required to file an initial and amended Schedule 13G no more than five business days after the end of the month in which their beneficial ownership exceeds 5% or a material change occurs under the proposed amendments to Rules 13d–1(d) and 13d–2(b), as compared to the current deadlines of 45 days after the end of calendar year for both initial and amended Schedule 13G filings. As a result, Exempt Investors may also incur one-time and continuing compliance costs as a result of the proposed amendments.

Passive Investors and Exempt Investors should not incur the economic costs associated with the risk of free-riding and front-running that QIIs would, because they do not actively manage their portfolios like QIIs do. However, the compliance costs to Passive Investors and Exempt Investors may be relatively higher than those to QIIs. Specifically, neither Passive Investors nor Exempt Investors currently need to monitor their beneficial ownership levels on a monthly basis as QIIs do to determine whether their holdings exceed more than 10% at the end of the month and trigger an initial Schedule 13G filing pursuant to Rule 13d–1(b)(2).

For all Schedule 13G filers, an increase in compliance costs may reduce their incentive to invest in smaller public companies, where equity holdings could more easily cross the 5% threshold. This could ultimately reduce the liquidity of these issuers' equity securities and potentially their incentives to be listed on an exchange.

We are unable to quantify the potential increase in costs related to the proposed shortened Schedule 13D and 13G filing deadlines due to the lack of data. For example, we lack data to estimate how the proposed amendments would affect blockholders' ability to initiate corporate change because such ability would depend on their target share accumulation level, the liquidity of their target stocks and their acquisition plans. Regarding Schedule 13G filings, the potential increase in costs would depend on a filer's investment strategy and frequency of disclosure after the rule change. Because we do not have all the inputs for these variables, we cannot provide a reasonable estimate for these costs.

2. Proposed Amendment to Rule 13d–3

a. Benefits

The proposed amendment to Rule 13d–3 would deem holders of certain cash-settled derivative securities as beneficial owners of the reference securities in a covered class. Overall, we believe this proposed amendment could improve transparency, promote market stability and ultimately enhance investor protection.

First, the proposed amendment could benefit investors and other market participants by providing improved transparency regarding persons with significant economic interests in an issuer's equity securities and potential control intent. Under current Rule 13d–3, it is possible for holders of cash-settled derivative securities to acquire economic exposure to substantial blocks of securities without public disclosure because those instruments generally do not convey voting or investment power over the reference equity security. However, academic literature has raised concern over the ''hidden ownership''

[257] *See* Wermers (2001), *supra* note 255; *see also* Sophie Shive, and Hayong Yun, *Are Mutual Funds Sitting Ducks?* 107.1 Journal of Financial Economics 220–237 (2013) (providing evidence on front running behavior by showing that hedge funds trade on expected mutual fund flows, and showing that this type of anticipatory trading is stronger after 2004 when quarterly portfolio disclosure was required of mutual funds).

through cash-settled equity-based derivatives, because in many cases, holders of such derivative securities may have the *de facto* ability to procure votes quickly when needed.[258] According to these studies, counterparties to these derivative contracts commonly hedge their risks by purchasing the reference shares related to these contracts and, at the end of the contract when those share are no longer needed, sell the shares to reduce their exposure.[259] It is convenient, and sometimes even expected (*e.g.,* in the U.K.), for counterparties to sell these shares back to their customers, the holders of the cash-settled derivative securities.[260] Alternatively, the holder of the derivative security and the counterparty can always try to modify the terms of a derivative security to settle the contract by transferring the reference securities instead of cash. Therefore, cash-settled derivative securities could ultimately be settled in kind. This optionality allows holders of the derivatives to have the ability to influence or control an issuer without triggering public disclosure. Indeed, there have been takeover attempts using this *de facto* ability to quickly acquire shares.[261]

Holders of cash-settled derivative securities could also influence or control an issuer in other ways. For example, they might try to influence the counterparties to vote any hedged shares according to their desire. Additionally, any shares used in a hedge would be eliminated from the universe of voting shares as a result of the derivative contract, altering the balance of the voting power.[262] Of course, there is no guaranteed success through these approaches. However, significant economic interest could confer some credibility upon the activist with other shareholders,[263] which could increase the likelihood of success.

Section 13(d) requires public disclosure of the rapid accumulation of sizable positions linked to equity ownership by investors with potential control intent. As discussed above, information related to a potential change in corporate control is material to the market, and withholding the information could lead to information asymmetry and mispricing in the market.[264] Therefore, by expanding the scope of beneficial ownership to include certain holders of cash-settled derivative securities, the proposed amendments would address concerns regarding large shareholders using ''hidden ownership'' to avoid their reporting obligations. Treating such holders as beneficial owners also would reduce information asymmetries and enhance investor protection. Greater transparency would allow investors to make more informed investment decisions and help other market participants to better evaluate securities.

Enhanced disclosure could also promote market stability. Rapid accumulation of large equity positions could impact the liquidity of a covered class, and the lack of disclosure could prevent the market from incorporating that liquidity risk into the pricing for the security. Therefore, an unwinding of the positions could lead to excessive volatility and adversely impact the stock price of an issuer.

b. Costs

Deeming certain holders of cash-settled derivative securities to be a beneficial owner may result in new entrants to the Sections 13(d), 13(g), and 16 reporting systems, and thus generate increased costs for those who previously were not subject to these regulations. These persons may incur more extensive and ongoing compliance costs due to their reporting obligations under these provisions. For example, as discussed in Section II.B.2., a person who holds a derivative security with variable delta would need to calculate the delta on a daily basis, for purposes of determining the number of equity securities that such person will be deemed to beneficially own. In addition, persons who would become ten percent holders as a result of proposed Rule 13d–3(e) would be subject to Section 16(b)'s short-swing profit liability and Section 16(c)'s short sale prohibitions.

The proposed amendment could also potentially reduce the incentive to use cash-settled derivatives for hedging purposes, especially when hedging large positions. The financial institutions that serve as counterparties to cash-settled derivatives could be negatively affected because the reduced use of cash-settled derivatives could result in loss in revenue. However, we believe the impact on hedging incentives should be limited. If holders of derivative securities have an economic reason to use derivative securities to limit their market risk exposure, the potential compliance costs should be small compared to the downside of not using them. In addition, we are proposing Rule 13d–6(d) to provide that two or more persons will not be deemed to have formed a group under Section 13(d)(3) or 13(g)(3) solely by virtue of their entrance into an agreement governing the terms of a derivative

[258] *See* Henry T.C. Hu, and Bernard Black, *Hedge Funds, Insiders, and the Decoupling of Economic and Voting Ownership: Empty Voting and Hidden (Morphable) Ownership,* 13.2–3 Journal of Corporate Finance 343–367 (2007); *see also* Pierre-Henri Conac, *Cash-Settled Derivatives as a Takeover Instrument and the Reform of the EU Transparency Directive, in* The European Financial Market in Transition 49–68 (2011).

[259] *See, e.g.,* Pierre-Henri Conac (2011), at 51 (stating ''[a]lthough it seems that CSDs [cash-settled derivatives] are not equivalent for the investor to holding the shares, the reality can be quite different. The reason is that banks do not want to face the risk that the price of the share increases and they have to pay the difference. Therefore, in order to hedge their risk, they usually purchase the underlying shares relating to the CSDs. At the end of the contract, the banks will normally sell their shares in the market in order to pay to the investor the difference with the price at the beginning of the contract. Even if the bank does not do so, it will not keep the shares once the contract terminates since it usually has no use of the shares. This is especially the case if the CSDs relate to a large number of shares, unless the bank is interested in keeping an exposure to this company which is usually not the case. Then, nothing prevents the investor from purchasing the shares that the bank is selling in the open market. Alternatively, the investor and the bank can decide before the end of the contract to modify it in order that the contract will not be settled in cash but will be settled physically by delivery of the underlying shares. Therefore, if the bank holds the shares in order to hedge its risk, the investor is during the life of the CSD a quasi-shareholder, except that subject to the contractual agreement, he usually does not control the voting rights attached to the shares held by the bank.''); *see also* Eugenio de Nardis, and Matteo Tonello, *Know your shareholders: the use of cash-settled equity derivatives to hide corporate ownership interests,* Conference Board Director Notes No. DN–009, 2010 (stating ''The derivatives dealer (*i.e.,* the short party in the derivatives transaction) often holds the underlying securities as a hedge against its short position. Especially in those cases where the equity swap involves a substantial amount of shares of a single company, hedging with matched shares may be the only commercially sound choice for the dealer, as alternative hedging strategies are likely to be limited and more expensive.'').

[260] *See* Henry T.C. Hu and Bernard Black (2007), *supra* note 258 (stating that in the U.K., it is ''frequently the expectation'' of a long equity swap holder that the dealer would ''ensure'' that shares are available to be voted by its customer or sold to the customer on closing out the swap). *But see* Marcel Kahan and Edward Rock, *Anti-Activist Poison Pills,* 99 B.U. L. Rev. 915, 948–953 (2019) (taking a different view regarding cash-settled derivative securities' effectiveness in achieving activists' objectives in the context of poison pills and arguing that synthetic equity confers no voting rights, and hence poses no threats that should be counted toward a poison pill triggering threshold).

[261] *See, e.g., The Case of Volkswagen,* The Hedge Fund Journal, Nov. 2008 (available at *https://thehedgefundjournal.com/the-case-of-volkswagen/*). While most of the examples referenced in this discussion involve European transactions or cash-settled security-based-swaps (which are excluded from the proposed amendments), the underlying mechanism for exercising influence over the voting, acquisition or disposition of reference securities is the same as for other cash-settled derivative securities. *See also supra* Section II.B.1 and note 88.

[262] *See* Wachtell Petition, *supra* note 16.

[263] *See* Marcel Kahan and Edward Rock (2019), *supra* note 260, at 950 (''While synthetic equity entails no voting rights, it enables an activist shareholder to increase its economic stake and confers some credibility upon the activist with other shareholders (albeit presumably less than actual share ownership).'').

[264] *See supra* Section III.C.1.A.i.

security. This proposed exemption seeks to avoid impediments to certain financial institutions' ability to conduct their business in the ordinary course, which, we believe, could mitigate some of the costs imposed on financial institutions.

We are unable to quantify these costs related to beneficial ownership disclosure, because we lack data on the current use of cash-settled derivative securities to provide reasonable estimates on how such use would change.

3. Proposed Amendments to Rules 13d–5 and 13d–6

a. Benefits

The Commission is proposing a series of amendments to Rule 13d–5 to clarify and affirm its operation as applied to two or more persons who ''act as'' a group under Sections 13(d)(3) and (g)(3) of the Exchange Act.[265] Current Rule 13d–5(b) states that when two or more persons ''agree to act together'' for the purpose of acquiring, holding, voting or disposing of equity securities of an issuer, then the group that is formed has acquired beneficial ownership of the securities. The intent of the rule, together with Sections 13(d)(3) and (g)(3), is to prevent investors from coordinating to circumvent the 5% threshold in Sections 13(d) and (g). However, recent academic research has underscored concerns that groups of blockholders may work together to gain control of corporate boards without making appropriate disclosure.[266]

The proposed amendments would remove the potential for Rule 13d–5(b) to be construed as requiring that an express or implied agreement exists between two or more persons before a group can be formed. By clarifying and affirming that an express or implied agreement is not needed to subject a group to regulation under Section 13(d) or 13(g), the proposed amendments would avoid misinterpretation of the rule, help ensure that the law is applied as it was intended to be, and improve transparency. Investors and other market participants would benefit to the extent that they receive more timely disclosure to make more informed investment decisions or better evaluate securities as a result of the proposed amendments.

b. Costs

To the extent that blockholders misinterpreted Rule 13d–5 as requiring an express or implied agreement before they are required to report their collective holdings, these blockholders may incur a cost as a result of the proposed amendments. For example, blockholders seeking to coordinate with other investors for corporate influence or control might no longer be able to avoid reporting because there is no express or implied agreement among the members. These blockholders would thus incur additional compliance costs related to the filing of Schedule 13D. Considering that the proposed amendments would also shorten the filing deadlines for Schedule 13D, it could be particularly costly for members to keep track of the shares purchased as a group and coordinate among themselves in order to file on time. Additionally, such a group of blockholders, to the extent its beneficial ownership exceeded 10% of a covered class, would be deemed a ''beneficial owner'' as defined under Rule 16a–1(a)(1). Under our administration of Section 16, each group member would be considered a 10% holder subject to Sections 16(a), (b), and (c). Thus, such blockholders may incur additional compliance costs for their filing obligations under Section 16.

Further, it could be more costly for blockholders to use group formation to influence or change corporate control, to the extent that they misinterpreted Rule 13d–5 as requiring an express or implied agreement, because they would no longer be able to accumulate shares at a pre-disclosure price as they might have done under such a misimpression. As we have discussed in Section III.C.1.b., if earlier disclosure were made, stock prices would likely increase, and, therefore, blockholders would have to acquire shares at a higher price and the profit they would expect to receive would be reduced. As a result, it is possible that the proposed amendments could chill shareholder engagement. Reduced shareholder engagement may result in less monitoring of an issuer's management by shareholders. Because of the principal-agent relationship between investors and management in a corporation, there may exist conflicts between management of the issuer and investors.[267] Thus, less monitoring by investors as a result of reduced shareholder engagement could negatively affect firm value. However, we note that these are the costs blockholders or large shareholders should have incurred anyway when forming a group for purposes of Section 13(d), and in this regard, the proposed amendments would not expand, but rather would clarify and affirm, the applicability of existing reporting obligations.

Additionally, by removing any potential misimpression that an agreement must exist for determining whether a group is formed, the proposed amendments could potentially chill shareholder communications in general, as shareholders may be uncertain whether their coordination constitutes ''acting as'' a group. As discussed in Section II.D.1., shareholders may choose to communicate with one another regarding an issuer's performance or a certain policy matter, and they may take similar action with respect to the issuer or its securities, such as aligning their voting of shares at the issuer's annual meeting with respect to one or more proposals. We recognize the potential risk of chilling such communications. We therefore are also proposing amendments to Rule 13d–6 to exempt certain actions taken by two or more persons from the scope of Sections 13(d)(3) and 13(g)(3). In addition to proposed Rule 13d–6(d), which we discussed in Section III.C.2.b above, proposed Rule 13d–6(c) would provide that two or more persons will not be deemed to have acquired beneficial ownership of, or otherwise beneficially own, an issuer's equity securities as a group solely because of their concerted actions related to an issuer or its equity securities, including engagement with one another or the issuer. This exemption would only be available if such persons, when taking such concerted actions, are not directly or indirectly obligated to take such actions and communications among or between such persons are not undertaken with the purpose or the effect of changing or influencing control of the issuer. This exemption would, therefore, exclude activity that is not contemplated within the purpose of Section 13(d). Additionally, to the extent beneficial owners qualify for and rely on the proposed exemptions in Rule 13d–6, those exemptions may offset any potential increase in the number of persons who become 10% holders as a result of our proposed amendments to Rule 13d–5. Thus, the proposed

[265] *See supra* Section II.C.

[266] *See, e.g.,* Carmen X.W. Lu, *Unpacking Wolf Packs,* 125 Yale L.J. 773, 775–76, 777 (2016) (observing that wolf packs, which may not be deemed groups by some courts despite ''empirical and anecdotal evidence of coordination'' if there is not ''specific evidence of coordination,'' are able to evade Section 13(d) reporting if, for instance, ''each of the activist investors acquires less than a five percent stake in the target''); *see also* John C. Coffee, Jr. and Darius Palia, *supra* notes 19 and 143.

[267] *See* Michael C. Jensen, and William H. Meckling, *Theory of the firm: Managerial behavior, agency costs and ownership structure,* 3.4 Journal of financial economics 305–360 (1976).

exemptions in Rule 13d–6 may lower the potential compliance costs associated with filings under Section 16 that are generated by the proposed amendments to Rule 13d–5. We believe the proposed exemption could alleviate the concern that the proposed amendments to Rule 13d–5 could chill communications among shareholders and shareholders' engagement with issuers for reasons that do not implicate the purpose of Section 13(d).

We are unable to quantify the costs of our amendments related to group formation. Because we lack data on how many groups may not be reporting beneficial ownership because of the misimpression that an agreement is required, we cannot provide reasonable estimates on how such reporting practices would change.

4. Proposed Amendments to Item 6 of Schedule 13D

Item 6 of Schedule 13D provides that beneficial owners must describe ''any contracts, arrangements, understandings or relationships (legal or otherwise)'' with respect to any securities of the issuer, and cash-settled derivative securities have not been expressly identified in the list of examples. The proposed amendment would make it explicit that cash-settled derivative securities (including cash-settled security-based swaps) that use the issuer's securities as a reference security are included among the types of contracts, arrangements, understandings and relationships that must be disclosed.

We believe the proposed amendment is consistent with the proposed amendment to Rule 13d–3 discussed in Section II.B. We also believe it is consistent with our goal of modernizing the beneficial ownership reporting requirements and improving their operation and efficacy. Given that the baseline disclosure requirement was set forth in 1968, and the derivative securities market has evolved significantly since then, investors would benefit if the language of the disclosure requirement reflects current market practice and the range of instruments that should be disclosed as contemplated by Section 13(d)(1)(E). By revising Item 6 to clarify what instruments are covered, the proposed amendments could improve compliance with Rules 13d–1(a) and 13d–101, and reduce potential ambiguity as well as litigation risk for filers. To the extent that the proposed amendment would enhance beneficial ownership reporting, investors and the market would benefit. However, filers could incur additional compliance costs, to the extent that they have not already been providing such disclosure.

5. Proposed Structured Data Requirement for Schedules 13D and 13G

The proposed amendments would require all disclosures reported on Schedules 13D and 13G other than the exhibits to be submitted using a structured, machine-readable data language—specifically, in 13D/G-specific XML. Currently, Schedules 13D and 13G are submitted in HTML or ASCII, neither of which is a structured data language; as such, the disclosures currently reported on Schedules 13D and 13G are not machine-readable. This aspect of the proposed amendments is expected to benefit investors and markets by facilitating the use and analysis, both by the public and by the Commission, of the ownership disclosures reported by filing persons on Schedules 13D and 13G, compared to the current baseline. We expect this would improve the public dissemination and accessibility of material information about potential change of control transactions.

We anticipate that the incremental costs associated with requiring reporting persons to submit the information disclosed on Schedules 13D and 13G in 13D/G-specific XML, compared to the baseline of submitting the Schedules in in HTML or ASCII, would be relatively low. Because we would provide reporting persons with the option of using a fillable web form that converts inputted disclosures into 13D/G-specific XML, the proposed structuring requirement would not impose upon filers without structured data experience the implementation costs of establishing related compliance processes and expertise. Filers who choose to submit directly in 13D/G-specific XML rather than use the web form may incur the aforementioned implementation costs, with costs varying based on their prior experience with encoding and transmitting structured disclosures.

D. Anticipated Effects on Efficiency, Competition and Capital Formation

We believe the proposed amendments together could have a positive effect on market efficiency, but there may be some offsetting effects as well. As discussed above, currently, large shareholders could use the 10-day window to accumulate a level of beneficial ownership far exceeding the 5% threshold before reporting. They could seek to avoid the 5% reporting threshold through the use of cash-settled derivative securities or refrain from communicating or undertaking actions that could result in the formation of groups. By shortening Schedule 13D and 13G filing deadlines, expanding the scope of beneficial ownership to include holders of certain cash-settled derivative securities, and, clarifying and affirming that an actual agreement is not needed for the formation of a group, the proposed amendments could help ensure that large shareholders, including groups, comply with the reporting threshold, and therefore improve disclosure regarding material information related to potential changes of corporate control. More timely and enhanced disclosure would reduce information asymmetry and mispricing in the market, thereby improving liquidity and market efficiency. More efficient prices and more liquid markets help allocate capital to its most efficient uses. By making material information available to the public sooner, and reducing the differential access to information, the proposed amendments could increase public trust in markets, thereby aiding in capital formation. Finally, we believe that the proposed amendments could promote competition in that those who delay reporting would not have an advantage over similarly situated shareholders who report earlier. Furthermore, lowering information asymmetry could also increase competition among market participants. For example, if blockholders selectively reveal information, this gives some market participants advantages over others.

On the other hand, we recognize that some aspect of the proposed amendments could increase the costs of accumulating large blocks of shares. If some investors choose not to trade when they otherwise might have, capital formation, and therefore market efficiency, could be harmed. However, this cost would be offset by increased liquidity that arises from reducing information asymmetry.

Furthermore, because accumulating large blocks may be more expensive, investors may be less incentivized to do so. To the extent that large blocks aid in monitoring managerial behavior or facilitating changes in corporate control for inefficient management, capital formation could be adversely effected. By reducing the ability of blockholders to engage in ''tipping,'' enhanced disclosure also would lower private benefits from accumulating blocks, potentially reducing the incentives for blockholders to initiate corporate change. However, while rents to the business of initiating corporate change may fall, general access to information

would increase, offsetting the effects described.

E. Reasonable Alternatives

1. Alternative Filing Deadlines

As an alternative to the proposed amendments, we considered alternative filing deadlines for an initial Schedule 13D. For example, we considered filing deadlines that are longer than the proposed five days but shorter than the current 10-day deadline. These alternatives would reduce the compliance costs for filers, especially those with operations in different jurisdictions or time zones. They would also allow blockholders to accumulate more shares before making their filings, reducing the concern that the five-day deadline could discourage shareholder activism and encourage management entrenchment. However, these alternatives would result in less timely reporting, and be less beneficial to investors, other market participants and the overall efficiency of the market. We also considered filing deadlines that are shorter than the proposed five-day deadline. These alternative deadlines would provide more timely reporting to investors and market. However, they could have more negative effects on shareholder activism.

We also considered shortening the deadline for QIIs to file an initial Schedule 13G to 45 days after the end of the quarter, instead of the proposed deadline of five business days after the end of the applicable month. This approach would be more in line with the current portfolio reporting requirement for institutional investors and mutual funds for Form 13F and Form N–Q, and could reduce the potential risk of free riding or front running as discussed in Section III.C.1.b.ii and the costs to QIIs as a result. On the other hand, similar to the alternative Schedule 13D deadline, this alternative Schedule 13G deadline would provide less timely disclosure compared to the proposed approach, and thus be of less benefit to investors and the market.

2. Tiered Approach and Purchasing Moratorium

We understand that certain persons who would be required to file a Schedule 13D under a shortened deadline could view an earlier deadline as a means of forfeiting a proprietary trading strategy or minimizing the opportunity to earn a return that is high enough to offset their research costs and litigation, reputational and investment risks. Rather than shortening the deadline in all instances, we also considered a tiered approach, such as maintaining the 10-day deadline for acquisitions of greater than 5% but no more than 10% while instituting a shorter deadline if beneficial ownership exceeds 10%. We also considered whether the deadline for the initial Schedule 13D filing should vary based on a particular characteristic of the issuer, such as its market capitalization or trading volume. A tiered approach would affect fewer filers than the proposed deadlines discussed above, and thus would be less costly. A tiered approach also would result in less timely reporting than the proposed approach, providing less benefit to investors and the market.

Finally, we also considered maintaining the 10-day deadline if the filer ''stands still'' by not acquiring additional beneficial ownership once the 5% threshold has been crossed and until the Schedule 13D is filed. This approach would differentiate between investors seeking to establish a small minority stake and those seeking to exert influence or accumulate a control position, including beneficial ownership amounting to a majority or more of the covered class. While this approach would be the most effective in enforcing the 5% threshold, it could also be the most costly in terms of its impact on shareholder activism. It would effectively place a speed bump on blockholders' acquisitions, and provide opportunities for management to defend and entrench themselves. In addition, it might be operationally difficult to ensure that the purchases of the shares add up to no more than 5%, especially when shares are purchased from different sources, or purchases are made by different entities. Further, this alternative would not increase the timeliness of Schedule 13D reporting, and thus would not provide the same benefits to investors and the market as the proposal. Rather than propose a deadline based upon a person's willingness to abstain from making additional acquisitions once the 5% threshold has been crossed, we instead have solicited comment on the efficacy of such an alternative while taking into account the operational difficulties associated with a person's attempt to acquire no more than the minimum reportable amount of beneficial ownership.

3. Consolidate Beneficial Ownership Reporting

We also considered consolidating beneficial reporting into one form, Schedule 13D (*i.e.,* by eliminating Schedule 13G). This approach would include a reduction in some of the compliance burdens applicable to former Schedule 13G filers that would now be required to file a Schedule 13D. For example, because there would be only one form, former Schedule 13G filers would no longer need to monitor their eligibility continuously. Also, with the new deadlines for Schedule 13D, no need would exist to amend the other filing deadlines applicable to (former) Schedule 13G filers. However, this alternative would further accelerate the filing for former Schedule 13G filers, and exacerbate the concerns about free-riding and front-running risks these filers could face as discussed above, potentially reducing their profits and increasing their costs.

4. Section 16 Rule Amendment

We considered amending Rule 16a–1(a)(1) to avoid the application of proposed Rule 13d–3(e) to the determination as to whether a person is a 10% holder under Section 16. More specifically, under this alternative, a holder of the cash-settled derivative securities covered by proposed Rule 13d–3(e) would be deemed the beneficial owner for purposes of Sections 13(d) and (g), but not the beneficial owner of those reference securities for purposes of determining whether that person is a 10% percent holder under Section 16. This alternative could reduce the costs of proposed Rule 13d–3(e) and its impact on Section 16 reporting obligations. However, the alternative approach could also potentially create two standards for determining beneficial ownership, potentially leading to confusion in the market and concerns regarding whether the rule is applied differentially to different groups of filers. Also, investors and the market would receive less informative Section 16 disclosures under the alternative as compared to the proposed approach, and the disclosures would thus be less beneficial.

5. Modify Scope of Structured Data Requirement

We also considered modifying the scope of the proposed structured data requirement for Schedules 13D and 13G. For example, we considered narrowing the requirement to include only the quantitative disclosures reported on Schedules 13D and 13G. Narrowing the scope of the structuring requirement to include only the quantitative disclosures could provide a clearer focus on those data points that could potentially be used most widely for market-level aggregation, comparison and analysis. However, the non-quantitative disclosures on Schedules

13D and 13G, such as textual narratives and identification checkboxes, also would be valuable for data users to access and analyze in an efficient and automated manner. In addition, the incremental cost savings to filers of requiring only quantitative disclosures to be structured would be low given the availability of a fillable web form in which filers would be able to input both quantitative and non-quantitative Schedule 13D and 13G disclosures.

F. Request for Comment

We request comment on all aspects of our economic analysis, including the potential costs and benefits of the proposed amendments and alternatives thereto, and whether the proposed amendments, if adopted, would promote efficiency, competition and capital formation or have an impact on investor protection. In addition, we also seek comment on alternative approaches to the proposed amendments and the associated costs and benefits of these approaches. Commenters are requested to provide empirical data, estimation methodologies, and other factual support for their views, in particular, on costs and benefits estimates. Specifically, we seek comment with respect to the following questions:

92. Would the proposed amendments shortening Schedule 13D filing deadlines negatively affect shareholder activism? If yes, are there any other reasons for such effects besides the ones we have discussed? Would such effects be more or less significant than our assessment? Would the benefits justify the costs? Are you aware of any data or methodology that could help us quantify the effects? Are there any factors that could mitigate these effects besides the ones we discussed? Is it fair to presume that blockholders generally have the ability to adapt to a five-day filing deadline given the fact that a number of them are already filing on this deadline voluntarily?

93. Studies observe share accumulations well above 10% of an issuer in the 95th percentile of the data set. Is it fair to presume that those accumulations are for purposes other than shareholder activism? If so, what are those purposes? What are the outcomes of such accumulations? If not, and such high accumulations were made for the purposes of activism, what motivates abnormally high accumulation at the time of 13D filings?

94. Would the proposed amendments shortening Schedule 13G filing deadlines increase the risk of free-riding or front-running for Schedule 13G filers? Would such effects be more or less significant than our assessment? Are there any other costs associated with these proposed amendments besides the ones we have identified? Would the benefits justify the costs? Are you aware of any data or methodology that could quantify the costs?

95. Would the proposed amendments to Rule 13d–3 regarding cash-settled derivative securities negatively affect the use of derivative instruments? Would such effect be more or less significant than our assessment? Are there any other economic effects associated with these proposed amendments that we have not discussed? Would the benefits justify the costs? Are you aware of any data or methodology that could help quantify the costs? To what extent do holders of derivative securities have the ability to influence or direct the voting, acquisition or disposition of shares acquired by the counterparty to hedge its position? Is it common for the holder to acquire the hedge securities from the counterparty and/or the counterparty to settle its positions with shares (rather than cash)? Please provide any data to support your view.

96. Would the proposed amendments affirming our view on group formation have negative effects on shareholder activism, engagement and communication? Would such effects be more or less significant than our assessment? Are there any other economic effects associated with these proposed amendments that we have not discussed? Would the benefits justify the costs? Are you aware of any data or methodology that could help quantify the costs?

97. Would the proposed amendments requiring submission of all disclosures (other than exhibits) on Schedules 13D and 13G in a structured, machine-readable data language (specifically 13D/G-specific XML) increase the accessibility and usability of those disclosures by investors and markets? Would this effect consequently improve transparency and reduce any existing information asymmetries related to beneficial ownership reporting on Schedules 13D and 13G? What are the incremental compliance costs associated with the structuring requirements? Would those costs be mitigated by the availability of an online web form that would render manually inputted disclosures into 13D/G-specific XML, as discussed? How, if at all, would the nature and magnitude of benefits and costs change if the scope of the proposed structuring requirement were modified (for example, by requiring structuring of only quantitative disclosures)? Are there any other economic effects associated with these proposed amendments that we have not discussed? Would the benefits justify the costs? Are you aware of any data or methodology that can help quantify the costs?

98. Are there any other costs and benefits to market participants that are not identified or are misidentified in the above analysis?

99. Would the proposed amendments affect efficiency, competition and capital formation as we have discussed? Would such effects be more or less significant than our assessment? Are there any other effects on efficiency, competition and capital formation that are not identified or are misidentified in the above analysis? Are you aware of any data or methodology that can help quantify these effects?

100. Are there any other costs and benefits associated with alternative approaches that are not identified or misidentified in the above analysis? Should we consider any of the alternative approaches outlined above instead of the proposed amendments? Which approach and why?

101. Are there any other alternative approaches to improve Section 13(d) and (g) disclosure that we should consider? If so, what are they and what would be the associated costs or benefits of these alternative approaches?

IV. Paperwork Reduction Act

A. Summary of the Collections of Information

Certain provisions of our rules, schedules and forms that would be affected by the proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[268] We are submitting the proposed amendments to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[269] The hours and costs associated with maintaining, disclosing or providing the information required by the proposed amendments constitute paperwork burdens imposed by such collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information requirement unless it displays a currently valid OMB control number.

The titles for the affected collections of information are:

- ''Regulation 13D and Regulation 13G; Schedule 13D and Schedule 13G'' (OMB Control No. 3235–0145);

[268] 44 U.S.C. 3501 *et seq.*

[269] 44 U.S.C. 3507(d); 5 CFR 1320.11.

• ''Form 3—Initial Statement of Beneficial Ownership of Securities'' (OMB Control No. 235–0104);
• ''Form 4—Statement of Changes In Beneficial Ownership'' (OMB Control No. 3235–0287); and
• ''Form 5—Annual Statement of Beneficial Ownership'' (OMB Control No. 3235–0362).

These schedules and forms contain item requirements that outline the information a reporting person must disclose. Compliance with the information collections is mandatory. Responses to the information collections are not kept confidential and there is no mandatory retention period for the information disclosed.

B. Incremental and Aggregate Burden and Cost Estimates for the Proposed Amendments to Rules 13d–2, 13d–3, 13d–5, and 13d–101

Below we estimate the incremental and aggregate effect on paperwork burden as a result of certain of our proposed amendments. To fully analyze the impact of our proposed amendments, our estimates generally constitute the upper limit of the amount of paperwork burden that potentially could be incurred by the parties affected by our proposed amendments, specifically with respect to our proposed amendments to Rules 13d–2, 13d–3, 13d–5, and 13d–101. In deriving our estimates, we recognize that the burdens would likely vary among individual respondents based on a number of factors, including the nature and conduct of their business.

We believe that the proposed amendments potentially could increase the number of responses to the existing collection of information for Schedules 13D and 13G as well as Forms 3, 4 and 5. For example, the proposed amendments to Rule 13d–2(b) with respect to the standard that requires an amendment to Schedule 13G could potentially increase the filing frequency for Schedule 13G amendments.[270] Similarly, our proposed amendments to Rules 13d–3 and 13d–5 potentially could result in additional persons becoming subject to Regulation 13D–G and Section 16 which would result in those persons being required to make initial and amended Schedule 13D and Schedule 13G filings and Form 3, 4, and 5 filings.[271]

For purposes of this PRA, we estimate that there could be an additional 36,702 annual responses to the collection of information under Regulation 13D–G[272] as a result of the proposed amendments, 36,190 of which would be attributable to our proposed amendments to Rule 13d–2,[273] 83 of which would be attributable to our proposed amendment to Rule 13d–3,[274] and 429 of which would be

[270] *See supra* Section III.C.1.b.ii. For example, Rule 13d–2(b) currently requires that a Schedule 13G be amended 45 days after the calendar year-end in which any change occurred to the information previously reported. Under our proposed amendment to Rule 13d–2(b), a Schedule 13G would have to be amended five business days after the end of the month in which a material change occurred to the information previously reported. Although an amendment under Rule 13d–2(b) currently is required for ''any'' change in the information previously reported, that rule only requires that one amendment be filed annually, if at all. Under the proposed revisions to that rule, although the standard for determining an amendment obligation would only arise upon a ''material'' change to the information previously reported, the rule changes could theoretically result in numerous amendments being filed on an annual basis, with as many as 12 Schedule 13G amendments being filed annually pursuant to Rule 13d–2(b).

[271] *See supra* Sections III.C.2.b and 3.b. For example, a holder of cash-settled derivative securities may be deemed the beneficial owner of more than 5% of a covered class or a 10% holder as a result of the application of proposed Rule 13d–3(e). In addition, two or more persons may be deemed to have formed a group that beneficially owns more than 5% of a covered class or a 10% holder as a result of the application of our proposed amendments to Rule 13d–5, particularly with respect to the tipper-tippee relationships that are the subject of proposed Rule 13d–5(b)(1)(ii). The group, therefore, may have to comply with Section 13(d) and Section 16.

[272] To the extent that a person or entity incurs a burden imposed by Regulation 13D–G, it is encompassed within the collection of information estimates for Regulation 13D–G. This burden includes the preparation, filing, processing and circulation of initial and amended Schedules 13D and 13G.

[273] The current OMB inventory for Regulation 13D–G reflects 8,587 annual responses. As discussed in Section III.B.2 *supra,* a total of 54,601 total Schedule 13D and 13G filings were made during calendar year 2020. *See supra* notes 201–202 and accompanying text. Of those filings, 31,221, or 57.18%, were Schedule 13G amendments. *Id.* Upon further review of that data set, we note that 25,642, or 82.13%, of those filings were made within the first 45 days of calendar year 2020. For purposes of this PRA estimate, therefore, we assume that 57.18% of the 8,587 annual responses in the current OMB inventory for Regulation 13D–G, or 4,910 responses, are Schedule 13G amendments. Of those 4,910 responses, we assume that 67%, or 3,290 responses, were made pursuant to Rule 13d–2(b). Our proposed amendment to Rule 13d–2(b) could result in 12 Schedule 13G amendments being filed annually pursuant to Rule 13d–2(b), as compared to the one annual amendment currently required by Rule 13d–2(b). *See supra* note 270. As such, for purposes of this PRA, we estimate that there would be 39,480 Schedule 13G amendments filed annually pursuant to Rule 13d–2(b) as a result of our proposed amendments (calculated by multiplying (×) the 3,290 annual responses currently attributable to Rule 13d–2(b) by (y) 12), resulting in 36,190 additional responses to the collection of information under Regulation 13D–G (calculated as the difference between (×) the 39,480 annual responses estimated to be attributable to Rule 13d–2(b) as a result of the proposed amendments and (y) the 3,290 annual responses currently attributable to Rule 13d–2(b)). We note, however, that this estimate likely reflects the upper limit of the potential increases in the number of annual Regulation 13D–G responses as a result of our proposed amendments to Rule 13d–2(b) because (1) the proposed amendments would revise Rule 13d–2(b) to require a Schedule 13G be amended only for a ''material'' change to the information previously reported, as compared to the current requirement that an amendment be filed for ''any'' change to the information previously reported and (2) the information previously reported by many Schedule 13G filers may not change materially on a monthly basis.

[274] For purposes of this PRA estimate, we assume that the proposed amendment to Rule 13d–3 potentially would lead to an increase in the number of Schedule 13D filings. We do not expect that the number of Schedule 13G filings would increase given that proposed Rule 13d–3(e)(1)(i)(C) would deem a person to be a beneficial owner only if such person held the derivative securities with the purpose or effect of changing or influencing the control of the issuer of the relevant covered class, or in connection with or as a participant in any transaction having such purpose or effect. Consequently, Exempt Investors are the only type of Schedule 13G filer that could be deemed beneficial owners of a cash-settled derivative security's reference covered class under proposed Rule 13d–3(e) and continue to report beneficial ownership on Schedule 13G. We believe, however, that certain persons filing a Schedule 13G as an Exempt Investor, such as founders of companies and early investors in an issuer's class of equity securities who made their acquisition before the class was registered under Section 12 of the Exchange Act, already control or may be in a position to control the issuer, and generally would not have a need to acquire or hold cash-settled derivative securities to effectuate influence or control over an issuer. Exempt Investors also may seek to avoid acquiring beneficial ownership of more than 2% of a covered class as a result of application of proposed Rule 13d–3(e) given that such an acquisition could not only jeopardize their eligibility to rely upon the Section 13(d)(6)(B) exemption, but also reduce or eliminate their capacity to acquire any shares with voting rights during the twelve month period in which the availability of the exemption is measured. As discussed in Section III.B.2 *supra,* there were a total of 10,542 Schedule 13D filings made in calendar year 2020. *See supra* notes 201–202 and accompanying text. Those 10,542 filings comprised 19.3% of the total number of Schedule 13D and 13G filings (54,601) made in calendar year 2020. *Id.* Applying that percentage to the current OMB inventory for Regulation 13D–G, we assume that 1,657 (or 19.3%) of the 8,587 annual responses are Schedule 13D filings. As noted in Section III.C.2.b *supra,* we lack data on the current use of cash-settled derivative securities. Based on the number of Schedule 13D filings that were made in 2020, however, we assume that the proposed amendment to Rule 13d–3 could result in a 5% increase in the number of Schedule 13D filers. As such, we estimate that there would be 83 additional responses to the collection of information under Regulation 13D–G as a result of our proposed amendment to Rule 13d–3 (calculated by multiplying (×) the 1,657 estimated number of Schedule 13D filings in the OMB inventory by (y) 5%). We note, however, that our analysis may overestimate the potential increase in the number of annual Regulation 13D–G responses as a result of our proposed amendment to Rule 13d–3. For example, it is possible that those derivative holders that may beneficially own more than 5% of a covered class as a result of proposed Rule 13d–3(e) would have eventually acquired beneficial ownership of more than 5% of such covered class in the same calendar year even absent application of proposed Rule 13d–3(e). In such cases, although application of proposed Rule 13d–3(e) would accelerate the point in time at which such person's initial Schedule 13D filing obligation arose, it would not necessarily cause additional persons to

attributable to our proposed amendments to Rule 13d–5.[275] We also estimate that there would be an additional 2,197 Forms 3 filed, an additional 33,821 Forms 4 filed, and an additional 594 Forms 5 filed as a result of the proposed amendments.[276]

In addition to a potential increase in the number of annual responses, we expect that the proposed amendments would change the estimated burden per response for Regulation 13D–G.[277] For both Schedule 13D and Schedule 13G filers, we expect that the proposed structured data requirements would increase the estimated burden per response by requiring that the disclosures in those schedules be made using the 13D/G-specific XML. For Schedule 13D filers, we expect that the amendment to Rule 13d–3 would increase the estimated burden per response if such filers hold cash-settled derivative securities as a result of the calculations required by proposed Rule 13d–3(e) to determine the number of reference securities that such filers would be deemed to beneficially own pursuant to that proposed rule.[278] Finally, for Schedule 13D, we expect that the amendments to Item 6 of Schedule 13D potentially could increase the estimated burden per response by specifying that disclosure is required under Item 6 for the use of cash-settled derivative securities with respect to an issuer's securities.[279]

The burden estimates were calculated by estimating the number of parties we anticipate would expend time, effort and/or financial resources to generate, maintain, retain, disclose or provide information in connection with the proposed amendments and then multiplying by the estimated amount of time, on average, such parties would devote in response to the proposed amendments. The following table summarizes the calculations and assumptions used to derive our estimates of the aggregate increase in burden corresponding to the proposed amendments.

PRA Table 1—Calculation of Increase in Burden Hours Resulting From the Proposed Amendments

	Schedule 13D filings (A)	Schedule 13G filings (B)
Number of Responses[a]	1,823	43,466
Burden Hours Per Response[b]	4.29	3.69
Column Total[c]	7,821	160,390
Aggregate Increase in Burden Hours[d]	140,799	

[a] As discussed in Section III.B.2 *supra,* there were 54,601 total Schedule 13D and 13G filings during calendar year 2020, comprised of 10,542 Schedule 13D filings and 44,059 Schedule 13G filings. *See supra* notes 201–202 and accompanying text. We note, therefore, that 19.3% of the filings were Schedule 13D filings and 80.7% of the filings were Schedule 13G filings. Applying those percentages to the current OMB inventory for Regulation 13D–G, we assume that 1,657 (or 19.3%) of the 8,587 annual responses are Schedule 13D filings and that the remaining 6,930 (or 80.7%) are Schedule 13G filings. When taking into account the potential effects of the proposed amendments, if adopted, we estimate that (1) the number of Schedule 13D filings could increase by 10% (166 additional filings) as a result of the proposed amendments to Rules 13d–3 and 13d–5 and (2) the number of Schedule 13G filings could increase by 5% (346 additional filings) as a result of the proposed amendments to Rule 13d–5 and 36,190 as a result of the proposed amendments to Rule 13d–2. *See supra* notes 273–275.

become Schedule 13D filers. In addition, it is possible that persons who use such derivatives may take steps to avoid becoming beneficial owners—or minimize or entirely eliminate the use of such derivatives—in order to avoid a Schedule 13D filing obligation if proposed Rule 13d–3(e) were adopted.

[275] As discussed in Section III.C.3.b *supra,* because we lack data on how many groups may not be reporting beneficial ownership because of the misimpression that an agreement is required, we cannot provide reliable estimates on how such reporting practices would change. For purposes of this PRA estimate, however, we assume that our proposed amendments to Rule 13d–5 could result in a 5% increase in the number Schedule 13D and 13G filers. As such, based on the current OMB inventory for Regulation 13D–G, which reflects 8,587 annual responses, we estimate that the number of responses will be increased by 429 filings (calculated by multiplying (×) the current 8,587 annual responses by (y) 5%). We note, however, that our analysis may overestimate the potential increase in the number of annual Regulation 13D–G responses as a result of the adoption of our proposed amendments to Rule 13d–5 because such adoption may incentivize persons to take steps to avoid triggering a requirement to report beneficial ownership. For example, two or more persons who collectively beneficially own in excess of 5% of a covered class may avoid coordination that could result in them being found to have ''act[ed] as'' a group for the purpose of acquiring, holding or disposing of a covered class absent reliance on an exemption. In addition, our proposed amendments to Rule 13d–6 would create new exemptions under which two or more persons will not be deemed to have acquired beneficial ownership of, or otherwise beneficially own, an issuer's equity securities as a group. As such, to the extent beneficial owners qualify for and rely on the proposed exemptions in Rule 13d–6, those exemptions may offset any potential increase in the number of annual Regulation 13D–G responses as a result of the adoption of our proposed amendments to Rule 13d–5.

[276] The current OMB inventories for Forms 3, 4 and 5 reflect 21,968, 338,207 and 5,939 annual responses, respectively. As discussed above, our proposed amendments to Rules 13d–3 and 13d–5 could increase the number of persons required to make Form 3, 4 and 5 filings. *See supra* note 271 and accompanying text. For purposes of this PRA estimate, we assume that any increase in the number of Form 3, 4 and 5 filings will correspond with our estimated increase in the number of Schedule 13D filings as a result of our proposed amendment to Rule 13d–3, which is 5%, and the increase in the number of Schedule 13D and 13G filings as a result of our proposed amendment to Rule 13d–5, which is also 5%. *See supra* notes 274 and 275. Taking the sum of these percentages (10%) and applying that sum percentage to the current OMB inventories for Forms 3, 4 and 5, we estimate that the number of responses will be increased by 2,197, 33,821 and 594 for Forms 3, 4 and 5, respectively. But see *supra* notes 274 and 275 for a discussion of why this analysis may overestimate the potential increase in the number of annual Form 3, 4 and 5 responses as a result of our proposed amendments to Rules 13d–3 and 13d–5.

[277] We do not expect that the proposed amendments would change the estimated burden per response for Form 3, 4, or 5 because the proposed amendments would not alter the filing deadlines for those forms or the type or form of the information required to be disclosed.

[278] Although applicable to both current and potential Schedule 13D and 13G filers, we assume that the proposed amendment to Rule 13d–3, if adopted, would affect only the burden hours for Schedule 13D filers, and not for Schedule 13G filers. See *supra* note 274 for a discussion of why we do not believe that the proposed amendment to Rule 13d–3 would impact Schedule 13G filers.

[279] We further expect, however, that this potential increase may be offset by the proposed amendment to Item 6 that would delete the ''including but not limited to'' proviso.

[b] The current OMB inventory reflects a total of 27,412 annual burden hours for Regulation 13D–G. When applied to the current OMB inventory of 8,587 annual responses, this results in an average of 3.19 burden hours per Schedule 13D or 13G filing. We use these per filing burden hours as a baseline for estimating the burden impact of the proposed amendments. For the proposed structured data requirements, we estimate they would increase the burden per response for both Schedule 13D and 13G filers by 0.5 burden hours. Our assumption is that the burden would be greatest in the first year after adoption, as filers adjust to the new requirement and update their Schedule 13D and 13G preparation and filing processes accordingly. We estimate that the burden of the proposed structured data requirement would be 1 hour in the first year and 0.25 hours in each of the following two years for a three-year average of 0.5 burden hours. For the proposed amendment to Rule 13d–3, we estimate they would increase the burden per respondent by 0.5 hours. Our assumption is that the burden would be the greatest in the first year after adoption, as filers adjust to the new requirements and develop systems and processes to determine the amount of their beneficial ownership as a result of their holdings of cash-settled derivative securities. We estimate that the burden of the proposed amendment to Rule 13d–3 would be 1 hour in the first year and 0.25 hours in each of the following two years for a three-year average of 0.5 burden hours. Although we expect that the burden of complying with the requirements of proposed Rule 13d–3(e) (including, in particular, the requirements in the notes to proposed Rule 13d–3(e)(2) that the relevant calculations be performed on a daily basis) would be greater than the burden of complying with the structured data requirements, we also expect that a relatively small percentage of all Schedule 13D filers hold cash-settled derivative securities and, therefore, Rule 13d–3(e) would only apply to a subset of Schedule 13D filers (whereas the structured data requirements would apply to all Schedule 13D and 13G filers). As such, we believe that it is appropriate to adjust the burden per respondent accordingly. Finally, for the proposed amendments to Item 6 of Schedule 13D, we estimate they would increase the burden per respondent by 0.1 hours. Although these proposed amendments could, in some cases, substantially increase the amount of disclosure made pursuant to Item 6, we believe that this estimate accurately reflects that only a relatively small percentage of all Schedule 13D filers hold cash-settled derivative securities and, therefore, would be required to make additional disclosures. In addition, we also expect that any increased burden may be somewhat offset by the proposed amendment to Item 6 that would delete the ''including but not limited to'' proviso. Taken together, we estimate that the proposed amendments could increase the annual burden hours per Schedule 13D filing by 1.1 hours and increase the annual burden hours per Schedule 13G filing by 0.5 hours. When added to the current average of 3.19 burden hours per Schedule 13D or 13G filing, we estimate that if the proposed amendments were adopted, the average burden hours per Schedule 13D filing would be 4.29 hours and the average burden hours per Schedule 13G filing would be 3.69 hours.

[c] Derived by multiplying the number of responses in each column by the burden hours per response.

[d] Derived by adding together the column totals (168,211 hours) and subtracting from that sum the total annual burden hours for Regulation 13D–G currently reflected in the OMB inventory (27,412 hours).

The table below illustrates the incremental change to the total annual compliance burden in hours and in costs [280] as a result of the proposed amendments. The table sets forth the percentage estimates we typically use for the burden allocation for each response.

PRA TABLE 2—CALCULATION OF AGGREGATE INCREASE IN BURDEN HOURS RESULTING FROM THE PROPOSED AMENDMENTS

Total number of estimated responses	Total increase in burden hours	Increase in burden hours per response	Increase in internal hours	Increase in professional hours	Increase in professional costs
(A) †	(B) ††	(C) = (B)/(A)	(D) = (B) × 75%	(E) = (B) × 25%	(F) = (E) × $400
45,289	140,799	3 †††	105,599	35,200	$14,080,000

† This number reflects an estimated increase of 36,702 annual responses to the existing Regulation 13D–G collection of information. *See supra* notes 272–275 and accompanying text. The current OMB PRA inventory estimates that 8,587 responses are filed annually for Regulation 13D–G.

†† Calculated as the sum of annual burden increases estimated for Schedule 13D and 13G filings. *See supra* PRA Table 1.

††† The estimated increases in Columns (C), (D) and (E) are rounded to the nearest whole number.

Finally, the table that follows summarizes the requested paperwork burden for Regulation 13D–G that will be submitted to OMB for review in accordance with the PRA, including the estimated total reporting burdens and costs, under the proposed amendments.

PRA TABLE 3—REQUESTED PAPERWORK BURDEN FOR REGULATION 13D–G UNDER THE PROPOSED AMENDMENTS

Current burden			Program change			Revised burden		
Current annual responses	Current burden hours	Current cost burden	Increase in number of responses	Increase in internal hours	Increase in professional costs	Annual responses	Burden hours	Cost burden
(A)	(B)	(C)	(D) ±	(E) ‡‡	(F) ‡‡‡	(G) = (A) + (D)	(H) = (B) + (E)	(I) = (C) + (F)
8,587	27,412	$32,894,000	36,702	105,599	$14,080,000	45,289	133,011	$46,974,000

± *See supra* notes 272–275 and accompanying text.

‡‡ From Column (D) in PRA Table 2.

‡‡‡ From Column (F) in PRA Table 2.

In addition, the requested increase in the paperwork burden for Forms 3, 4, and 5 that will be submitted to OMB for review in accordance with the PRA will be 1,099 hours, 16,911 hours and 594 hours, respectively, and zero dollars for each Form.[281]

Given the number of variables that are highly specific to the unique

[280] Our estimates assume that 75% of the burden is borne by the reporting persons and 25% is borne by outside professionals at $400 per hour. We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis, we estimate that such costs would be an average of $400 per hour.

[281] These amounts are calculated based on the estimated number of additional Forms 3, 4, and 5 filed as a result of the proposed amendments—2,197, 33,821 and 594, respectively, *see supra* note 276 and accompanying text—multiplied by the current OMB inventory number of hours per response. The current OMB inventory indicates that there are 0.5 burden hours associated with each Form 3 and Form 4 filing and one burden hour associated with each Form 5 filing. The current OMB inventory also indicates that there are $0 of burden dollars associated with each Form 3, 4, and 5 filing.

circumstances of each type of person affected by the proposed amendments, our ability to predict the magnitude of corresponding costs and burdens with any precision is limited. Therefore, we encourage public commenters to consider our assessment and provide additional information and, where available, data that would be helpful in deriving our estimates for purposes of the PRA.

Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comment in order to:

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility;
- Evaluate the accuracy and assumptions and estimates of the burden of the proposed collection of information;
- Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;
- Evaluate whether there are ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and
- Evaluate whether the proposed amendments would have any effects on any other collection of information not previously identified in this section.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing the burdens. Persons who desire to submit comments on the collection of information requirements should direct their comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, with reference to File No. S7–06–22. Requests for materials submitted to the OMB by us with regard to these collections of information should be in writing, refer to File No. S7–06–22 and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, a comment to the OMB is best assured of having its full effect if the OMB receives it within 30 days of publication.

V. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[282] the Commission must advise OMB as to whether the proposed amendments constitute a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results, or is likely to result, in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on whether the proposed amendments would be a ''major rule'' for purposes of SBREFA. We solicit comment and empirical data on: (a) The potential effect on the U.S. economy on an annual basis; (b) any potential increase in costs or prices for consumers or individual industries; and (c) any potential effect on competition, investment or innovation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VI. Regulatory Flexibility Act Certification

The RFA requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a) of the Administrative Procedure Act,[283] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on ''small entities.'' [284] Section 605(b) of the RFA states that this requirement shall not apply to any proposed rule or proposed rule amendment which, if adopted, would not have a significant economic impact on a substantial number of small entities.[285]

For purposes of Commission rulemaking in connection with the RFA, a small entity includes: (1) When used with reference to an ''issuer'' or a ''person,'' other than an investment company, an ''issuer'' or ''person'' that, on the last day of its most recent fiscal year, had total assets of $5 million or less; [286] or (2) a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to 17 CFR 240.17a–5(d) (''Rule 17a–5(d)''),[287] or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and is not affiliated with any person (other than a natural person) that is not a small business or small organization.[288] An investment company, including a business development company,[289] is considered to be a ''small business'' if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[290]

Although the proposed amendments would apply to beneficial owners regardless of their size, we believe that the vast majority of the beneficial owners that would be subject to the proposed amendments would not be small entities for purposes of the RFA. For example, the proposed amendments to the filing deadlines in Rules 13d–1 and 13d–2, as well as the proposed amendments to Rules 13 and 201 of Regulation S–T and the proposed structured data requirements, only would impact persons who beneficially own more than 5% of a covered class. In addition, the proposed amendment to Rule 13d–3 would apply to holders of cash-settled derivative securities; we believe that persons who hold such derivatives are generally larger, sophisticated investors. Similarly, while the proposed amendments to Rule 13d–5 could apply to numerous smaller persons who individually, absent formation of a group pursuant to the proposed amendments, would not beneficially own more than 5% of a covered class, we believe that persons

[282] Public Law 104–121, Title II, 110 Stat. 857 (1996); 5 U.S.C. 801 *et seq.*

[283] 5 U.S.C. 603(a).

[284] Although Section 601(b) of the RFA defines the term ''small entity,'' the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term ''small entity'' for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in 17 CFR 240.0–10. *See* Final Definitions of ''Small Business'' and ''Small Organization'' for Purposes of the Regulatory Flexibility Act, Release No. 34–18452 (Jan. 28, 1982) [47 FR 5215 (Feb. 4, 1982)].

[285] *See* 5 U.S.C. 605(b).

[286] *See* 17 CFR 240.0–10(a).

[287] Rule 17a–5(d).

[288] *See* 17 CFR 240.0–10(c).

[289] Business development companies are a category of closed-end investment company that are not registered under the Investment Company Act [15 U.S.C. 80a–2(a)(48) and 80a–53–64].

[290] 17 CFR 270.0–10(a).

who take concerted actions that would implicate the proposed amendments generally would be larger, sophisticated investors. That same belief applies to the exemptions contained in the proposed amendments to Rule 13d–6.

For the foregoing reasons, the Commission certifies, pursuant to 5 U.S.C. 605(b), that the proposed amendments, if adopted, would not have a significant economic impact on a substantial number of small entities for purposes of the RFA. We invite commenters to address whether the proposed amendments would have a significant economic impact on a substantial number of small entities, and, if so, what would be the nature of any impact on small entities. We request that commenters provide empirical data to illustrate the extent of the impact. Such comments will be considered in the preparation of any final rules (and in a Final Regulatory Flexibility Analysis if one is needed) and will be placed in the same public file as comments on the proposed amendments themselves.

VII. Statutory Authority

We are proposing the rule amendments contained in this release under the authority set forth in Sections 3(a), 3(b), 13, 16, and 23(a) of the Exchange Act.

List of Subjects

17 CFR Part 232

Administrative practice and procedure, Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Amendments

For the reasons set out in the preamble, the Commission proposes to amend title 17, chapter II, of the Code of Federal Regulations as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The general authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78o(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

§ 232.13 [Amended]

■ 2. Amend § 232.13(a)(4) by:

■ a. Removing the words ''or a Schedule 14N'' and adding '', a Schedule 14N'' in their place; and

■ b. Adding the phrase '', or a Schedule 13D or Schedule 13G, inclusive of any amendments thereto (§§ 240.13d–101 and 240.13d–102 of this chapter),'' immediately preceding ''submitted by direct transmission''.

§ 232.201 [Amended]

■ 3. Amend § 232.201(a) introductory text by:

■ a. Removing the word ''or'' that immediately precedes ''an Asset Data File''; and

■ b. Adding after the phrase ''Asset Data File (as defined in § 232.11),'' the phrase ''or a Schedule 13D or Schedule 13G (§§ 240.13d–101 and 240.13d–102 of this chapter)''.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 4. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

Section 240.13d–3 is also issued under Public Law 111–203 § 766, 124 Stat. 1799 (2010).

* * * * *

■ 5. Amend § 240.13d–1 by revising paragraphs (a), (b)(2), (c) introductory text, (d), (e)(1) introductory text, (f)(1), (g), and (i) to read as follows:

§ 240.13d–1 Filing of Schedules 13D and 13G.

(a) Any person who, upon acquiring directly or indirectly the beneficial ownership of any equity security of a class which is specified in paragraph (i) of this section, is directly or indirectly the beneficial owner of more than five percent of the class shall, within five days after the date of the acquisition, file with the Commission, a statement containing the information required by Schedule 13D (§ 240.13d–101).

(b) * * *

(2) The Schedule 13G filed pursuant to paragraph (b)(1) of this section shall be filed within five business days after the end of the month in which the person became obligated under paragraph (b)(1) of this section to report the person's beneficial ownership as of the last day of the month, *provided,* that it shall not be necessary to file a Schedule 13G unless the percentage of the class of equity security specified in paragraph (i) of this section beneficially owned as of the end of the month is more than five percent.

(c) A person who would otherwise be obligated under paragraph (a) of this section to file a statement on Schedule 13D (§ 240.13d–101) may, in lieu thereof, file with the Commission, within five days after the date of an acquisition described in paragraph (a) of this section, a short-form statement on Schedule 13G (§ 240.13d–102). *Provided,* that the person:

* * * * *

(d) Any person who, as of the end of any month, is or becomes directly or indirectly the beneficial owner of more than five percent of any equity security of a class specified in paragraph (i) of this section and who is not required to file a statement under paragraph (a) of this section by virtue of the exemption provided by Section 13(d)(6)(A) or (B) of the Act (15 U.S.C. 78m(d)(6)(A) or 78m(d)(6)(B)), or because the beneficial ownership was acquired prior to December 22, 1970, or because the person otherwise (except for the exemption provided by Section 13(d)(6)(C) of the Act (15 U.S.C. 78m(d)(6)(C))) is not required to file a statement, shall file with the Commission, within five business days after the end of the month in which the person became obligated to report under this paragraph (d), a statement containing the information required by Schedule 13G (§ 240.13d–102).

(e)(1) Notwithstanding paragraphs (b) and (c) of this section and § 240.13d–2(b), a person that has reported that it is the beneficial owner of more than five percent of a class of equity securities in a statement on Schedule 13G (§ 240.13d–102) pursuant to paragraph (b) or (c) of this section, or is required to report the acquisition but has not yet filed the schedule, shall immediately become subject to paragraph (a) of this section and § 240.13d–2(a) and shall file a statement on Schedule 13D (§ 240.13d–101) within five days if, and shall remain subject to those requirements for so long as, the person:

* * * * *

(f)(1) Notwithstanding paragraph (c) of this section and § 240.13d–2(b), persons reporting on Schedule 13G (§ 240.13d–102) pursuant to paragraph (c) of this section shall immediately become subject to paragraph (a) of this section and § 240.13d–2(a) and shall remain subject to those requirements for

so long as, and shall file a statement on Schedule 13D (§ 240.13d–101) within five days after the date on which the person's beneficial ownership equals or exceeds 20 percent of the class of equity securities.

* * * * *

(g) Any person who has reported an acquisition of securities in a statement on Schedule 13G (§ 240.13d–102) pursuant to paragraph (b) of this section, or has become obligated to report on the Schedule 13G (§ 240.13d–102) but has not yet filed the Schedule, and thereafter ceases to be a person specified in paragraph (b)(1)(ii) of this section or determines that it no longer has acquired or holds the securities in the ordinary course of business shall immediately become subject to paragraph (a) or (c) of this section (if the person satisfies the requirements specified in paragraph (c)) and § 240.13d–2(a), (b), or (d), and shall file, within five days thereafter, a statement on Schedule 13D (§ 240.13d–101) or amendment to Schedule 13G, as applicable, if the person is a beneficial owner at that time of more than five percent of the class of equity securities.

* * * * *

(i)(1) For the purpose of this section, the term ''equity security'' means any equity security of a class which is registered pursuant to section 12 of that Act, or any equity security of any insurance company which would have been required to be so registered except for the exemption contained in section 12(g)(2)(G) of the Act, or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940; provided, such term shall not include securities of a class of non-voting securities.

(2) For the purpose of this section, the term ''business day'' means any day, other than Saturday, Sunday, or a Federal holiday, from 6 a.m. to 10 p.m., eastern time.

* * * * *

■ 6. Amend § 240.13d–2 by:
■ a. Revising paragraphs (a), (b), (c), and (d); and
■ b. Removing the parenthetical authority citation at the end of the section.

The revisions read as follows:

§ 240.13d–2 Filing of amendments to Schedules 13D or 13G.

(a) If any material change occurs in the facts set forth in the Schedule 13D (§ 240.13d–101) required by § 240.13d–1(a), including, but not limited to, any material increase or decrease in the percentage of the class beneficially owned, the person or persons who were required to file the statement shall file or cause to be filed with the Commission an amendment disclosing that change within one business day after that change. An acquisition or disposition of beneficial ownership of securities in an amount equal to one percent or more of the class of securities shall be deemed ''material'' for purposes of this section; acquisitions or dispositions of less than those amounts may be material, depending upon the facts and circumstances.

(b) Notwithstanding paragraph (a) of this section, and provided that the person filing a Schedule 13G (§ 240.13d–102) pursuant to § 240.13d–1(b) or (c) continues to meet the requirements set forth therein, any person who has filed a Schedule 13G (§ 240.13d–102) pursuant to § 240.13d–1(b), (c), or (d) shall amend the statement within five business days after the end of each month if, as of the end of the month, there are any material changes in the information reported in the previous filing on that Schedule, including, but not limited to, any material increase or decrease in the percentage of the class beneficially owned; *provided, however,* that an amendment need not be filed with respect to a change in the percent of class outstanding previously reported if the change results solely from a change in the aggregate number of securities outstanding. Once an amendment has been filed reflecting beneficial ownership of five percent or less of the class of securities, no additional filings are required unless the person thereafter becomes the beneficial owner of more than five percent of the class and is required to file pursuant to § 240.13d–1.

(c) Any person relying on § 240.13d–1(b) that has filed its initial Schedule 13G (§ 240.13d–102) pursuant to § 240.13d–1(b) shall, in addition to filing any amendments pursuant to § 240.13d–2(b), file an amendment on Schedule 13G (§ 240.13d–102) within five days after the date on which the person's direct or indirect beneficial ownership exceeds 10 percent of the class of equity securities. Thereafter, that person shall, in addition to filing any amendments pursuant to § 240.13d–2(b), file an amendment on Schedule 13G (§ 240.13d–102) within five days after the date on which the person's direct or indirect beneficial ownership increases or decreases by more than five percent of the class of equity securities. Once an amendment has been filed reflecting beneficial ownership of five percent or less of the class of securities, no additional filings are required by this paragraph (c).

(d) Any person relying on § 240.13d–1(c) that has filed its initial Schedule 13G (§ 240.13d–102) pursuant to § 240.13d–1(c) shall, in addition to filing any amendments pursuant to paragraph (b) of this section, file an amendment on Schedule 13G (§ 240.13d–102) within one business day after acquiring, directly or indirectly, greater than 10 percent of a class of equity securities specified in § 240.13d–1(d), and thereafter within one business day after increasing or decreasing its beneficial ownership by more than five percent of the class of equity securities. Once an amendment has been filed reflecting beneficial ownership of five percent or less of the class of securities, no additional filings are required by this paragraph (d).

* * * * *

■ 7. Amend § 240.13d–3 by:
■ a. Revising paragraph (d) introductory text;
■ b. Adding paragraph (e); and
■ c. Removing the parenthetical authority citation at the end of the section.

The revision and addition read as follows:

§ 240.13d–3 Determination of beneficial owner.

* * * * *

(d) Notwithstanding the provisions of paragraphs (a), (c), and (e) of this section:

* * * * *

(e)(1)(i) A person shall be deemed to be the beneficial owner of a number of securities for purposes of Sections 13(d) and 13(g) of the Act, calculated in accordance with paragraph (e)(2) of this section, in a class of equity securities if that person holds a derivative security, as defined in § 240.16a–1(c) (Rule 16a–1(c)), other than a security-based swap as defined by section 3(a)(68) of the Act (15 U.S.C. 78c(a)(68)) and the rules and regulations thereunder in this part:

(A) That references such class of equity securities;

(B) To the extent that such derivative security is required to be settled exclusively in cash and holding such security has not otherwise resulted in a determination that the person is a beneficial owner under this section; and

(C) That is held with the purpose or effect of changing or influencing the control of the issuer of such class of equity securities, or in connection with or as a participant in any transaction having such purpose or effect.

(ii) Any securities not outstanding which are referenced by such derivative security shall be deemed to be

outstanding for the purpose of computing the percentage of outstanding securities of the class owned by such person but shall not be deemed to be outstanding for the purpose of computing the percentage of the class by any other person.

(2)(i) The number of securities that a person shall be deemed to beneficially own pursuant to paragraph (e)(1) of this section shall be the larger of (in each case as applicable):

(A) The product that is obtained by multiplying {x} the number of securities by reference to which the amount payable under the derivative security is determined by {y} the delta of the derivative security; and

(B) The number that is obtained by {x} dividing the notional amount of the derivative security by the most recent closing market price of the reference equity security, and then {y} multiplying such quotient by the delta of the derivative security.

(ii) For the purpose of this section, the term ''delta'' means, with respect to a derivative security, the ratio that that is obtained by comparing {x} the change in the value of the derivative security to {y} the change in the value of the reference equity security.

Note 1 to Paragraph (e)(2). For purposes of determining the number of equity securities that a person shall be deemed to beneficially own pursuant to this paragraph (e), only long positions in derivative securities should be counted. Short positions in derivative securities should not be netted against long positions or otherwise taken into account.

Note 2 to Paragraph (e)(2). For purposes of determining the number of equity securities that a person shall be deemed to beneficially own pursuant to this paragraph (e), the calculation in clause (x) of paragraph (e)(2)(i)(B) of this section should be performed on a daily basis.

Note 3 to Paragraph (e)(2). If a derivative security does not have a fixed delta, then a person who holds such derivative security should calculate the delta on a daily basis, for purposes of determining the number of equity securities that such person shall be deemed to beneficially own pursuant to this paragraph (e), based on the closing market price of the reference equity security on that day.

■ 8. Revise § 240.13d–5 to read as follows:

§ 240.13d–5 Acquisition of beneficial ownership.

(a) A person who becomes a beneficial owner of securities shall be deemed to have acquired such beneficial ownership for purposes of section 13(d)(1) of the Act, whether such acquisition was through purchase or otherwise. However, executors or administrators of a decedent's estate generally will be presumed not to have acquired the beneficial ownership held by the decedent's estate until such time as such executors or administrators are qualified under local law to perform their duties.

(b)(1)(i) When two or more persons act as a group under section 13(d)(3) of the Act, the group shall be deemed to have acquired beneficial ownership, for purposes of section 13(d) of the Act, of all equity securities of an issuer beneficially owned by any such persons as of the date of the group's formation.

(ii) A person that is or will be required to report beneficial ownership on Schedule 13D (§ 240.13d–101) who, in advance of making such filing, directly or indirectly discloses to any other market participant the non-public information that such filing will be made, acts as a group with such other person or persons within the meaning of section 13(d)(3) of the Act to the extent such information was shared with the purpose of causing such other person or persons to acquire equity securities of the same class for which the Schedule 13D will be filed, and such group will be deemed to have acquired any beneficial ownership held in the same class by its members as of the earliest date on which such other person or persons acquired beneficial ownership based on such information.

(iii) A group regulated as a person pursuant to section 13(d)(3) of the Act shall be deemed to have acquired beneficial ownership, as determined under paragraph (a) of this section and for purposes of sections 13(d)(1) and (2) of the Act, if any member of the group becomes the beneficial owner of additional equity securities in the same class beneficially owned by the group after the date of the group's formation. The beneficial ownership so acquired shall be reported as being held by the group through the earlier of {x} the date of the group's dissolution or {y} the date of that member's withdrawal from the group.

(iv) Notwithstanding paragraph (b)(1)(iii) of this section, a group regulated under section 13(d)(3) of the Act shall not be deemed to have acquired beneficial ownership, as determined under paragraph (a) of this section, if a member of the group becomes the beneficial owner of additional equity securities in the same class beneficially owned by the group after the date of group formation through a sale by or transfer from another member of the group.

(2)(i) When two or more persons act as a group under section 13(g)(3) of the Act, the group shall be deemed to have become the beneficial owner, for purposes of sections 13(g)(1) and (2) of the Act, of all equity securities of an issuer beneficially owned by any such persons as of the date of group formation notwithstanding the absence of an acquisition subject to section 13(d) of the Act.

(ii) A group regulated as a person pursuant to section 13(g)(3) of the Act shall be deemed to have become the beneficial owner, for purposes of sections 13(g)(1) and (2) of the Act, if any member of the group becomes a beneficial owner of additional equity securities in the same class held by the group after the date of the group's formation and through the earlier of {x} the date of the group's dissolution or {y} the date of that member's withdrawal from the group.

(iii) Notwithstanding paragraph (b)(2)(ii) of this section, a group regulated under section 13(g)(3) of the Act shall not be deemed to have become the beneficial owner of additional equity securities in the same class beneficially owned by the group if a member of the group becomes the beneficial owner of additional such equity securities in that same class after the date of the group's formation through a sale by or transfer from another member of the group.

■ 9. Revise § 240.13d–6 to read as follows:

§ 240.13d–6 Exemption of certain acquisitions.

(a) The acquisition of securities of an issuer by a person who, prior to such acquisition, was a beneficial owner of more than five percent of the outstanding securities of the same class as those acquired shall be exempt from section 13(d) of the Act; provided, that:

(1) The acquisition is made pursuant to preemptive subscription rights in an offering made to all holders of securities of the class to which the preemptive subscription rights pertain;

(2) Such person does not acquire additional securities except through the exercise of his pro rata share of the preemptive subscription rights; and

(3) The acquisition is duly reported, if required, pursuant to section 16(a) of the Act and the rules and regulations thereunder in this part.

(b) A group shall be deemed not to have acquired any equity securities beneficially owned by the other members of the group solely by virtue of their concerted actions relating to the

purchase of equity securities directly from an issuer in a transaction not involving a public offering; provided, that:

(1) All the members of the group are persons specified in § 240.13d–1(b)(1)(ii);

(2) The purchase is in the ordinary course of each member's business and not with the purpose nor with the effect of changing or influencing control of the issuer, nor in connection with or as a participant in any transaction having such purpose or effect, including any transaction subject to § 240.13d–3(b);

(3) There is no agreement among, or between any members of the group to act together with respect to the issuer or its securities except for the purpose of facilitating the specific purchase involved; and

(4) The only actions among or between any members of the group with respect to the issuer or its securities subsequent to the closing date of the non-public offering are those which are necessary to conclude ministerial matters directly related to the completion of the offer or sale of the securities.

(c) Two or more persons shall not be deemed to have acquired beneficial ownership of, for purposes of section 13(d) of the Act, or otherwise beneficially own, for purposes of section 13(g) of the Act, an issuer's equity securities as a group under sections 13(d)(3) or 13(g)(3) of the Act solely because of their concerted actions with respect to such issuer's equity securities, including engagement with one another or the issuer or acquiring, holding, voting or disposing of the issuer's equity securities; provided, that:

(1) Communications among or between such persons are not undertaken with the purpose or the effect of changing or influencing control of the issuer, and are not made in connection with or as a participant in any transaction having such purpose or effect, including any transaction subject to § 240.13d–3(b); and

(2) Such persons, when taking such concerted actions, are not directly or indirectly obligated to take such actions.

(d) Two or more persons who, in the ordinary course of their business, enter into a bona fide purchase and sale agreement setting forth the terms of a derivative security, as defined in § 240.16a–1(c) (Rule 16a–1(c)), with respect to a class of equity securities shall not be deemed to have acquired beneficial ownership of, for purposes of section 13(d)(1) of the Act and § 240.13d–5, or otherwise beneficially own, for purposes of section 13(g) of the Act, any such equity securities of the issuer referenced in the agreement as a group under sections 13(d)(3) or 13(g)(3) of the Act; provided, that such persons did not enter into the agreement with the purpose or effect of changing or influencing control of the issuer, or in connection with or as a participant in any transaction having such purpose or effect, including any transaction subject to § 240.13d–3(b).

■ 10. Amend § 240.13d–101 by revising Item 6 to read as follows:

§ 240.13d–101 Schedule 13D—Information to be included in statements filed pursuant to § 240.13d–1(a) and amendments thereto filed pursuant to § 240.13d–2(a).

* * * * *

Item 6. Contracts, Arrangements, Understandings or Relationships With Respect to Securities of the Issuer. Describe any contracts, arrangements, understandings, or relationships (legal or otherwise) among the persons named in Item 2 and between such persons and any person with respect to any securities of the issuer, including any class of such issuer's securities used as a reference security, in connection with any of the following: Call options, put options, security-based swaps or any other derivative securities, transfer or voting of any of the securities, finder's fees, joint ventures, loan or option arrangements, guarantees of profits, division of profits or loss, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, understandings, or relationships have been entered into. Include such information for any of the securities that are pledged or otherwise subject to a contingency the occurrence of which would give another person voting power or investment power over such securities except that disclosure of standard default and similar provisions contained in loan agreements need not be included.

* * * * *

By the Commission.

Dated: February 10, 2022.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–03222 Filed 3–9–22; 8:45 am]

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